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COUNCIL DIRECTIVE 92/79/EEC
of 19 October 1992
on the approximation of taxes on cigarettes

(OJ L 316, 31.10.1992, p. 8)

Amended by:

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COUNCIL DIRECTIVE 92/79/EEC
of 19 October 1992
on the approximation of taxes on cigarettes

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 99 thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the European Parliament [2],

Having regard to the opinion of the Economic and Social Committee [3],

Whereas Directive 72/464/EEC [4] lays down general provisions concerning excise duties on manufactured tobacco and special provisions concerning the structure of excise duties applicable to cigarettes;

Whereas Directive 79/32/EEC [5] laid down the definitions of the various groups of manufactured tobacco;

Whereas for the completion on 1 January 1993 of an internal market without frontiers it is necessary to establish an overall minimum excise duty for cigarettes;

Whereas it is necessary for the Kingdom of Spain to have a transitional period of two years in order to attain that overall minimum excise duty;

Whereas the Portuguese Republic should be granted the possibility of a reduced rate for cigarettes made by small-scale producers and consumed in the most remote regions of the Azores and Madeira;

Whereas a procedure should be introduced so that, as regards the overall incidence and the structure of excise duties on cigarettes, it will be possible every two years to make the adjustments necessary to take account of the proper functioning of the internal market and the wider objectives of the Treaty,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Not later than 1 January 1993, Member States shall apply to cigarettes minimum consumption taxes in accordance with the rules provided for in this Directive.

2. Paragraph 1 shall apply to the taxes which, pursuant to Directive 72/464/EEC, are levied on cigarettes and which comprise:

(a) a specific excise duty per unit of the product;

(b) a proportional excise duty calculated on the basis of the maximum retail selling price;

(c) a VAT proportional to the retail selling price.

Article 2

Not later than 1 January 1993, each Member State shall apply an overall minimum excise duty (specific duty plus *ad valorem* duty excluding VAT) the incidence of which shall be set at 57 % of the retail selling price (inclusive of all taxes) for cigarettes of the price category most in demand.

The overall minimum excise duty on cigarettes shall be determined on the basis of cigarettes of the price category most in demand according to data established as at 1 January of each year, beginning on 1 January 1993.

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(1) OJ No C 12, 18. 1. 1990, p. 4.
(2) OJ No C 94, 13. 4. 1992, p. 35.
(3) OJ No C 225, 10. 9. 1990, p. 56.
(4) OJ No L 303, 31. 12. 1972, p. 1. Last amended by Directive 92/78/EEC, (see page 5 of this Official Journal).
(5) OJ No L 10, 16. 1. 1979, p. 8.

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Article 2a

1. When a change in the retail selling price of cigarettes in the most popular price category occurs in a Member State, thereby bringing the incidence of the overall minimum excise duty below the level specified in the first subparagraph of Article 2, the Member State in question may refrain from adjusting the incidence of the overall minimum excise duty until not later than 1 January of the second year following that in which the change occurs.

2. When a Member State increases the rate of value-added tax on cigarettes, it may reduce the incidence of the overall minimum excise duty up to an amount which, expressed as a percentage of the retail selling price, is equal to the incidence of the increase in the rate of value added tax, also expressed as a percentage of the retail selling price, even if such an adjustment has the effect of reducing the incidence of the overall minimum excise duty to below the level laid down in Article 2.

3. If, in accordance with paragraph 2, a Member State reduces the incidence of the overall minimum excise duty to a level below that laid down in the first subparagraph of Article 2, it shall raise that incidence so as to reach at least that level not later than 1 January of the second year after that in which the reduction took place.

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Article 3

1. The Kingdom of Spain shall have a transitional period of two years, starting on 1 January 1993, to attain the overall minimum excise duty laid down in Article 2.

2. The Portuguese Republic may apply a reduced rate of up to 50 % less than that laid down in Article 2 to cigarettes consumed in the most remote regions of the Azores and Madeira, made by small-scale manufacturers each of whose annual production does not exceed 500 tonnes.

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3. Notwithstanding Article 2, the Kingdom of Sweden may postpone, up to and including 31 December 2002, the application of an overall minimum excise duty equivalent to 57 % of the retail selling price (inclusive of all taxes) of cigarettes in the most popular price category. In addition, the Kingdom of Sweden may not reduce the overall excise duty below the level applied on 1 August 1998.

4. Up to and including 31 December 2002, the French Republic may apply for cigarettes sold on the island of Corsica the same rates as those in force on 31 December 1997.

Article 4

Not less frequently than every three years, and for the first time not later than 31 December 2000, the Council, acting on the basis of a report and, where appropriate, a proposal from the Commission, shall examine the overall minimum excise duty laid down in Article 2 and in Article 3(2) and the structure of excise duties as defined by Article 16 of Council Directive 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco ([1]) and, acting unanimously after consulting the European Parliament, shall adopt the necessary measures. The report by the Commission and the examination by the Council shall take into account the proper functioning of the internal market and the wider objectives of the Treaty.

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Article 5

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 31 December 1992. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

([1]) OJ L 291, 6.12.1995, p. 40.

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2. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive.

Article 6

This Directive is addressed to the Member States.