



HM Treasury



HM Revenue  
& Customs

# Vaping Products Duty consultation response template

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It is recommended that you read the full consultation document before completing your response. Please note that the text boxes used in this template can be expanded to accommodate additional text.

### **Guidance for respondents**

- Please try to answer all questions (even if it is just to say that you do not have an opinion) as this will assist with our analysis.
- You are not limited to only answering the questions asked and we will also consider written submissions provided to the consultation.
- There is no word limit on responses.

Responses should arrive no later than **29 May 2024**, with early responses encouraged where possible.

For further information on how we handle your personal data, please read the Privacy Notice in Chapter 12 of the consultation document.

Please send your response to: [vapingproductsduty@hmrc.gov.uk](mailto:vapingproductsduty@hmrc.gov.uk)

Please enter **“Vaping Products Duty consultation response”** in the subject line.

## **Chapter 4: About you**

**Full Name (if responding on behalf of a business / organisation please include the business / organisation name):**

Chartered Institute of Taxation

**Email address:**

technical@ciot.org.uk

**Address:**

30 Monck Street London SW1P 2AP

**1. Are you:**

A business?\*

An organisation? If so, please provide details (e.g. trade/health body):

Professional body for tax advisers

An individual

**\*If you answered 'a) a business' please specify which of the following describe your business:**

a UK producer of vaping products to which you own the brand

a UK producer of vaping products to which you do not own the brand

a UK packager of vaping products that someone else has produced

an overseas producer of vaping products

an importer of vaping products into the UK

a UK retailer

a UK wholesaler or distributor

a business providing goods or services that support the production, packaging, importation, or supply of vaping products in the UK – please provide details:

another type of business – please provide details:

**2. If you are a business, where is your business established?**

UK

Isle of Man

EU – please state country:

Non-EU – please state country:

**3. If you are a business, how many staff do you employ?**

Fewer than 10

10-100

101-500

More than 500

## Tobacco industry declaration

As a party to the World Health Organization's Framework Convention on Tobacco Control (FCTC), the UK has an obligation to protect the development of public health policy from the vested interests of the tobacco industry. To meet this obligation, we ask all respondents to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry.

### 4. Do you have any direct or indirect links to, or receive funding from, the tobacco industry?

Yes

No

## Structure of the duty

### 5. Do you agree that the rates and structure outlined in Chapter 3 will achieve the stated objectives of the duty?

Yes

No

*Please provide any reasons for your answer.*

The CIOT agrees that the introduction of a tiered excise duty rate on vaping products, Vaping Products Duty ('VPD'), will achieve the following objectives set out in paragraph 3.1 of the consultation document:

- Reduce affordability
- Raise revenue

The CIOT agrees that the introduction of VPD may achieve the remaining objectives:

- Does not make smoking more attractive (based on price); we noted that industry feedback suggested that the new pricing may encourage consumers to buy smuggled vaping products or cigarettes, including illegal vaping products over 20mg/ml strength, but we cannot comment further on this.
- VPD is proportionate to administer for businesses and HMRC – the CIOT supports that VPD will be levied at the manufacturer/importer level in a similar way to the existing excise rules for alcohol and tobacco, rather than requiring smaller retailers to administer and pay the duty.

- Encourage consumers to buy lower strength or nicotine free products – we noted in the roundtables that industry indicated that in their experience, smokers tended to be more successful in giving up cigarettes where they chose a higher strength vaping product that could meet the nicotine levels of the addiction. For these purposes, it is a logical conclusion that the consumer may still be encouraged to try higher strength vaping products irrespective of the introduction of VPD but we do not have further evidence to comment on this.

The vaping industry itself will provide feedback on whether VPD will meet the aim of encouraging manufacturers to reduce the strength of the nicotine in their products, as this is outside of the CIOT's knowledge.

**6. Do you agree that the rates and structure will encourage manufacturers to reduce the nicotine content of their products?**

Yes

No

*Please provide any reasons for your answer.*

Why we have answered 'yes':

In principle, where consumers are deterred from buying stronger strength vaping products due to reduced affordability, we would anticipate that manufacturers will see a decrease in sales of these products and increased demand for lower strength/nicotine free vaping liquids. This suggests market demand will drive the requirement to produce more lower strength/nicotine free products but we do not have evidence to support this.

Why we have answered 'no':

Where the customer is using vaping to assist in the cessation of smoking cigarettes, industry feedback provided during the consultation engagement meetings indicated that they would be far more likely to succeed where they move to higher strength vaping products that meet their nicotine addiction requirements, and then gradually reduce the strength in time should they choose to. The levying of VPD would have no bearing on the ability of a vaping product to meet such needs; if a strong strength vaping product provides the best smoking cessation outcomes, then we expect manufacturers will continue to produce them for this purpose but we are not experts in the vaping market.

**7. What do you think the likely impact the rate structure will have on consumers' vaping behaviours?**

Yes

No

*Please provide any supporting evidence.*

We agree that it seems likely that reducing affordability by applying higher rate of VPD to higher strength products may deter young consumers or the less well-off from trying higher strength products although we do not have evidence to support this.

The highest rates of VPD may encourage existing vapers to try using lower strength liquids, though it is possible that their nicotine addiction may mean that they vape more often with a lower strength/lower VPD product. To offset increased prices, there could also be an increase in using smuggled products to add nicotine to lower strength vaping liquids.

For people using vaping products to quit smoking cigarettes, they may have no choice but to continue to use higher strength vaping products with the highest rate of VPD. We cannot comment further other to note industry feedback indicated that this usually provided the most successful journey off cigarettes and onto vaping products. There may be an increased risk of using illegal products to offset the increased costs.

## Scope of the duty

### **8. Should production of vaping products by individuals for their own use be within scope of the duty?**

Yes

No

*Please explain any reasons for your answer.*

We prefer that the obligation to declare VPD should apply to businesses that manufacture vaping products or import them into the UK.

Bringing individuals into the scope of VPD registration and compliance will not meet one of the stated objectives of the duty, that is, '*To ensure that the duty is proportionate to administer for both businesses and HMRC.*'; the aim is specific to businesses.

Bringing private individuals into the excise regime will be onerous as they will highly likely be unrepresented by a tax adviser, as well as potentially having a disproportionate impact on HMRC resources to provide adequate services to:

- Highlight VPD obligations to affected individuals
- Provide VPD education/guidance for affected individuals
- Process additional (and unknown numbers of) VPD registrations
- Carry out compliance visits, with comparatively little tax collection compared to affected businesses
- Deal with VPD fraud by individuals

Possible alternatives that could be consulted upon could include:

- Apply a specific VPD rate to products used for home production

- Where private individuals act as the UK importer for smaller quantities of product for home production, have VPD added to the import VAT and customs duty charges that must be paid to the courier

**9. Are there any other factors concerning home production/blending that should be considered?**

Yes

No

*Please specify.*

This question is outside of the CIOT's expertise.

## Chapter 5: Liability for the duty

**10. Do you agree with the proposals on how liability would work?**

Yes

No

*Please provide any reasons for your answer.*

The CIOT agrees that, where possible, VPD should work in a similar way to the existing excise rules for alcohol and tobacco, including similar measures allowing for duty suspension.

Should further joint and several liability rules be introduced, we would like to see further consultation undertaken.

**11. Do you agree with HMRC's proposal for when products should be charged with the duty?**

Yes

No

*Please provide any reasons for your answer.*

The CIOT agrees that VPD should be charged at the time of manufacture or import into the UK, subject to any allowable deferment of the tax point, such as duty suspension arrangements.

As mentioned in our response to question 8, where individuals import products for home production for personal use, we would prefer that the VPD on products for home production is levied in a way that prevents individuals from being obliged to register for VPD.

**12. Do you have views on the extent to which premises used for further processing or packaging should be required to register or seek approval?**

Yes

No

*If so, please explain your answer.*

The CIOT agrees that businesses with premises used for further processing and packaging should be able to apply for a duty suspension authorisation so that the tax point of the completion of manufacture may be deferred accordingly. Where such a business becomes the owner of the product, or is subject to any new joint and several liability rules, the CIOT agrees that it would be required to register for and declare the VPD, rather than the original manufacturer.

**13. Do you agree with the suggestion on who should be liable to pay the duty?**

Yes

No

*If not, do you think any other person should be held liable?*

The CIOT agrees that the UK manufacturer or importer should be liable to pay the duty, unless the products are held in duty suspension by another person after initial manufacture or import, in which case it would be that person who is liable to pay the duty when those arrangements cease.

**14. The government also welcomes evidence on the processes followed in the manufacture of vaping products, including any secondary processes that are carried out after initial manufacture, for example processing of semi-finished products or packaging.**

This question is outside of the expertise of the CIOT.

## Exemptions and reliefs

**15. Do you agree that products destined for general sale on the UK market should not qualify for any reliefs or exemptions from the duty?**

Yes

No

*If not, do you think there should be any exceptions to this, please explain why.*

Whilst the CIOT would agree that products for sale on the domestic market should not qualify for reliefs, HMRC may wish to consider whether any relief may apply for products:

- used for testing



- used in clinical research/trials

**16. Are you aware of any examples of vaping products being used for purposes other than general sale on to the UK market that you feel ought to be eligible for relief or exemption?**

Yes

No

*If so, please provide any supporting evidence.*

This question is outside of the expertise of the CIOT.

## **Chapter 6: UK manufacture: Registration, returns and other requirements**

**17. Please provide information on how manufacturing supply-chains of vaping products currently operate.**

This question is outside of the expertise of the CIOT.

**18. Are vaping products subject to additional processing on a different premises or by businesses other than the initial manufacturer?**

Yes

No

*If so, please explain your answer and provide any supporting evidence.*

This question is outside of the expertise of the CIOT.

**19. Are there any processes, including packaging of vaping products, that you feel should not be required to take place on premises registered or approved by HMRC?**

Yes

No

*If so, please explain what these are and why the relevant premises should not require approval from HMRC.*

This question is outside of the expertise of the CIOT.

**Registration of premises, process and requirements**

**20. Is there any other information that would be relevant for HMRC to consider an application for registration?**

Yes

No

*If yes, please explain your answer and provide any supporting evidence.*

The business should be able to appoint an agent to assist with the application and authorisation process as set out in the HMRC Charter, and these details could be disclosed to HMRC as part of the application process.

**21. Is there a need for joint registrations covering more than one legal entity that manufactures/or stores vaping products in the same premises?**

Yes

No

*If so, please explain your answer and provide any supporting information and evidence.*

We would support the availability of joint registrations for VPD as this may offer simplification and flexibility to VPD businesses and storage operators.

**22. Is there a need for registrations to cover more than one premises owned by a single entity?**

Yes

No

*If so, please explain your answer and provide any supporting evidence.*

We would support the availability of registrations being able to cover more than one premises as this may offer simplification and flexibility to VPD businesses.

## Refusal/Revocation/Deregistration

**23. Do you agree these registration and deregistration provisions are appropriate?**

Yes

No

*If not, please explain your answer and provide any supporting evidence.*

In principle, we agree that HMRC should be able to refuse or revoke an application for registration with reasonable cause. However, we would like to see very clear guidance provided to HMRC staff as to what qualifies as 'reasonable cause' so that there is equity of treatment to businesses in the sector.

As VPD is a new tax for the sector, we would like to see for at least an initial bedding in period that HMRC take a light touch approach to non-deliberate behaviour, so that non-compliance arising from genuine mistakes or carelessness is not subject to revocation of registration in the same way as deliberate behaviour.

We welcome a suitable deregistration process for businesses who cease to be liable for VPD, for example in cases of the cessation of business.

Where a trading business is the subject of a transfer of a going concern, we would like to see guidance and processes that clearly set out the steps for the seller and the buyer for VPD compliance (as well as clear for HMRC officers), so that business continuance in respect of VPD can be achieved.

#### **24. Please provide details of the one-off costs businesses may face for registering for the duty with HMRC.**

Whilst the CIOT would not be able to provide a monetary value on the costs of such services due to the wide variation in fee levels of tax advisers, or if the work will be carried out internally, the costs of the staff involved, the work would normally include:

- From internal resources, time spent to read and understand the guidance and application form, obtain the relevant data to complete and submit the application and liaise with HMRC should any follow up questions arise – the cost is likely cheaper than using an excise adviser, though there may be increased risk of errors/oversights by staff new to the tax
- A tax adviser with excise experience would obtain the relevant data to complete and submit the application and liaise with HMRC should any follow up questions arise; usually working on a fixed fee. They may provide wider VPD advice on a variable fee basis in connection with the supply chain, for example, where other authorisations may be required, timing of tax points, risk management, handling imports etc. For new clients, they would also incur time in completing client onboarding identity and risk management checks, for which a fee may be charged to the business.

### Filing returns and other requirements

#### **25. Please provide details of the expected one-off and ongoing costs to businesses of completing and filing a monthly online return and making payments of duty.**

Whilst the CIOT would not be able to provide a monetary value on the costs of these services due to the wide variation in fee levels of tax advisers, or if the

work will be carried out internally, the costs of the staff involved, the work would normally include:

- From internal resources, there may be one-off costs for software adaptations so that systems can compile VPD return data; time spent reviewing the background, obtaining documentation from suppliers/internally in the business, preparing the data into a return format, reviewing the return and submitting the return – the cost is likely cheaper than using an excise adviser, though there may be an increased risk of errors/oversights by staff new to the tax
- A tax adviser would obtain the relevant data to prepare and review the VPD return, engage with the business to authorise the submission of the return; usually working on a fixed fee, though this may be larger for the first return where more questions are likely to arise. For new clients, they would also incur time in completing client onboarding identity and risk management checks, for which a fee may be charged to the business.

**26. Are these return and payment arrangements appropriate for UK manufacturers of vaping products?**

Yes

No

*If not, please explain your answer and provide any supporting evidence.*

The making of monthly returns in an online format and generating electronic payments to pay the tax are generally standard arrangements for other customs or excise duties.

**27. How soon (number of days) after the end of a month should businesses be expected to submit their return and make payment to HMRC for the duty? Please explain your answer.**

We would expect the time limits for submission and payment to mirror other excise duty arrangements for alcohol and tobacco.

HMRC may wish to consider whether a slightly longer submission and payment period should be granted for the first VPD return while the entire sector and HMRC itself is new to the tax.

## Credits and repayments

**28. Are there any other circumstances where a claim to a repayment of duty should be permitted which has not been covered above?**

Yes

No

*If so, please explain your answer and provide any supporting evidence.*

The provisions set out describing the opportunities for applying duty drawback and under/overdeclarations at 6.10-12 appear to be equivalent to existing measures for other excise duties, which is welcomed and appear adequate.

Should industry highlight circumstances specific to the vaping sector that require further consideration than the existing provisions, we would welcome additional engagement to review such requirements.

## Tax agents and intermediaries

### **29. If you are a business, do you intend to use a third-party agent to help meet your obligations for the duty?**

Yes

No

*If so, please provide details on which obligations you would seek assistance with.*

This question is not applicable to the CIOT.

### **30. If you are a tax agent, what services relating to the duty do you expect to offer to your customers?**

CIOT members that provide indirect tax services would be able to assist their clients with VPD services such as:

- Registration/deregistration
- Arranging any HMRC authorisations (eg for suspension),
- Advise on the tax/import consequences in supply chains (both domestic and international)
- Assist with the preparation, review and/or submission of returns/import declarations
- Liaise with HMRC on a tax liability issue
- Assist with dispute resolution including penalties, ADR, tribunal

## Records and accounts

### **31. Will the record keeping requirements outlined above be straightforward for businesses to comply with?**

Yes

No

*If not, please provide details of any issues you expect.*

We would anticipate that businesses and their agents may have some difficulty in obtaining all of the data for the return, at least in the early stages of the tax going live, particularly where they must rely on third party suppliers for supplying such data. They will also have increased time creating new processes for internal resources such as the warehousing, logistics, and stock control teams, who may all play a part in providing the right information for the VPD return. As all staff will be new to the tax obligations, we recommend that HMRC takes a light touch for an initial period in respect of compliance and penalties for non-deliberate behaviour, where an educational approach may be more appropriate.

Once the processes to capture the correct data are in place, the compliance should become easier as it will be more routine, though businesses will still require a permanent increased resource for the management of this tax.

## Chapter 7: Treatment of imports, exports, and duty suspension

### 32. Is the proposed approach to imports appropriate for vaping products?

Yes

No

*If not, please explain your answer and provide any supporting evidence.*

The arrangements set out at 7.1-4 are quite brief but in principle appear equivalent in approach to the rules for other excise products which is welcomed.

### 33. Please provide information on how importation supply-chains of vaping products currently operate.

This question is outside of the CIOT's expertise.

### 34. Is there is a need for any additional arrangements covering other persons that may have a role in import processes? For example, agents or fulfilment houses.

Yes

No

*If so, please explain your answer and provide any supporting evidence.*

VPD will be new to other persons involved in the import process such as freight agents, customs agents and storage operators so we would like to see VPD

guidance provided for third party operators so that they too are able to provide a compliant service to their vaping sector clients.

## Duty suspension arrangements

### 35. Are the proposals related to duty suspension appropriate?

Yes

No

*If not, please explain your answer and provide any supporting evidence.*

We support introducing duty suspension measures that are equivalent to measures for other excise products.

If the vaping sector highlight circumstances specific to their sector, we would support further consideration to measures that could accommodate such requirements.

### 36. Is there a commercial need for HMRC to permit duty suspended storage of imported products?

Yes

No

*If so, please explain your answer and provide any supporting evidence.*

This question is outside of the CIOT's expertise.

### 37. Do you agree that EMCS should be used for duty-suspended movements of vaping products in the UK?

Yes

No

*If not, please explain any circumstances that you think are relevant.*

We support introducing EMCS measures that are equivalent to measures for other excise products.

If the vaping sector highlight circumstances specific to their sector, we would support further consideration to measures that could accommodate such requirements.

### 38. If you are an importer of vaping products, how are they currently moved from overseas to the UK? Please provide details on packaging (individual pods, as bulk liquid or any other means) as well as any evidence you see as relevant.

This question is not applicable to the CIOT.

## Duty-free allowances

### 39. Should there be a quantitative personal allowance for vaping products?

Yes

No

*Please provide evidence to support your answer where possible.*

The CIOT does not normally comment on the setting of rates or quantities of goods to be subject to tax. We note that including vaping products in a personal allowance would be similar treatment to other excise goods.

## Goods to be loaded as ship, train, or aircraft stores

### 40. Should the government apply similar arrangements to vaping products shipped as stores as are applied currently for existing excise duties?

Yes

No

*If not, please explain your answer and provide any supporting evidence.*

In principle, the arrangements for vaping products shipped as stores that are the same or very similar to the existing arrangements for alcohol and tobacco sectors, should be fairly straightforward for suppliers/agents to understand, as they are experienced with the existing rules.

## Chapter 8: Compliance and enforcement

### 41. Are there any other specific compliance risks relating to the manufacture and importation of vaping products that may require bespoke compliance arrangements?

Yes

No

*If so, please outline any scenarios that you anticipate may require bespoke compliance powers.*

This question is outside of the CIOT's expertise.



**42. Where is the nicotine used in the manufacture of vaping products generally sourced from (e.g. UK or imported)?**

This question is outside of the CIOT's expertise.

**43. How do businesses know the nicotine content of vaping products they manufacture or import?**

This question is outside of the CIOT's expertise.

**44. How easy is it to test the nicotine content and strength of vaping products? Please provide relevant information relating to costs and availability of tests.**

This question is outside of the CIOT's expertise.

**45. Are there any industrial uses for nicotine, other than the manufacture of tobacco, vaping and smoking cessation products?**

Yes

No

*Please provide evidence where relevant.*

This question is outside of the CIOT's expertise.

## Penalties

**46. Do you consider that the suggested approach to compliance and penalties is appropriate?**

Yes

No

*If not, please explain your answer and provide any supporting evidence.*

In principle, as the suggested penalty position is to take a broadly similar approach to other excise taxes, this appears appropriate. However, as VPD is introducing excise to a new sector, we recommend taking a 'light touch' approach to penalties for cases of non-deliberate behaviour for at least an initial period.

## Track and Trace

**47. Should a track and trace system be introduced for vaping products?**

Yes

No

*Please explain any reasons for your answer.*

This question is not applicable to the CIOT, though any track and trace system would increase the administrative burden for businesses subject to the VPD regime.

**48. Are there any other compliance tools, e.g. fiscal marks, which would be appropriate to introduce for vaping products?**

Yes

No

*If so, please outline these tools and explain how they would help ensure compliance with the requirements of the duty.*

This question is not applicable to the CIOT, though any fiscal marks obligations would increase the administrative burden for businesses subject to the VPD regime.

## **Chapter 9: Understanding commercial practices**

**49. Unless already covered in your responses to other questions within this document, please tell us about how your business operates and how you think it would be impacted by the duty, including additional administrative burdens?**

This question is not applicable to the CIOT.

**50. Are there any specific impacts on small and micro businesses that are not covered?**

Yes

No

*If so, please provide details of the anticipated one-off and on-going costs and burdens.*

Small and micro businesses are less likely to be able to afford to advisory fees to assist with VPD implementation compared to larger businesses, which may mean they have an increased risk of making errors. They may also experience disproportionate costs for system upgrades so that VPD can be digitalised where possible in their supply chains. They may have to consider increasing inhouse resource to be able to manage the administrative burden of managing VPD requirements, which will be a cost burden.

**51. Are there any specific impacts on importers that are not covered?**

Yes

No

*If so, please provide details of the anticipated one-off and on-going costs and burdens.*

We would anticipate that data gaps may be an issue for importers, where they rely on overseas third party suppliers to provide adequate data to assist with the compiling of VPD returns.

**52. If you manufacture or process vaping products, what type of businesses do you supply them to?**

This question is not applicable to the CIOT.

**53. If you manufacture or process vaping products, how much of this product is sold domestically and how much is exported?**

This question is not applicable to the CIOT.

**54. If you manufacture or process vaping products, please explain how the proposed levels of duty compare to the other costs involved in production/distribution. Do you expect an impact on profit margins?**

This question is not applicable to the CIOT.

**55. If you are a business that supplies vaping products, to what extent do you expect to 'pass through' the new duty in prices that you charge to your customers?**

This question is not applicable to the CIOT.

**56. If you manufacture or store vaping products, how long do you typically keep stock on hand before it goes out to sale?**

This question is not applicable to the CIOT.

**57. Is there anything else you would like to add about how your business operates that may be relevant to the design of the new duty?**

This question is not applicable to the CIOT.

## Alternative Nicotine Products

**58. Do you believe the introduction of the new duty would lead to consumers switching to alternative nicotine containing products?**

Yes

No

*Please add which products you believe would be a realistic switch.*

This question is not applicable to the CIOT.

## Chapter 10: Assessment of Impacts

**59. Unless already covered in your responses to other questions within this document, is there anything else you would like us to note about the impact of the duty?**

We would like to see further consideration and consultation on any anti-forestalling provisions where retailers who are able to buy large stocks of vaping products prior to the launch date of VPD (in the roundtable events it was suggested some retailers could accommodate up to a year's stock) and who may be selling product free of VPD for quite some time afterwards.

The Chartered Institute of Taxation is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 20,000 members, and extensive volunteer network, in providing our response.

Our stated objectives for the tax system include:

- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
- Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
- Greater certainty, so businesses and individuals can plan ahead with confidence.
- A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
- Responsive and competent tax administration, with a minimum of bureaucracy.

Thank you for taking the time to respond to this consultation. HM Treasury and HM Revenue and Customs (HMRC) value the input of stakeholders and interested

parties. We will consider your response to help shape our policy development and ensure a vaping duty achieves its objectives.

Please send your response to: [vapingproductsduty@hmrc.gov.uk](mailto:vapingproductsduty@hmrc.gov.uk)

Please enter "**Vaping Products Duty consultation response**" in the subject line.