

CONFRONTING ILLICIT TOBACCO TRADE:



A GLOBAL REVIEW OF COUNTRY EXPERIENCES

IRELAND: ADDRESSING THE ILLICIT FLOW OF
TOBACCO PRODUCTS

TECHNICAL REPORT OF THE WORLD BANK GROUP
GLOBAL TOBACCO CONTROL PROGRAM.

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SHEILA DUTTA



IRELAND

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Addressing the Illicit Flow of Tobacco Products

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Chapter Summary

Ireland is committed to a policy of high tobacco taxation to encourage people to quit smoking. A high rate of tobacco excise, and the consequent high price of tobacco products, make Ireland attractive to those involved in the illicit tobacco trade. The supply of cheap illicit tobacco lessens the effectiveness of demand reduction strategies, including by enabling greater youth smoking uptake and continued tobacco use by price-sensitive consumers. However, Ireland's comprehensive and effective system of customs and tax enforcement, alongside strong regulatory control of the tobacco market, has contained the illicit flow of tobacco products onto the Irish market.

This chapter sets out the context of tobacco consumption within Ireland and details the operational and specific processes followed by Ireland in addressing the challenge of illicit tobacco, with particular focus on tax administration reforms. The chapter addresses the legal, institutional, and enforcement mechanisms which control legal supply chains and the marketing of tobacco products, as well as measures to identify and disrupt the supply of illicit products.

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The chapter illustrates the fact that illicit tobacco trade remains a complicated phenomenon, and that even the estimation of its size is methodologically challenging. Effective action to inhibit the illicit tobacco trade requires a multi-pronged approach by agencies within a country, along with international cooperation.

1. Situation Description

1.1 Overview

Tobacco consumption is a recognized danger to human health, and tobacco policy in Ireland is informed by public health policy. Smokers lose an average of ten years of life compared with otherwise similar non-smokers.² Department of Health research indicates that smoking remains the leading cause of preventable death in Ireland, accounting for nearly 19 percent of the country's preventable deaths annually.³ Health inequalities are also associated with smoking, with prevalence higher in lower socio-economic groups,⁴ contributing to marked differences in mortality rates by socio-economic group. In March 2013, the *Healthy Ireland* framework⁵ outlined national public-health objectives, including reducing the country's smoking prevalence to 5 percent by 2025. This target was reconfirmed in *Tobacco Free Ireland: Report of the Tobacco Policy Review Group*, published by the Department of Health in October 2013.⁶ Government policy is to reduce harm through reducing tobacco consumption and smoking prevalence in Ireland.

The World Health Organization (WHO) advocates raising tobacco prices through increased taxation as an effective approach to control the spread of tobacco use.⁷ Tobacco tax is recognized as a key policy instrument in reducing tobacco consumption in Ireland.⁸ The WHO considers that higher prices prevent initiation of tobacco use, induce cessation, and reduce relapse among those who have quit. Ireland currently imposes the highest duty rates in the European Union on tobacco products, including on cigarettes and roll-your-own tobacco,⁹ resulting in relatively high retail prices for tobacco products.

² Jha et al, 2018, <https://www.bmj.com/content/361/bmj.k1162>

³ Howell F R, Shelley E, *Mortality attributable to tobacco use in Ireland. The Faculty of Public Health Medicine RCPI Winter meeting*; Dublin (2011).

⁴ Hickey, P., Evans, D.S., *Smoking in Ireland 2014: Synopsis of Key Patterns, 2015*, National Tobacco Control Office.

⁵ Healthy Ireland: <https://health.gov.ie/wp-content/uploads/2014/03/HealthyIrelandBrochureWA2.pdf>

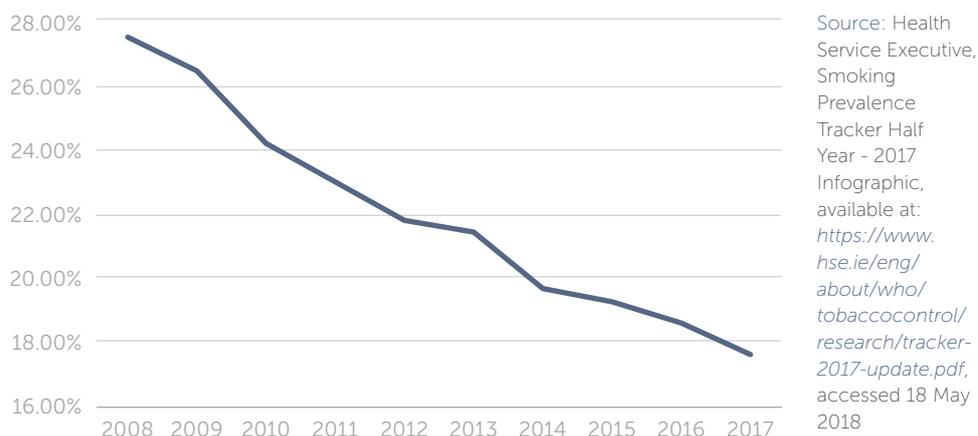
⁶ Tobacco Free: <https://health.gov.ie/wp-content/uploads/2014/03/TobaccoFreeIreland.pdf>

⁷ WHO: Tobacco Free Initiative (TFI): Taxation, <http://www.who.int/tobacco/economics/taxation/en/>, accessed 05 February 2018

⁸ Joint Committee on Health and Children, *Report on Hearings in relation to the General Scheme of the Public Health (Standardised Packaging of Tobacco) Bill*, Volume 1, April 2014, p 63

⁹ European Commission, Excise Duty Tables, Part III – Manufactured Tobacco, 2018. https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/excise_duties/tobacco_products/rates/excise_duties-part_iii_tobacco_en.pdf

Figure 1. Smoking Prevalence in Ireland, 2007 to 2017



A sustained increase in excise taxation has coincided with and contributed to reductions in smoking prevalence in Ireland (Figure 1). Tax on tobacco products has been increased in nine of the last ten years. Analysis by the World Bank suggests that overall elasticity of demand lies between 0.3 and 0.8, meaning that a 10 percent increase in cigarette prices should lead to a 3 to 8 percent decline in consumption.¹⁰ Over the period from 2007 to 2017, the Irish Consumer Price Index rose by 2.4 percent. During that period, the tax-inclusive price of cigarettes in the Most Popular Price Category (MPPC) has increased by 60.8 percent, an increase in real terms of 57.1 percent.

Figure 2 shows the decrease in affordability between 2006 and 2016, taking account of two key determinants: inflation and growth in per capita income, both in current market prices. The Relative Income Price (RIP) is the percentage of per capita income required to purchase 100 packs of cigarettes. Affordability is expressed as a percentage, where higher percentages indicate less affordable cigarettes as a greater proportion of income is required to purchase the same quantity of cigarettes. Blecher¹¹ used per capita GDP as measure of income, however this chapter adopts per capita modified gross national income (GNI*) as more appropriate to the measurement of domestic economic activity for Ireland.¹²

The tax content (excise plus Value-Added Tax (VAT)) of the cigarette retail price has increased by 62.6 percent, a real increase of 58.8 percent, while the non-tax element of retail price has risen by 54.6 percent, an increase of 51 percent in real terms. The tobacco industry has applied price increases in addition to tax increases. The total tax as a percentage of the retail price increased marginally from 77.5 percent in 2007 to 78.3 percent in October 2017.¹³ At

¹⁰ World Bank, *Tobacco Tax Reform: At the Crossroads of Health and Development*, 2017, p 35.

¹¹ Blecher, E., *Targeting the affordability of cigarettes: a new benchmarking for taxation policy in low-income and-middle-income countries*, 2010.

¹² Report of the Economic Statistics Review Group, Central Statistics Office, 2016.

¹³ Calculations based on a current price of a pack of 20 cigarettes of €11.50.

Figure 2. Affordability (Relative Income Price) of Cigarettes, 2006 to 2016



the same time, smoking prevalence in Ireland has fallen by 9.66 percentage points since 2007, from 27.26 percent¹⁴ to 17.6 percent (as of June 2017).¹⁵ Fewer people are smoking than ten years ago, and those that smoke are smoking less.

Economic theory suggests that the quantity demanded of a product depends on multiple factors including its price, the price of related goods, incomes and unemployment.¹⁶ The nature of tobacco products introduces other demand variables. The addictive nature of tobacco products implies that current consumption levels depend upon past consumption, and potentially upon an idea of future prices and other determinants of demand.¹⁷ Setting expectations of continuing substantial increases in taxes is an important demand suppressant tool, particularly so for lower-income smokers and for young people who have not yet become confirmed tobacco addicts.¹⁸ In addition, tobacco consumption is influenced by tobacco control policies,¹⁹ including the mandatory presence of warning labels, bans on tobacco marketing practices, and access to cessation treatments and services.²⁰ Moreover, traditional variable-demand relationships have changed over time. Previously, increases in income would have been expected to give rise to increases in tobacco consumption; more recently, however, as knowledge about the health consequences of smoking has increased, this relationship has either disappeared or been reversed.²¹

¹⁴ Smoking Trend Data 2003-2013, available at: https://www.drugsandalcohol.ie/22499/1/Smoking%20Trend_Data_2003%20-%202013.pdf, accessed 18 May 2018.

¹⁵ Health Service Executive, Smoking Prevalence Tracker Half Year - 2017 Infographic, available at: <https://www.hse.ie/eng/about/who/tobaccocontrol/research/tracker-2017-update.pdf>, accessed 18 May 2018.

¹⁶ Walsh et al, *Economics of Tobacco: An Analysis of Cigarette Demand in Ireland*, 2015, p 13.

¹⁷ Chaloupka, FJ and Tauras, JA, *The Demand for Cigarettes in Ireland*, 2011, p 8

¹⁸ World Bank, *Tobacco Tax at the Crossroads of Health and Development: A Multisectoral Perspective*, 2017, p 86

¹⁹ Chaloupka, FJ and Tauras, JA, *The Demand for Cigarettes in Ireland*, 2011, p 13

²⁰ *Ibid.*

²¹ Jha P, Chaloupka FJ (1999). *Curbing the Epidemic: Governments and the Economics of Tobacco Control*. Washington D.C.: The International Bank for Reconstruction and Development/The World Bank.

Opportunities for tax avoidance are also relevant variables.²² Such opportunities include consumers purchasing tobacco products in non-EU countries from duty free shops or in other EU countries at prices that include local taxes but are well below prices in Ireland. Other examples involve distributors and retailers stockpiling cigarettes to avoid an anticipated tax increase. Such practices are affecting the demand for Irish duty-paid tobacco products by permitting substitution by non-Irish duty-paid (NIDP) products.²³

Differences in the relative prices of tobacco products tend to lead to some substitution among products by consumers.²⁴ This has prompted the World Bank to recommend maximum use of uniform specific excise taxes, in preference to ad valorem taxes or specific excises for different price tiers.²⁵ Alternatives to cigarettes may include cigars, roll-your-own (RYO) fine-cut tobacco for the rolling of cigarettes, other smoking tobacco and, more recently, electronic cigarettes,²⁶ all of which have lower incidence of taxation.²⁷ Finally, substitution of illicit for licit tobacco products affects demand for Irish duty-paid tobacco products.

Whereas, at first glance, there appears to be a correlation between tax increases and reduced consumption, the causal factors behind any reduction require careful analysis. In addition, due to the nature of the illicit tobacco market and the difficulty in deriving an agreed figure for the size of the illicit market, the nearest measure of total consumption available is based on Irish duty-paid sales. Furthermore, these figures are themselves a proxy and not actual consumption.²⁸ As these figures reflect the payments of excise taxes at the wholesale level,²⁹ they do not include non-Irish duty-paid tobacco products, whether legally acquired or illicit, and are distorted, relative to actual consumption, by the operational choices made by tobacco companies as to the timing of inventory releases. Data on actual tobacco product consumption simply does not exist for the Irish market.³⁰

The illicit tobacco trade avoids State regulation and taxation and jeopardizes tobacco control policies. Simultaneously, the illicit tobacco trade enables greater consumption by lowering the effective cost of tobacco products. It also shrinks tax-financed public funding available to the health care system,³¹ including monies collected in respect of tobacco-product taxes and earmarked for the Ministry for Health.³² While the illicit trade in tobacco is a global problem, it is particularly so for countries, including Ireland, that pursue a policy of

²² Chaloupka, FJ and Tauras, JA, *The Demand for Cigarettes in Ireland*, 2011, p 13

²³ Walsh et al, *Economics of Tobacco: Modelling the Market for Cigarettes in Ireland*, 2011, p iii.

²⁴ Chaloupka, FJ and Tauras, JA, *The Demand for Cigarettes in Ireland*, 2011, p 6

²⁵ World Bank, *Tobacco Tax at the Crossroads of Health and Development: A Multisectoral Perspective*, 2017, p 14

²⁶ Walsh et al, *Economics of Tobacco: An Analysis of Cigarette Demand in Ireland*, 2015, p 8

²⁷ Tobacco Products Tax is not applied to electronic cigarettes

²⁸ Walsh, *Economics of Tobacco: An Analysis of Cigarette Demand in Ireland*, 2015, p 14

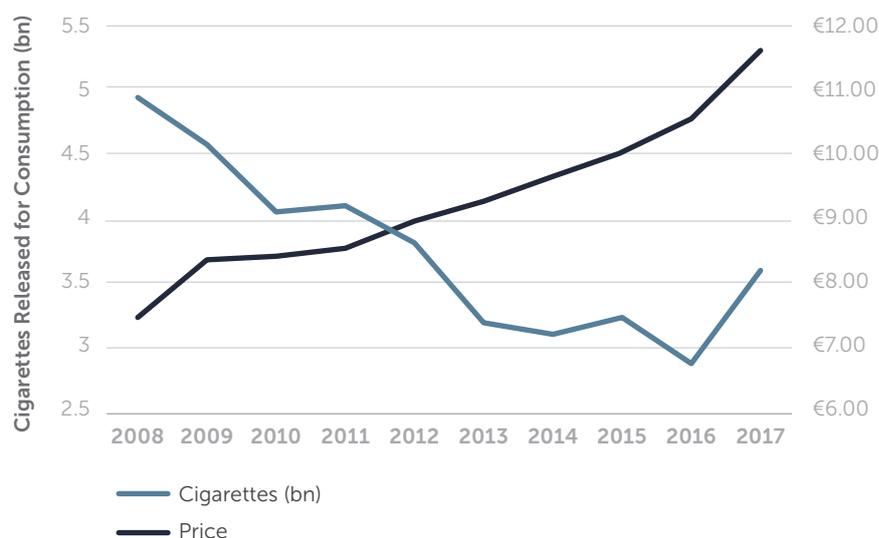
²⁹ Chaloupka, FJ and Tauras, JA, *The Demand for Cigarettes in Ireland*, 2011, p 11

³⁰ Chaloupka, FJ and Tauras, JA, *The Demand for Cigarettes in Ireland*, 2011, p 11

³¹ Calderoni, F, Rotondi, M, Favarin, S, *The Factbook on the Illicit Trade in Tobacco Products Issue 3: Ireland, Transcrime*, 2013, p 61

³² Section 3 of the Appropriation Act, 1999

Figure 3. Cigarette Consumption and the Price of Cigarettes in the Most Popular Price Category (MPPC) in Ireland, Expressed in Current Market Prices



high tobacco taxes.³³ However, the most recent survey results show that, while trend data for illicit cigarette use show an increase in the most recent year, the general trend over the period 2007 to 2017 in the prevalence of the illicit trade has been downward.³⁴ This has occurred even as the price of cigarettes has risen, suggesting that, while the illicit trade has not been eliminated, Revenue’s extensive program of enforcement³⁵ has contained it. This would be consistent with the general finding from the World Bank (2017), suggesting that the main driver of illicit flows is not relative levels of price or taxation but the effectiveness of customs and tax enforcement.³⁶ The most recent survey evidence suggests that 13 percent of cigarette consumption in Ireland is illicit.³⁷

³³ Joint Committee on Health and Children, *Report on Hearings in relation to the General Scheme of the Public Health (Standardised Packaging of Tobacco) Bill*, Volume 1, April 2014, p 63

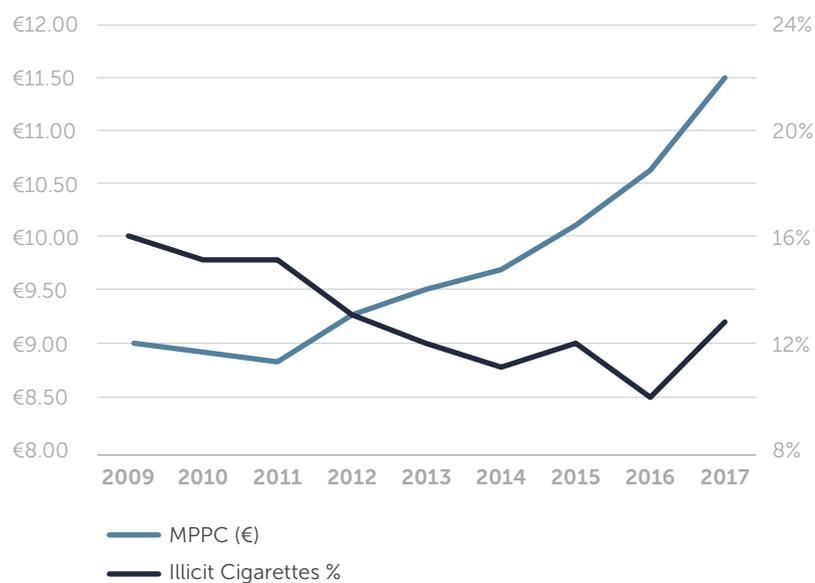
³⁴ Revenue, *Illegal Tobacco Products Research Surveys 2017*, available at: <https://www.revenue.ie/en/corporate/documents/research/illegal-tobacco-survey-2017.pdf>

³⁵ Revenue, *Annual Report 2017*, available at: <https://www.revenue.ie/en/corporate/press-office/annual-report/2017/ar-2017.pdf>, p 29

³⁶ World Bank, *Tobacco Tax at the Crossroads of Health and Development: A Multisectoral Perspective*, 2017, p 18

³⁷ IPSOS MRBI, *Illegal Cigarette Research 2017*, April 20188

Figure 4. Illicit Cigarettes and the Price of Cigarettes in the Most Popular Price Category (MPPC) in Ireland



There are three main types of illicit tobacco of most concern to the Irish authorities:³⁸

- CONTRABAND:** genuine tobacco which has been smuggled or diverted due to discrepancies in price between jurisdictions;
- COUNTERFEIT:** tobacco products which have been manufactured covertly and smuggled into the country;
- CHEAP WHITES:** tobacco products which are produced independently of the International Tobacco Manufacturers and then smuggled into the country avoiding tax.

1.2 Context of Tobacco Control

In the context of public health policy, tobacco control and regulation in Ireland are governed primarily by the Public Health (Tobacco) Acts 2002 to 2013. These Acts include provisions which prohibit tobacco advertising and sponsorship and restrict the marketing and sale of tobacco products.

³⁸ Joint Committee on Health and Children, *Report on Hearings in relation to the General Scheme of the Public Health (Standardised Packaging of Tobacco) Bill*, Volume 1, April 2014, p 64

Some of the key legislative measures introduced in recent years include the workplace smoking ban, the ban on the sale of cigarettes in packs containing less than 20 cigarettes, the ban on point-of-sale advertising, the introduction of graphic warnings on tobacco packaging, the introduction of standardized packaging, and the ban on smoking in cars carrying a child.

The illicit trade presents a number of different challenges to government policies, and the fight against the illicit trade is a priority for several reasons:

1. The availability of illicit tobacco products undermines public health policies, including demand-reduction strategies regarding tobacco. As illicit tobacco is available outside the normal regulatory framework, it may fail to comply with regulations regarding, availability, advertising, appearance and the presence of appropriate health warnings. Such regulations aim to reduce the appeal of cigarettes and smoking, enhance the salience of health warnings on packs, and address the use of packaging elements that mislead smokers about product harm. Illicit tobacco products that fail to comply with such regulations undermine policy initiatives aimed at reducing consumption by vulnerable persons, including low-income groups and minors. In addition, illicit tobacco may fail to comply with regulations regarding the reporting of ingredients and emissions and may contain additional harmful substances, including "asbestos, mold, dust, dead flies, rat droppings, and even human excrement."³⁹
2. The illicit trade in tobacco results in losses to national finances through uncollected tax.
3. The illicit trade damages compliant taxpayers, including retailers and distributors, when the legitimate product they deal in is substituted by cheaper illicit tobacco products.
4. Finally, criminal groups, and in some cases terrorist groups, are financial beneficiaries of the illicit trade,⁴⁰ and the profits they acquire may be used to fund further activities harmful to society.

Since 2004, cigarette manufacturers and the European Union have cooperated in comprehensive initiatives, including traceability operations, aimed at limiting illicit activity. These agreements have been criticized for lacking transparency, serving the interests of tobacco companies, failing to align with the requirements of Article 5.3 of the WHO's Framework Convention on Tobacco Control (FCTC), having inadequate penalties, and for generally

³⁹ Gabe Jagger, *The Times*, Illegal tobacco tainted by asbestos and rats, 16 May 2017

⁴⁰ UK Parliament, Northern Ireland Affairs Committee, *Third Report: Fuel laundering and smuggling in Northern Ireland*, 20 March 2012, para 28; Transcrime, *The Factbook on The Illicit Trade in Tobacco Products: Issue 3 Ireland*, 2013, p 88; Independent Monitoring Commission, *Twenty-fifth Report of the Independent Monitoring Commission: Presented to the Government of the United Kingdom and the Government of Ireland under Articles 4 and 7 of the International Agreement establishing the Independent Monitoring Commission*, October 2010, p 12, p 17

threatening progress in tobacco control.⁴¹ However, they have coincided with a drastic reduction in the smuggling of major brands.⁴²

Better control of the major cigarette supply chain appears to have changed the nature of the illicit market. Whereas previously the illicit trade mainly involved large-scale container smuggling of well-known brands of cigarettes, recent years have seen a relative decline of such activities, replaced by counterfeiting, illegal production, and cheap whites.⁴³ However, the majority of the illicit cigarette market in Europe still comprises tobacco industry product and well-known brands.⁴⁴

SECURITY SITUATION

The illicit trade in tobacco is, by its nature, a criminal undertaking, and quantifying a clandestine activity is inherently difficult. However, the trade appears to be dominated by organized crime groups (OCGs) operating across borders.⁴⁵

OCGs operating within the EU are highly diverse and range from large, "traditional" OCGs to smaller groups and loose networks supported by individual criminals, who are hired and collaborate in an *ad hoc* manner. More than 5,000 OCGs operating on an international level are currently under investigation in the EU, involved in many areas of criminality.

In 2012, the then Garda Commissioner (highest ranking officer in the Irish police force) indicated that there were approximately 25 organized crime groups operating throughout the State and that, while most were domestically orientated, five had a significant international dimension.⁴⁶ The Netherlands, Spain, and the UK were described as the main locations for such links.⁴⁷ The OCGs operating in Ireland tend to be Irish, but there is also evidence of Chinese and Eastern European groups.⁴⁸ Not all OCGs are involved in the illicit tobacco

⁴¹ Luk Joossens, Anna Gilmore, Michal Stoklosa and Hana Ross. An assessment of European Union's agreements with the four major Transnational Tobacco Companies to address the illicit cigarette trade. *Tobacco Control* 2016; 25:254–260

⁴² European Commission, *Technical Assessment of the experience made with the Anti-Contraband and Anti-Counterfeit Agreement and General Release of 9 July 2004 among Philip Morris International and affiliates, the Union and its Member States*, Brussels, 24.2.2016 SWD(2016) 44 final, pp 19–22

⁴³ European Commission, *Communication from the Commission to the Council and the European Parliament: Stepping up the fight against cigarette smuggling and other forms of illicit trade in tobacco products – A comprehensive EU Strategy*, 06 June 2013, COM(2013) 324 final, p 4

⁴⁴ Gilmore AB, Rowell A, Gallus S, et al., Towards a greater understanding of the illicit tobacco trade in Europe: a review of the PMI funded 'Project Star' report, *Tobacco Control* 2014;23:e51-e61; Gilmore AB, Gallagher AWA, Rowell A, Tobacco industry's elaborate attempts to control a global track and trace system and fundamentally undermine the Illicit Trade Protocol *Tobacco Control* Published Online First: 13 June 2018. doi:10.1136/tobaccocontrol-2017-054191

⁴⁵ European Commission, *Communication from the Commission to the Council and the European Parliament: Stepping up the fight against cigarette smuggling and other forms of illicit trade in tobacco products – A comprehensive EU Strategy*, 06 June 2013, COM(2013) 324 final, p 4

⁴⁶ Commissioner Martin Callinan, *Joint Committee on Justice, Defence and Equality*, 21 November 2012

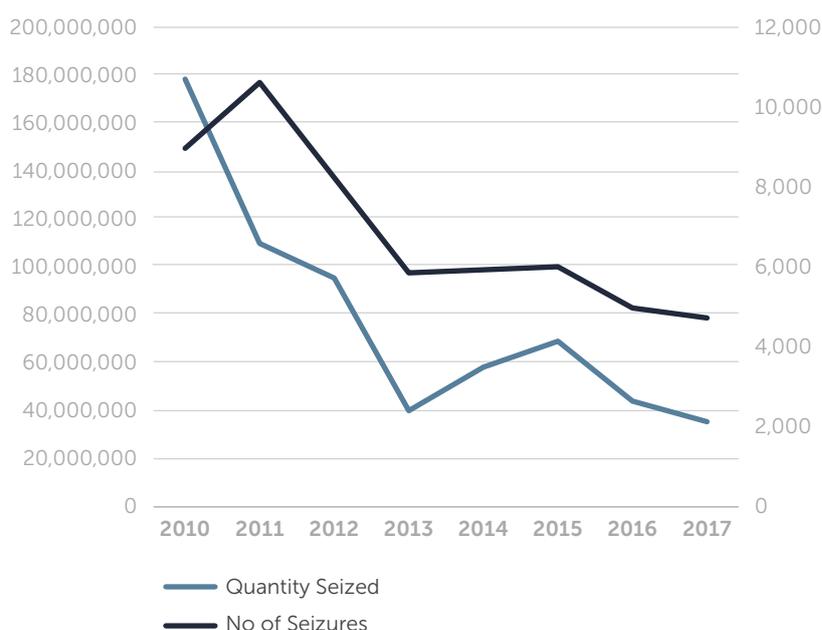
⁴⁷ *Ibid.*

⁴⁸ Transcrime, *The Factbook on The Illicit Trade in Tobacco Products: Issue 3 Ireland*, 2013, p 87

trade, but they feature prominently and often have extensive networks on both sides of the border with Northern Ireland which allow them to partake in numerous illegal ventures, often working in partnership with each other.⁴⁹

In 2017, 34.2 million cigarettes were seized in Ireland by Revenue, compared to 44.6 million in 2016 and 67.9 million in 2015.⁵⁰ Seizures of illicit tobacco in any given year can be affected by a range of factors, including the disproportionate impact of one or more particularly large seizures and the adaptation by smugglers to successful enforcement measures. Revenue is aware that smugglers are constantly looking for new ways to avoid detection, and that it needs to be agile and adaptable in responding to emerging threats. Revenue is continuously reviewing the ways in which it acts against the illicit trade and carefully monitors trends and patterns so that its response can be adjusted accordingly.

Figure 5. Cigarette Seizures in Ireland, 2009 – 2017



⁴⁹ British-Irish Parliamentary Assembly, *Report from Committee A (Sovereign Matters) on Cross-border Police Cooperation and Illicit Trade*, 2015, p 6

⁵⁰ Revenue, *Annual Report 2017*, Table 20: Excisable Products Seized, p 63, available at: <https://www.revenue.ie/en/corporate/press-office/annual-report/2017/ar-2017.pdf>; Revenue, *Annual Report 2016*, Table 23: Excisable Products Seized 2016, p 102, available at: <https://www.revenue.ie/en/corporate/press-office/annual-report/2016/ar-2016.pdf>; Revenue, *Annual Report 2015*, Table 20: Excisable Products Seized in 2015, p 79, available at: <https://www.revenue.ie/en/corporate/documents/statistics/annual-report-2015.pdf>.

In 2017, 88 people were convicted for illicit tobacco offenses, and Irish courts imposed custodial sentences in 18 cases. Of these, three people were sentenced to an average sentence of three months for smuggling offenses and six months for selling offenses, while 15 had their sentences suspended. A suspended sentence involves the judge imposing a prison sentence but suspending some or all of it on certain conditions. If the convicted person breaks any of the conditions set during the period for which the sentence is suspended, they will have to serve the term of imprisonment originally suspended. Average fines of €2,580 were imposed in 69 cases.

Figure 6. Convictions and Sentences Imposed for Illicit Tobacco Offenses in Ireland, 2009 – 2017

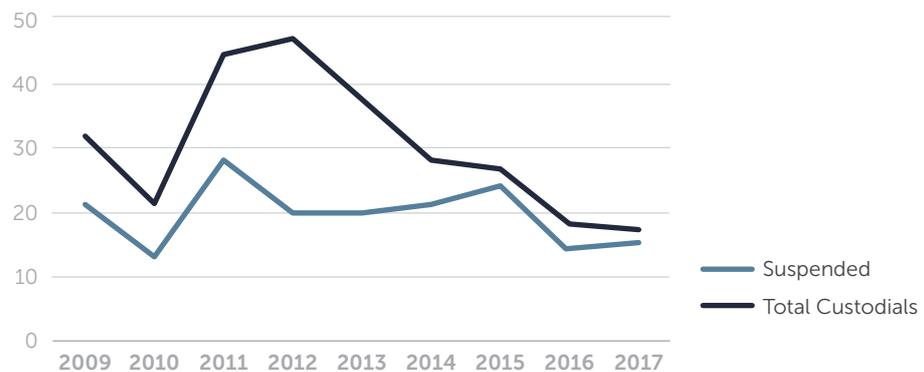
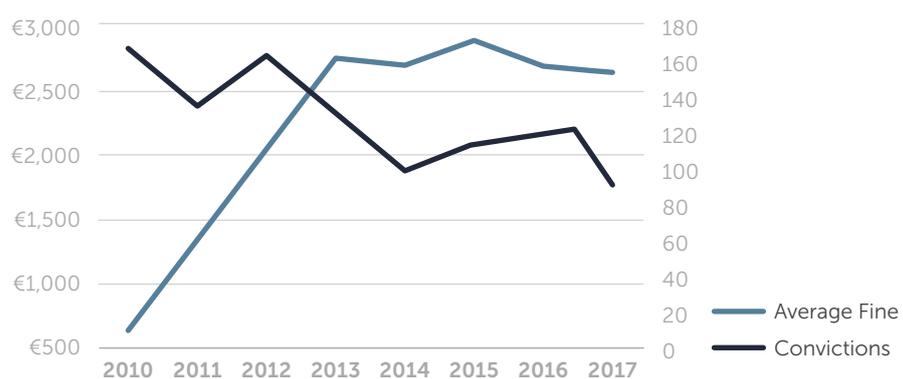


Figure 7. Convictions and Fines for Illicit Tobacco Offenses in Ireland, 2009 – 2017

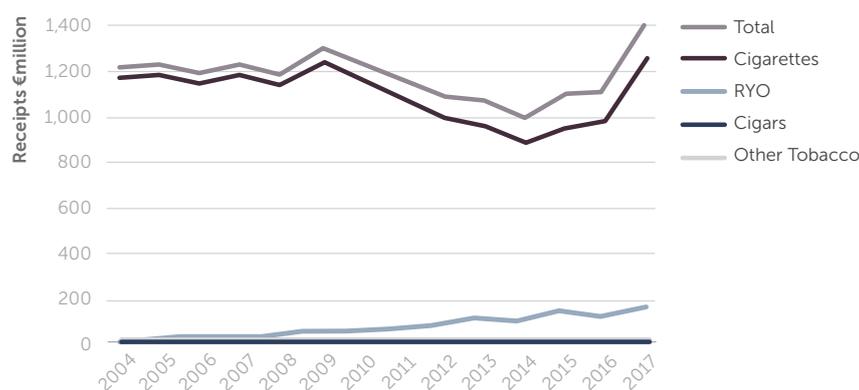


RATES OF FISCAL REVENUE

Despite a decline in Ireland's cigarette consumption, Tobacco Product Tax receipts rose in nominal terms from €568 million in 1994 to peak at €1,217 million in 2009. By 2016, receipts had slipped to €1,098 million. However, provisional figures show that receipts for 2017 rose to €1,397.4 million, exceeding the 2016 yield by €299.7 million. As these figures reflect the

payments of excise taxes, they are distorted, relative to actual consumption of legitimate tobacco products, by the operational choices made by tobacco companies as to the timing of inventory releases.

Figure 8. Receipts of Tobacco Products Tax in Ireland Since 2004, Expressed in Current Market Prices



RELEVANT INSTITUTIONS

The Office of the Revenue Commissioners (Revenue), the Department of Health, and the Department of Finance are the main institutional actors in the regulatory field, controlling the supply and sale of tobacco products in Ireland.

Revenue is responsible for the administration and collection of tobacco products tax and has, additionally, prioritized combating the illegal tobacco trade. Revenue’s strategy as regards the illicit trade includes a range of measures to identify and target the supply of illicit tobacco products, with a view to seizing illicit products and prosecuting those responsible. In this role, Revenue cooperates with An Garda Síochána (Irish police force) and with the other relevant agencies in the State.

The Department of Health is responsible for tobacco control legislation in Ireland in the context of public health. These laws include restrictions on the sale of tobacco products to minors, restrictions on the advertising and marketing of tobacco products, restrictions on point-of-sale displays, and the prohibition of smoking of tobacco products in workplaces. They also encompass measures controlling the appearance of cigarette packages, including text and photographic warnings (in line with EU Directives), and standardized packaging. The Health Service Executive enforces most of the tobacco control legislation in the context of public health.

The Department of Finance is responsible for fiscal policy advice to Government in relation to tobacco products.

POLITICAL SITUATION

Ireland is a multiparty parliamentary democracy with an executive branch headed by a prime minister (An Taoiseach), a bicameral parliament (the Dáil and Seanad), and a directly elected president. Political support for regulating the control and supply of tobacco products in Ireland is evidenced by a number of key legislative measures introduced in recent years:

- » The enclosed workplace smoking ban (2004), which means that pubs and restaurants, shops, and public transport, as well as other workplaces, are smoke-free;
- » The ban on the sale of cigarettes in packs of less than 20 (2007);
- » The ban on point-of-sale advertising (2009);
- » The introduction of graphic warnings on tobacco packaging (2013);
- » The introduction of standardized packaging (2017); and
- » The ban on smoking in cars carrying a child (2016).

INTERNATIONAL COOPERATION

Ireland is a Member State of the European Union. The current rates and structures of excise duty on tobacco products are harmonized across the European Union through Directive 2011/64/EU (Tobacco Products Tax Directive). Directive 2014/40/EU (Tobacco Products Directive) seeks to approximate the laws, regulations, and administrative provisions of Member States concerning the manufacture, presentation, and sale of tobacco and related products.

Ireland is a party to the WHO Framework Convention on Tobacco Control (FCTC) and a signatory to the Protocol to Eliminate Illicit Trade in Tobacco Products (FCTC Protocol). The FCTC was developed in response to the globalization of the tobacco epidemic, and it places an obligation on Parties to “develop, implement, update and review comprehensive multi-sectoral national tobacco control strategies, plans and programmes.”⁵¹ The FCTC Protocol requires Parties to adopt effective measures to control and regulate the supply chain of tobacco products in order to prevent, deter, detect, and prosecute the illicit trade in such products. The European Union is a party to both the FCTC and the FCTC Protocol.

Ireland pursues extensive cooperation with other tax administrations and with the European Anti-Fraud Office (OLAF) and the European Multiagency Platform Against Criminal Threats (EMPACT).

⁵¹ Article 5(1), WHO Framework Convention on Tobacco Control

2. Tobacco Tax Policy

2.1 Overview of the Legal Framework

Ireland classifies tobacco products for fiscal purposes as follows:

- » Cigarettes
- » Cigars or cigarillos
- » Fine-cut tobacco for the rolling of cigarettes (commonly known as “roll your own” or RYO tobacco)
- » Other smoking tobacco (for products containing smoking tobacco that do not fall into the above categories) ⁵²

Section 72 of the Finance Act 2005 provides for the charging of excise duty on tobacco products. The rates of duty are set down in Schedule 2 of the Finance Act 2005. The current rates of Tobacco Products Tax, in force from 10 October 2018, are as follows:

DESCRIPTION OF PRODUCT	RATE OF TAX
	Rate of tax at-
Cigarettes	a. except where paragraph (b) applies, €327.10 per thousand together with an amount equal to 9.04 per cent of the price at which the cigarettes are sold by retail, or b. €376.82 per thousand in respect of cigarettes sold by retail where the rate of tax would be less than that rate had the rate been calculated in accordance with paragraph (a).
Cigars	Rate of tax at €375.058 per kilogram.
Fine-cut tobacco for the rolling of cigarettes	Rate of tax at €360.827 per kilogram.
Other smoking tobacco	Rate of tax at €260.199 per kilogram.

The manner in which Tobacco Products Tax is calculated for each type of tobacco product is outlined below.

CIGARETTES

Tobacco Products Tax on cigarettes consists of two separate elements:

- i. An *ad valorem* element, which is a percentage of the retail selling price.; plus
- ii. A specific amount of tax calculated per 1,000 cigarettes.

⁵² Section 71 Finance Act 2005

EXAMPLE: 20 PACK CIGARETTES WITH A RETAIL PRICE OF €12.00

Specific Duty ($€327.10 \div 1000$) x 20	=	€6.542
Ad Valorem Duty $€12.00 \times 9.04\%$	=	€1.0848
Total Tobacco Products Tax due	=	€7.63

CIGARS OR CIGARILLOS

Tax is to be charged on the net weight of taxable product in kilograms per case, with some allowance for rounding.

EXAMPLE: A CASE OF CIGARS WEIGHING 5.60KGS

Tobacco Products tax payable: $5.60\text{kg} \times €375.058 = €2,100$

FINE-CUT ROLL-YOUR-OWN TOBACCO

Tobacco Products Tax is to be charged on the total net weight per case.

EXAMPLE: A POUCH OF ROLL-YOUR-OWN TOBACCO WEIGHING 30G

Tobacco Products Tax payable: $0.03\text{kg} \times €360.827 = €10.82$

OTHER SMOKING TOBACCO

Tobacco Products Tax is to be charged on the total net weight per case.

A 20KG BOX OF TOBACCO NOT FALLING WITHIN ANY OF THE ABOVE CLASSIFICATIONS

Tobacco Products Tax payable: $20\text{kg} \times €260.199 = € 5,203.98$

VALUE-ADDED TAX (VAT)

VAT at the standard rate, currently 23 percent, is applied to all tobacco products, on the excise-inclusive price. To ensure the VAT charged remains proportional to the pre-VAT price, an adjustment is required in its calculation, as such the 23 percent standard rate is reported as 18.7 percent.⁵³

⁵³ $23/(123 \times 100) = 18.7$

EXAMPLE: 20-CIGARETTE PACK WITH A RETAIL PRICE OF €12.00

Specific Duty ($€327.10 \div 1000$) x 20	=	€6.542
<i>Ad Valorem</i> Duty ($€12.00 \times 9.04\%$)	=	€1.0848
VAT ($€12.00 \times 18.7$)	=	<u>€2.2439</u>
Total Tax due	=	€9.87

UNMANUFACTURED TOBACCO

Unmanufactured tobacco is not liable to Tobacco Products Tax but it is subject to control. Any unmanufactured tobacco found in the state must comply with the requirements of Section 78A of the Finance Act 2005, which requires that unmanufactured tobacco can only be kept, under a specified customs procedure, for use as a raw material either for the production of tobacco products in a tax warehouse or for the production of something other than a tobacco product, and not for any other reason. Any unmanufactured tobacco found in the State contrary to Section 78A would be prohibited goods and liable to seizure. As unmanufactured tobacco is not a harmonized excisable product, its movement is not controlled under the EU-wide Excise Movement and Control System (EMCS).

TOBACCO GROWING

A license is required to grow, cure, or re-handle tobacco.⁵⁴ In addition, the area which may be planted with tobacco in any one year in Ireland is regulated. In 2017, the maximum number of hectares permissible to plant with tobacco was set at 5 hectares, while the maximum by any one person was set at 0.5 hectares.⁵⁵

EXEMPTIONS: WITHIN THE EU

As a Member State of the European Union, Ireland is bound by Article 32 of Directive 2008/118/EC,⁵⁶ which allows a private individual to acquire tobacco for his or her own use in one Member State and to transport that tobacco to another Member State. In order to determine whether the excise goods are intended for the own use of a private individual, Member States are allowed to set indicative levels. Article 32(3) sets a lower bound on all of the levels.

Irish law has transposed these EU principles and sets out a range of circumstances to be considered when determining whether quantities of tobacco are to be considered as being for the personal use of individuals travelling within the EU, including the frequency with which the person brings tobacco products into the State. The following indicative levels are applied:

⁵⁴ Regulation 1, Statutory Instrument. (S.I.) No. 3/1933 - The Tobacco Growing Regulations, 1933

⁵⁵ Regulation 2, S.I. No. 41/2017 - Tobacco (Areas for 2017) Order 2017

⁵⁶ Council Directive 2008/118/EC concerning the general arrangement for excise duty repealing Directive 92/12/EEC

- » 800 cigarettes;
- » 400 cigarillos;
- » 200 cigars;
- » 1 kg smoking tobacco.⁵⁷

Where it is determined that the tobacco products in question are for the personal use of the individual, no further Irish duty is payable. Where it is determined that the tobacco products were brought into Ireland for commercial purposes, then Irish duty at the appropriate rate must be paid.

EXEMPTIONS: OUTSIDE THE EU

For individuals arriving in Ireland from outside the European Union, the following personal allowances of tobacco apply:

- » 200 cigarettes;
- » 100 cigarillos;
- » 50 cigars; or
- » 250g smoking tobacco.⁵⁸

An individual may split his or her allowance on a fractional basis, for example: 100 cigarettes and 50 cigarillos.

DISTANCE SALES

Retailers established in Ireland who intend to engage in cross-border distance sales of tobacco products or electronic cigarettes to consumers located in the European Union, and retailers established in another Member State who intend to engage in cross-border distance sales of tobacco products or electronic cigarettes to actual or potential consumers located in Ireland, must register with the Health Service Executive (HSE).⁵⁹

In the case of tobacco products sold to consumers located in Ireland, the retailer in question must appoint a tax representative, established in Ireland, who is liable for the payment of Excise Duty and Value-Added Tax.⁶⁰

⁵⁷ Regulation 25 of S.I. No. 146/2010 - Control of Excisable Products Regulations 2010

⁵⁸ Regulation 5(1) of I. No. 480/2008 - European Communities (Tax Exemption for Certain Non-Commercial Goods Imported in the Personal Luggage of Travellers from Third Countries) Regulations 2008; Article 8(1) of Council Directive 2007/74/EC of 20 December 2007 on the exemption from value added tax and excise duty of goods imported by persons travelling from third countries

⁵⁹ Regulations 23 and 25 (3) of the European Union (Manufacture, Presentation and Sale of Tobacco and Related Products) Regulations 2016 (S.I. No. 271 of 2016) as amended by the European Union (Manufacture, Presentation and Sale of Tobacco and Related Products) (Amendment) Regulations 2017 (S.I. No. 252 of 2017).

⁶⁰ Section 109U, (1) Finance Act, 2001

USE OF TAX STAMPS

Ireland uses tax stamps for fiscal purposes and to identify tax-paid tobacco products. A tax stamp must be affixed to all packets of cigarettes and roll-your-own tobacco. The tobacco tax stamp has a range of sophisticated security features to minimize the risk of counterfeiting. In addition, a newly designed tax stamp is held in reserve by Revenue should security be breached on the current stamp.

It is an offense to sell cigarettes and roll-your-own tobacco which do not carry an Irish tax stamp. The penalties currently available in Ireland on conviction for these offenses were increased in 2010.

In Ireland, offenses may be dealt with by a judge of a lower court (the District Court) sitting alone without a jury, and in such cases the offense is referred to as a summary offense. Where the offense is tried before a judge and jury, it is an indictable offense.

On conviction following summary prosecution for tobacco tax stamp offenses, a court may impose a fine of €5,000, or a term of imprisonment not exceeding 12 months, or both a fine and imprisonment. A fine of up to €126,970, or a term of imprisonment not exceeding five years, or both a fine and imprisonment, may be imposed on conviction following a prosecution on indictment.

COMBINED HEALTH WARNINGS

Combined health warnings are required on all packages⁶¹ of tobacco products placed on the market. The tar, nicotine, and carbon monoxide yields of cigarettes must be printed on one side of the cigarette packet in both the Irish and English languages. A general warning as to the adverse health effects of tobacco must be printed. In addition, a combined text and photo warning is required.

STANDARDIZED/PLAIN-PACK CIGARETTES

All tobacco products for sale in Ireland from 30 September 2017 must be presented in standardized retail packaging.⁶² There is a wash-through period so that any products placed on the market before that date will be permitted to be sold for a 12-month period, i.e., until September 30, 2018.

Standardized packaging will mean that all forms of branding, including trademarks, logos, colors, and graphics, are no longer present on tobacco packs. The brand and variant names are to be presented in a uniform typeface, and the packs are to be in one plain neutral color. The aim of standardized packaging is to decrease the attractiveness of tobacco packs to consumers, increase the effectiveness of health warnings, and prevent packaging from misleading consumers as to the harmful effects of smoking.

⁶¹ Public Health (Tobacco) (General and Combined Warnings) Regulations 2011 (S.I. No. 656/2011)

⁶² Public Health (Standardised Packaging of Tobacco) Act 2015

2.2 Overview of the Institutional Framework

Revenue is responsible for the administration and collection of tobacco products tax⁶³ on tobacco products. In addition, tackling the illicit tobacco trade remains a high priority for the agency.⁶⁴

As Revenue is a fully integrated tax and customs administration, it is not possible to dis-aggregate resources deployed exclusively at any given time on regulation of the tobacco trade, including action against smuggling and other illicit tobacco-trade activities. Revenue currently has approximately 2,000 staff engaged on activities that are dedicated to targeting and confronting non-compliance. These frontline activities include anti-smuggling and anti-evasion, investigation and prosecution, audit, assurance checks, anti-avoidance, returns compliance, and debt collection.

The legislation governing excisable products, and offenses regarding same, is consolidated in the Finance Act 2001. Sections 133–144 set out the powers of officers with regard to excisable products. In addition, tobacco products are subject to the provisions contained in Chapter 3 of Part 2 of the Finance Act 2005. Section 1078 of the Taxes Consolidation Act 1997 is also relevant, insofar as it creates offenses in relation to duties of excise.

Revenue Officers, authorized by a Commissioner, have powers to stop,⁶⁵ examine, search, and take samples from vehicles.⁶⁶ However, such powers are exercisable only to the extent necessary to control excisable products. For instance, Officers have the power to search a vehicle,⁶⁷ but only in order to establish: (a) whether the vehicle contains anything liable to forfeiture under excise law;⁶⁸ (b) that excisable products are being transported in compliance with the rules on intra-EU movement of goods under a suspension arrangement or the intra-EU movement of duty-paid excisable products;⁶⁹ or (c) that the vehicle itself is goods registered for Vehicle Registration Tax.⁷⁰

For all excisable products including tobacco, Section 136 of the Finance Act 2001 provides that an authorized officer may, at all reasonable times, enter a premises (with the exception of a dwelling) in which excisable products are being processed, held, stored, kept, imported, purchased, packaged, offered for sale, sold, or disposed of,⁷¹ and may there carry out a search and investigation, take samples without the need for payment, inspect and copy records, question persons present, and detain or seize vehicles or goods.⁷² Powers to search dwellings derive from powers conferred on Revenue Officers through search warrants issued by the Courts.

⁶³ Chapter 3 of Part 2 of the Finance Act 2005

⁶⁴ Revenue Commissioners, Annual Report 2016, p 37

⁶⁵ Section 134(1), Finance Act 2001

⁶⁶ Section 135(1), Finance Act 2001

⁶⁷ Section 135(1)(b), Finance Act 2001

⁶⁸ Section 135(1)(b)(i), Finance Act 2001

⁶⁹ Section 135(1)(b)(ii), Finance Act 2001

⁷⁰ Section 135(1)(b)(iii), Finance Act 2001

⁷¹ Section 136(1)(a), Finance Act 2001

⁷² Section 136(3), Finance Act 2001

In relation to offenses connected with the operation of the tobacco tax stamp system, as provided for under Section 78 of the Finance Act 2005, an Authorized Officer has the power to question and require information from persons.⁷³ Furthermore, an Authorized Officer has the power to arrest without warrant a person reasonably suspected of evading or attempting to evade excise duty⁷⁴ or committing an offense connected to the operation of the tobacco tax stamp system.⁷⁵

Separate provisions also apply to Customs Officers, and these include:

- » The power to stop vehicles where there is a belief smuggled goods are being transported;⁷⁶
- » The power to search stopped vehicles for smuggled goods.⁷⁷

The Department of Health oversees the implementation of Ireland's tobacco control policy, *Tobacco-Free Ireland* under the *Healthy Ireland* framework.⁷⁸

The Department of Health is responsible for introducing a number of measures in recent years in the area of tobacco control. These include prohibiting the sale of tobacco products to minors,⁷⁹ setting a minimum pack size of 20 for cigarettes,⁸⁰ the mandatory registration of retail outlets to sell tobacco,⁸¹ restrictions on the advertising of tobacco products⁸², bans on displays of tobacco products in shops,⁸³ restrictions on certain types of promotional activities,⁸⁴ restricting smoking in workplaces (the smoking ban),⁸⁵ and introducing standardized packaging for tobacco products.⁸⁶

In line with Directive 2014/40/EU concerning the manufacture, presentation, and sale of tobacco and related products ("the Directive"), the Department of Health introduced legislation providing for the setting of technical standards in relation to the content of tobacco products,⁸⁷ reporting of ingredients and emissions by tobacco manufacturers,⁸⁸ a minimum

⁷³ Section 138(1), Finance Act 2001

⁷⁴ Section 139(1)(a), Finance Act 2001

⁷⁵ Section 139(2)(a), Finance Act 2001

⁷⁶ Section 26, Customs Act 2015

⁷⁷ Section 27 (3), Customs Act 2015

⁷⁸ <http://health.gov.ie/wp-content/uploads/2014/03/TobaccoFreeIreland.pdf>

⁷⁹ Section 45 of the Public Health (Tobacco) Act 2002

⁸⁰ Section 38 of the Public Health (Tobacco) Act 2002, as inserted by section 9 of the Public Health (Tobacco) Act 2004

⁸¹ Section 37 of the Public Health (Tobacco) Act 2002, as inserted by section 8 of the Public Health (Tobacco) (Amendment) Act 2004; Public Health (Tobacco) (Registration) Regulations 2009 (S.I. No. 41 of 2009)

⁸² Section 33 of the of the Public Health (Tobacco) Act 2002, as amended by Section 5 of the Public Health (Tobacco) (Amendment) Act 2004

⁸³ Section 33A of the of the Public Health (Tobacco) Act 2002, as inserted by Section 5 of the Public Health (Tobacco) (Amendment) Act 2004

⁸⁴ Public Health (Tobacco)(Control of Sales Promotion) Regulations 2013 (S.I. No. 530/2013)

⁸⁵ Section 47 of the Public Health (Tobacco) Act 2002, as inserted by section 16 of the Public Health (Tobacco) Act 2004

⁸⁶ Part 2 of the Public Health (Standardised Packaging of Tobacco) Act 2015

⁸⁷ Regulation 4 of the European Union (Manufacture, Presentation and Sale of Tobacco and Related Products) Regulations 2016

⁸⁸ Regulation 4 of the European Union (Manufacture, Presentation and Sale of Tobacco and Related Products) Regulations 2016

weight of 30g for roll-your-own tobacco packs,⁸⁹ combined health warnings on packages,⁹⁰ and traceability and security features systems for tobacco products.⁹¹

The Health Service Executive is the enforcement authority for the public health provisions of tobacco control legislation. Section 48(4) of the Public Health (Tobacco) Act 2002⁹² provides that authorized officers, appointed by the Health Service Executive⁹³, have the power to:

- » Enter a specified premises or place;
- » Inspect and take copies of any books, records, other documents or extracts;
- » Remove any such books, records, or documents and detain for a reasonable period;
- » Carry out, or have carried out, such examinations, tests, inspections, and checks of the premises, any tobacco product, or any article or substance, and any equipment, machinery, or plant at the premises as may be reasonably necessary;
- » Require any person at the premises to give assistance and information as may be reasonably required;
- » Take samples;
- » Direct that such tobacco products are not to be sold, distributed, or moved from the premises, without consent;
- » Secure for later inspection any premises or part of any premises for such period as may reasonably be necessary;
- » Take possession of and remove from the premises for examination and analysis any tobacco product, or any substance or article, and detain them for such a period as is reasonably necessary

Section 48(7) of the Public Health (Tobacco) Act 2002 provides that a judge of the District Court may issue a warrant to an authorized officer to enter a dwelling and perform the functions listed under Section 48(4) of the Public Health (Tobacco) Act 2002. The Environmental Health Officer (EHO) may be accompanied by members of An Garda Síochána or Revenue officers, as necessary.

Section 48(9) of the Public Health (Tobacco) Act 2002 provides that, where an authorized officer has reasonable grounds to believe that a person has committed an offense under

⁸⁹ Regulation 13(1) of the European Union (Manufacture, Presentation and Sale of Tobacco and Related Products) Regulations 2016

⁹⁰ Regulation 14 of the European Union (Manufacture, Presentation and Sale of Tobacco and Related Products) Regulations 2016

⁹¹ Regulations 20 and 21 of the European Union (Manufacture, Presentation and Sale of Tobacco and Related Products) Regulations 2016

⁹² Section 48 of the Public Health (Tobacco) Act 2002, as inserted by section 23 of the Public Health (Standardised Packaging of Tobacco) Act 2015

⁹³ Section 48(1) of the Public Health (Tobacco) Act 2002

this Act, the authorized officer may require that person to provide his or her name and the address at which he or she ordinarily resides.

As part of their enforcement operations, EHOs carry out test purchases in retail stores.⁹⁴

STATUS OF ADMINISTRATIVE MECHANISMS

Licit

With regard to interactions with tobacco companies as taxpayers, Revenue ensure that such interactions respect the Framework Convention on Tobacco Control (FCTC) and the Guidelines for implementation of Article 5.3 of the FCTC on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry.

Control Officers employed by Revenue have specific responsibility for interacting with individual tobacco companies, and their role includes oversight of the reporting and payment of tobacco products tax, the taxation of new tobacco products, supervising delivery of Irish tax stamps from the tax stamp manufacturer to tobacco company stores, conducting stock checks of those stores, and supervising any destruction of Irish tax stamps and damaged or waste tobacco products. Revenue also interact with individual tobacco companies and the wider tobacco industry in order to source information in relation to trends and developments in the illicit tobacco trade.

Under EU legislation, excise duties are paid on alcohol, tobacco, and energy products at the final point of consumption. While in transit to their final destination, these goods are in duty suspension, i.e., no excise duty has yet been paid on them. Member States use an electronic system, the Excise Management and Control System (EMCS), to monitor the movement of these goods in real time, in order to ensure that the duties are properly levied at the final destination.⁹⁵ As there are no tobacco manufacturing facilities in Ireland, the movements of tobacco products into Ireland through the legitimate supply chain are controlled, as excisable goods, under EMCS and under cover of the appropriate excise Administrative Document (eAD). Interventions are based on a risk-profiling assessment, or may be intelligence led.

EMCS. Under EMCS, a movement of excise goods is documented at every stage through an electronic Administrative Document (eAD).

- » The eAD is issued by the original consignor, containing information on the consignment and the planned movement within the EU.

⁹⁴ 465 tobacco sales to minors test purchases were carried out in 2016: HSE Annual Report and Financial Statements 2016, p 106 <http://www.hse.ie/eng/services/publications/corporate/hse-annual-report-and-financial-statements-2016.html>

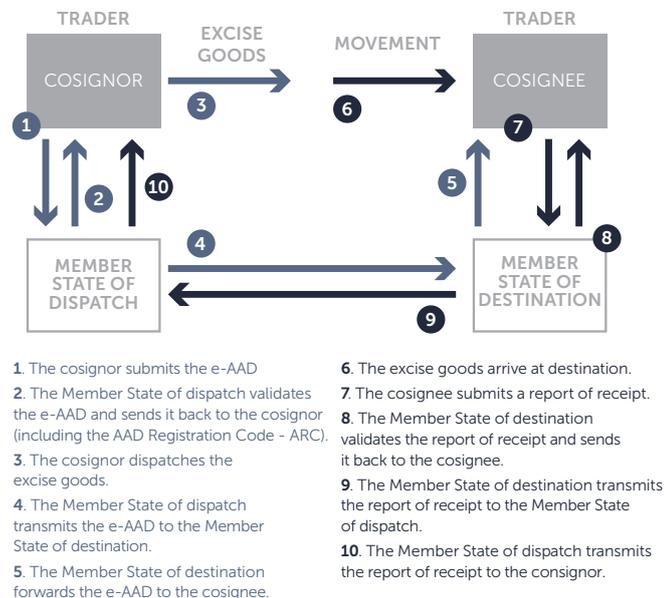
⁹⁵ The legal framework for the Excise Movement Control System (EMCS) is laid down by Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC

- » The eAD is validated in the Member State of dispatch. A European register of operators (SEED) is used to check the excise numbers of the consignor and consignee.
- » The eAD is electronically transmitted by the Member State of dispatch to the Member State of destination.
- » The Member State of destination forwards the eAD to the consignee.
- » The consignee submits a "report of receipt" once he/she has received the excise goods. This report should mention any anomalies, such as shortages or excesses in the consignment.
- » The report of receipt is sent to the consignor, who can then discharge the movement and recover the financial guarantees they had to make for the excise products.

Illicit

Revenue strategy towards combatting the illicit trade includes a range of measures designed to complement each other in identifying and targeting the supply of illicit tobacco products, with a view to disrupting the supply chain, seizing the illicit products and prosecuting those responsible. Key elements of Revenue's strategy include:

Figure 9. EMCS System



Source: European Commission, EMCS: How it Works, available at: https://ec.europa.eu/taxation_customs/business/excise-duties-alcohol-tobacco-energy/excise-movement-control-system/emcs-how-it-works_en, accessed 14 May 2018

- » Using risk analysis and profiling to screen cargo, vehicles, baggage, and postal packages to intercept the supply of illicit tobacco products;
- » Post-importation intelligence-based operations and random checks at retail outlets, markets, and private and commercial premises; and
- » Extensive cooperation between Revenue and An Garda Síochána, other relevant State agencies, and counterparts in Northern Ireland, as well as cooperation with other tax administrations and with the European Anti-Fraud Office (OLAF) in ongoing international programs of action to tackle the illicit trade.

Revenue works closely with EU partners to identify source countries, share intelligence on illicit shipments of tobacco products into Ireland, and monitor shipping and passenger traffic. Revenue also deploys scanning equipment and sniffer dogs and conduct regular street-level exercises to tackle illicit cigarette sales.

In March 2018, a commercial illicit cigarette production plant was discovered, along with 40 tonnes of tobacco, all the pre-cursor components for the manufacture of cigarettes, and approximately 25 million cigarettes. This was the first time a commercial illicit cigarette production plant was discovered in the State. The factory was closed down by Revenue officials and members of An Garda Síochána, and eleven men were arrested at the site. Investigations are ongoing, nationally and internationally.⁹⁶

Offenses

Persons contravening tobacco control regulations tobacco may face prosecution under tax and excise law and under health legislation. They may also face prosecution under other criminal legislation. Prosecution Guidelines require that the prosecutor not “over-charge,” that is prefer charges more serious than are justified by the evidence, and that the prosecutor should avoid pursuing too many charges arising out of the same set of facts.⁹⁷ As such, not all potential charges will be brought in response to a particular set of facts.

Persons involved in the smuggling and sale of illicit tobacco will generally be prosecuted for offenses under tax and excise law, including the evasion of excise duty,⁹⁸ the keeping for sale or delivery of tobacco products without a tax stamp,⁹⁹ or for dealing in counterfeit tax stamps.¹⁰⁰ Where OCGs are involved, offenses related to organized crime¹⁰¹ and money laundering¹⁰² may also be relevant. Furthermore, a body of health legislation supports the

⁹⁶ Revenue, Revenue and An Garda Síochána dismantle illicit cigarette factory in Jenkinstown, Co. Louth, 15 March 2018, <https://www.revenue.ie/en/corporate/press-office/press-releases/2018/pr-150318-illegal-cigarette-factory-jenkinstown-louth.aspx>

⁹⁷ Director of Public Prosecutions, *Guidelines for Prosecutors*, 4th Edition, 2016, p 23

⁹⁸ Section 119 of the Finance Act 2001

⁹⁹ Section 78(3) of the Finance Act 2005

¹⁰⁰ Section 78(3) of the Finance Act 2005

¹⁰¹ Criminal Justice Act 2006

¹⁰² Criminal Justice (Money Laundering and Terrorist Financing) Act 2010

maintenance of controls over the wider regulatory environment, including the display, sale, and regulation of tobacco products in the State.

TOBACCO COMPANY AGREEMENTS

As a method of addressing the illicit tobacco trade, the European Union signed cooperation agreements with four major transnational tobacco companies.

Agreements were signed with Philip Morris (PM) in 2004, with Japan Tobacco International (JTI) in 2007, and with both British American Tobacco (BAT) and Imperial Tobacco Limited (ITL) in 2010.¹⁰³

The agreements set out obligations for the tobacco companies, including in respect of:

- » Their manufacturing, sales, distribution, storage and shipment practices;
- » The marking and the “tracking and tracing” of their products;
- » Providing information to the Commission and Member States; and
- » Cooperation in the event of significant seizures of products bearing their trademarks in order to determine whether the products were genuine or counterfeit.¹⁰⁴

Each of the agreements provided for two types of payments: annual payments totaling US\$1.9 billion over 20 years and supplementary payments equivalent to the taxes evaded in the event that genuine product was seized.¹⁰⁵ In 2016, the European Commission decided not to renew its agreement with Philip Morris. The agreements with JTI and BAT do not have to be renewed until at least 2022.¹⁰⁶

PROCESSES

Supply chain controls

The EU-wide Excise Movement and Control System (EMCS) is a computerized, paperless system that is used by businesses when moving duty-suspended excise goods (alcohol, tobacco, and certain mineral oils) between EU Member States as part of their commercial activities. Its purpose is to combat fiscal fraud by providing tax authorities and the traders involved with real-time information and checks on individual consignments of excise goods along the supply chain. As a standardized, electronic system for the whole EU, it also simplifies procedures and reduces administrative costs for businesses and tax authorities.

¹⁰³ Joosens, L, Gilmore, AB, Stoklosa, M, Ross, H, Assessment of the European Union’s illicit trade agreement with the four major Transnational Tobacco Companies, *Tob Control*, 2016; 25:254–260, p 254

¹⁰⁴ Heyward, M. Legal Analysis of the agreements between the European Union, Member States, and multinational tobacco companies, New York, 2010

¹⁰⁵ Joosens, L, Gilmore, AB, Stoklosa, M, Ross, H, Assessment of the European Union’s illicit trade agreement with the four major Transnational Tobacco Companies, *Tob Control*, 2016; 25:254–260, p 254

¹⁰⁶ Robinson, D, Financial Times, EU to end anti-tobacco smuggling deal with Philip Morris, 05 July 2018, available at: <https://www.ft.com/content/1724b620-42b9-11e6-b22f-79eb4891c97d>, accessed 21 May 2018

Revenue has a number of staff appointed as Control Officers to help control the supply chain of tobacco within the State. Tobacco Traders must inform their designated Control Officer in advance of certain processes taking place, and Revenue Control Officers have the power to enter premises where tobacco is stored at any time to carry out spot checks on the amount of tobacco being kept in storage. Revenue Control Officers must also witness the destruction of tobacco products as required by European Union legislation.

Revenue officers may enter premises where tobacco is being sold within the State to check that products have the correct tax stamp affixed. Stamps may be checked during scheduled compliance visits or random audits of businesses. Revenue Officers are empowered to conduct random checks in retailers and may seize products where tax is deemed not to have been paid.¹⁰⁷ Revenue Officers have also been active in seizing tobacco products on sale illegally, including at street markets within the State.¹⁰⁸

National public-health legislation concerning the sale and use of tobacco is enforced by Environmental Health Officers employed by the Health Service Executive. The laws include the mandatory registration of retailers selling tobacco products, the restriction of advertising and marketing of tobacco products, restrictions on the point of sale, and the prohibition of the smoking of tobacco products in certain places. Environmental Health Officers carry out random test purchases to make sure that retail outlets are abiding by tobacco control legislation, including the prohibition on selling tobacco products to minors.

International cooperation

Revenue works very closely with OLAF, EUROPOL, and with the authorities of other countries to tackle the problem of illicit tobacco entering Ireland. Regular development and exchange of intelligence and joint operations are the norm. There is an ongoing review of operational action in the light of emerging trends, new detection technologies, and identification of best practice. As a result of Revenue's cooperation with other countries and agencies, seizures of illicit tobacco occur not only in Ireland but also in other jurisdictions.

In June 2014, over 32 million cigarettes and 4,500 kg of water pipe tobacco were seized at Drogheda Port, as was the cargo vessel MV Shingle, following dedicated work and international cooperation involving Revenue and authorities across several jurisdictions, including Slovenia, Portugal, and Ireland.¹⁰⁹ The seized cigarettes and tobacco represented a potential loss to the Exchequer of nearly €13 million. Cooperation between authorities regularly takes place across both sides of the border with Northern Ireland.¹¹⁰

¹⁰⁷ Revenue, Revenue seizes tobacco products, alcohol, prohibited drugs and cash, 08 January 2018, available at: <https://www.revenue.ie/en/corporate/press-office/press-releases/2018/pr-080118-tobacco-products-alcohol-prohibited-drugs-and-cash.aspx>, accessed 18 May 2018

¹⁰⁸ Revenue, Revenue seizes over 11,000 cigarettes on Moore Street, 03 July 2017, available at: <https://www.revenue.ie/en/corporate/press-office/press-releases/2016/pr-121216-cigarettes.aspx>, accessed 18 May 2018

¹⁰⁹ Revenue, Revenue seizes over 32m cigarettes in Drogheda Port, the largest seizure in Europe to date this year, 24 June 2014, available at: <https://www.revenue.ie/en/corporate/press-office/press-releases/2014/pr-240614-cigarettes.aspx>

¹¹⁰ The Guardian, 2m cigarettes seized in Northern Ireland raids, 04 February 2015, available at: <https://www.theguardian.com/uk-news/2015/feb/04/cigarettes-seized-northern-ireland-raids>

A key factor in the successful cooperation between agencies and states has been the legislation enacted by the EU, such as the Convention on Mutual Assistance and Cooperation between Customs Administrations (Naples II), which ensures that Member States of the EU have a legal basis when providing assistance and information through formal mutual assistance requests.

As a Member State of the EU, Ireland works very closely with its EU partners to tackle source countries and apply the maximum pressure on the governments concerned. This includes working with other Member State law enforcement agencies, including OLAF and EUROPOL, with which Revenue has a very close relationship. Revenue currently has five officers assigned abroad who are directly involved with the international exchange of information and intelligence. These officers work with Revenue's Customs Division and the Investigations and Prosecutions Division. Two officers are assigned to Ireland's permanent Representation to the EU in Brussels, one officer is assigned to the Irish Embassy in London, one officer is assigned to Europol headquarters in The Hague, and one is assigned to the Maritime Analysis Operations Centre (Narcotics) in Lisbon.

The land frontier continues to feature as a focal point for those involved in smuggling of tobacco products into both jurisdictions. Revenue has traditionally worked very closely with Her Majesty's Revenue and Customs (HMRC), the United Kingdom's tax, payments, and customs authority, and continues to do so on specific projects. For example, in July 2015, a joint operation involving Revenue, HMRC, and the Police Service of Northern Ireland seized more than four million cigarettes along with a suspected mobile fuel laundering plant in County Tyrone.¹¹¹

Investment in systems

Revenue continually invests in its resources for tackling the illicit tobacco trade in the State. A number of resources are used, including scanning equipment at ports and airports within the State. A state-of-the-art mobile x-ray scanner was acquired in 2017, partly funded by the EU Hercule III program administered by OLAF.¹¹² Revenue also has a team of highly trained sniffer dogs that can be deployed nationwide in uncovering consignments of tobacco in properties, vehicles, and boats.

Intelligence-led interventions

Revenue conducts risk analysis to profile cargo, vehicles, baggage, postal packets, and passengers entering the State. These risk analyses are constantly monitored, updated, and refined to ensure that Revenue is consistently on top of any threat to the legitimate tobacco market in the State.

¹¹¹ <https://www.revenue.ie/en/corporate/press-office/press-releases/2015/pr-280515-cigarettes.aspx>

¹¹² <https://revenue.ie/en/corporate/press-office/press-releases/2017/pr-150617-scanner.aspx>

Tobacco stamp

A tobacco tax stamp for cigarettes and roll-your-own tobacco products was introduced in 1994 and must be affixed to products for retail sale in Ireland. The stamp serves as proof to both Revenue and consumers that tax has been paid on the product. In the majority of cases, tobacco products not bearing a tax stamp are seized by Revenue officers and sellers prosecuted in the Courts. In certain cases, such as duty-free shops and diplomatic sales, products may be sold without a tax stamp, as tax will not have been paid on these products.

Offenses

Revenue benefits from a comprehensive legislative framework to support its work against those who sell or smuggle excisable products. It is an offense to evade tax on, that is to smuggle, excisable products, and it is an offense to sell cigarettes and roll-your-own tobacco products which do not carry an Irish tobacco tax stamp.

The specific penalty to be applied in any particular case is entirely a matter for the courts and, where a fine is imposed, the amount is at the judges' discretion and may be mitigated. In addition, the Court may choose to impose a term of imprisonment, a suspended sentence, or a community service order in lieu of a fine. Revenue, on an ongoing basis, monitors closely the outcome of cases prosecuted and the severity of the sanctions and penalties imposed upon conviction.

3. Enforcement Solutions

3.1 Tobacco Tax Stamp

Tax stamps are labels issued by Revenue under Section 73 Finance Act 2005 for the purpose of collecting the Tobacco Products Tax on cigarettes and fine-cut tobacco for the rolling of cigarettes. They are applied directly to cigarette packs beneath the cellophane wrapper. Each stamp measures 19.05 mm x 44.45 mm. Tax stamps are supplied in sequentially numbered batches containing 30,000 numbered stamps.

Tobacco Products Tax on cigarettes and fine cut tobacco for the rolling of cigarettes (RYO) – described as “specified tobacco products” in section 71 Finance Act 2005 - shall be payable by means of tax stamps issued by Revenue. Each pack of cigarettes or RYO, intended for sale, delivery, or consumption in the State, must have a tax stamp affixed to it in respect of which the appropriate duty has been paid. Revenue shall issue tax stamps only on payment of an amount equivalent to the duty represented by such stamps, although the operation of the systems allows for deferred payment, usually for a period of two months. This amount is known as the tobacco tax stamp charge.

The Irish tobacco tax stamp is highly sophisticated with a number of overt, semi-covert, and covert layered security features. Revenue has a role in preventing the contamination of the supply chain with illicit tobacco products and counterfeited tax stamps, and Revenue control

officers and enforcement officers are trained to carry out checks on tobacco products to detect counterfeit stamps. Each stamp has a unique printed code which correlates to the brand and price point of product to which it is affixed. The code on the stamp is an overt security feature and is used by Enforcement officers as a means of identifying the trader, quantity of cigarettes/rolling tobacco, retail selling price, when the product was released, and the production specifics of the stamp itself. Revenue owns the code. Revenue officers are trained to identify the overt security features of the stamp and have handheld verification tools to identify the semi-covert security features. There are contingency plans in place such that, should a counterfeit stamp be found, the current stamp can be replaced by a backup design which is ready to go into production immediately.

Tobacco traders may purchase tax stamps and hold stocks of stamps subject to strict Revenue control. Anti-forestalling measures may be imposed including by placing restrictions on the release of tobacco tax stamps in the three-month period prior to a Budget, where the quantity of cigarettes or tobacco involved exceeds the expected requirements for the period.¹¹³ The granting of permission to purchase and store stamps will be subject to the acceptance by the trader of any conditions, including security, as set out in legislation or laid down by Revenue.

Deliveries of the tobacco tax stamps are made using door-to-door delivery by secure Cash-in-Transit¹¹⁴ from the printers' premises to the tobacco traders' secure premises. Revenue officers attend at deliveries of tax stamps to secure stores. On delivery of stamps, an official of the authorized trader and a Revenue Officer will compare the number and details of stamps received with the details contained in the delivery docket. Batches found to be incomplete or damaged are to be returned to the printing contractor and the delivery docket endorsed. Delivery dockets are to be signed by an authorized company official and the Revenue Officer.

Tobacco traders must provide a secure store for stamps, which must be capable of being placed under Revenue lock. Responsibility for the security of stamps delivered to a trader's premises rests solely with the trader. Traders must notify their designated Revenue Officer if stamps are discovered to be damaged or unusable after receipt.

Stamps are to be affixed directly to tobacco packs beneath the cellophane wrapper and in a position on the pack that does not obscure or interfere with health warnings or other markings required by law. Physically affixing the tobacco tax stamps is for the tobacco manufacturer or importer, and mainly this takes place at the manufacturing plant.

It is important that each stamp be affixed solidly to a pack so that it cannot be removed without damage to the stamp itself or to the packaging material which contains the tobacco products.

¹¹³ Section 18 of the Finance Act 1939 (as amended)

¹¹⁴ National Standards Authority of Ireland, Cash-in-transit Services, I.S. 998:2006

Revenue staff will carry out a stocktake of tax stamps in the secure store in conjunction with the tobacco trader each month. This allows for any discrepancies to be managed appropriately by Revenue.

Tax stamps damaged or otherwise rendered unusable during the packaging process are to be made available for inspection by the Revenue Officer. Suitable arrangements are made for the destruction of the stamps in the presence of the Revenue Officer, where required. Stamps destroyed under supervision will qualify for a refund of excise paid.

DESIGN

The design of the tax stamps is governed by Regulation 21 of The Tobacco Products Tax Regulations 2006 (S.I. 261/2006), which provides that the tax stamp shall include:

- » A continuous background printing of the words "The Revenue Commissioners" and "Na Coimisinéirí Ioncaim";
- » A representation of the (Official) Irish Harp containing 12 strings in a vertical plane encircled by a ring on which are printed the words "Ireland," "Éire," "Excise Duty," and "Dleacht Mháil";
- » Three lines of encoding printed in black containing such combination of characters as Revenue have authorized for the tobacco products to which the stamp relates; and
- » Such security or other features as Revenue may from time to time direct.

Figure 10. The Current Irish Tobacco Tax Stamp Design



The paper specification currently utilized is an ungummed coated security paper to the following specification:

Coated Substance	72±5 gm ²
Base stock	62±3 gm ²
Coat weight	10±1 gm ²
Caliper (microns)	80±5
Parker Roughness (microns)	2.5 max
Gloss %	30 ± 5
I.G.T. cm/sec LVO	135 min
Ink Absorption (K+N units)	15 ± 5
Brightness (%)	80 (min)
Security fibers	Yes - (not for disclosure)

CONTRACT

Within the framework of Regulation 21, Revenue outsources the design, production, printing, and delivery of the tobacco tax stamp. Currently (July 2018), the tobacco tax stamp contract is held by the DLRS Group.¹¹⁵ In order to select a third-party supplier, the Office of Government Procurement, on behalf of Revenue, conducts a competitive tendering processing comprised of two stages:

- i. Stage 1 - Short-listing (invites responses and short-lists all the prospective suppliers that are compliant and meet selection criteria); and
- ii. Stage 2 - Tendering and Award.

The purpose of the first stage is to obtain sufficient information from candidates to enable Revenue to evaluate suppliers based on their economic and financial standing and their technical and professional ability. Revenue apply a pre-defined list of selection criteria to the responses received during the first stage in order to arrive at a short-list of candidates to proceed to the second stage. At the second stage, those suppliers who were successfully short-listed will be invited to submit tenders for the work involved.

The two-stage process allows Revenue to limit the availability of the full details of the specifications, requirements, and other contractual provisions to the second stage of the contract award process, and so protect the confidential nature of the tobacco tax stamp.

The final contract will cover the design, supply of all materials, and printing of high-security tobacco tax stamps, and the secure delivery of those stamps on behalf of Revenue. The

¹¹⁵ <https://dlrsgroup.com/>

three-year contract is extendable by periods of one year, with a maximum of three such extensions. The estimated quantity of stamps required in a year is between 150 and 200 million.

To ensure continuity, successful suppliers are required to supply, on an interim basis, quantities of the tobacco tax stamp in its current design for a transition period of no more than six months, before supplying a new tobacco tax stamp incorporating new and/or additional features and enhancements as designed by the supplier. The supplier is also required to provide a second design along with a quantity of such stamps – sufficient to meet immediate requirements – to act as an emergency back-up stamp in case of a force majeure event or a breach of security compromising their new stamp design. Where no force majeure or breach occurs, the second design will become the tobacco tax stamp after the elapse of three years, at the discretion of Revenue, and a third design will be required to act as an emergency back-up to that stamp.

Each enhancement must provide added multi-layered security and enhanced features to its predecessor while remaining within the terms set for the design of tax stamps as governed by Regulation 21 of The Tobacco Products Tax Regulations 2006 (S.I. 261/2006) and the contractual requirements as set by Revenue. This process of ongoing enhancement ensures that the tobacco tax stamp remains cutting-edge.

There are limitations to the design of such enhancements. For instance, Revenue requires that the specification for the existing paper substrate, or its exact equivalent, must be retained for reasons of functionality on cigarette packaging machinery. There are limitations to the inclusion of certain features to the surface of the tobacco tax stamps imposed by the functional characteristics and mechanical restrictions of the tobacco tax stamp applicators on cigarette packaging equipment. The application of overt surface security measures that are applied to only part of the surface of the tobacco tax stamp and/or have a partially raised profile will not be appropriate due to irregular or uneven pilling of tobacco tax stamps in the cigarette packaging equipment applicators. Watermarks are not considered practical due to the weight of the paper, totality of ink coverage, and practicality of application. Similarly, intaglio printing is also not suitable, since it cannot be read under cellophane.

However, Revenue will consider solutions if the supplier can provide evidential proof that the suggested proposal is currently in mainstream tobacco production and utilizes the same process and packaging machinery as currently utilized by the tobacco manufacturers who supply the Irish market.

TRACEABILITY AND SECURITY FEATURES

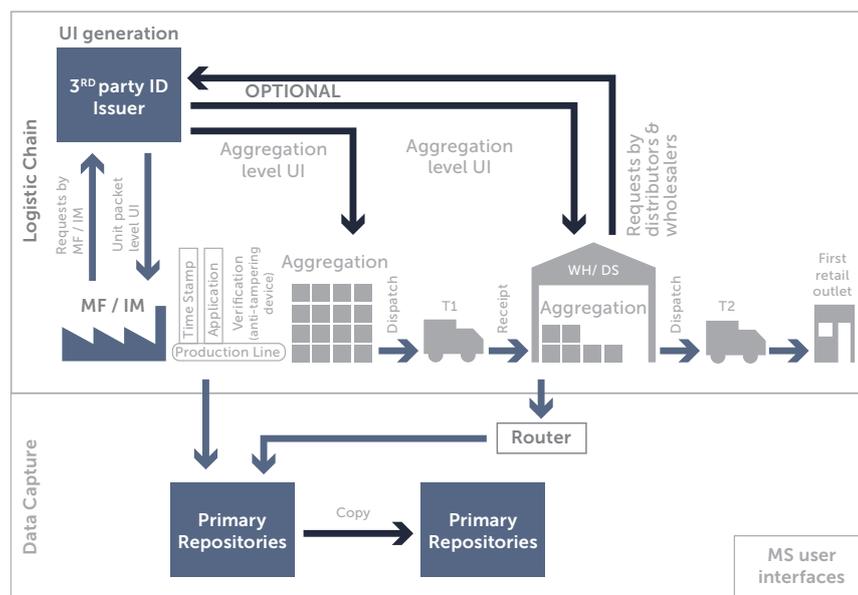
The revised Tobacco Products Directive 2014/40/EU concerning the manufacture, presentation, and sale of tobacco and related products (TPD) provides for, amongst other measures, the introduction of mandatory traceability and security feature systems for tobacco products. Implementing and delegated acts to lay down the technical details necessary for the systems of traceability and security features for tobacco products were adopted by the

European Commission on December 15, 2017, and published in the Official Journal of the EU on April 16, 2018.¹¹⁶

The proposed system involves the marking of individual packs of tobacco products with a "Unique Identifier" which allows for individual packs and aggregated packages to be recorded in a "Primary Repository," exclusive to the manufacturer or importer concerned. This data is then copied to a "Secondary Repository" which allows for surveillance by competent authorities as packs move through the supply chain.

The governance model aims to ensure the required level of integrity by ensuring the systems operate independently of the tobacco industry, as envisaged by the Protocol and the TPD.

Figure 11. Traceability – Operational System Structure



Source: European Commission, EU systems for traceability and security features of tobacco products, Presentation: Regional Workshop No. 1 Stockholm, 25 January 2018, available at: https://ec.europa.eu/health/sites/health/files/tobacco/docs/ev_201801252_ag_en.pdf

Enhanced supply-chain controls, alongside traceability and authentication systems that could operate globally and include source and transit countries, have real potential to assist in the control of the illicit tobacco market. An impact assessment prepared by the EU anticipates that implementation would increase collected taxes (i.e., VAT and excise duties) by €2 billion per year throughout the EU.¹¹⁶ However, this estimate is generic in that it is based on

¹¹⁶ European Commission, Impact Assessment accompanying Commission Implementing Regulation (EU) 2018/574 on technical standards for the establishment and operation of a traceability system for tobacco products and Commission Implementing Decision (EU) 2018/576 on technical standards for security features applied to tobacco products, Brussels, 15 December 2017, SWD(2017) 455 final, p 35

the EU-wide tobacco market and does not take into account the particularities of the Irish tobacco market. As Ireland currently operates a robust tax stamp system and controls the movement of legitimate tobacco arriving in Ireland, a more specific study would be needed to measure the exact effects on the illicit tobacco market in Ireland of the proposed system.

Revenue and the Department of Health are working together to devise the best method of implementing the envisaged traceability and security feature systems in Ireland, so that they may be incorporated into the existing regulatory framework for the distribution and sale of tobacco in Ireland. A competent authority for the implementation of the traceability and security feature systems in Ireland will be designated by the Government.

4. Results

Measuring the illicit tobacco trade is methodologically challenging for a number of reasons, and similar challenges are faced when measuring the success, or otherwise, of control measures intended to inhibit the illicit tobacco trade. As an illegal activity, participants are unlikely to record their activities in a manner that provides easy proof of their criminality. Where authorities have data on the activities of those involved in the illicit tobacco trade, they may prefer not to share this data for security reasons. In addition, all methods to estimate the illicit tobacco trade have limitations.

The three most commonly used methods to measure the illicit trade are:

- » Comparison of tax-paid sales and individually reported consumption measures;
- » Survey of tobacco users' purchase behaviors; and
- » Observational data collection.

Overall smoking prevalence, including the smoking of licit and illicit tobacco, has declined in Ireland from 27.6 percent in 2007 to 17.6 percent in 2017. Over the same period, excise receipts from tobacco products has remained relatively stable between €1 billion and €1.4 billion per year.

The quantity of tobacco demanded depends on multiple factors, economic and societal, but is also influenced by the interaction of the dual licit and illicit tobacco markets. Estimating the percentage of overall tobacco consumption captured by the illicit market is fraught with difficulties. Both smoking prevalence and the size of the licit market are important indicators, and certainly trends within the licit market which may indicate that consumers are seeking cost-effective alternatives are particularly relevant. However, such figures must be considered within the broader context.

In 2017, 34.2 million cigarettes were seized, compared to 44.6 million in 2016 and 67.9 million in 2015. These figures continue to show a decline, especially considered against the 178.3 million cigarettes seized in 2010. These figures reflect a response by OCGs to enforcement activities and successful interception of larger consignments, resulting in a move away

from very large consignments in favor of smaller volumes. Where possible, those involved in smuggling, distributing, or selling illicit cigarettes are prosecuted. In 2017, 88 people were convicted for illicit tobacco offenses, and Irish courts imposed custodial sentences in 18 cases and average fines of €2,580 in 69 cases where fines were imposed.

Seizure figures may be distorted by the seizure of a small number of atypically large consignments, while figures for convictions, sentencing, and the imposition of fines may be affected by judicial processes not directly relevant to the illicit tobacco trade. As such, survey results indicating the penetration of the illicit market are considered an important measure of the incidence of illicit consumption,¹¹⁷ and therefore an important gauge of the success, or otherwise, of measures to control the illicit tobacco trade.

The KPMG Project Sun report, produced on behalf of the Royal United Services Institute for Defense and Security Studies (RUSI) in the UK, estimated that Ireland had the third-highest rate of illicit tobacco consumption in the EU at 17.5 percent.¹¹⁸ The KPMG methodology is principally based on a calculation of legal domestic sales (from which outflows of legal sales to other countries are subtracted and inflows from other countries are then added back in) to give an estimate for the total consumption, combined with data from an Empty Pack Survey (EPS) to provide a measurement of the share of non-domestic packs.¹¹⁹ The EPS method relies upon the random collection of empty packs of any brand and market variant from streets and easy access bins. The following should be noted in relation to EPS survey data:

- » They assess non-domestic products, which include legitimately purchased cigarettes;
- » Figures are based on packs of cigarettes and exclude other products, such as RYO or cigars;
- » They do not identify domestic contraband cigarettes; and
- » The sample is collected at the street level and does not consider homes and workplaces.¹²⁰

While all estimation methodologies have their limitations, in Ireland the best estimate of the scale of the illicit tobacco problem comes from the IPSOS-MRBI surveys conducted for Revenue and the National Tobacco Control Office.¹²¹ In addition, the consistency of the methodology allows for changes in illicit consumption levels to be tracked over time. The most recent survey, conducted in late 2017, found that 13 percent of cigarette consumption was illicit. This compares to a figure of 10 percent in the comparable survey for 2016. The

¹¹⁷ Moran, G. Revenue Commissioners, evidence to the Oireachtas Joint Committee on Health and Children, 23 January, 2014

¹¹⁸ KPMG, Project Sun: A study of the illicit cigarette market in the European Union, Norway and Switzerland, 2016 Results, p 80

¹¹⁹ KPMG, Project Sun: A study of the illicit cigarette market in the European Union, Norway and Switzerland, 2016 Results, p 174

¹²⁰ Transcrime, The Factbook on The Illicit Trade in Tobacco Products: Issue 3 Ireland, 2013, footnote 15, p 64

¹²¹ Moran, G. Revenue Commissioners, evidence to the Oireachtas Joint Committee on Health and Children, 23 January, 2014

2017 survey also found that a further 9 percent of consumption was accounted for by cigarettes purchased abroad and brought into Ireland legitimately for personal consumption.

5. Methodology

The purpose of this case study is to describe the illicit flow of tobacco products in Ireland and the counter-measures taken to halt that illicit trade. It is important to state that all data relied upon in the compilation of this case study are publicly available.

The primary assumption underlying the case study is that there are dual licit and illicit tobacco markets in Ireland, the former closely regulated and controlled, and the latter operating at the margins, or entirely outside, such controls.

The existence of a separate illicit market, outside the controlled licit market, gives rise to difficulties in estimating the size of shadow economy activities. In addition, criminal actors in the illicit tobacco trade are found to be dynamic and responsive, and this demands a similar attitude on the part of the authorities, necessitating a multi-pronged approach to the control of the illicit tobacco trade.

As such, two related evidential problems arise in relation to the illicit tobacco trade: (i) estimating the illicit tobacco share of overall tobacco consumption, particularly given the influence of other variables on tobacco consumption; and (ii) disaggregating the effect of particular control measures on the illicit tobacco trade, as can be seen by attempts to estimate the future effects of EU-wide traceability and security feature systems on the illicit tobacco trade in Ireland.

Literature exists concerning the multiple influences on demand for illicit tobacco, however the authors discovered less literature addressing the impact of specific control measures on the illicit trade in Ireland.

In deciding upon the selection of data concerning these dual markets and their interactions, the authors prioritized data which were: (i) publicly available, (ii) acknowledged as reliable, and (iii) capable of being tracked over time.

The authors' purpose was to gain an understanding of the existence of the illicit tobacco trade in Ireland and to describe the responses of the Irish authorities. It is hoped that the case study will both provide insights into the problem and help to develop ideas or hypotheses for potential additional research.

6. Recommendations

The illicit tobacco trade is a complicated phenomenon and requires a multi-pronged approach for its control and suppression. As outlined, the authorities in Ireland devote considerable resources to the control of the licit tobacco market and supply chain. In addition,

substantial resources are also deployed to suppress the activities of the illicit tobacco trade, the scale of which has been successfully contained.

The case study makes the following recommendations:

1. Additional research should be conducted in the area of tobacco generally and illicit tobacco specifically. Areas of special interest would be:
 - › The overall tobacco market;
 - › Drivers of illicit trade; and
 - › Optimal taxation point for tobacco products.
2. Ireland's comprehensive and effective system of customs and tax enforcement, and the resultant relatively low rate of illicit flows, suggest that Ireland retains the opportunity to further increase real and affordability-corrected taxes on tobacco. Appropriate tax increases and improved structure can continue to help drive down tobacco consumption and save Irish people from disease and premature death.
3. There should be continued efforts to improve tax and customs enforcement, building on strong progress and good results to date.
4. Consideration should be given, at an EU-wide level, to greater controls over unmanufactured tobacco, a potential ingredient of illicit tobacco products, which is not currently controlled under the Excise Movement Control System (EMCS) or other EU-wide control mechanism.
5. An assessment should be undertaken of the impact of EU-wide traceability and security feature systems, post-introduction in May 2019.

Annex

Tax and Excise Legislation

Section 119 Finance Act, 2001 provides for an offense of evading excise duty by taking possession, custody, transporting or concealing excisable products with intent to defraud the State of Excise Duty.

Persons found guilty of an offense under this section are liable on summary conviction to a fine of €5,000 or a term of imprisonment of 12 months or both. On indictment, a person found guilty of an offense under this section is liable to a fine of €126,970 or where the value of the excisable goods concerned, including any duties or taxes chargeable on them is greater than €250,000, the maximum penalty is three times the value of those products. The Courts have discretion in imposing a prison sentence of up to five years.

Section 121 Finance Act, 2001 provides for an offense of failing to comply with the rules and regulations relating to the production, processing and holding of excisable products.

Section 122 Finance Act, 2001 provides for an offense of submitting a fraudulent claim, return, statement or accounts or to furnish any incorrect information.

Section 123 Finance Act, 2001 provides that any person who resists, obstructs or impedes an officer of Revenue in the exercise of these powers shall be guilty of an offense. The penalty for an offense committed under Sections 121–123 on summary conviction is €5,000.

Section 124A Finance Act, 2001 provides that any authorized ware housekeeper who contravenes or fails to comply with any condition or requirement imposed on him by legislation is liable to a penalty of €1,500 for each contravention or failure.

Section 125 Finance Act, 2001 provides that any excisable products in respect of which an offense has been committed (or any goods packed with and/or vehicles used in concealing the excisable products in question) are liable to forfeiture.

Section 136 Finance Act, 2001 provides that an authorized officer of Revenue may at all reasonable times enter premises on which the manufacture of tobacco products is reasonably believed by the officer to be carried on, and may there make such search and investigation and take such samples of materials, tobacco products and partially manufactured tobacco products as the officer shall think proper, and may inspect and take copies of or extracts from any books or other documents there found and reasonably believed by the officer to relate to the manufacture of tobacco products.

Section 78(3) Finance Act, 2005 provides that any person who in the State offers for sale or delivery, other than under a duty-suspension arrangement, cigarettes otherwise than in a pack or packs to which a tax stamp, on which Tobacco Products Tax at the appropriate amount has been paid, is affixed in the prescribed manner, is guilty of an offense and shall be liable on summary conviction to a fine of €5,000 and/or a maximum of twelve months imprisonment, or on conviction on indictment to fine of up to €126,970 and/or a maximum of five years imprisonment. The cigarettes in respect of which an offense has been committed and any goods packed with or used to conceal the said cigarettes and any vehicle or conveyance in which the said cigarettes are found in, on, or in any manner attached to, are also liable to forfeiture.

Section 78(4) Finance Act, 2005 provides that any person who counterfeits, alters or otherwise makes fraudulent use of, or who is knowingly concerned in holding, selling or dealing in counterfeited or altered tax stamps is guilty of an offense and shall be liable on summary conviction to a fine of €5,000 and/or a maximum of twelve months imprisonment, or on conviction on indictment to fine of up to €126,970 and/or a maximum of five years imprisonment.

Section 79 Finance Act, 2005 provides that any person who offers to treat, offers for sale or sells by retail any packet of cigarettes at a price higher than, in the case of cigarettes sold or to be sold by means of a coin-operated vending machine, the nearest multiple of five cent to the price, or in all other cases, the retail price, shall be guilty of an offense and shall be liable on conviction to an excise penalty of €60 in respect of each such offense.

Section 78A Finance Act, 2005 provides that any person who produces or possesses any illicit tobacco product or attempts to produce or process is guilty of an offense. An illicit tobacco is defined as a tobacco product that has not been produced or processed in the State in a tax warehouse contrary to section 108A Finance Act 2001. It is also an offense to knowingly deal in any illicit tobacco product, to keep prohibited goods on any premises or other land or on any vehicle or to deliver or to be in the process of delivering, any illicit tobacco product or prohibited goods. Penalties for these offenses can be up to a maximum of €5,000 or 12 months imprisonment on summary conviction or €126,970 or 5 years in prison on indictment. Illicit tobacco products are liable to forfeiture and if they are found within a vehicle, the vehicle is also liable to forfeiture. Where any unmanufactured tobacco is found in the State and where that unmanufactured tobacco is not shown to the satisfaction of Revenue to be kept or in the course of delivery under a customs procedure, for use as raw material for the production of tobacco products in a tax warehouse, for use as raw material for the production of any product or thing other than a tobacco product or for any other use that is not contrary to the legislation, it shall be presumed until the contrary is proved that the unmanufactured tobacco is prohibited goods.

Health Legislation

Section 33 Public Health (Tobacco) Act, 2002 provides that a person who advertises, or causes the advertisement of, a tobacco product in contravention of the Directive of 2003 shall be guilty of an offense and shall be liable on summary conviction to a fine not exceeding €3,000, imprisonment of 3 months or both. On indictment, a person found guilty of an offense under this section is liable to a fine not exceeding €125,000 or two years imprisonment or both.

Section 33A Public Health (Tobacco) Act, 2002 provides that the advertisement of tobacco products in premises in which the business of selling tobacco products by retail is carried on in whole or in part is prohibited. A person found guilty on summary conviction shall be liable to a fine not exceeding €3,000, imprisonment of 3 months or both. On indictment, a person found guilty of an offense under this section is liable to a fine not exceeding €125,000 if convicted on indictment or 2 years imprisonment or both.

Section 36 Public Health (Tobacco) Act, 2002 provides that a person who engages in sponsorship in contravention of the Directive of 2003 shall be guilty of an offense and shall be liable on summary conviction to a fine not exceeding €3,000 on summary conviction, imprisonment of 3 months or both. On indictment, a person found guilty of an offense under this section is liable to a fine not exceeding €125,000 if convicted on indictment or 2 years imprisonment or both.

Section 37 (13) Public Health (Tobacco) Act, 2002 provides that a person who, knowingly or recklessly provides information or a particular [when registering] that is false or misleading in a material respect, or who believes any such information or particular provided by him or her, not to be true, shall be guilty of an offense. A person found guilty on summary conviction shall be liable to a fine not exceeding €3,000, imprisonment of 3 months or both.

Section 37 (14) Public Health (Tobacco) Act, 2002 provides that it shall be an offense for a person to sell a tobacco product, or cause a tobacco product to be sold, by retail unless the person is registered. A person found guilty on summary conviction shall be liable to a fine not exceeding €3,000, imprisonment of 3 months or both. On indictment, a person found guilty of an offense under this section is liable to a fine not exceeding €125,000 if convicted on indictment or 2 years imprisonment or both.

Section 38 Public Health (Tobacco) Act, 2002 provides that it shall be an offense to sell cigarettes in packs less than 20, to manufacture, import, supply, sell or offer for sale an oral smokeless tobacco product, to sell confectioneries that resemble in appearance a type of tobacco product, to import, sell, or supply tobacco products which does not conform to the standardised packaging legislation to import, sell or supply tobacco products which do not contain a batch number to ascertain date and place of manufacture, to supply tobacco products free of charge to promote consumption of tobacco products, to supply or sell vouchers or coupons to the Public to pay or exchange for a tobacco product, or to sell a

tobacco product where consideration is a gift, token, stamp, coupon or other thing that may be exchanged for or used as part payment for the goods. A person found guilty of an offense under this section on summary conviction shall be liable to a fine not exceeding €3,000, imprisonment of 3 months or both. On indictment, a person found guilty of an offense under this section is liable to a fine not exceeding €125,000 if convicted on indictment or 2 years imprisonment or both.

Section 39 Public Health (Tobacco) Act, 2002 provides that it shall be an offense to fail to comply with regulations regarding standards and requirements relating to their manufacture, importation, distribution and sale. A person found guilty of an offense under this section on summary conviction shall be liable to a fine not exceeding €3,000, imprisonment of 3 months or both. On indictment, a person found guilty of an offense under this section is liable to a fine not exceeding €125,000 if convicted on indictment or 2 years imprisonment or both.

Section 40 Public Health (Tobacco) Act, 2002 provides that it shall be an offense to fail to abide by requirements to provide information to the HSE relating to tobacco products when required to by the HSE including information relating to composition and properties and sale and/or marketing, to fail to carry out tests specified by the HSE, to fail to allow an official to attend the tests, to fail to provide notice of the results to the HSE within 14 days of the results of the test. A person found guilty of an offense under this section on summary conviction shall be liable to a fine not exceeding €3,000, imprisonment of 3 months or both. On indictment, a person found guilty of an offense under this section is liable to a fine not exceeding €125,000 if convicted on indictment or 2 years imprisonment or both.

Section 42 Public Health (Tobacco) Act, 2002 provides that where the packaging or any printed material attached to a tobacco product bears an assertion that smoking does not cause life-threatening illnesses, smoking a particular brand is less harmful than another, that smoking of tobacco products is not addictive, that filters or other additives or ingredients render the product less harmful than others, then the manufacturer, importer, distributor, and if the tobacco product is sold by retail, the retailer, shall be guilty of an offense. A person found guilty of an offense under this section on summary conviction shall be liable to a fine not exceeding €3,000, imprisonment of 3 months or both. On indictment, a person found guilty of an offense under this section is liable to a fine not exceeding €125,000 if convicted on indictment or 2 years imprisonment or both.

Section 43 Public Health (Tobacco) Act, 2002 provides that it is an offense to sell or to make available for sale tobacco products by way of self service, other than in conformity with regulations made by the Minister. A person found guilty of an offense under this section on summary conviction shall be liable to a fine not exceeding €3,000, imprisonment of 3 months or both.

Section 45 Public Health (Tobacco) Act, 2002 provides that it is an offense to sell tobacco to a person under 18 years of age. A person found guilty of an offense under this section

on summary conviction shall be liable to a fine not exceeding €3,000, imprisonment of 3 months or both.

Section 46 Public Health (Tobacco) Act, 2002 provides that it is an offense to fail to display a sign in a premises to which the public have access identifying the parts of the premises in which smoking is permitted or prohibited. A person found guilty of an offense under this section on summary conviction shall be liable to a fine not exceeding €3,000, imprisonment of 3 months or both.

Section 47 Public Health (Tobacco) Act, 2002 provides that it is an offense to smoke a tobacco product in a specified place, being a workplace, a school, college, public building, or other building listed in the section. A person found guilty of an offense under this section on summary conviction shall be liable to a fine not exceeding €3,000.

Section 48(8) Public Health (Tobacco) Act, 2002 provides that it is an offense to obstruct, or interfering with an authorised officer, a member of An Garda Síochána, or Revenue officers when they are exercising a power under the Act. The section also provides that it is an offense for a person to falsely represent themselves as an authorised officer of the HSE. A person found guilty of an offense under this section on summary conviction shall be liable to a fine not exceeding €3,000, imprisonment of 3 months or both.

Section 53 Public Health (Tobacco) Act, 2002 provides that it is an offense to forge documents or to have forged documents, or to aid or abet in the commission of a forgery. A person found guilty of an offense under this section on summary conviction shall be liable to a fine not exceeding €3,000, imprisonment of 3 months or both. On indictment, a person found guilty of an offense under this section is liable to a fine not exceeding €125,000 if convicted on indictment or 2 years imprisonment or both.

Other relevant criminal offenses

Organised crime offenses (Part 7 of the Criminal Justice Act 2006, as amended by the Criminal Justice (Amendment) Act 2009). These offenses comprise conspiracy to commit a serious crime (s.71), direction of a criminal organisation (s.71A), participation in, or contribution to, certain activities (s.72) and commission of an offense for a criminal organisation (s.73). The penalties range between life imprisonment for the direction of a criminal organisation to a maximum of 15 years of imprisonment for participation in and commission of an offense for a criminal organisation.

Conspiracy is agreement to commit an offense and is an offense in common law. The penalty for conspiracy is at the discretion of the court. In practice, however, conspiracies are punished less than the predicate offenses.¹²²(3) Fraudulent application or use of trademark in relation to goods (Section 92 of the Trade Marks Act 1996). The penalty on summary

¹²² Law Reform Commission, Report: Inchoate Offenses, 2010 (LRC 99–2010), pp 17–18

conviction is a fine to a maximum of €1,270 or a term of imprisonment not exceeding 6 months or both. On indictment, it is imprisonment for a term not exceeding five years or a fine to a maximum of €126,970, or both.

Money laundering (s.7 Criminal Justice (Money Laundering and Terrorist Financing) Act 2010): the penalty on summary conviction for a money laundering offense is a fine of up to €5,000 and/or imprisonment of up to 12 months. The penalty on conviction on indictment is a fine and/or imprisonment of up to 14 years.

COVER QUOTE SOURCES

ⁱ WHO Framework Convention on Tobacco Control Press Release, June 28, 2018.
<https://www.who.int/fctc/mediacentre/press-release/protocol-entering-into-force/en/>

ⁱⁱ World Health Organization Press Release, July 19, 2017.
<https://www.who.int/en/news-room/detail/19-07-2017-who-report-finds-dramatic-increase-in-life-saving-tobacco-control-policies-in-last-decade>

ⁱⁱⁱ Combatting illicit trade in tobacco products: Commissioner Andriukaitis' Statement on the EU's adoption of an EU-wide track and trace system. European Commission Press Release, December 15, 2017.
http://europa.eu/rapid/press-release_STATEMENT-17-5269_en.htm

^{iv} How to design and enforce tobacco excises? International Monetary Fund, October 2016
<https://www.imf.org/en/Publications/Fiscal-Affairs-Department-How-To-Notes/Issues/2016/12/31/How-to-Design-and-Enforce-Tobacco-Excises-44352>

^v World Bank Group: "Global Tobacco Control: A Development Priority for the World Bank Group", Preface of WHO Global Tobacco Report 2015.
http://www.who.int/tobacco/global_report/2015/timeevansandworldbankforeword.pdf?ua=1

“To tackle illicit trade is to tackle accessibility and affordability of tobacco products, to be more effective on the control of the packaging and to reduce funding of transnational criminal activities whilst protecting the governmental revenues from tobacco taxation.”ⁱ

– **Dr. Vera Luiza da Costa e Silva**
Head of the Secretariat of the WHO Framework Convention on Tobacco Control

“Governments around the world must waste no time in incorporating all the provisions of the WHO Framework Convention on Tobacco Control into their national tobacco control programmes and policies. They must also clamp down on the illicit tobacco trade, which is exacerbating the global tobacco epidemic and its related health and socio-economic consequences.”ⁱⁱ

– **Dr. Tedros Adhanom Ghebreyesus, Director-General**
World Health Organization

“Tobacco still remains the biggest avoidable cause of premature death in the EU, and the illicit trade in tobacco facilitates access to cigarettes and other tobacco products, including for children and young adults. In addition, millions of euros in tax revenues are lost every year as a result of the illicit trade.”ⁱⁱⁱ

– **Commissioner Vytenis Andriukaitis**
Health and Food Safety / European Commission

“Given their light weight, small size, and high value, tobacco products are susceptible to fraud through illegal trade, production, and cultivation. . . . Illegal trade is a context-specific activity that has various modus operandi and therefore requires multi-dimensional context-specific solutions.”^{vi}

– **Patrick Petit (Senior Economist) & Janos Nagy (Senior Economist)**
Fiscal Affairs Department / International Monetary Fund

“Effective tobacco tax regimens that make tobacco products unaffordable represent a 21st century intervention to tackle the growing burden of noncommunicable diseases. We are convinced that, working together with WHO and other partners in support of countries, we will be able to prevent the human tragedy of tobacco-related illness and death, and save countless lives each year.”^v

–**Dr. Tim Evans (Senior Director) & Patricio V Márquez (Lead Public Health Specialist)**
Health, Nutrition and Population Global Practice / World Bank Group

