

From: Ministry of Finance
To: EFTA Surveillance Authority
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Excise duty on chocolate and sugar products

1. Introduction

Reference is made to our videoconference 7. December 2017 concerning the excise duty on chocolate and sugar products and its compliance with the EEA agreement. In order to provide the EFTA Surveillance Authority with the requested facts the Ministry will provide an overview of the Norwegian system of excise duties in general and the excise duty on chocolate and sugar products in particular. As will follow, the Ministry maintains that the measure does not constitute state aid according to art 61(1) of the EEA agreement and, moreover, that the measure does not constitute a discriminatory measure.

2. Overview of the Norwegian system of excise duties

According to [Norwegian constitution](#) section 75 letter a) taxes – both direct and indirect – are adopted annually by the Parliament. Indirect taxes consist of Value Added Tax (VAT) and excise duties.

Excise duties are levied on specific goods and services and are mainly fiscally justified. The incomes from the excise duties go directly to the treasury, without any band on how the incomes are spent. Most of the excise duties are subject to goods where the duty is paid by the manufacturer and importer. Excise duties on goods are levied on both imported and domestic produced products. Provisions on collection, inspection etc. are laid down in [Act May 19th 1933 No. 11 concerning excise duties](#), the [tax payment act June 17th 2005 No. 67](#), and [act May 27th 2016 NO. 14](#) on tax administration. Further provisions regarding the tax on chocolate and sugar products are set out in the [Regulation of December 11th 2001 no. 1451 concerning excise duties](#).

Most excise duties, including the excise duty on chocolate and sugar products, are based on principles of self-declaration, i.e. the tax subject shall on his or her own calculate and pay the tax to the tax authorities.

As a starting point, the tax is to be paid at the time of importation and production. However, for registered tax subjects the obligation to pay the tax is postponed to the point when the goods leave the storage. Domestic manufacturers of taxable goods etc. are obligated to register as tax subject for excise duties, and determines the excise duties on a tax form. Importers of taxable goods can choose to register. Importers that are registered determines the excise duties on a tax form, while unregistered importers determines the tax through the customs declaration.

3. Excise duty on chocolate and sugar products

The excise duty on chocolate and sugar products was introduced in 1922 as a luxury tax. Today the tax is considered fiscally justified, although it also may have some health benefits. As other excise duties the tax on chocolate and sugar products is levied on both imported and domestic produced products, i.e. the tax is not discriminatory.

The scope of the tax is established in order for the tax to be levied on chocolate and sugar products as “finished goods”, i.e. products that you would normally buy in a shop/kiosk and eat immediately. In short, it is what we in Norway call “godteri” (English: sweets). In line with this products used as a factor in the production of (other) taxed goods (input/raw material) fall outside the scope of the tax.

The tax is levied both on chocolate and sugar products which contain sugar/sweeteners and on products without sugar/sweeteners. When it comes to what products that are regarded as being chocolate or sugar product subject to the excise duty, the selection is based directly on the HS Nomenclature (hereinafter referred to as the tariff), cf. the Regulation concerning excise duties section 3-17-1. The tariff is an international system of classification of all goods. All goods imported to Norway are classified according to the tariff.

The Regulation’s link to the tariff secures an equal tax treatment of imported and domestic products. Further, it reduces the administrative burdens both for the tax subject and for the tax authorities in determining whether the product in question is taxable or not. For the tax subjects, the link to the tariff system simplifies their assessment of whether the product in question is taxable or not and for the tax authorities, the link to the tariff enhances the possibility to exercise control with the taxation of the product.

In the Regulation, there is a reference to certain numbers in the tariff which contain goods that after a natural and logical understanding fall within the category of chocolate or sugar products. When defining the scope, one has sought to encompass all numbers that include what one typically and logically considers being chocolate or sugar products. The Ministry will here provide an overview of this regulation with reference to the tariff, without however at the present time providing an exhaustive description.

All products falling under the scope of the excise duty on chocolate and sugar products are included in Section IV of the tariff on “prepared foodstuffs; beverages, spirits and vinegar; tobacco and manufactured tobacco substitutes”. The section consists of the following chapters:

- 16 Preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates
- 17 Sugars and sugar confectionery
- 18 Cocoa and cocoa preparations
- 19 Preparations of cereals, flour, starch or milk; pastrycooks' products
- 20 Preparations of vegetables, fruit, nuts or other parts of plants
- 21 Miscellaneous edible preparations
- 22 Beverages, spirits and vinegar
- 23 Residues and waste from the food industries; prepared animal fodder
- 24 Tobacco and manufactured tobacco substitutes

As is apparent, most of these chapters do not include chocolate or sugar products for consumption “there and then”. The excise duty is therefore limited to the relevant chapters, i.e. chapters 17, 18, 19 and 21.

Within these chapters, the selection and clarifications can briefly be explained as follows.

Chapter 17 on “sugars and sugar confectionery” does mostly include sugar as a raw material or as an ingredient. The duty therefore does not include, for instance, code 17.01 “Cane or beet sugar and chemically pure sucrose, in solid form”. What is included, is the relevant subsections under code 17.04 “Sugar confectionery (including white chocolate)”. Three subsections are included in its entirety: chewing gum, (17.04.1000), caramels (17.04.9091) and pastilles, sweets and drops (17.04.9092). One subsection is *not* included – marzipan paste (17.04.9010), whereas the category “Other” (ex ¹17.04.9099) is included with the clarification that this is limited to sugar confectionery shaped as plates, figures etc.

The example of marzipan illustrates the scope of the excise duty. Marzipan paste falls outside the scope, whereas marzipan shaped as figures, rods or balls are included (under “other” in ex 17.04.9099). The reason is that while marzipan paste is considered to be input/raw material in production of other goods, the marzipan shaped as figures etc. are considered as a “finished product”. It is therefore logical to tax the marzipan shaped as figures etc. on the grounds that these are “sweets”.

Chapter 18 of the tariff concerns “Cocoa and cocoa preparations”. Most of the subheadings contain products that are raw materials etc., such as heading 18.01 “Cocoa beans, whole or broken, raw or roasted”. Again, what is included is the only heading that seems relevant for products seen as “sweets”, i.e. “Chocolate and other food preparations containing cocoa” (code 18.06). This code, however, also includes products that clearly fall outside the scope of the duty, such as “cocoa powder” (18.06.10). What is included are three categories of preparations containing cocoa provided it is presented in blocks, slabs or bars, whether in “other products” (18.06.2090), “filled” products (18.06.3100) or “not filled” products (18.06.3200), and a residual category of other kind of chocolate with cocoa, the latter limited – in line with the scope – to products formed as figures etc. (ex 18.06.3200).

Chapter 19 concerns “Preparations of cereals, flour, starch or milk; pastrycooks’ products”. The only subcategory that includes products relevant for the excise duty is 19.05, encompassing inter alia “Bread, pastry, cakes, biscuits and other bakers’ wares”. In line with the scope of the duty, crispbread (19.05.10), gingerbread (19.05.20) and toasted bread (19.05.40) is excluded, whereas biscuits (sweet biscuits, waffles and wafers) are included (codes ex 19.05.3100 and ex 19.05.3200).

It is however clarified, in the Norwegian Regulation, that biscuits are included only if they are i) completely coated with chocolate and/or sugary pulp or ii) partially coated with chocolate and/or has an intermediate layer of chocolate and/or sugary pulp, when the pulp constitutes more than 50 percent of the total weight of the biscuit. Biscuits not fulfilling these criteria are not taxed because they are considered as a cake, which is not covered by the tax.

Biscuits represent an interesting example of the scope of the excise duties. On the one hand, it is clear that some biscuits have little resemblance with “sweets”, such as biscuits traditionally used in a breakfast or together with cheese and wine. Some biscuits would, on the other hand, come close to traditional chocolates. Other biscuits could be seen as falling in a middle category as cakes. Any line to be drawn for the excise duty in relation to biscuits would be difficult as well as debatable. One

¹ “Ex” is an abbreviation for “extract”, and is referring to a selection of goods within the position. Not all the goods included in the relevant position after the tariff are subject to tax. Only sugar confectionery in solid form and shaped as plates, figures etc. are levied tax.

chose to only include those biscuits that would be seen as being fairly close to traditional chocolates. As set out just above, the biscuit would have to have a full chocolate or sugar cover, alternatively a layer of chocolate etc. constituting more than half of the biscuit by weight. The Ministry fails to see that other criteria would imply a more appropriate borderline.

Next, the excise duty includes a limited number of products under chapter 21 of the tariff on “Miscellaneous edible preparations”. Again, as is evident, most products under this chapter are irrelevant for the excise duty on chocolate and sugar products. There is a final category under heading of “Food preparations not elsewhere specified or included” (21.06), with a subcategory “Other”. A limited number of such “other” products are included, all of which are naturally regarded as “sweets” for immediate consumption: drops and pastilles (21.06.9041), chewing gum, but not nicotine chewing gum (21.06.9044 in the Regulation, also specified in codes 21.06.9041 and 21.06.9043 in the customs tariff), and other sweets (ex 21.06.9098).

Finally, letter e) of section 3-17-1 of the Excise Regulation includes products falling under other codes in the tariff because they have been incorporated with or packed with products falling under the scope of the excise duty.

In sum, this means that the excise duty include those headings within the tariff that are naturally seen as sweets for consumption. Other products, including chocolate and sugar products used as raw material or ingredients, are not covered by the Regulation. It is only been necessary to make a few national clarifications and limitations, notable in relation to biscuits as set out above, in order for the duty to have a consistent scope.

The Ministry would nevertheless like to emphasize that it is possible to either extend or reduce the tax liability, i.e. respectively more or fewer products can be taxed. However, no matter where you draw the line between taxed and non-taxed products border cases are unavoidable. A change in the scope of the duty will imply new border cases. It is the Ministry’s opinion that the chocolate and sugar duty is logically limited and at least not arbitrary. With reference to national tax authority, it is the Ministry’s opinion that it must be within the state’s freedom to determine which goods are to be taxed, where the purpose of the duty is fiscally justified.

Finally, the Ministry would like to reiterate that it is, in principle, within the national state’s sovereignty to determine which goods are to be taxed, where the purpose of the duty is fiscally justified. As it follows from the above, the Ministry is, moreover, of the opinion that the choice of chocolate and sugar products as the tax base is indeed a choice that is non-discriminatory and thus in compliance with relevant EEA law. Furthermore, it is the Ministry’s opinion that the boundaries of the excise duty on chocolate and sugar products are logically and consistently applied. Thus, the Ministry maintains that specific boundaries of the chosen tax base are not at all designed in a biased way or in a clearly arbitrary manner, cf. the Commission state aid notice paragraph 129. In that regard, the Ministry would like to emphasize that even if it, in principle, is possible to either extend or reduce the tax base, so that more or fewer products are taxable, difficult delineations will be an unavoidable consequence irrespective of where you draw the line between taxed and non-taxed products. The Ministry considers that a change in the scope of the duty will give rise to further and even more difficult boundaries, and that the chosen system is the most appropriate.

4. Tax rate – adjustments and effects

The tax rate on chocolate and sugar products is NOK 20.19 per kg for 2017. From January 1st 2018 the tax rate will be increased to NOK 36.92 per kg. Raising the tax was not a part of the Government's budget proposal for 2018, but was a result of budgets negotiations in the Parliament resulting in a budget agreement between four political parties (Høyre, Fremskrittspartiet, Venstre and Kristelig Folkeparti). The tax increase is estimated to increase accrued revenue from excise duty on chocolate and sugar products by NOK 1 120 mill. in 2018.

Excise duties where the tax rate is per unit are adjusted according to estimated inflation (changes in consumer price index) once a year. Hence, the tax burden remains unchanged in real terms. There is, however, no legislation which requires that the excise duties are adjusted with the inflation, and accordingly there is no inherent element in the excise duties that their rates are adjusted according to the estimated inflation rate. The annual tax rate is set by the Parliament depending on economic policies, budgetary needs or other relevant reasons.

The tax rates on chocolate and sugar products in the period 1993-2017 are shown in the attached excel-file. Except for 1997, the tax rate has only been adjusted for estimated annual inflation. In 1997 the rate was also adjusted in real terms. Please notice, that there is no agreement (formally or informally) between authorities and affected industries that the tax rate should only be adjusted for annual inflation. As mentioned above, the level of taxes and fees is exclusively the Parliament's decision.

In the videoconference 7 December, ESA asked for information on the effect of the tax change on individual companies. On [4 November 2017](#), the Minister of Finance replied to a question from the Parliament concerning this issue.

As stated in the reply, information on paid excises by individual companies lies with the Tax Administration. This information is, however, subject to confidentiality pursuant to section 3-1, first paragraph, of the [Tax Administration Act](#). Therefore, the Ministry can not obtain this information from the Tax Administration for the purpose of incorporating them into a letter of reply to the Parliament that becomes publicly available.

The Ministry is of the opinion that the tax burden of the excises will - depending on the actual market conditions – to a certain extent be shifted over to the consumers by increasing the prices. Excise duties are indirect taxes, meaning that it is a tax on consumption, but is levied on the importer/producer which in turn can shift the burden on to the consumer. Thus, the tax paid to the Tax Administration from the company would most likely not be equal to the tax burden that falls on the company itself.

The reply shows aggregated established paid excise duty for the 30 registered taxable enterprises with the highest excise payment (see table 1). The table distinguishes between chocolate and sugar products ("sjokolade- og sukkervarer" in Norwegian) and non-alcoholic beverages ("alkoholfrie drikkevarer"), and shows numbers in NOK mill. for year 2014, 2015 and 2016.

The average price of chocolate and sugar products is assumed to be approximately NOK 220 per kilogram. If the tax is completely passed on to the consumers, the tax increase of NOK 16.41 per kilogram will increase the *average* price on chocolate and sugar products by NOK 18.87 per kilogram, or by approximately 8.6 pct. In this calculation, it is taken into account that it is 15 per cent VAT on the excise duty.

There are, however, a number of different items subject to the excise duty on chocolate and sugar products. Thus, average effect on prices will be different from the effect on individual products. Table 1 shows some products subject to the excise on chocolate and sugar product, their price and weight, and increases in excise and prices (included 15 pct. VAT) as of 1 January 2018. It is assumed that the tax increase is completely passed on to the consumers. Notice that there will be significant variation in the prices of the products, depending on where the products are sold, the products brand, size of the packages etc.

Table 1. Effect of the tax increase on the prices of some products subject to the excise duty on chocolate and sugar products

Product	Price (NOK)	Weight (gram)	Increase in excise (incl. VAT) (NOK)	Increase in price ¹ (per cent)
Milk chocolate	38.90	200	3.77	9.7%
Chewing gum	13.90	14	0.26	1.9%
Pastilles/drops	15.50	24	0.45	2,9%
Mixed sweets	39.90	280	5.28	13.2%
Caramels	3.50	15	0.28	8.1%

Source: Meny (<https://meny.no/varer/snacks-godteri>)

¹ Assumed that the tax increase is completely passed on to the consumers