

Tax Label for Tobacco Products

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Tobacco control and regulation is one of the ongoing challenges to the government of the UAE. Over the years, the UAE customs authorities have developed a strict regime of border control and surveillance of incoming tobacco products. However, the UAE's introduction of its excise taxation regime directly led to an increase in the smuggling of tobacco products. In an attempt to avoid the excise tax on tobacco products and increase illicit gains, smugglers are devising new schemes to infiltrate the UAE market with unauthorised tobacco products. Officials have noticed that parallel imported tobacco products, the sale of which the UAE has banned, are increasing in the market too. Such unauthorised products will undoubtedly create more health problems (due to the unknown, suspicious and hazardous sources and chemical components of such products) and economic issues (unfair trading/competition and pricing) in the country. In response and to curb the influx of unauthorised tobacco products into the UAE market, the government recently decided to mark all authorised tobacco products with a special label. This article examines the details and impact of this new decision on the tobacco industry in the UAE.

Problem and Response

Historically, the UAE Customs authorities always imposed and continue to impose a surcharge duty that amounts to 100% of the tobacco products import value. In 2007, to further reduce the consumption of tobacco, the UAE added to this duty the excise tax that amounted to an additional 100% of the tobacco products sale value. Yet imposing this duty and excise tax obviously fell short of addressing the ongoing smuggling of unauthorised tobacco products. If anything, this measure aggravated the smuggling. To tackle the smuggling pandemic, the UAE enacted a resolution that requires the use of a new tax label (cabinet resolution number 42 of 2018 on 24 July 2018). This new tax label not only aids the collection of taxes, but it also acts as a counter measure against smuggling, as further explained next.

Cabinet Resolution 42 of 2018

With the introduction of the new cabinet resolution, all tobacco traders in the UAE must now mark their legally imported and/or locally manufactured tobacco products with the special label. The resolution sets out the general rules of issuing the label, the procedures to obtain the same and the return conditions. However, one important distinction must be drawn; the new resolution only applies to tobacco products which are destined to be sold in the local UAE markets. Strictly speaking, all tobacco products, which enter the UAE only for the purpose of re-exportation, and, all products, which are manufactured in the UAE, but are destined to be exported and sold outside the UAE, are exempt from the tax label.

How the New Tax Label Works

The tax label authenticates the tobacco traders' payment of the relevant selected excise tax on those products and is significantly hard to counterfeit. The tax labels will enable the authorities in the UAE to

track the origin of the tobacco products as each shipment or batch of tobacco product will carry labels with unique serial numbers. The unique serial numbers will enable authorities to even discover potential violations such as unauthorised re-sale, distribution or exchange of the labels. As such, the label offers a new effective mechanism to aid in the government's collection of the higher tax duties. However, the absence of this label will also better enable UAE law enforcement and border control authorities to identify and seize unauthorised tobacco products. Therefore, the required use of the new label further restricts the sale of unauthorised tobacco products, and in parallel, better monitors and controls the sale of authorised tobacco products in the local market.

The resolution defines the new tax label in article (1). Accordingly, the label can be any digital or physical stamp or a mark that the Federal Tax Authority may approve. The authority will therefore decide which form the label may take and will no doubt consider many facts including the nature of the tobacco products when taking this decision. By way of example and comparison, Iran is using the same idea of the tax labelling on tobacco products, and has imposed the use of physical labels. Moreover, tobacco traders will probably need to affix the label on a specific part of the product package during the packaging process at the factory inside or outside of the UAE. The exact placement, specifications and mechanism for affixing this label ought to be clarified in the implementing regulations.

Authority in Charge and Authorised Distributors

The new cabinet resolution tasked the Federal Tax Authority with the role of designing and issuing the tax labels, distributing, pricing and accepting the returns of unused/damaged tax labels. The resolution requires the director of the authority to set out the proper implementing regulations. The passing of these regulations appears to be a work in progress. The resolution also allows the authority to delegate/outsourcing the process of distributing the labels to qualified third party service providers. Additionally, the resolution has granted the UAE Customs authorities the power to verify the compliance of all incoming tobacco shipments with the new tax labelling requirements. On this front, the Federal Tax Authority would be in charge of training the customs officers on the ways of suspecting counterfeit tax labels and how to discover the unauthorised labels, if any.

The resolution also requires the distribution of the labels via government authorised distributors. Those are the only entities allowed to sell the tax labels, as no other party can re-sell, distribute, exchange or even give the tax labels free of charge. As the tax labels are not for free, the director of the authority will be determining their sale price. Accordingly, manufacturers and importers of tobacco products must place their requests for a specific number of the labels depending on their need with the authorised distributor. The manufacturers and importers may not keep those labels without use for more than 12 months from the labels' issuance dates and must therefore return whatever labels remain in excess/unused.

As the price of the labels is paid prior to the issuance of the same, the purchaser may request the authorised distributor to send the labels out of the UAE to the factory where the tobacco products are packaged. This option will make it easier for tobacco manufacturers to control the quality of their products. Nevertheless, some tobacco manufacturers have expressed concerns about the quality of the labels and the need to change their packaging process in order to comply with the new tax labels. The resolution's implementing regulations will hopefully address those concerns.

“To curb the influx of unauthorised tobacco products into the UAE market, the government decided to mark all authorised tobacco products with a special label. This label will better enable UAE law enforcement and

border control authorities to identify and seize unauthorised tobacco products. It also authenticates the tobacco traders' payment of the relevant selected excise tax on the tobacco products.”

Possible Penalties and Closing Comments

Finally, resolution number 42 of 2018 does not include any penalties for violating its articles. It is also unclear up to now if the ensuing implementing regulations will include penalties over the offenders or the penalties will be extracted from other existing laws such as, the common customs law of the GCC states, the federal law No. (7) of 2017 concerning the tax procedures or the cabinet resolution No. 40 of 2017 regarding administrative penalties for violation of tax laws in the state. Evidently, much remains to be seen with how and when the implementing regulations apply. However, the enactment of the new tax label resolution is a welcomed and positive step in the right direction to curb the influx and consumption of health hazardous unauthorised tobacco products in the UAE.

For further information and details on the new tobacco tax label, please contact the author of this article.

Al Tamimi & Company's [Intellectual Property team](#) regularly advises on tobacco labeling. For further information please contact Bassam Al-Azzeh (b.alazze@tamimi.com).