

## Three Counties Cider and Perry Association – 23<sup>rd</sup> March 2015

### Review of the 70 hl Exemption from Cider & Perry Excise Duty

#### TO ALL MEMBERS OF THE TCCPA:

PLEASE READ THE FOLLOWING CAREFULLY AND IF YOU HAVE ANY COMMENTS, QUERIES OR SUGGESTED AMENDMENTS PLEASE CONTACT PETER MITCHELL ([peter@mitchell-fd.co.uk](mailto:peter@mitchell-fd.co.uk) / 01531 828330) **BY MONDAY 30<sup>th</sup> MARCH** AT THE LATEST. IF WE DO NOT HEAR FROM YOU WE WILL PRESUME THAT YOU ARE IN AGREEMENT WITH THE TCCPA RESPONSE (*drafted below*). THIS WILL THEN BE SENT TO THE NACM, HM TREASURY & LOCAL MPs.

#### 1. Background and Situation to Date. (*Note: 'cider' in this paper should be read as including 'perry'*)

##### 1.1. Excise Tax on Cider & Perry (UK)

Since shortly after the re-introduction of duty on cider in 1976, any maker producing 7000 litres (70hl) or less for sale or consumption otherwise in a 12-month period may apply to HMRC to be classed as exempt from registration as a cider maker. This removes any obligation to pay excise duty. This was done as much to allow the continuation of time-honoured farm cider making practice as to remove an onerous burden of control from the then HMC&E. Production in excess of 70 hl brings a duty charge on the whole volume made and sold. If the duty exemption was not in place, at the current duty rates (£38.87 per hl for cider  $\geq 1.2\%$  ABV -  $\leq 7.5\%$  ABV), an annual charge of some £2,720 for 7000 litres of cider would have been payable.

##### 1.2. EU Legislation

EU rules regarding excise duty rates and the structures for the excise duty system originally came into force on 1<sup>st</sup> January 1993 (EU Directive 92/83/EEC). Other than aromatic bitters (e.g. Angostura Bitters) and wort of a unique concentrated malt beverage, **NO** other alcoholic beverage (including cider & perry) may be exempt from excise tax. So, since 1993 the current 70hl UK excise exemption for cider has been **illegal** under EU law.

Importantly, however, it should also be noted that, as part of the EU duty system, there are agreed minimum duty rates for each of the five categories of alcohol and alcoholic beverages. For beer, for example, the minimum level of duty is fixed at 1.87 EUR per hl per degree alcohol. Cider and perry are included in the "**Fermented Beverages other than Beer and Wine**" category and, as such, the current minimum level of excise duty permitted is 0 EUR per hectolitre, plus for products that have less than 8.5%ABV, reduced excise duty rates are also allowed.

However, after 1993 nothing was changed with respect to the existing duty exemption for cider makers in the UK. Then in 2007 the EU Commission (DG Taxud) set up a Working Group to identify and discuss the whole matter of small enterprises and any special conditions relating to excise duty that are extended to them in all EU Member States. This was part of an ongoing FISCALIS process and a re-examination of the "Structures" Directive, 92/83/EEC. At that stage the TCCPA requested that the NACM should propose to the UK Government that, using the powers available in Article 13.3 of Directive 92/83/EEC, the 70 hl exemption should be converted into a special band of zero rate cider duty available to **all** cider makers and that a sliding duty scale be introduced for increasing volumes of cider thereafter.

Again, the issue went 'off the radar' until mid-February 2015 (although there were some discussions with HM Treasury in October 2012; who defended the *status quo*) when the EU Commission finally requested that the UK Government formally respond to the EU within a two month period with respect to removing the duty exemption.

#### 2. TCCPA Committee Proposal for a Formal Response from TCCPA

The committee of the TCCPA met on Monday 16<sup>th</sup> March 2015 to discuss the issue and consider a formal response to the NACM and formulate a consensus lobbying position to be sent to HM Treasury, MPs and Other Interested Parties. Our draft response is detailed on the following page.

The Three Counties Cider and Perry Association (TCCPA) wishes to express its real concern and make the following comments with respect to the potential removal of the existing excise duty exemption for cider maker producing 7000 litres (70hl) or less for sale or consumption otherwise in a 12-month period:

1. Over many years the existing duty exemption has enabled three counties of Gloucestershire, Herefordshire and Worcestershire and surrounding areas (as with other regions of the UK) to maintain a unique and thriving craft cider & perry industry and it has also provided a real incentive to existing fruit growers to diversify into cider & perry production and has acted as a stimulus to other individuals and rural businesses to establish completely new enterprises.
2. Small craft cider makers, unlike the larger producers, do not benefit from the economies of scale. Costs of production are significantly higher and many of our craft cider & perry producers also differentiate their ciders in the marketplace by promoting their relatively high fresh-pressed juice content made from locally grown fruit from a diversity of, typically, small and older traditional orchards. Overall these factors combine to make this cider & perry relatively expensive to produce. Thus, any additional requirement to pay excise duty could well destroy a lot of small rural businesses and undermine the local communities that they support. Potentially it would also have a major negative impact on the countryside and wildlife as the older and smaller traditional orchards are likely to become un-economic to maintain and could well be removed.
3. Notwithstanding the above key concerns, although the existing duty exemption system (“nothing or all” depending on production volume) does provide a real incentive and great assistance to new businesses to enter into the cider market, it does have a capping effect on small-scale cider production and tends to act as a barrier to such enterprises to fully develop and expand their businesses and realise their full potential.
4. We do appreciate that the existing 70hl UK excise exemption for cider & perry may be found to be illegal under EU law, but we also understand, in reference to the European Directive 92/83/EEC, that it is possible for “*Member States to apply for reduced rates or exemptions for certain products of a regional and traditional nature*” – and - “*Member States may apply reduced rates of excise duty if the actual alcoholic strength [does] not exceed 8.5% vol.*” and, indeed, that the minimum allowed duty rate for cider & perry in the EU is zero.

In summary, if the existing duty exemption system for cider & perry production is to be abolished, we would wish to see it replaced by a system of progressive taxation - commencing at a zero rate – and/or an excise tax rebate system for small craft enterprises, that would take into account the specific challenges that our small rural businesses and communities face, recognise the unique characteristics of our long established and traditional craft cider & perry industry and would also provide a real stimulus for further development of our sector.