

INTELLIGENCE

Excise Duty on Tobacco Products Council Directive 92/12/EEC

At the time of going to press a case is pending before the English Courts relating to the interpretation of Council Directive 92/12/EEC of 25th February 1992, which concerns the imposition of Excise Duty in the Single Market.

A UK based company acting as a purchasing and importing agent solicits orders for tobacco products in the UK on behalf of individuals. The individuals order the products for their own use. The agent purchases the products from a retailer in Luxembourg (where duty is paid) and then arranges for their transport to the UK.

The Commissioners of Customs and Excise in the UK have argued that UK Excise Duty is exigible by virtue of Article 10 of the Directive, which provides for Excise Duty to be charged in the state of destination in relation to distance selling. The agent contends that this is not the case and that no UK duty is payable.

One of the crucial provisions of the Directive is Article 8. This provides that:

"As regards products acquired by private individuals for their own use and transported by them, the principle governing the internal market lays down that excise duty shall be charged in the Member State in which they are acquired."

If Article 8 applies where an individual acts by way of an agent then Excise Duty is chargeable in Luxembourg not the UK.

Clearly the case raises interesting issues on the interpretation of the Directive and it is hoped that further details will be available in the next issue of the *Journal*.