



St. Gallen, 13 March 2019

Press Release

regarding judgment A-1211/2018 of 11 March 2019

Cannabis flowers subject to tobacco tax

The Swiss Federal Administrative Court has ruled that cannabis flowers are used primarily in the same way as tobacco products. Therefore, this product is subject to tobacco tax.

Cannabis with a THC content of less than one per cent is legally available in Switzerland and is supplied and used in different ways. In addition to finished products such as oils or teas, cannabis flowers are also on offer.

Manufacturers and retailers fought back

On 22 February 2017, the Directorate General of Customs (DGC), Section for Tobacco and Beer Tax, advised manufacturers and retailers that cannabis products for the purposes of smoking are to be taxed in accordance with the Federal Act on Tobacco Taxation. Consequently, various manufacturers and retailers declared their supply of cannabis flowers for sale to the DGC. After the DGC had assessed the tobacco tax, some of the manufacturers and retailers fought back and finally brought the case to the Federal Administrative Court (FAC).

Tobacco substitute products also subject to tax

The present case only concerns the taxation of cannabis flowers. The FAC has ruled that these products are primarily smoked or otherwise used as tobacco products and are also seen by customers as such. They are therefore to be subject to the tobacco tax because tobacco tax legislation stipulates tobacco substitute products are subject to tax as much as tobacco products. In this case, it was also revealed that the complainant was advertising the flowers on its website in combination with smoking paraphernalia, among other items.

Taxed in the same way as fine-cut tobacco

The tax rate for cannabis flowers is the same as that of fine-cut tobacco (CHF 38 per kilogram and 25 per cent of the retail price, a minimum of CHF 80 per kilogram). This is because the flowers are mainly smoked in hand-rolled cigarettes, which is also the case with fine-cut tobacco. The application of the tax rate for other types of smoking tobacco, which amounts to 12 per cent at the moment, was rejected by the FAC.

Besides the aforementioned judgement, the FAC issued two further judgements concerning the tobacco tax on cannabis flowers, which led to the same result.

These judgements may be appealed to the Federal Court.

Contact

Andreas Notter

Head of communication

+41 (0)58 468 60 58

+41 (0)79 460 65 53

medien@bvger.admin.ch

About the Federal Administrative Court

Located in St. Gallen, the Federal Administrative Court (FAC) was established in 2007. With its staff of 357 employees (307.65 FTE) and its 76 judges (68.2 FTE) it is the largest federal court in Switzerland. The Federal Administrative Court has jurisdiction to hear appeals against decisions rendered by Swiss federal authorities. In specific matters, the FAC may grant review on decisions rendered by cantonal authorities. Recourse actions are also reviewed by the Court. The FAC is composed of six divisions. It renders an average of 7,500 judgments every year.