



National Taxpayers Association
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**ALIGNMENT OF TOBACCO TAX TO THE
OVERRIDING OBJECTIVES OF TOBACCO
CONTROL ACT, 2007, FRAMEWORK
CONVENTION ON TOBACCO CONTROL AND THE
WORLD HEALTH ORGANISATION GUIDELINES**

POLICY BRIEF



ALIGNMENT OF TOBACCO TAX TO THE OVERRIDING OBJECTIVES OF TOBACCO CONTROL ACT, 2007, FRAMEWORK CONVENTION ON TOBACCO CONTROL AND THE WORLD HEALTH ORGANISATION GUIDELINES

INTRODUCTION

This brief is based on NTA's study conducted in May 2019. It proposes to the Government of Kenya to increase the prevailing excise duty applicable to cigarettes and to apply a uniform rate for all cigarettes



BACKGROUND

Paragraph 1 of the First Schedule of the Excise Duty Act, 2015 as read with section 5 imposes excise duty of Kenya Shillings 2500 per mille for cigarettes with filters (hinge lid and soft cap) and Kenya shillings 1800 per mille for cigarettes without filters (plain cigarratees) One mille amounts to 1000 sticks of cigarettes. Therefore, this translates into Kenya Shillings 2.50 and Kenya Shillings 1.80 per cigarette stick respectively. The law empowers the Commissioner General of Kenya Revenue Authority (KRA) to adjust this figure to take into account inflation. Through Legal Notice No. 239 of 2018 issued in December 2018, the excise duty payable on cigarettes was adjusted by 5.2 % to Ksh. 2630 per mille for cigarettes with filters and Ksh. 1893 per mille for cigarettes without filters. Thus, the applicable rate of excise duty per cigarette stick was Ksh. 2.63 per stick for cigarettes with filters and Ksh. 1.89 per stick for cigarettes without filters. In November, 2019 the Finance Act No.23 of 2019 raised excise duty charged on cigarettes by 14.1%. The levy per mille (thousand sticks) on filtered cigarettes rose to Sh3,157 per mille while the tax on non-filtered cigarettes was increased to Sh2,272 per mille.

THE PROBLEM

As seen in these tariffs, Kenya applies specific differential or two-tier approach to taxing cigarettes such that cigarettes without filters attract lower excise duty than those with filters. This two-tier approach falls short of the recommended World Health Organisation (WHO) best practices for tobacco taxation. In addition, the prevailing rates, which account to about 58% of the retail price, fall below the recommended WHO minimum of 70%.

Despite concerted efforts to control tobacco consumption in Kenya over the last decade, it is estimated that over 2.5 million adults use tobacco products. Cigarettes are the most consumed. It is also estimated that 5% of all deaths from non-communicable diseases in Kenya result from tobacco use, while 55% of all deaths from cancers of the trachea, bronchitis, and lung are attributable to tobacco.

Cigarettes contain over 4,000 chemicals, including...

- Benzo(a)pyrene
- Arsenic
- Acetone
- Lead
- Formaldehyde
- Toluene
- Butane
- Cadmium
- Ammonia
- Benzene



THE OVERRIDING OBJECTIVES OF TOBACCO CONTROL ACT, 2007 AND THE FRAMEWORK CONVENTION ON TOBACCO CONTROL (FCTC)

Prepared under the auspices of the WHO, the Framework Convention on Tobacco Control (FCTC) was adopted in May 2003 and came into effect in February 2005. Kenya is a party to this Convention, and by virtue of **article 2(6)** of the Constitution, it is a source of law. The aim of this Convention is to protect individuals and members of the public from harmful effects of consumption and exposure to tobacco products such as diseases and premature death.

Article 6 of the Convention requires governments to use tax and price measures to reduce consumption of tobacco products.

Through the **Tobacco Control Act, 2007**, Kenya domesticated this Convention and established robust framework for the control of tobacco and tobacco products so as to shield the public from their harmful effects. **Section 12** of the Act empowers the Cabinet Secretary for Treasury to use tax and price policies to control consumption of tobacco and tobacco products such as cigarettes. It is by virtue of this provision that the First Schedule of the **Excise Duty Act, 2015** as read with **Section 5 (2)** imposes excise duty on cigarettes, among other tobacco products.



RECOMMENDATIONS OF WHO ON TOBACCO TAXATION

The WHO recommends tax policies that have the effect of improving public health by discouraging tobacco consumption, without necessarily compromising tax revenues.

The following best practices are recommended.

- (a) Taxation of tobacco products to at least 70% share in final consumer price
- (b) Apply a uniform tax rate to minimize incentives for tobacco consumers to switch to cheaper alternatives or brands in response to tax increases
- (c) Apply a uniform tax rate to simplify and improve tobacco tax administration to minimize chances of tax avoidance and evasion.
- (d) Monitor and increase taxes periodically to take into account inflation, increases in consumer prices and income growth so as to reduce affordability of tobacco products



BENEFITS OF THE PROPOSED TAX INCREMENT AND APPLICATION OF UNIFORM RATE TO ALL CIGARETTES

Increasing the rate of excise duty to Ksh. 3200 per mille for all cigarettes as proposed translates into an increase of about Ksh. 1.30 per stick for cigarettes without filters and about 60 cents for cigarettes with filters. While the increment is marginal in absolute terms, the expected public health and tax revenue benefits will be significant. It will help reduce consumption of cigarettes without reducing tax revenues.

Research has shown that an increase in tax on cigarettes reduces consumption and increase revenues. People with low incomes who also bear the brunt of the effects of tobacco consumption are more sensitive to price changes in tobacco products. Thus, an increase in prices will have a bigger effect of causing a reduction in consumption, hence improving public health on aggregate.



Secondly, the application of uniform rate simplifies administration of excise duty for cigarettes. This is bound to enhance revenue collection by improving compliance and reducing opportunities tax evasion or avoidance.

Thus, the proposed increment will improve compliance with the objectives of Tobacco Control Act, 2007, the Framework Convention on Tobacco Control, and WHO Guidelines, by reducing consumption of cigarettes, hence improving public health. Importantly, this measure will also enhance tax realized from tobacco products, hence contribute to reducing revenue gaps.

CONCLUSION AND CALL FOR ACTION

Raising excise duty applicable to cigarettes as proposed will promote public health by reducing consumption. It will also have the additional benefit of increasing tax revenues from cigarettes. In view of this, we urge the Government of Kenya to increase the rate of excise duty applicable under the First Schedule of the Excise Duty Act, 2015 to all cigarettes to a uniform rate of Kenya shillings 3,200 per mille.



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