

Mr. Samuel Njoroge
Clerk of National Assembly
P. O. Box 41482-00100
Nairobi

27th May 2023

RE: NTA, GENDER CSOS AND TOBACCO CONTROL CSOS SUBMISSIONS ON FINANCE BILL 2024

The National Taxpayers Association (NTA) is a non-governmental organization focused on promoting good governance in Kenya. Since 2006, NTA has been implementing programmes focused on enhancing public accountability through monitoring the quality of public service delivery and the management of both the national government and devolved funds. It has achieved this through the development of social accountability tools (Citizen Report Cards(CRCs), civic awareness, citizen capacity-building, and partnerships with government agencies, service providers, the private sector, civil society, and community action groups.

In response to the call for public participation, NTA convened civil society actors that advocate for better public health policies through tobacco control, to come up with a joint proposal for consideration in the Finance Bill, 2024. The submission highlights the proposed amendment to the law, supported by an annex on the scientific research, analysis, best practices, WHO recommendations and a justification for the proposed amendments. The NTA is available to highlight our submissions to the Finance and National Planning Departmental Committee.

We look forward to hearing from you and engaging in this important national exercise that will shape the fiscal landscape of Kenya.

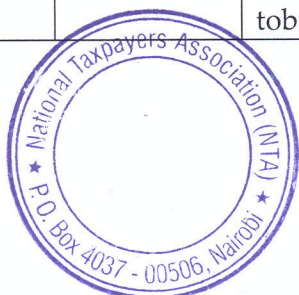
Yours sincerely,

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CC Mr. Benjamin Magut Liason
Officer National Assembly, Departmental Committee on Finance and National Planning



EXCISE DUTY ACT				
No.	Clause	Description of the Clause	Proposal	Justification
42	The First Schedule to the Excise Duty Act is amended—	<p>(a) in Part I— (i) in the second table of paragraph 1—</p> <p>(L) in the description of "Cigarette with filters (hinge lid and soft cap)", by deleting the corresponding rate of Excise Duty and substituting therefore the rate of Excise Duty "Shs. 4,100 per mille";</p> <p>(M) in the description "Cigarettes without filters (plain cigarettes)", by deleting the corresponding rate of excise duty and substituting therefore the rate of excise duty "shs. 4,100 per mille";</p>	<p>Accept with amendment:</p> <p>Delete the current descriptions "Cigarette with filters (hinge lid and soft cap)" "Cigarettes without filters (plain cigarettes)", and substituting therefore the following: "Cigarettes containing tobacco or tobacco substitutes with the corresponding rates of excise duty "shs. 4,100 per mille"</p>	<p>Uniformity in excise taxes on cigarettes will:</p> <ul style="list-style-type: none"> • Reduce tobacco consumption at the same increase revenue collected from tobacco products; • The unified rates will reduce administrative cost of tax collection in the tobacco industry; • Reduce health, social and economic burden to the government and the citizens due to reduced consumers of the tobacco products; and • The unified tax structure will reduce the possibility of substituting the two products.
		<p>(a) in Part I— (i) in the second table of paragraph 1—</p> <p>(N) in the description of "Products containing nicotine or nicotine substitutes intended for inhalation without combustion or oral application but excluding medicinal products approved by the Cabinet Secretary responsible for matters relating to health and other manufactured tobacco and manufactured tobacco substitutes that have been homogenized and reconstituted tobacco, tobacco extracts and</p>	Accept in its entirety	<ul style="list-style-type: none"> • The nicotine products and their substitutes are highly addictive and have been proven to have health effects, hence need to be taxed more in order to reduce affordability. • The youths and women have been the main target for consumption of these products by the tobacco industry, hence increasing their taxes will reduce their affordability.



EXCISE DUTY ACT

No.	Clause	Description of the Clause	Proposal	Justification
		essences", by deleting the corresponding rate of excise duty and substituting therefor the rate of excise duty "shs. 2,000 per kg";		
		(a) in Part I— (i) in the second table of paragraph 1— (O) in the description of "Liquid nicotine for electronic cigarettes", by deleting the corresponding rate of excise duty and substituting therefor the rate of excise duty "shs. 100 per milliliter"	Accept with amendment: The e cigarettes and there delivery systems should also be subject to an upward tax review	<ul style="list-style-type: none"> • The liquid nicotine is highly addictive and therefore needs to be taxed more in order to reduce its consumption. • As part of electronic cigarettes, its delivery system taxes should also be reviewed upwards.
		Consider increasing by 20% tax rates for all other tobacco products outlined in the Excise Duty Act Schedule, specifically other manufactured tobacco and tobacco substitutes, electronic cigarettes and other nicotine delivery devices, and cartridges used in electronic cigarettes.	Proposed new sections	<ul style="list-style-type: none"> • To reduce and eliminate opportunities for substitution across different tobacco products based on differentiated prices.

FOURTH SCHEDULE (s. 7B(2)) GOODS SUBJECT TO ECO LEVY

No.	Clause	Description of the Clause	Proposal	Justification
48	The Miscellaneous Fees and Levies Act is amended by inserting the following new Schedule	FOURTH SCHEDULE (s. 7B(2)) GOODS SUBJECT TO ECO LEVY	Electronic cigarettes, other nicotine delivery devices and cigarettes to be included in this schedule.	These products are not biodegradable, so they pose a twin challenge to the environment and health. Disposable e-cigarettes and vaping pods, spent e-cigarette capsules, or replaceable pods, pose significant potential environmental burden. Vaping pods are an example of plastic



EXCISE DUTY ACT

No.	Clause	Description of the Clause	Proposal	Justification
	immediately after the Third Schedule—			waste because they are not biodegradable and are poorly recyclable. Additionally, cigarette filters contain micro plastics, a leading form of plastic pollution worldwide.



Annex

In reviewing the Finance Bill 2024, we appreciate the recognition of the need to review the taxes on tobacco and nicotine products. As detailed in the memorandum table above, we have either agreed, agreed with amendment or proposed an introduction of new clauses to the Bill. Our input is informed by the fact that we firmly support policies that would enhance public health while at the same time improve domestic resource mobilization. Being cognizant of the theme of the 2024 Budget Policy Statement (BPS), the second under Kenya Kwanza Administration, "*Sustaining Bottom-Up Economic Transformation Agenda for Economic Recovery and Improved Livelihoods*", our proposals focuses on supporting the Bottom-Up Economic Transformation Agenda (BETA), aligns with Kenya's Vision 2030's and the WHO FCTC¹.

In this section, we present our detailed justification and evidence of the analysis of the proposed changes:

As part of comprehensive policy intervention, tobacco and nicotine products taxation remains a critical and progressive tool at the disposal of governments to reduce tobacco and nicotine consumption, reduce non-communicable diseases linked to tobacco, and nicotine as well as increase revenue. These socio economic impacts can only be achieved through having the policymaking process borrowing from best practices in tobacco taxation.

Case for Uniform Tax Structure – Although taxation is the most effective tool to not only control tobacco uses but also to generate revenue to the government, the choice of a tax structure presents difficult options for governments. To effectively maximise taxes as tools for reducing tobacco use and generating tax revenue, there is need to consider two key areas: how tobacco products are taxed (tax structure), and the frequency of tobacco taxes increases². A uniform specific tax structure for tobacco is superior to a tiered tax structure since it enhances effectiveness of tax administration, limits incentives for reducing non-compliance by producers and for substitution by users, restricts incentives for introduction of pricing strategies that reduce tax liability – by producers.

Case for inflation adjustment – excisable products that have negative effects on human health are becoming more affordable in countries struggling with the human and economic impact of high levels of cancer and cardiovascular disease³. This is informed by the increase in inflation rates which is eroding tax rates on these products i.e. cigarettes, alcohol and betting. This creates the need to continuously adjust health taxes to account for lost value of the taxes through inflation. Ultimately the efforts of protecting the public health through targeted taxation will be

¹ <https://fctc.who.int/who-fctc/overview>

² The Tobacco Atlas, 2021

³ <https://www.cgdev.org>



reversed. The inflation adjustment should be reinstated in the Excise Duty Act (2015) to be applied biannually or as directed by the Commissioner General, Kenya Revenue Authority.

Case for inclusion of Electronic cigarettes and other nicotine delivery devices – FOURTH SCHEDULE (s. 7B (2)) GOODS SUBJECT TO ECO LEVY. The levy is informed by the need to protect the environment. It aims at ensuring that the manufacturers and importers of the specified goods pay for the negative environmental impacts of their goods. Therefore, it is necessary that even these categories of tobacco and nicotine products be included in the schedule of goods subject to eco levy. The products result in a dual impact on the environment. Firstly, some e-cigarettes are designed to be completely disposable, while others are rechargeable. Disposable e-cigarettes and vaping pods, spent e-cigarette capsules or replaceable pods, pose a significant environmental burden. Vaping pods are an example of plastic waste because they are not biodegradable and are poorly recyclable. They contain similar waste components as reusable e-cigarettes but are used for a shorter time before being discarded hence posing harm to the environment. Further, e-cigarette vapors are potent sources of air pollution such as aldehydes, carbon monoxide, particulate matter (PM), VOCs, heavy metals, and nicotine⁴. Additionally, cigarette filters contain micro plastics and are the second highest form of plastic pollution worldwide. These wastes are toxic and can take up to 10 years to completely degrade, while the chemicals they release can remain in the environment for much longer. They are washed down into waterways and oceans, significantly threatening aquatic life.

Case for addressing Challenges of New Generation Product – according to the tobacco control board, 9,000 deaths in Kenya are linked to causes that are related to tobacco use and thousands of people left severely sick and on the brink of death⁵. Additionally, tobacco is also one of the four risk factors alarmingly increasing the burden of NCDs in the country. Further, just like many other jurisdictions, the novel tobacco products have posed even more challenges to the Kenyan public sector. For instance, it has been proven that trying e-cigarettes is associated with onset of multiple other tobacco products before age 18 years⁶ hence their penetration within the economy remains a threat. According to the world bank, more than 7,700 unique e-cigarette flavorants are present on the market with some flavorants contain a chemical called diacetyl, which when inhaled, can cause bronchiolitis obliterans⁷. This necessitates that action should be taken in order to protect the general population, with a focus on the youths who are mostly affected. Taxing these commodities will make them less accessible as the incentive and affordability will be reduced.

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<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10542855/#:~:text=Beside%20the%20direct%20harm%20experienced,nicotine1%2C3%2C13>.

⁵ <https://tcb.go.ke/2022/06/09/tobacco-use-among-the-kenyan-youth-alarmingly-high/>

⁶ Pierce et al. (2021)

⁷ Global World Bank (2019)

