

# TAXATION OF ENDS & ENNDS WORKSHOP

Discussion of stakeholder comments

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REPUBLIC OF SOUTH AFRICA



**STAY  
SAFE**

VACCINATE TO SAVE SOUTH AFRICA

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# Background

- Minister of Finance (MoF) announced in 2019 & 2020 February Budgets that government intends to start taxing ENDS/ENNDS
- Further, in the 2021 February Budget, the Minister announced that National Treasury will publish a discussion paper on the proposal to tax ENDS/ENNDS
- The discussion paper was published on 15 December 2021 for public comments
- Comments period initially set for 25 Jan 2022 but later extended to 07 February 2022 following stakeholder requests
- National Treasury received 27 written inputs from organisations, individuals/group of individuals, associations, companies, a consulting firm and an academic Institution
- In the 2022 National Budget, the MoF proposed a revised flat excise rate structure that will apply to both nicotine and non-nicotine solutions
- That proposal will be included in the 2022 Taxation Laws Amendment Bill for further consultation before being introduced from 01 January 2023

# Health considerations

## For ENDS/ENNDS:

- Vaping is significantly less harmful (i.e. >95%) than smoking, and SA should adopt it as part of its tobacco harm reduction strategies;
  - There is no concrete proof or conclusive studies linking vaping to any form of medical harm
  - Vaping is not smoking, it is combustion free, tobacco free, and even where there may be tobacco flavoured variants in a vaping liquid, it does not have the tar, carbon monoxide or thousands of carcinogens found in combustible tobacco products
  - Vaping is an effective smoking cessation aid, the use of e-cigarettes as a cessation aid has outpaced the use of traditional quit methods (varenicline, nicotine replacement therapies and counseling) and demonstrates a higher degree of success
  - Many of the toxicants in tobacco smoke are either not present at detectable levels or present at much lower levels
  - Even though smoking-related harms may be merely reduced rather than removed by this approach, many lives could also be saved, and much morbidity prevented
  - While no tobacco product is without risk, nicotine products represent a continuum of risk, where e-cigarettes and HTPs represent a lower risk

# Health considerations

## For ENDS/ENNDS (continued):

- Vaping particularly limits health risks for people who use combustible tobacco products, cannot or do not want to stop or people who would otherwise take up smoking
- Vaping is a source of second-hand exposure (SHV) to nicotine but not to combustion toxicants – scientific research has not established a link between SHV and increased health risks for non-users
- Nicotine is not found in all vaping liquids and nicotine by itself is a mild stimulant which does not cause cancer.
- Nicotine and non-nicotine vaping liquids are different from liquids containing THC or CBD and therefore a clear distinction needs to be made – EVALI (e-cigarette or vaping use-associated lung injury) has been primarily linked to tetrahydrocannabinol (THC) containing e-cigarettes with vitamin E acetate, EVALI has not been associated with well-established nicotine vaping devices
- The evidence does not support the proposition that the availability of ENDS can undermine tobacco control measures by renormalising smoking
- There is no reliable evidence that e-cigarette use is associated with ever having had a myocardial infarction among never smokers

# Health considerations

## Against ENDS/ENNDS:

- These products increase the risks of lung, heart diseases and present health risk to bystanders
- The heterogeneity of the product is also associated with varying degrees of harm
- It cannot be determined whether ENDS may help most smokers to quit or prevent them from doing so – there is research that found that quitting using e-cigarette was associated with higher likelihood of short-term, but not long-term quitting
- Children and adolescents are highly susceptible to nicotine addiction, it negatively affects their brain development, and serves as a gateway to cigarette smoking
- Nicotine exposure during the adolescent period is also linked to drug-seeking behaviours and often acts as a gateway to substance abuse
- A precautionary approach towards the regulation of ENDS/ENNDS is necessary - the claim that e-cigarettes are at least 95% safer than cigarettes is misleading
- There is evidence of a high incidence of dual use of e-cigarettes and traditional cigarettes among most e-cigarette users, the dual use of these products increases the harms to health caused by these products

# Regulatory considerations

## For ENDS/ENNDS:

- A campaign to incentivize smokers to move to ENDS/ENNDS could save uncountable lives each year – such a program would recognize that a lower tax on ENDS/ENNDS would only be successful if accompanied by an active program of information to smokers, one designed to inform them of relative risks
- The Control of Tobacco Products and Electronic Nicotine Delivery Systems Bill (CTP-EDS) is misguided, it seeks to increase the tax rate on proven reduced risk alternatives to cigarette, if enacted, this bill would have a disastrous economic impact but also on public health throughout South Africa, and lead to a clear increase in tobacco-related mortality
- The conversation on the taxing of vaping products should not overtake the finalisation of the Draft Control of Tobacco Products and Electronic Delivery Systems (COTPENDS) Bill, which is yet to be tabled in Parliament
- Excise duties are not the only form of tobacco control that government could consider in pursuing safer or reduced use of ENDS/ENNDS
- There has been no sustained provision of quit services for smokers who wish to quit, no discernible budget has been directed towards aiding smokers who cannot afford nicotine replacement therapies or counselling services to overcome their nicotine addiction
- Any considerations around flavour bans would require extensive research and public consultation given the potential adverse effect and unintended consequences
- South Africa should adopt a SABS standard for vaping products, it is critical that a standard be put in place to promote consumer safety and product quality
- Age restrictions should be put on nicotine vaping, though lower than the legal age for smoking, and those age limits should be enforced

# Regulatory considerations

## Against ENDS/ENNDS:

- The proposal to tax ENDS/ENNDS is supported primarily because tax plays a critical role in protecting public health
- Evidence shows that the flavouring and not the nicotine alone, is responsible for most of the youth initiation
- There is evidence that young adults in South Africa are being targeted by the e-cigarette marketers, e.g., through the location of vape shops which tend to be in close proximity to University and College campuses
- Higher voltage devices, over-heating, or how dirty or worn out the electronic cigarette is and use behaviour are other factors which have been identified as determinants of harm
- To limit the availability of e-liquid solutions that have a high nicotine concentration levels, South Africa can refer to the EU example – the nicotine concentration is limited to 20 mg/ml – while the enforcement of this limitation will require some laboratory capacity, it will not require as much capacity as testing all e-liquids for the quantity of nicotine, as is currently proposed



# Economic considerations

- Though in its infancy, industry has contributed to employment (> 9,500), R2.5bn in GDP, sales valued at R1.25bn and R710mn in taxes in 2019
- The vaping industry is exceptionally negligible viz-a-viz tobacco industry and thus offers limited scope to raise significant excise revenues
- The proposed taxation of the vape industry will have a profound negative impact on the financial viability of the vaping industry
- Estimates reveal that the proposed taxation, especially at the levels indicated, would see in excess of 15% of all users of vape products returning to combustible tobacco products due to the unaffordability of vape products once the tax has been imposed
- ENDS are economic substitutes for cigarettes – increases in the relative price of ENDS are likely to decrease demand for ENDS but increase demand for cigarettes
- A tax on vaping products, particularly while the industry is still at its infancy, disproportionately affects the poor. Regulations would only serve to increase the mounting burden placed upon lower income and disadvantaged communities
- In respect of the statement that “higher cigarette prices are associated with increased ENDS/ENNDS sales”, of the view that this will not hold true in the South African context, due to unprecedented levels of illicit cigarettes in SA
- NT should undertake research to fully understand the local ENDS/ENNDS market, its dynamics, product categories and the end-to-end supply chain. This research should also determine estimated revenues and consider category growth

# International practice

- Latvia has abandoned the policy to base excise tax on the volume of e-liquid and nicotine content in 2021 – it now applies a single rate on all e-liquids regardless of nicotine content – One of the reasons was that policy was too difficult to implement
- A new Latvian law was introduced which covers ingredients that consumers use to produce their own e-liquids – these consumers were previously able to avoid paying excise duty on the e-liquids
- Indonesia has also changed its tax structure and has moved from ad valorem on ENDS products since January 2022 to a specific excise rate per ml with a much higher tax per ml on closed systems e-liquids compared to open systems e-liquids
- The German Ministry of Finance presented a draft law to tax based on mg of nicotine, but on the implementation of the law, the tax base was changed to ml of liquid, after submissions by stakeholders, as well as the parliamentary process of voting on the amendment to the tobacco law
- In its April 2021 budget, the Canadian federal government proposed a tax of \$1 per 10 millilitres of e-liquid – this relatively low rate signifies that the federal government recognizes the principle of taxation according to risk
- There is no single example of a state adopting a system similar to the ‘hybrid’ system of taxing both the amount of liquid (by ml) and the amount of nicotine contained (by mg)

# Tax policy instrument

## Tax base:

- Concerned with feasibility of implementing a tax that is based on both volume of liquid (ml) and the weight of nicotine (mg)
- No countries apply excise based on nicotine concentration. Majority (80%) apply excise on volume of e-liquid (per ml), the remainder apply an ad valorem excise
- Discourages government to tax e-cigarettes based on the nicotine concentration of products partly due to complexity of the tax administration and enforcement and that the battery power of the device can have an effect on nicotine delivery regardless of the initial concentration in the liquid
- Taxation levied based on strength of nicotine would penalize newly-switched smokers, who require higher strength liquids to make the switch to lower-risk products
- Considering that the evidence shows that vaping may not be a gateway into smoking, it makes little sense to implement an excise on non-nicotine containing e-liquids, which are non-addictive products.
- Government should consider including electronic cigarette devices in the ad valorem schedules
- A flat rate per ml, without the separation between nicotine and non-nicotine liquids would be a better fit
- An ad valorem tax should be applied to e-liquids and a specific tax plus ad valorem tax to devices
- If an excise tax is imposed on e-cigarettes, it should be levied on the consumable, not the device or any other components
- A distinction between free-base nicotine and nicotine salts might be necessary

# Tax policy instrument

## Tax rate:

- An appropriate risk-based taxation that is either zero or a small fraction of the rate on combustibles, excise policy should reflect the reduced risk of ENDS/ENNDS compared to combustible cigarettes i.e., tax should be at a lower level than combustible cigarettes – these products are still a relatively new consumer product, the tax bearing capacity remains uncertain and needs to be tested in practice
- In contrast, there are a number of proposals for ENDS/ENNDS to be taxed at the same rate as traditional cigarettes until there is a scientific basis for differential treatment of these two products
- ENDS/ENNDS and HTPs are designed to deliver nicotine to the user, and it was proposed that they should be similarly taxed, at the same rate as conventional cigarettes
- If cannot introduce regulation that restricts nicotine concentration in these products, it is proposed that e-liquid based on nicotine salt be taxed at a higher rate than E-liquid based on free base nicotine – the nicotine concentration in nicotine salt (typically 40-50 mg/ml) is much higher than the concentration in free base liquid (typically less than 18 mg/ml)
- The increase in the tax should increase by at least the rate of inflation plus a minimum of 10% every year – the retail selling price must become more expensive in real terms
- The vaping market is very different from the cigarette market with multiple product types and formats (e.g. closed vs open systems, flavoured vs non-flavoured, large vs small units etc.) – therefore, it will be impossible to establish a Most Popular Price Category in the vaping market hence cannot use the 40% incidence target rule to set the excise rate
- There are distinct differences between smoking and vaping – the option of using some cigarette equivalence scale is premised on a flawed thinking and would be inexact
- That the electronic cigarettes be taxed at a higher rate than traditional cigarettes

# Tax policy instrument

## Use of revenue:

- This new tax should be used to aid the costs of implementation of regulations for electronic cigarettes and other tobacco control measures as well as cessation programmes for those who would need assistance
- Initially, the use of the tax revenue on e-cigarettes should be decided by a committee comprised of representatives of National Treasury, the National Department of Health and a non-governmental organization representing the public health community

# Administrative issues

- It is not feasible to implement a tax that is based on both the volume of liquid measured in millilitres and the weight of nicotine measured in milligrams
  - This system would require independent laboratory testing, and labour-intensive monitoring of the content of nicotine in electronic cigarette liquids which would not only require great capacity but also would be subject to manipulation by manufacturers and marketers
  - Products marketed as nicotine-free often contain nicotine – manufacturers would also have an incentive to mislabel the nicotine content
  - Recommendation is that consideration is given to a penalty clause for producers who do not have certified nicotine concentration
  - There is evidence that suggests that most of domestic e-liquid supply is from small and local manufacturers for whom obtaining certification or producing a test report would likely form a significant additional cost
- It is important for SARS and Treasury to device appropriate measures to prevent illicit trade of vapour products in South Africa
- National Treasury would also need to fully understand the administrative and legal framework by considering the relevant provisions of the Act, and SARS' procedures and processes – this will need to be done through consultation and workshops with the industry and SARS

# Way forward

- National Treasury will publish the draft Taxation Laws Amendment Bill containing the provisions on ENDS/ENNDS around June/July
- Stakeholders will have an opportunity to provide written comments on the draft legislation
- The Standing Committee on Finance (SCoF) will also have its own consultation process on the draft Bill
- The draft legislation will be formally tabled at the Medium Term Budget Policy Statement (MTBPS) around October

# Additional slides



# International practice

- **Cyprus** - €0.12 (\$0.14 US) per ml tax on all e-liquid (**equivalent to R2.11 per ml**)
- **Denmark** - the Danish parliament has passed a DKK 2.00 (\$0.30 US) per ml tax, which is scheduled to take effect July 1, 2022 (**equivalent to R 4.52 per ml**)
- **Finland** - a €0.30 (\$0.34 US) per ml tax on all e-liquid (**equivalent to R 5.12 per ml**)
- **Georgia** - a tax of 0.2 Georgian Lari (\$0.066 US) on all e-liquid (**equivalent to R0.99 per ml**)
- **Germany** - will impose a €0.16 (\$0.19 US) per ml tax on all e-liquid beginning July 1, 2022 (**equivalent to R2.86 per ml**)
- **Greece** - a €0.10 (\$0.11 US) per ml tax on all e-liquid (**equivalent to R 1.66 per ml**)
- **Hungary** - a HUF 20 (\$0.07 US) per ml tax on all e-liquid (**equivalent to R1.06 per ml**)
- **Poland** - a 0.55 Polish Zloty (PLN) (\$0.14 US) per ml tax on all e-liquid liquid (**equivalent to R2.11 per ml**)
- **Portugal** - a €0.32 (\$0.37 US) per ml tax on nicotine-containing e-liquid (**equivalent to R5.58 per ml**)
- **Russia** - nicotine-containing e-liquid is taxed at 13 rubles (\$0.21 US) per ml (**equivalent to R3.17 per ml**)
- **Serbia** - a 4.32 Serbian Dinar (\$0.044 US) per ml tax on all e-liquid (**equivalent to R0.66 per ml**)
- **Slovenia** – a €0.18 (\$0.20 US) per ml tax on nicotine-containing e-liquid (**equivalent to R3.01 per ml**)

Source: <https://vaping360.com/learn/tax-rates-on-vaping-products/>