



6 October 2020

Parliament of the Republic of South Africa  
Standing Committee on Finance  
Cape Town  
South Africa

Committee Secretaries per e-mail: awicomb@parliament.gov.za; tsepanya@parliament.gov.za

Dear Sir / Madam

**COMMENTS ON DRAFT RATES AND MONETARY AMOUNTS AND AMENDMENT OF REVENUE LAWS BILL**

Your latest invitation for written comments on the contents of the above draft publication ("the Draft Bill") refers.

Our comments below reinforce and/or supplement our submission made on 28 April 2020 and relate specifically to Schedule II Part I (Section 7) of the Draft Bill, with heading 'Amendment of Part 2A of Schedule No. 1 to the Customs and Excise Act, 1964' and, more specifically, to the Rate of Excise Duty ("ROD") for Tariff Item 104.35.19 / Tariff Subheading 2403.99.90 as documented on p.16 of the Draft Bill.

**Submission**

We hereby submit our comments specifically in relation to the ROD of R815.63/kg published under Tariff Item 104.35.19, in so far as the '/kg' part thereof is concerned.

We are not contesting the fact that an excise duty was imposed on Heated Tobacco Products ("HTPs"), or the actual monetary rate of duty, but are questioning the apparent error in the publication of the ROD base for Tariff Item 104.35.19 / Tariff Subheading 2403.99.90 itself as a result of omitting to include a reference to 'R /kg **net**' (our emphasis).

This published ROD expressed as '/kg', as opposed to '/kg net', could mean that the products classifiable under Subheading 2403.99.90, including HTPs are taxed on full product weight (including non-consumable elements such as wrapping paper, filters, cardboard, foil and cellophane of the entire pack rather than just on the tobacco content alone) and not on tobacco-content net weight, in other words the actual consumable.

We submit that this published ROD ('/kg'):

- 1) would not be in line with the global practice when taxing these types of products including HTPs;
- 2) would be in contradiction with the published statement by the National Treasury that this rate aims to equate to 75% of the rate on conventional cigarettes;
- 3) would not be in line with tax rates set for other tobacco categories such as cigars, cigarillos and water pipe tobacco.

## 1. Global Practice

HTPs are introduced in different forms and shapes with different amounts of tobacco content applying different technologies. Therefore, each HTP is different based on consumables and consumption units. A practicable and equitable tax base would be the weight of the tobacco mixture, because all HTPs in all shapes and forms contain tobacco.

Our research shows that no country (where the product is on sale today) globally, where specific excise duty has been imposed on HTPs (as is the case for South Africa), is applying it on a full product weight basis, 'kg' (i.e. including non-consumable elements such as wrapping paper, filters, cardboard, foil and cellophane of the entire pack rather than just on the tobacco content alone). Very few countries (e.g. UK) used to initially apply a tax on the total weight of the product, but after careful consideration of the category it was revised to be applicable to the net weight of the tobacco mixture.

If the current published rate is maintained without further amendment, this could mean that South Africa would be the only country globally using the full product weight as a tax basis for the rate on HTPs.

To date, there are 28 countries around the world, where the excise tax system applied to other tobacco products and HTPs is weight-based with a nominal amount applied per kilogram of tobacco mixture<sup>1</sup>. Application of the new excise tax to "kg net" in South Africa would thus be in line with global practice.

A determining factor globally, when deciding on the most appropriate dutiable quantity for HTPs, was (and remains) that the non-tobacco components of the full range of HTPs currently available in the market (and, potentially, of future new products) vary from product to product (e.g. several filters and wrapping paper, required for some HTPs, are not required for most other HTPs).

## 2. HTP / Conventional Cigarette Excise Rate-Ratio of 75% announced in Budget Speech

The currently published rate could be interpreted as a gross figure of "R815.63/kg" as opposed to "815.63/kg net". The gross rate as published without the inclusion of the word "net" could attract excise duty on the full product weight of the pack that includes the tobacco, paper, filter, cardboard, foil and cellophane of the entire pack rather than just on the tobacco content alone.

If it is applied to the full product weight, the excise duty would apply to the tobacco and non-tobacco materials. For example, for a pack of our HTPs, branded HEETS, this would result in the effective excise rate of R2,152.73 per kg. If one compares this rate to the new excise rate of R8.70 per 10 cigarettes and assume an estimated 8 grams of tobacco mixture per 10 sticks, the effective excise rate for cigarettes will be R1,087.50/kg. The application of the currently published rate to full product weight would attract an excise rate of almost 200% of that imposed on cigarettes.

This means the effective excise rate for HTPs /kg as set out above, instead of "kg/net" as we argue it should be, is not in line with what the Minister of Finance stated in his Budget Speech, that HTPs would be taxed at 75% of the excise rate of cigarettes.

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<sup>1</sup> **Countries that currently apply a fully specific excise tax based on tobacco weight for HTPs:** Albania, Austria, Belarus, Bosnia & Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Czechia, Denmark, Greece, Kazakhstan, Latvia, Lithuania, Malaysia, Montenegro, Netherlands, New Zealand, North Macedonia, Poland, Romania, Russia, Serbia, Slovak Republic, Slovenia, Sweden, United Kingdom, Ukraine



Therefore, the excise rate published in Schedule 1 Part 2A should be rectified to read “815.63/kg **net**”. This is so that the excise rate of HTPs would be consistent with what the Minister of Finance stated in his Budget Speech i.e. that HTPs would be taxed at 75% of the excise rate of cigarettes.

### 3. Tax rate of other tobacco products

The excise rates published in Schedule 1 Part 2A tax are on a ‘/kg net’ basis for other tobacco categories such as cigars, cigarillos, water pipe tobacco. We believe a decision to also set the rate as ‘/kg net’ for HTPs would be in line with the existing practice applied to cigars, cigarillos and water pipe tobacco products and beneficial for a level playing field in South Africa.

### Our Conclusion

Based on the above shown anomalies and contradictions in the published ROD for Tariff Item 104.35.19, as well as the fact that it is clear that the monetary value of that ROD was clearly calculated on the tobacco-content net weight of conventional cigarettes in order to achieve the mentioned 75% rate-ratio (i.e. R815.63 is 75% of the R /kg net value of conventional cigarettes on and not the gross value based /kg), we submit that the published ‘R /kg’ rate should be amended to a ‘R /kg net’ rate.

We are therefore seeking rectification of the weight on which the excise duty calculation must be based, considering the negative impact, in terms of distorting a level playing field, this has on the HTP industry.

We furthermore wish to formally request the opportunity to make our submission at the public hearings, which are scheduled to take place via ZOOM on Wednesday, 7 October 2020.

As a directly affected industry member, we remain at your disposal to address any further queries you may have in relation to our above submission.

Yours sincerely,

**Ulreich Tromp**  
Director External Affairs