

05 October 2020

Honourable Mkhacani Joseph Mswanganyi, MP
Chairperson: Standing Committee on Finance
Parliament of South Africa

Dear Honourable Mswanganyi,

South Africa Tobacco Transformation Alliance Submission: Response to the Tax Administration Bills

The South Africa Tobacco Transformation Alliance (SATTA) represents the leading South African manufacturer, 350 tobacco farmers, and the largest leaf processor.

Collectively, our members employ over 8,000 people directly and support the livelihoods of more than 30,000 dependents.

As you are aware, excise is a key factor that affects the success and sustainability of the tobacco industry globally. In this respect it is essential that we promote investment and grow government revenues. As such, we would like to express our gratitude for the opportunity to comment on the Tax Administration Bills proposed by National Treasury.

Illicit Trade

One of the biggest threats to the local tobacco leaf industry is the illicit cigarette market, which costs taxpayers millions every day. It erodes Government income, threatens local jobs and damages the Government's ability to make the necessary investments in infrastructure and development to grow the economy.

The illicit market is threatening to wipe out the local leaf producing and processing industry, putting more than 8,000 jobs at risk and threatening the livelihoods of over 30,000 dependents in rural communities around South Africa, and any attempts to revise tax administration legislation have to take place with this in mind.

As you are aware, our industry suffered a massive setback due to the COVID-19 pandemic, where cigarettes sales were banned in line with the National Disaster Management Act Regulations. This was almost five months of no sales, and subsequently no revenue inflow for cigarette manufacturers. As a result, there was a very low demand for the tobacco leaf produced by farmers –which in turn had a huge impact on pricing.

We envisage that these challenges will continue into 2021. The industry is still in the process of trying to recover from this, and as such we are appealing for a sensible approach when considering any changes to the excise on cigarettes.

Proposals

Our view is that to balance out the fiscal and administrative framework, there is a great need for improved administration and enforcement to prevent fiscal leakages and to reduce the supply of illicit tobacco.

Government should acknowledge that its own COVID-19 Regulations have had a crippling effect on the industry, from which we are still trying to recover. The industry cannot afford an excise increase. This will threaten its sustainability and its ability to continue positively contributing to the South African economy.

We therefore propose the following:

1. Government should not increase excise on cigarettes because this will lead to a rise in illicit trade (and, therefore, reduced excise). As things stand, National Treasury has already gone beyond the 40% excise incidence as outlined in the stated excise policy of South Africa. We recommend that no further increase should be made until the 40% excise incidence target has been achieved.
2. Law enforcement agencies must directly tackle the illicit trade in cigarettes which has heavily impacted our value chain. We believe that treating this issue with the urgency it deserves will surely allow our industry to increase sales, thereby increasing excise revenue for the state and enabling us to function as a sustainable economic contributor in the country.
3. Recent independent studies show that the market is replete with cigarettes being sold below the minimum collectable tax (excise and VAT) or at prices which indicate that the relevant taxes have not been paid. The efforts of law enforcement agencies are drastically inhibited by the need to carry out further investigations and obtain the necessary underlying transaction documentation in order to establish a *prima facie* case to prosecute. It is common knowledge that our law enforcement agencies are under resourced and that the crime rate in our country is on a continuous rise.

The cigarette Minimum Retail Selling Pricing Law (MPL) concept which has been adopted by several countries globally provides some instructive insights on how South Africa can increase the effectiveness and efficiency in combating illicit trade in cigarettes. The MPL sets a price below which cigarettes cannot be sold to any consumer. The MPL concept is also instrumental in achieving related public health objectives in connection with consumption on tobacco products. We strongly recommend that National Treasury should adopt the MPL concept for cigarettes through the amendment for Customs & Excise laws.

In particular, we recommend that the MPL Price Point for a 20s cigarette pack be set at R28 (which translates to R1.40 per stick in the informal market) for all retail sales of cigarettes. Promotional discounts should not be permitted below the MPL Price Point. We further recommend that going forward the MPL Price Point should self-adjust by a factor equivalent to the excise change annually and together with the budget announcement.

The MPL strategy should be supported by a deterrent criminal penalty regime which includes heavy fines and jail time for traders who contravene the law.

Setting the MPL will allow law enforcement agencies to seize unlawful sales of cigarettes in the most efficient and effective way, based on a clear regulation set in Law.

Conclusion

As you are aware, our Government signed the World Health Organisation Protocol on Elimination of Illicit Trade in Tobacco Products (WHO ITP) on 10 January 2013, signifying its intention to ratify the Protocol. We recommend that South Africa should urgently ratify the WHO ITP and become member of the Meeting of the Parties, in order to counter the growth of illicit cigarettes in South Africa as well as participate in the global initiatives of eradicating cross border movement of illicit cigarettes.

We thank you for your consideration.

Yours Sincerely,

Shadrack N. Sibisi
Chairman

