

Honourable Members of the Standing Committee on Finance

Parliament Street

Cape Town

8000

12 September 2022

Dear Honourable Members,

RE: VPASA SUBMISSION ON THE 2022 TAXATION LAWS AMENDMENT BILL

The Vapour Products Association of South Africa (VPASA) welcomes the opportunity to provide written inputs on the 2022 draft Taxation Laws Amendment Bill (TLAB). The 2022 TLAB includes a proposal by government to introduce a tax on vaping e-liquid, at a rate of R2.90/ml on nicotine and non-nicotine solutions. VPASA has been consistently involved in government's efforts to solicit stakeholder inputs, including workshops and invitations for written inputs. Here, we have provided National Treasury with our concerns over the proposed tax. This submission is an attempt to relay these concerns for your attention.

While not being opposed to the regulation of the vaping industry, we are aware that any attempts to regulate the industry needs to account for several considerations. These, in the interests of the growth of the industry, and the public health agenda as it relates to the reduction of smoking rates in the country. In the main, we are concerned that government has severely understated the efficacy of vaping products as a tool for tobacco harm reduction. Copious amounts of evidence, some of which are contained in our submission, have spoken to the effectiveness of vaping products as a less-harmful alternative to combustible tobacco products. Several countries that have embraced the science behind vaping have seen a decrease in their smoking rates. In turning a blind eye to this, government is depriving itself of an opportunity to provide an effective solution to the country's high rates of smoking.

We have also called on government to take a closer look at the composition of the vaping industry, primarily comprised of small businesses, and the effect the tax is likely to have on their sustainability. At this stage, a tax will favour bigger industry players while making it difficult for smaller businesses to survive. A preliminary study on the impact of the tax, conducted by Oxford Economics Africa (OEA)

and commissioned by VPASA, has determined that vaping industry sales are likely to see a decrease of 22%. The same study finds that the industry's contribution to South Africa's GDP could fall by R360 million, with a related decline in 1,500 jobs.

The imposition of a tax, at this stage, represents an attempt to increase the public purse at the expense of smokers in desperate need of reduced-harm alternatives to smoking. OEA has determined that government could collect as much as R680 million in excise revenue from the sale of e-liquids. This number, however, does not account for the cost of tax administration and enforcement. Lack of enforcement could incentivise increased illicit activity. Without a true determination of the health-related costs of depriving adult smokers of less-harmful alternatives, it is difficult to determine the true fiscal benefit or cost of the proposed tax.

We have asked Treasury to apply its mind to the following questions, before implementing a tax on vaping e-liquids:

- What is the rate of youth vaping in South Africa? What percentage of these are former smokers who quit with the aid of ENDS/ENNDS? What percentage were diverted from initiating smoking through initiating the use of ENDS/ENNDS?
- How many vapers have quit smoking and vaping altogether?
- What is the expected outcome of the excise duty on vaping behaviour?
- How much revenue is likely to be raised?
- What is the projected impact on the sector's growth?
- What is the projected impact on small traders in the sector?
- How many vapers may switch back to smoking due to raised prices of ENDS/ENNDS products?

Additionally, we have called on Treasury to ensure that it does the following before a decision is made on the taxing of ENDS/ENNDS:

- I. Market study to understand the size of the category and its various components. This is extremely important to determine the devastation of the ban on the legal sale of ENDS/ENNDS during the COVID-19 lockdown in 2020.
- II. Socio Economic Impact Assessment be conducted to have a clear view on how a tax will impact the industry specifically small businesses and jobs.
- III. Clear articulation of how collection of revenue will be done and the impact on local manufacturers.

- IV. South African Bureau of Standards (SABS) to devise standards for testing of nicotine for products being declared.
- V. All companies dealing in vapour products should be registered with SARS for ease of tracking.
- VI. The excise framework should be supported by a robust anti illicit trade legal framework, which includes, licensing of importers and manufacturers of nicotine, security of manufacturing sites and warehouse, auditing and traceability of products.

We thank you for your consideration of the abovementioned concerns. VPASA is available to make an **oral presentation** to the Committee, in support of its submission, on **14 September 2022**.

We thank you in advance for your favourable consideration of the issues raised herein.

Yours Sincerely,



Mrs Asanda Gcoyi

CEO: VPASA

Vapour Products Association of South Africa – 2022 Draft Taxation Laws Amendment Bill

Submission

Contents

1. Introduction	5
2. Harm Reduction	6
2.1. Tobacco Harm Reduction.....	8
3. The Differences Between Smoking and Vaping	10
4. Electronic Cigarettes as a Harm Reduction Tool	10
5. The ENDS/ENNDS Market in South Africa.....	14
6. Response to National Treasury’s Proposal	15
6.1. Distinction Between Tobacco Products and ENDS/ENNDS	15
6.2. Perceived Harms of Nicotine	15
6.3. Youth Vaping.....	16
6.4. Gateway Theory.....	17
6.5. Second-Hand Aerosol	18
6.6. Economic Impact of Vaping Excise Duty	19
6.7. Finalising of COTPENDS Bill	19
6.8. Purpose of Excise Duty	20
7. Approach to Vapour Products Taxation.....	22
8. Enforcement	22
9. Conclusion and Recommendations	23

1. Introduction

The Vapour Products Association South Africa (VPASA) welcomes the opportunity to make a submission to the Standing Committee on Finance on the 2022 draft Taxation Laws Amendment Bill (TLAB). This includes measures for the taxation of Electronic Nicotine and Non-Nicotine Delivery Systems (ENDS/ENNDS).

VPASA represents vapour products manufacturers, retailers and importers. VPASA was established to protect the interests and wellbeing of vapour product consumers in South Africa. The association strives to serve as a united, official voice to represent the industry to government, regulators, consumers and the general public.

VPASA maintains that vaping is significantly less harmful than smoking, as demonstrated by a growing body of scientific evidence. Thus, South Africa should adopt vaping as part of its tobacco harm reduction strategies and as a revolutionary breakthrough to assist in significantly reducing smoking rates in the country.

Upfront, we make the following key points about vaping:

- Vaping is not smoking. It is combustion free and tobacco free, even where there may be tobacco flavoured variants in a vaping liquid;
- Vaping is significantly less (>95%) harmful than smoking and an effective smoking cessation aid. This is based on reviews of the available evidence and the considerations of numerous independent public health authorities.
- Nicotine is not found in all vaping liquids and nicotine by itself is a mild stimulant which does not cause cancer¹.

VPASA is not opposed to the regulation of the industry. We support sensible, evidenced-based regulation. We accept that public health discourse requires a carefully considered set of regulations that will safeguard public health interests whilst not unduly stymying technological innovation and the development of the industry. At an individual level, mistakes in regulation may deprive consumers of a lifetime opportunity to eliminate their exposure to cancer inducing carcinogens found in combustible tobacco products, which have been scientifically found to contribute substantially to the growing incidents of non-communicable diseases globally. At a population level, misdirected policies

¹ Public Health England. 2021. Vaping in England: An Evidence Update Including Vaping for Smoking Cessation. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/962221/Vaping_in_England_evidence_update_February_2021.pdf

have a heavy economic impact, in addition to working against the protection of public health. The economic benefits of encouraging smokers to move to vaping cannot be ignored. As seen in countries such as the United Kingdom and New Zealand, vaping has resulted in a decrease in smoking rates and related deaths. This in turn leads to less of a burden on the public health system. Though still in its infancy, the vaping industry has contributed to the country's employment and Gross Domestic Product (GDP). A study by NKC African Economics found that the vaping industry supported 9,500 jobs across three channels of impact in 2019. In the same year, the industry made R1.25 billion in sales, contributing R2.5 billion to GDP through its supply chain and paying R710 million in taxes².

We implore government to take note of the US Food and Drug Administrations' (FDA) recent decision to authorize the marketing of ENNDS. According to Mitch Zeller, Director of the FDA's Center for Tobacco Products, granting this approval was based on a demonstration that the "products could benefit addicted adult smokers who switch to these products – either completely or with a significant reduction in cigarette consumption – by reducing their exposure to harmful chemicals". The FDA's own toxicological assessment found that the authorized products' aerosols are significantly less toxic than combusted cigarettes. The FDA has also highlighted the benefits posed to the population as a whole, noting that "the potential benefit to smokers who switch completely or significantly reduce their cigarette use, would outweigh the risk to youth"³.

2. Harm Reduction

The United Kingdom's (UK) Royal College of Physicians defines Harm Reduction as "a strategy used in medicine and social policy to minimize harm to individuals and/or wider society from hazardous behaviours or practices that cannot be completely avoided or prevented"⁴. In South Africa, the National Drug Master Plan defines Harm Reduction as "the development of policies and programmes that focus directly on reducing the social, economic and health-related harm resulting from the use of alcohol and other drugs"⁵. The Master Plan further states that the focus of harm reduction is limiting or ameliorating the damage caused to individuals and communities who have already succumbed to

² NKC African Economics. 2021. *The Economic Impact of the Vaping Industry in South Africa*

³ US Food and Drug Administration. 2021. FDA Permits Marketing of E-Cigarette Products, Marking First Authorization of Its Kind by the Agency. <https://www.fda.gov/news-events/press-announcements/fda-permits-marketing-e-cigarette-products-marking-first-authorization-its-kind-agency>

⁴ Royal College of Physicians. 2016. *Nicotine without Smoke: Tobacco Harm Reduction: A Report by the Tobacco Advisory Group*; Royal College of Physicians, UK. <https://www.rcplondon.ac.uk/sites/default/files/media/Documents/Nicotine%20without%20smoke.pdf>

⁵ The National Drug Master Plan 2019-2024, Department of Social Development. https://www.gov.za/sites/default/files/gcis_document/202006/drug-master-plan.pdf

the temptation of substances. This can be done by providing treatment, aftercare, and reintegration of substance dependents within society, for instance.

The National Drug Masterplan 2013-2017 outlines the following types of harm⁶:

- **Direct Harm:** arises in the user because of the effect of the drug on the body. Example: drug overdose.
- **Indirect Harm:** occurs to others because of the use of a drug. Example: loss of property through crime or being knocked down by an intoxicated driver.
- **Intrinsic Harm:** attributed to the toxic effects of a drug.
- **Extrinsic Harm:** attributed to the circumstances of use of the drug but not inherent in the properties of the drug itself. Example: HIV infection from the use of contaminated injection equipment.

The key rationale for harm reduction is the recognition that the ideal scenario of users walking away from their habits may be exceedingly difficult to achieve if it is the sole object of public health policy. A central feature of Harm Reduction is its focus on the reduction of harm, rather than preventing the use of the substance itself. According to Hawk et al, Harm Reduction refers to “interventions aimed at reducing the negative effects of health behaviours without necessarily extinguishing the problematic health behaviours completely”⁷. This results from the recognition that addictive behaviours can be exceedingly difficult to eliminate once they take hold. Though society would be best served by abstinence, it is not always feasible for afflicted individuals to terminate their behaviour. In cases where individuals do manage to kick their habit, for instance drugs or smoking, there can be a high case of recidivism, which may lead to despondency and resignation to the harmful effects associated with the behaviour. Public health and social development policies aimed purely at forcing puritanical behaviour may thus not always succeed if effort is not made to ensure that short term needs of users are provided to achieve the ideal end state of non-usage.

Put practically, a drug user may require substitute drugs as part of their transition out of the said drug. Smokers may require Nicotine Replacement Therapy to kick the smoking habit. Harm reduction recognizes this and seeks to meet the addictive needs of the user, while transitioning them out of their unhealthy habit. Harm reduction is not designed to encourage use per se, but rather, to mitigate the

⁶ The National Drug Master Plan 2013-2017, Department of Social Development.

https://www.gov.za/sites/default/files/gcis_document/201409/national-drug-master-plan2013-17.pdf

⁷ Hawk, M., Coulter, R.W.S., Egan, J.E. et al. 2017. *Harm reduction principles for healthcare settings*. Harm Reduction Journal. <https://link.springer.com/article/10.1186/s12954-017-0196-4>

negative effects of such usage, based on the recognition that public health policy may not always achieve its objective of forcing users to quit.

2.1. Tobacco Harm Reduction

Tobacco harm reduction involves the use of alternative sources of nicotine by those smokers that find it difficult or are unwilling to quit tobacco and nicotine entirely. Back in 2007, the Royal College of Physicians came up with a conceptual model which recognised that “encouraging smokers to quit smoking and developing better ways of helping them to do so, is a recognised public health priority. There is, however, a complementary approach, which is to reduce the harm caused by tobacco smoking by making effective but less hazardous substitute products available to the smoker. Since nicotine is the primary addictive constituent of tobacco smoke, the harm reduction approach for those who cannot otherwise quit smoking tobacco or who want to reduce the impact their smoking has on themselves, and others is to substitute cigarettes with less hazardous alternatives. 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”⁸.

Both Norway and Sweden have seen a reduction in smoking rates owing to an update in the use of snus. Snus is a non-combusted, moist powder tobacco pouch which is placed between the lip and gum. A study conducted by researchers Ramström, Borland and Wikmans, looking at snus usage in Sweden, found that:

“Snus was also reported as the most common smoking cessation aid among men and yielded higher success rates than nicotine replacement therapy and other alternatives. As conclusions, snus has both contributed to decreasing initiation of smoking and, when used subsequent to smoking, appears to facilitate smoking cessation. All these effects suggest that the availability and use of snus has been a major factor behind Sweden’s record-low prevalence of smoking and the lowest level of tobacco-related mortality among men in Europe.”⁹

The use of snus has also been identified as a smoking cessation tool in Norway, with individuals using the product to assist them in quitting the habit. According to data from Statistics Norway, smoking

⁸ Royal College of Physicians. 2007. *Harm Reduction in Nicotine Addiction: Helping People who Can’t Quit*; a Report by the Royal College of Physicians.

⁹ Ramström, L, Borland, R and Wikmans, T. 2016. *Patterns of Smoking and Snus Use in Sweden: Implications for Public Health*. Patterns of Smoking and Snus Use in Sweden: Implications for Public Health. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5129320/>

rates in the country have seen a reduction between 2011 and 2021, while snus use saw an increase in the same time period. Cigarette use for users aged 17 to 74 from this time period saw a decrease from 17% to 8%, while snus use saw an increase from 8% to 15%¹⁰.

The Global Adult Tobacco Survey (GATS), published this year, has revealed that 29.4% of South Africans are current tobacco users, with 41.7% being men and 17.9% being women¹¹. This is an increase from the results of a 2017 survey, which found that 20% of South Africa's adult population smoked cigarettes¹². This makes it clear that government's current approach to reducing smoking rates has been insufficient. While there are a myriad reasons for this increase, it is clear that the increase coincides with the explosion in the illicit tobacco market in South Africa. The increase also comes against the backdrop of above-average inflation excise increases, which have progressively made illicit tobacco cheaper in comparison to legal products. We contend that this is a good indicator of what is likely to happen in the vaping industry when a high excise duty is imposed. The market will shift towards illicit players, which could lead to an explosion in the incidence of vaping due to the low prices that users can obtain in the black market for goods.

In terms of tobacco harm reduction, the Department of Health (DoH) has relied on punitive policies to get smokers to quit. The Department has not robustly engaged various stakeholders to find viable alternatives to encourage smokers to quit or reduce their consumption of tobacco products, which goes beyond the introduction of policies. Tobacco control policies - particularly when not integrated and well supported by adequate funding - are not very effective.

As various studies have shown, e-cigarettes might be the most promising product for tobacco harm reduction to date. E-cigarettes deliver a nicotine vapour without the combustion of products that are responsible for nearly all of smoking's damaging effects¹³. Most scientists and commentators agree that complete tobacco cessation is the best outcome for smokers, and any efforts to make available safer products need to be part of a comprehensive tobacco control strategy aimed at minimising

¹⁰ Statistics Norway. 2022. *Almost twice as many daily users of snus as daily smokers.*

[https://www.ssb.no/en/helse/helseforhold-og-levevaner/statistikk/royk-alkohol-og-andre-rusmidler/tobacco-
alcohol-and-other-drugs/almost-twice-as-many-daily-users-of-snus-as-daily-smokers](https://www.ssb.no/en/helse/helseforhold-og-levevaner/statistikk/royk-alkohol-og-andre-rusmidler/tobacco-
alcohol-and-other-drugs/almost-twice-as-many-daily-users-of-snus-as-daily-smokers)

¹¹ Global Adult Tobacco Survey. Fact Sheet, South Africa 2021. https://www.health.gov.za/wp-content/uploads/2022/05/Global-Adult-Tobacco-Survey-GATS-SA_FS-Populated_28-April-2022.pdf

¹² Southern Africa Labour and Development Research Unit, National Income Dynamics Study 2017, Wave 5 dataset. <https://www.datafirst.uct.ac.za/dataportal/index.php/catalog/712/overview>

¹³ Polosa, R. Redu, B. Caponnetto, P. Maglia, M and Raciti, C. 2013. *A fresh look at tobacco harm reduction: the case for the electronic cigarette.* <https://harmreductionjournal.biomedcentral.com/articles/10.1186/1477-7517-10-19>

tobacco use through cessation and prevention¹⁴. A balanced view is that the DoH should be looking at how it can incorporate e-cigarettes into its strategies of reducing smoking in South Africa.

3. The Differences Between Smoking and Vaping

Studies have shown that the combustion of tobacco is the leading cause of smoking-related illnesses. This harmful process involves the combination of harmful chemical compounds, including ammonia, mercury, carbon monoxide, tar, and hydrogen cyanide.

E-cigarettes do not contain these harmful compounds and do not produce smoke, but rather an aerosol. The e-liquid in vapour products typically contains propylene glycol and vegetable glycerine liquid mixed with nicotine, and flavouring. The toxicants generated from burning tobacco are the primary cause of smoking-related diseases and not nicotine. Nicotine is a naturally occurring compound, found in the tobacco plant. It is considered an addictive substance and is not considered to be completely risk-free. Decoupled from tobacco smoke, nicotine's long-term safety profile has been established through years of pharmaceutical clinical trials and decades of 'over-the-counter' use.

Public Health England's study on these products currently represents the most definitive body of evidence on the glaring differences between combustible tobacco and Electronic Nicotine Delivery Systems' impact on the health of users, with the latter found to be at least 95% less harmful than combustible tobacco¹⁵.

While both cigarettes and electronic vapour products contain nicotine, vaping ensures that nicotine, a stimulant, is delivered in a less harmful manner.

4. Electronic Cigarettes as a Harm Reduction Tool

The safety of e-cigarettes is being fiercely debated across the scientific and public health policy fraternities globally. With mixed media reports and sometimes conflicting headlines, it is not surprising that the picture may seem unclear. However, there is emerging consensus globally that e-cigarettes are less harmful than tobacco¹⁶.

The Cochrane Library, in its updated review on e-cigarettes has found that e-cigarettes containing nicotine could increase the number of people who stop smoking compared to Nicotine Replacement

¹⁴ *ibid*

¹⁵ *ibid*

¹⁶ Smith, N. 2016. *Reducing the harm of tobacco, could e-cigarettes be part of the solution?*

<http://scienceblog.cancerresearchuk.org/2016/04/28/reducing-the-harm-of-tobacco-could-e-cigarettes-be-part-of-the-solution>

Therapy (NRT), such as gums and patches. The review further states that unlike existing forms of NRTs, vaping mimics the experience of cigarette smoking due to the devices being “hand-held and generating a smoke-like vapour when used”. This meets the smoker’s process expectations, or ‘ritual’ behaviour, without the associated harms¹⁷.

A 2021 Update from Public Health England (PHE) also found strong evidence that nicotine vaping products are effective for smoking cessation and reduction. In 2017, it was estimated that over 50,000 smokers in England stopped smoking with a vaping product who would otherwise have carried on smoking.

The UK Royal College of Physicians has found that vaping is far less harmful than combustible tobacco, further noting that the hazard to health arising from long-term vapour inhalation is unlikely to exceed 5% of the harm from smoking tobacco. The institution has highlighted that people smoke because they are addicted to nicotine but are harmed by the other constituents of tobacco smoke. The provision of nicotine without the other harmful components prevents the harms associated with combustible tobacco¹⁸.

The South African Medical Journal (SAMJ: Vol 103, No 11) has stated that government should embrace e-cigarettes and look at incorporating them into their strategies to encourage people to quit or reduce smoking of cigarettes. It said the following of e-cigarettes: “We have a chance to seize on the current market disruption being caused by e-cigarettes and to ride, rather than fight, the wave of interest among smokers. This wave shows strong signs of building as technological progress makes such products ever more acceptable to ever larger numbers of current smokers, and at prices increasingly cheaper than cigarettes”.

In the UK, the Royal College of Physicians¹⁹ has developed explicit recommendations arguing for the UK government to take a liberal approach towards e-cigarettes and to recognise these as a tool towards achieving the objective of reducing the avoidable deaths caused by tobacco consumption.

The recommendations are worth quoting at length:

¹⁷ Cochrane Library. 2020. *Electronic cigarettes for smoking cessation*.
<https://www.cochranelibrary.com/cdsr/doi/10.1002/14651858.CD010216.pub4/full>

¹⁸ UK Royal College for Physicians. 2019. *RCP advice on vaping following reported cases of deaths and lung disease in the US*. <https://www.rcplondon.ac.uk/projects/outputs/rcp-advice-vaping-following-reported-cases-deaths-and-lung-disease-us>

¹⁹ *ibid*

1. Provision of the nicotine that smokers are addicted to without the harmful components of tobacco smoke can prevent most of the harm from smoking.
2. Nicotine replacement therapy (NRT) is most effective in helping people to stop smoking when used together with health professional input and support, but much less so when used on its own.
3. E-cigarettes are marketed as consumer products and are proving much more popular than NRT as a substitute and competitor for tobacco cigarettes.
4. E-cigarettes appear to be effective when used by smokers as an aid to quit smoking.
5. E-cigarettes are not currently made to medicines standards and are probably more hazardous than NRT.
6. However, the hazard to health arising from long-term vapour inhalation from the e-cigarettes available today is unlikely to exceed 5% of the harm from smoking tobacco.
7. Technological developments and improved production standards could reduce the long-term hazard of e-cigarettes.
8. There are concerns that e-cigarettes will increase tobacco smoking by renormalising the act of smoking, acting as a gateway to smoking in young people, and being used for temporary, not permanent, abstinence from smoking.
9. However, the available evidence to date indicates that e-cigarettes are being used almost exclusively as safer alternatives to smoked tobacco, by confirmed smokers who are trying to reduce harm to themselves or others from smoking, or to quit smoking completely.
10. There is a need for regulation to reduce direct and indirect adverse effects of e-cigarette use, but this regulation should not be allowed significantly to inhibit the development and use of harm-reduction products by smokers.
11. However, in the interests of public health it is important to promote the use of e-cigarettes, NRT and other non-tobacco nicotine products as widely as possible as a substitute for smoking in the UK.

A French medical journal recently published a study into vaping, claiming that: “All regular vapers are, or have been, smokers: the electronic cigarette in this way seems to consist of, at least for the moment, a solution to get out of smoking rather than a way in”²⁰.

Cancer Research UK, in a 2021 evidence report, maintained that vaping is far less harmful than smoking. The report also highlights that the use of e-cigarettes can help people stop smoking. It further

²⁰ Varga, P. 2017. *To Vape or not to Vape?* <https://specmed.co.za/2017/02/16/to-vape-or-not-to-vape/>

states that “e-cigarettes combined with the behavioural support from stop smoking services are also effective in helping people to stop smoking”²¹.

The United States National Academies of Science, Medicine and Engineering, in a 2018 report, found that among youth and young adult e-cigarette users who have ever used combustible tobacco cigarettes, there is limited evidence that e-cigarette use increases, in the near term, the duration of subsequent combustible tobacco cigarette smoking²².

Investigating the state of global e-cigarette regulation, a 2021 White Paper published by the Property Rights Alliance found that due to the adoption of a tobacco harm reduction approach, countries such as France, the UK, New Zealand and Canada have achieved double the rate of the global smoking cessation average. In France, daily smoker usage decreased from 29.4% to 24% in 2016 to 2019, while vaping saw an increase within the same period. Due to its embrace of harm reduction policies, the UK has seen a slower smoking rate than any other EU country, save for Sweden. From 2016 to 2020, New Zealand saw a drop from 14.2% to 11.60% in its daily tobacco rate while vaping consumption increased. Following the introduction of Juul and Vuse into its market in 2018, Canada saw a decrease in smoking rates from 15% to 9% while vaping prevalence increased. While progress can be made in all four countries, the benefits of a tobacco harm reduction approach through vaping is clear²³.

In Australia, a real-world study of vaping nicotine, published in August 2022, concluded that using e-cigarettes to quit increased the odds of success by 68% - 124% compared to not using a vape. The study included 1,601 smokers in the 2019 National Drug Strategy Household Survey who had attempted to quit in the previous 12 months²⁴.

A 2020 brief by the World Health Organisation (WHO)²⁵ office in Europe, showed that “there is conclusive evidence that completely substituting combustible tobacco cigarettes with ENDS/ENNDS reduces users’ exposure to numerous toxicants and carcinogens present in combustible tobacco

²¹ Cancer Research UK. 2021. *E-cigarettes: what we know and what we don't*.

<https://news.cancerresearchuk.org/2021/04/26/e-cigarettes-what-we-know-and-what-we-dont/>

²² US Academies of Science. 2018. *Public Health Consequences of E-Cigarettes: Conclusions by Level of Evidence*.

<https://www.nap.edu/resource/24952/012318ecigaretteConclusionsbyEvidence.pdf>

²³ Snowdon C, Houlbrooke L, Couquart P & Irvine I. 2021. *Vaping Works, International Best Practices: United Kingdom, New Zealand, France and Canada*. <https://jea.org.uk/wp-content/uploads/2021/09/Vaping-Works.pdf>

²⁴ Chambers MS. 2022. *Effect of vaping on past-year smoking cessation success of Australians in 2019-evidence from a national survey*. <https://pubmed.ncbi.nlm.nih.gov/35403757/>

²⁵ World Health Organisation Regional Office for Europe. *Electronic Nicotine and Non-Nicotine Delivery Systems, A brief*. https://www.euro.who.int/data/assets/pdf_file/0009/443673/Electronic-nicotine-and-non-nicotine-delivery-systems-briefeng.pdf

cigarettes”. The brief also showed that there is a semblance of evidence that some smokers may successfully quit tobacco by using some types of ENDS/ENNDS frequently.

5. The ENDS/ENNDS Market in South Africa

The vaping industry is exceptionally negligible compared to the conventional tobacco industry in South Africa and thus offers limited scope to raise significant excise revenues from vaping products. Levying a duty on these products could be costly, difficult to administer and enforce, and could have negative unintended consequences.

South Africa is still in the early stages of its ENDS/ENNDS market development. The market consists of mainly small and medium enterprises, whose owners are mostly ex-smokers, who have themselves seen the benefits of switching to a potentially less harmful product and have decided to share this technology with the rest of the smoking population.

Latest data on the local market compiled by NKC African Economics²⁶, as commissioned by VPASA, has found that the industry made R1.25 billion in sales 2019 with over 350 000 South Africans using vaping products. In the same year, the industry contributed R2.5 billion to the GDP through its supply chain across three channels of impact, and paid R710 million in taxes. The study also found that the industry supported 9,500 jobs across three channels of impact.

The ban on the sale of tobacco products and e-cigarettes imposed by government from March to August 2020, as part of its COVID-19 lockdown measures, had a heavy impact on the growth of the market. The prohibition on trade made it impossible for legitimate traders to continue with their business, heavily impacting projected growth of the industry. The NKC report notes that, as of July 2020, approximately R100 million in revenue had been lost by member firms, with roughly 20% of industry jobs lost as a consequence of the sales ban. Quite unfortunately, lack of access to safer alternatives may have incentivised ENDS/ENNDS users to switch back to smoking due to the widespread availability of illicit cigarettes. The reduced size of the industry lowers any potential takings from an excise duty on vaping products.

²⁶ NKC African Economics. 2021. *The Economic Impact of the Vaping Industry in South Africa*

6. Response to National Treasury's Proposal

6.1. Distinction Between Tobacco Products and ENDS/ENNDS

It is vital, from the onset, that a distinction between ENDS/ENNDS and tobacco products is made clear. Treasury's previously published Discussion Paper on the Taxation of ENDS/ENNDS, which forms the basis of its proposals, deals extensively with tobacco consumption trends and tobacco-related harms. The focus on the tobacco market distorts the picture of the vaping market. As stated in this submission, smoking and vaping differ vastly and the tobacco market differs from the vaping market.

As previously mentioned, ENDS/ENNDS do not contain tobacco and have been proven to be a less harmful alternative to tobacco products for adult smokers wishing to quit. As far as VPASA is concerned, the mention of tobacco should be focused on its relative harm to ENDS/ENNDS.

6.2. Perceived Harms of Nicotine

In proposing the tax, Treasury has attempted to portray nicotine use as the problem, suggesting that nicotine is not only addictive but has also been associated with "cardiovascular disease, learning and anxiety disorders, tumours and neurodegeneration". While nicotine on its own is an addictive substance, it has not been linked to smoking-related diseases²⁷. The Royal College of Physicians has maintained that while not completely risk-free, nicotine's long-term safety profile has been established through years of pharmaceutical clinical trials and decades of 'over-the-counter' use of medicinally licensed products. The institution has also noted that the hazard to health arising from long-term vapour inhalation was unlikely to exceed 5% of the harm from smoking tobacco²⁸. A large body of the available scientific evidence suggests that nicotine, on its own, does not cause cardiovascular disease or cancer.

In addition to this, a replica study produced by researchers from the Center of Excellence for the acceleration of Harm Reduction found that switching to nicotine e-cigarettes reduces vascular damage and the onset of smoking-related diseases. It is well established that reducing exposure to smoke toxicants may result in the mitigation of cardiovascular disease development²⁹. Their findings affirm claims of vaping products being a reduced-harm alternative to smoking.

²⁷ *ibid*

²⁸ *ibid*

²⁹ Caruso, Massimo, et al. 2021. *Comparative assessment of electronic nicotine delivery systems aerosol and cigarette smoke on endothelial cell migration: the Replica Project*.
<https://analyticalsciencejournals.onlinelibrary.wiley.com/doi/10.1002/dta.3349>

In 1976, tobacco researcher, Michael Russell stated that, “People smoke for the nicotine, but they die from the tar”³⁰. Thus, the burning of tobacco causes smoking-related diseases, and not nicotine. There are around 7,000 chemicals in tobacco smoke, of which nicotine is one. The United States (US) Food and Drug Administration (FDA) has highlighted that the toxic mix of chemicals in tobacco products, and not nicotine, causes fatal health complications including lung diseases, like chronic obstructive pulmonary disease (COPD) and cancer³¹. While information regarding the long-term effects of nicotine or Nicotine Replacement Therapy (NRT) use is still emerging, several studies conclude that nicotine is not carcinogenic³².

6.3. Youth Vaping

Treasury has raised concerns over youth uptake of vaping.

The results of the GATS have revealed that the highest percentage of vaping prevalence is between the ages of 15 – 24, at 3.1%. This number is low, and does not support any claim of a youth vaping crisis. The age range employed by the GATS also fails to provide a clear picture of underage vaping, as users over the age of 18 are considered adult consumers. From what has been made available of the report, it is not clear at what frequency young people between the ages of 15-18 vape, whether their vaping is one-off experimentation or regular use, how many of those who vape regularly were already initiated into nicotine when they took up vaping, and how many have quit smoking because of vaping. In our view, much remains to be cleared about the methodology of this study and whether its findings can actually be relied upon for making crucial policy decisions.

While we agree that any youth vaping is a problem, we do wish to caution against measures that would deter even adult smokers from taking up vaping. From our perspective, government ought to first and foremost finalise the legislation dealing with vaping, as a precursor to imposing a tax on vaping. To do so before the legislation is finalised is to close the door on the necessary democratic debate that must take place in Parliament about the level of regulation that must be imposed on vaping products.

³⁰ Fiore M, Baker T. *Reduced-Nicotine Cigarettes--A Promising Regulatory Pathway*. N Engl J Med. 2015;373(14):1289-1291.doi:10.1056/NEJMp1509510

³¹ United States Food and Drug Administration. 2021. *Nicotine Is Why Tobacco Products Are Addictive*. <https://www.fda.gov/tobacco-products/health-effects-tobacco-use/nicotine-why-tobacco-products-are-addictive#References>

³² Hecht SS. 2003. *Tobacco carcinogens, their biomarkers and tobacco-induced cancer*. Nat Rev Cancer

On the global front, youth vaping is currently seeing a decline. New data, published in May 2022 in the *Addiction Journal*, has found that approximately 8.6% of adolescents reported using e-cigarettes within a 30-day period, but only 1.7% engaged in frequent vaping. This suggested that most adolescents who vape are experimenting but not making it a habit. Study researchers, from the University of Queensland (Australia) analysed data from 151,960 adolescents in 47 countries who participated in the World Health Organization's (WHO's) Global Youth Tobacco Survey between 2015 and 2018³³.

Several studies in the United States have also reported a decline in youth vaping rates. From 2019 to 2020, youth e-cigarette use saw a decline from 27.5% to 19.6% in high school students, and 10.5% to 4.7% in middle school students³⁴. In the US Centre for Disease Control and Prevention's National Youth Tobacco Survey, 11.3% of high school students reported e-cigarette use, down from 19.6% in 2020. E-cigarette use for middle school students in 2021 stood at 2.8%, down from 4.7%. This marked the second consecutive decline in youth vaping rates³⁵.

VPASA strongly maintains that the use of vaping products should be confined to adult smokers hoping to quit the habit and in search of a less harmful alternative to smoking. While it is vital to ensure that young people do not vape, this should be achieved in a manner that does not discourage current smokers from making the life-saving switch to vaping.

6.4. Gateway Theory

Treasury has cited concern at ENDS/ENNDS being a gateway to combustible tobacco, also claiming that vaping has the potential to re-normalise smoking. This is inaccurate and highly misleading.

The bulk of available data suggests that there are more people making the switch from smoking to vaping than there are people making the switch from vaping to smoking. Vaping is primarily used by adult smokers in their efforts to quit. Mendelsohn and Hall suggest that the rapid decline in smoking

³³ Chan GCK, Gartner C, Lim C, Sun T, Hall W, Connor J, Stjepanović D, and Leung J. 2022. Association between the implementation of tobacco control policies and adolescent vaping in 44 lower-middle, upper-middle, and high-income countries. <https://onlinelibrary.wiley.com/doi/epdf/10.1111/add.15892>

³⁴ Choi B & Abraham I. 2021. *The Decline in e-Cigarette Use Among Youth in the United States—An Encouraging Trend but an Ongoing Public Health Challenge*. <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2780707>

³⁵ Centre for Disease Control and Prevention. 2021. Notes from the Field: E-Cigarette Use Among Middle and High School

Students – National Youth Tobacco Survey, United States, 2021.

<https://www.cdc.gov/mmwr/volumes/70/wr/mm7039a4.htm#:~:text=Among%20current%20e%2Dcigarette%20users,middle%20school%20e%2Dcigarette%20users>

rates suggest, contrary to the gateway hypothesis, that vaping may be acting as a gateway out of smoking by replacing, rather than promoting, the smoking of tobacco cigarettes³⁶.

In 2017, public health researchers from the University at Buffalo and the University of Michigan³⁷, writing in the journal *Drug and Alcohol Dependence*, concluded that national trends in vaping and cigarette smoking did not support the argument that vaping leads to smoking. The study added that research in the U.S. showed that as the use of e-cigarettes has increased, overall smoking rates have decreased.

The gateway theory is misleading given that it fails to provide evidence which support its claims. Misleading assumptions continue to provide an undue risk associated with vaping and generate negative perceptions about vaping. Recognising this, Mr Clive Bates, former head of Actions at ASH, concludes that “misleading studies will scare people about e-cigarettes for no reason and encourage smokers to stick to smoking”³⁸.

6.5. Second-Hand Aerosol

In its discussion paper, Treasury highlighted the potential health impacts of ENDS/ENNDS on non-users. It also acknowledged that while “exposure to toxicants from secondhand aerosol (with the exception of heavy metals) is generally in lower concentrations than those found in second-hand smoking from combustible tobacco, the amount of risk reduction, is presently unknown”.

The health risks for non-users associated with secondhand vaping (SHV) are unwarranted particularly when taking a closer look at emerging scientific evidence on the matter. Researching the effects of secondhand vaping from e-cigarettes, the Oxford Nicotine and Tobacco Research Journal noted “that e-cigarettes are a source of secondhand exposure to nicotine but not to combustion toxicants”. The report concludes that “using an e-cigarette in indoor environments may expose nonusers to nicotine but not to toxic tobacco-specific combustion products”³⁹.

Importantly, scientific research has not established a link between SHV and increased health risks for non-users. Bates and Beaglehole, public health experts in New Zealand write that “we agree there is

³⁶ Mendelsohn, C.P., Hall, W. (2020). *Does the gateway theory justify a ban on nicotine vaping in Australia?* Int J Drug Policy 78:102712. doi: 10.1016/j.drugpo.2020.102712.

³⁷ University at Buffalo & University of Michigan 2017. “*E-Cigarettes a gateway to smoking? Not likely*”. <https://www.sciencedaily.com/releases/2017/03/170313135003.htm>

³⁸ Clive Bates. 2015. *Spreading fear and confusion with misleading formaldehyde studies*. <https://clivebates.com/spreading-fearand-confusion-with-misleading-formaldehyde-studies/>

³⁹ Oxford Journal: Nicotine & Tobacco Research. 2012. *Secondhand Exposure to Vapors from Electronic Cigarettes*. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4565991/>

no robust evidence of harm from secondhand vapour. However, it is not just an absence of evidence: the evidence that is available suggests the possibility of material harm from second-hand vapour would be minimal – whereas secondhand cigarette smoke, especially the smoke generated when a user is holding a lit cigarette, has been associated with cancer and heart disease in bystanders⁴⁰.

These important research findings prove that the understanding that SHV is a health risk to non-users is a huge misconception and should not be the basis of any meaningful regulatory proposal.

6.6. Economic Impact of Vaping Excise Duty

We have consistently called on government to take a closer look at the composition of the vaping industry, and the impact a tax might have on its growth and sustainability. The industry, as previously mentioned, is primarily made up of small businesses whose operations will be severely impacted by the imposition of the tax.

A preliminary study on the economic impact of the tax, conducted by the by Oxford Economics Africa (OEA) and commissioned by VPASA, has determined that vaping industry sales are likely to see a decrease of 22%. The same study finds that the industry's contribution to South Africa's GDP could fall by R360 million, with a related decline in 1,500 jobs. This, at a time where the country should be working at its hardest to ensure the creation of employment opportunities.

6.7. Finalising of COTPENDS Bill

VPASA is of the view that the conversation on the taxing of vaping products is premature and 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. It is our belief that processes around the taxing of vaping products cannot proceed without the finalisation of a regulatory framework for ENDS/ENNDS, as this would form the basis for determining if a taxation framework is actually required.

The draft COTPENDS Bill, in its current form, introduces regulatory measures for both tobacco and vaping products. VPASA's position on the Bill is that, though it is a progressive attempt to promote good health and manage the growing load of Non-Communicable Diseases in South Africa, the bill

⁴⁰ Bates C, Beaglehole R, Laking G, Sweanor D, Youdan B. 2019. *A Surge Strategy for Smokefree Aotearoa 2025: The role and regulation of vaping and other low-risk smokefree nicotine products*. ASH New Zealand and End Smoking New Zealand

seeks to impose identical restrictions on ENDS/ENNDS as traditional tobacco products is problematic. ENDS/ENNDS and combustible tobacco differ vastly and should not be regulated in the same manner.

Similar to the UK and the US, VPASA recommends that the South African government commission a full review of the scientific evidence on ENDS/ENNDS. We also recommend that South Africa follow the example of the EU, UK and the US and develop separate legislation to regulate ENDS/ENNDS as a distinct category from tobacco. Conflating the two products is likely to lead to poor perceptions of ENDS/ENNDS and discourage potential users from switching to these less harmful alternatives. A separate legislation of vaping products from tobacco products will also be able to ensure alignment with international trends and that the country is able to take advantage of new developments in this important field. As an industry body, we would be willing to partner with government in creating a favourable environment for ENDS/ENNDS to displace combustible tobacco products.

As it stands, Treasury's proposed tax measures find their basis in proposals from the National Department of Health, which are yet to be finalised. Depending on the final outcome of the COTPENDS Bill process, Treasury may need to adjust its tax proposals to ensure synchronisation. This renders the tax conversation largely premature.

The explanatory memorandum accompanying the TLAB states that the World Health Organisation (WHO) has advised governments to implement a tax on vaping products, in line with national standards, to prevent uptake of vaping products particularly among children and adolescents. It goes on to mention South Africa's obligations as a signatory to the Framework Convention on Tobacco Control (FCTC). We wish to highlight that the FCTC is yet to provide clear guidance on the appropriate regulations of ENDS/ENNDS. This decision has been deferred to the ninth gathering of the Conference of the Parties (COP9), to be held in 2023. We also wish to caution government against imposing measures without ensuring a meaningful consideration of its domestic context. The WHO has encouraged Member States to consider implementing regulatory measures for ENDS/ENNDS that they determine to be the most appropriate for their domestic context. While Treasury has highlighted its obligations under the FCTC, we submit that it has not fully assessed the applicability of the FCTC, which was established before the emergence of ENDS/ENNDS.

6.8. Purpose of Excise Duty

It is not clear what the projected impact of the proposed excise duty is. In our view, this is an inevitable outcome of the nascent phase of the industry, as well as the gaping data gaps in the foundational elements of the tax proposal. Treasury should conduct further assessment of the sector in order,

firstly, to arrive at a scientific and balanced view of what ENDS/ENNDS represents for public health, and secondly, to solidly anchor its excise proposal on empirical understanding of the vaping sector in South Africa. To achieve both outcomes, we propose that first and foremost, Treasury commission a study to assess and answer the following questions;

- What is the rate of youth vaping in South Africa? What percentage of these are former smokers who quit with the aid of ENDS/ENNDS? What percentage were diverted from initiating smoking through initiating the use of ENDS/ENNDS?
- How many vapers are former smokers? How many vapers are never smokers? How many vapers are dual users?
- How many vapers have quit smoking and vaping altogether?
- What is the expected outcome of the excise duty on vaping behaviour?
- How much revenue is likely to be raised?
- What is the projected impact on the sector's growth?
- What is the projected impact on small traders in the sector?
- How many vapers may switch back to smoking due to raised prices of ENDS/ENNDS products?

In our view, a clear answer on the questions raised above is critical for designing a rational and practicable excise duty. Without answering these questions, proposals to levy a tax are nothing but an ideological pursuit of quit or die policies that have not served the South African smoking population, especially poor smokers, very well. It bears mentioning that excise duties are not the only form of tobacco control that government could consider in pursuing safer or reduced use of ENDS/ENNDS. However, it appears to be an easy answer which satisfies the Treasury's need to raise revenue. It also satisfies the Department of Health's quest to demonise vaping and draw false parallels with smoking thus discarding the potential gains that could be made in the country's fight against smoking and its resultant diseases.

In our view, it is respectfully submitted that in general this continues to follow the misdirected policy position of government in dealing with smokers. Where smokers should be the focus of policy, government has prioritised non-smokers exclusively without providing any means for smokers to exit their habit. In the years during which government has levied tobacco taxes, 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. The result is that South Africa's quit rate has plateaued.

In addition, it is common knowledge that illicit trade in cigarettes has sky rocketed in recent years; this, coupled with the above, has resulted in South Africa's quit rate plateauing.

Writing in Fin24, Chief Economist and Executive Head of Research and Strategic Advisory at IQ Business, Mr Sifiso Skenjana, draws parallels between smoking and fossil fuels industry, using the concept of Just Transitions. In essence, he argues that government's position on a just energy transition may fight application within the nicotine space. Though imperfect, as a substitute for smoking, vaping represents a revolutionary change in the way in which smokers consume their nicotine, similar to how the world is replacing fossil fuels with renewable energy solutions. Though there are some debates within government about the appropriate ways such a transition should take, there is universal agreement that such a transition is desirable. There is also agreement that such a transition must not adversely affect poor communities who depend on coal mining and Eskom facilities. For this reason, it follows that a just transition in the nicotine market demands that government policy must not leave behind poor smokers. The point of policy should rather be to make nicotine vaping safer, and less accessible to minors, without impeding access for smokers.

The imposition of a tax on both nicotine and non-nicotine vaping liquids, at the same rate, may also prove to be problematic. This, primarily because Treasury has repeatedly pointed to the supposed health harms of nicotine. ENDS and ENNDS are quite distinct from each other, owing to the presence of nicotine in the case of ENDS, and the absence of nicotine, in the case of ENNDS.

7. Approach to Vapour Products Taxation

Levying an excise duty on ENDS/ENNDS could be costly, difficult to administer and to enforce, and could have negative unintended consequences. ENDS/ENNDS are unprecedented among other excise products in terms of the supply chain complexity, stability, and scale of the category.

This means that a tax administration system would need to be designed and operated in a way that:

- I. levies tax in an equitable way across all product types and channels,
- II. is flexible to future product developments, and
- III. is monitored appropriately.

8. Enforcement

Taxation is often known to be one of the main causes of illicit trade. A well thought out enforcement plan should be put in place with the industry to ensure that all market players abide by the regulations.

It is essential that clear steps are part and parcel of the new taxation framework to ensure a level playing field in the market as well as to minimise the opportunity for illicit trade to flourish.

Oxford Economics Africa has determined that government could collect as much as R680 million in excise revenue from the sale of e-liquids. This number, however, does not account for the cost of tax administration and enforcement. Lack of enforcement could incentivise increased illicit activity. Without a true determination of the health-related costs of depriving adult smokers of less-harmful alternatives, it is difficult to determine the true fiscal benefit or cost of the proposed tax.

In this regard, it is vital that SARS and Treasury device appropriate measures to prevent illicit trade of vapour products in South Africa.

9. Conclusion and Recommendations

It has been scientifically established that ENDS/ENNDS are likely to be significantly less harmful than combustible tobacco cigarettes and THPs. Thus, ENDS/ENNDS have the potential to play a significant role in tobacco harm reduction strategies when supported by the right regulatory and fiscal frameworks.

The South African government should follow the example of countries such as the United Kingdom, who have endorsed ENDS/ENNDS as less harmful alternatives to smoking. MPs in the U.K. parliament's science and technology committee stated that e-cigarettes are at least 95 percent less harmful than traditional cigarettes and should be strongly promoted as an alternative and that taxes on e-cigarettes be reduced⁴¹.

Levying excise on ENDS would limit the future growth of the category.

It is imperative that government does the following before a decision is made:

- I. Market study to understand the size of the category and its various components. This is extremely important to determine the devastation of the ban on the legal sale of ENDS/ENNDS during the COVID-19 lockdown.
- II. Socio Economic Impact Assessment be conducted to have a clear view on how a tax will impact the industry specifically small businesses and jobs.

⁴¹ Jennings, K. 2019. British MPs push e-cigarettes as health benefit, Parliamentary report says UK should loosen restrictions on e-cigarettes after Brexit. <https://www.politico.eu/article/e-cigarettes-forget-big-tobacco-back-vaping-for-health-benefits-saymps/>

- III. Clear articulation of how collection of revenue will be done and the impact on local manufacturers.
- IV. South African Bureau of Standards (SABS) to devise standards for testing of nicotine for products being declared.
- V. All companies dealing in vapour products should be registered with SARS for ease of tracking.
- VI. The excise framework should be supported by a robust anti illicit trade legal framework, which includes, licensing of importers and manufacturers of nicotine, security of manufacturing sites and warehouse, auditing and traceability of products.

Until the above recommendations are put in place, we thus urge Treasury:

1. To not implement an excise on vaping and allow the growth of these harm reduced products in South Africa.
2. However, if Treasury still decides to go ahead with an excise, we recommend a tax rate significantly lower than the tax levied on THPs, given that ENDS are scientifically proven to be less harmful than both combustible tobacco cigarettes and THPs.

VPASA is available to make oral presentations to the Standing Committee on Finance in support of its submission.