

Government of Uganda Should Save Lives by Raising Tobacco Tax, Amending the Excise Duty Act, and Avoiding Destructive Legal Tussle

By the Uganda Tobacco Control Coordination Forum

On the 25th January 2018, the East African Court of Justice granted BATU an interim injunction on collection of excise duty that is over and above the amounts levied on Ugandan products in the Ugandan Market.

The background is that, in 2017, Parliament amended the Excise Duty Act, imposing different excise tax on cigarettes and alcoholic beverages with lower rates for products produced in Uganda and higher rates for similar imported products. This differential taxation is the basis for the legal challenge from British American Tobacco. According to the company, imposing a different excise duty on goods from Kenya as opposed to similar goods from Uganda contravenes the Treaty for the establishment of the East African Community and the Protocol on the establishment of the East African Customs Unions of 2004.

As World Trade Organization Agreements also emphasize the principle of non-discrimination between domestic and imported products, it is possible that similar suits will follow from WTO partners who export cigarettes to Uganda, such as countries that host Philip Morris International, a major cigarette producer with products in our market.

The current legal challenge from BATU and other potential suits could very well delay

Uganda from implementing life-saving increases in tobacco tax.

The Government of Uganda risks being drawn into an unhelpful legal battle over tobacco tax. This battle will ultimately be costly in terms of lives lost to tobacco-caused disease if the government is delayed in its good-faith, evidence-based efforts to raise taxes on tobacco. The government should instead focus on raising tobacco excise tax and updating the Excise Duty Act to eliminate the issues being contested.

We recommend that the Government of Uganda move to amend the Excise Duty Act to provide for equal treatment for locally manufactured and imported tobacco products. By doing this, the country will comply with Uganda's obligations and commitments under the Uganda Tobacco Control Act, the EAC Treaties and protocols and WTO agreements.

Further, we recommend that Uganda avoids engaging in the legal tussle of appealing the judgment of the EAC Court, given the legal commitments the country has made.

Tobacco use creates a significant economic burden on society due to high direct and

indirect health costs associated with tobacco related diseases, disability, and premature loss of life.

In Uganda, the total health cost of tobacco use including direct cost of treatment, indirect costs of loss of income, and productivity from death and disability is UGX 328.82 Billion (USD 126.48).

Article 6 of the WHO Framework Convention on Tobacco Control, to which Uganda is a party, obligates parties to use tax measures to reduce tobacco consumption by ensuring high price of tobacco products, while at the same time increasing government revenue to address its negative economic and health effects. Under the treaty, Uganda is legally obligated to raise excise tax for all tobacco products to reduce affordability thereby reducing tobacco consumption, as well as reducing government expenditure on tobacco related health care costs associated with tobacco consumption.

Tobacco has passed the test of being the most toxic legal product which kills its users when used according to prescription. WHO has stated that tobacco kills up to half of its users because it contains more than 7000 chemicals, of which at least 250 are known to be harmful and at least 69 are known to cause cancer. The taxation of the tobacco products

is therefore a way of promoting public health by increasing the price. **Economic interests of tobacco companies should therefore not supersede human rights and public health.**

To ensure the maximum health and economic benefits, government should consider the following options:

1. Tobacco Tax should be regularly raised in consideration of inflation rates and increase in income to reduce affordability especially for young people and the poor.
2. Adopt the WHO FCTC recommended tax system for tobacco products, which is the specific and uniform (no tiers of soft cap or hinge lid) tax system.
3. The tax should be increased progressively until the share of excise tax to total retail price per pack is above 70%.
4. Apply the same excise tax for both local tobacco products and the imported tobacco products in line with the WHO FCTC recommendations.
5. Prevent illicit trade through tax evasion by acceding to and implementing the provisions of the Protocol for Elimination of Illicit Trade in Tobacco Products.

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