



WHO FRAMEWORK CONVENTION
ON TOBACCO CONTROL

**Conference of the Parties to the
WHO Framework Convention
on Tobacco Control**

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**Draft guidelines for implementation of Article 6
of the WHO Framework Convention
on Tobacco Control**

Report of the open-ended intersessional drafting group

1. At its fifth session (Seoul, Republic of Korea, 12–17 November 2012), the Conference of the Parties (COP) adopted a set of guiding principles and recommendations for implementation of Article 6 of the WHO FCTC (*Price and tax measures to reduce the demand for tobacco*) and decided to establish an open-ended intersessional drafting group (drafting group) to continue the work of elaborating guidelines and to present a complete draft for consideration at its sixth session.¹
2. Consistent with that decision, participation in the drafting group was open to all Parties to the WHO FCTC and observers to the COP. An invitation to join the drafting group was sent to all Parties on 19 December 2012 as well as to accredited observers to the COP. The drafting group met in Geneva from 3 to 6 June 2013. Representatives of 40 Parties and four observer organizations attended. The drafting group elected Mr Simon Cotterell of Australia to be its Chair.
3. The drafting group used as the basis of its work the set of guiding principles and recommendations adopted by the COP in decision FCTC/COP5(7), and the draft guidelines contained in document FCTC/COP/5/8 that had been prepared by the working group established by the COP at its fourth session.²
4. Bearing in mind the mandate given by the COP, the drafting group did not propose any amendments to the set of guiding principles and recommendations adopted by the COP in decision FCTC/COP5(7). At the conclusion of the meeting, the drafting group agreed on a consensus text of the draft guidelines. The drafting group agreed to the establishment of a group of Parties to act as

¹ See decision FCTC/COP5(7), available along with all other decisions, guidelines and COP documentation, at <http://www.who.int/fctc/publications>

² See decision FCTC/COP4(13).

“friends of the Chair” to assist the Chair in finalizing, out of session, the sections on Use of Terms and General References, and the final text of the draft guidelines to be submitted to the COP following the consultation with the Parties.¹ Some Parties agreed to parts of the consensus text on the basis that a statement or a summary of position would be included in the report of the drafting group (see below).

Draft guidelines opened to comments by all Parties to the WHO FCTC

5. In accordance with decision FCTC/COP5(7), the draft guidelines were made available, on a protected website, to Parties for comment from 16 September 2013 to 8 November 2013, a total of eight weeks, following which they were reviewed by the friends of the Chair group.

6. Comments were submitted by 21 Parties (of which 18 had participated in the meeting of the drafting group). The comments are summarized below, as well as the outcome of the review by the friends of the Chair group:

- Comments and textual proposals on the guiding principles and recommendations adopted by COP at its fifth session: bearing in mind the mandate given by the COP, and the approach taken by the drafting group not to reopen the guiding principles and recommendations, the friends of the Chair group agreed that the text should remain unchanged.
- Comments and textual proposals on issues that had been debated extensively by the drafting group: the friends of the Chair group agreed that reopening discussion on those issues where the text represented the consensus of the drafting group should be avoided and therefore the text would remain unchanged.
- Proposals for substantial reformulation of the text: the friends of the Chair group agreed that these proposals should not be taken into account in the draft to be presented to the COP when they changed the meaning of the text or when they contradicted the text of other sections of the draft guidelines agreed by the drafting group, or existing text in the guidelines adopted by the COP at its fifth session.
- Editorial comments and comments to improve readability: the friends of the Chair group agreed to take into account only those editorial comments that represented a substantial improvement to the text. Editorial proposals were not taken into account when they introduced new principles not debated by the drafting group or when they added complexity to the text. In most cases, editorial comments were not accepted as the text had been heavily negotiated by the drafting group and a careful balance achieved among the various interests of the Parties.
- Other comments made by the Parties, such as the addition of new definitions, were not taken into account by the friends of the Chair group as such definitions exist in other texts adopted by the COP, for example the text of the Protocol to Eliminate the Illicit Trade in Tobacco Products.

¹ The friends of the Chair group comprised the Chair, representatives of the European Union, Kenya, Oman, Panama, Thailand and Turkey, and Dr Frank Chaloupka (technical adviser to the drafting group).

- Proposals were made to revise the Russian and Chinese translations. These proposals were carefully reviewed by WHO language services and were incorporated into the versions of the text in those two languages to be presented to the COP, when the changes did not affect the meaning of the English text or were consistent with accepted terminology in other reference texts (e.g. the WHO FCTC) or documents previously adopted by the COP (e.g. guidelines).

7. The friends of the Chair group would like to note that a number of Parties that commented on the draft guidelines reiterated the sovereign right of Parties to determine their own taxation policies (some Parties requested that their statement be included in this report, as indicated below) and that the provisions of the draft guidelines should not affect their obligations under other international agreements. The friends of the Chair group notes that the text of the guidelines repeatedly makes it clear that those rights and obligations are to be respected, in accordance with the provisions of the WHO FCTC.

8. The drafting group would like to express its thanks to all Parties that submitted comments and supported the work of the drafting group.

9. The text that resulted from the work of the drafting group, and the review process outlined above, is presented to the COP in the Annex to the present document.

Parties' statements submitted following the drafting group meeting in June 2013

10. As noted above, some Parties agreed to parts of the consensus text during the meeting held on June 2013, provided that statements or a summary of position would be included in the report of the drafting group, as follows:

- *Concerning section 3.2 of the draft guidelines “level of tax rates to apply”*

Statement submitted by the European Union, supported by Canada, Guatemala and the Philippines:

“The reference to a particular tax or excise rate or share as included in a WHO publication must not be understood as being a recommendation by the WHO FCTC to its Parties to apply such a rate or share.”

Statement submitted by Honduras:

“Honduras in the spirit of a constructive contribution to the work of the drafting group would like to put on record that the reference that is proposed in relation to tax levels applicable to tobacco is merely indicative rather than binding.”

- *Concerning the scope of the draft guidelines*

Position of Guatemala:

Guatemala requested that its views regarding the relationship of the guidelines to other international agreements be noted. Below is a summary of the views expressed on this subject during the meeting by the representative of Guatemala, on 6 June 2013.

Guatemala proposed that the scope of the guidelines include the phrase: “These guidelines are without prejudice to the Parties’ obligations under other relevant international agreements”. The

representative of Guatemala explained that although Parties clearly have the sovereign right to set tax policies, the existence of other relevant international obligations, which are also binding on their contracting parties, may need to be taken into account.

The WHO Legal Counsel explained that the guidelines are not legally binding, but are adopted by the COP to guide Parties in implementing their obligations under the WHO FCTC; so implementation of the guidelines cannot lead to a breach of another international agreement. Article 2 of the WHO FCTC also stipulates that the provisions in the WHO FCTC are not a ceiling, but are a floor below which States Parties cannot go, and encourages Parties to implement measures beyond those required by the Convention and its protocols.

The representative of Guatemala explained that Guatemala was not seeking to include a protection clause in the guidelines nor trying to establish a hierarchy between international agreements. Rather, the aim was to help national authorities to implement Article 6 in an effective way by taking into account other international agreements and thereby avoid potential international disputes and claims in other forums in the future.

Recommendations to the COP

11. The drafting group recommends the draft guidelines contained in the Annex of this report to the Conference of the Parties for adoption.
12. The drafting group also recommends that the COP request the Convention Secretariat to make available and regularly update, via a website: research, studies, and other useful reference materials relevant to the guidelines for implementation of Article 6 of the WHO FCTC.

ANNEX

**DRAFT GUIDELINES FOR IMPLEMENTATION OF ARTICLE 6
OF THE WHO FCTC***Price and tax measures to reduce the demand for tobacco***1. INTRODUCTION****Purpose of the guidelines**

Consistent with other provisions of the WHO Framework Convention on Tobacco Control (WHO FCTC) and the decisions of the Conference of the Parties, these guidelines are intended to assist Parties in meeting their objectives and obligations under Article 6 of the WHO FCTC. They draw on the best available evidence, best practices and experiences of the Parties that have successfully implemented tax and price measures to reduce tobacco consumption.

Guiding principles

Tobacco use creates a significant economic burden on society at large. Higher direct health costs associated with tobacco-related disease, and higher indirect costs associated with premature loss of life, disability due to tobacco-related disease and productivity losses create significant negative externalities of tobacco use.

Effective tobacco taxes not only reduce these externalities through reduced consumption and prevalence but also contribute to the reduction of governments' expenditures for the health care costs associated with tobacco consumption.

Tax and price policies are widely recognized to be one of the most effective means of influencing the demand for and thus the consumption of tobacco products. Consequently, implementation of Article 6 of the WHO FCTC is an essential element of tobacco-control policies and thereby efforts to improve public health. Tobacco taxes should be implemented as part of a comprehensive tobacco-control strategy in line with other articles of the WHO FCTC.

The following guiding principles underpin the implementation of Article 6 of the WHO FCTC.

1.1 Determining tobacco taxation policies is a sovereign right of the Parties

All parts of the guidelines respect the sovereign right of the Parties to determine and establish their taxation policies, as set out in Article 6.2 of the WHO FCTC.

1.2 Effective tobacco taxes significantly reduce tobacco consumption and prevalence

Effective taxes on tobacco products that lead to higher real consumer prices (inflation-adjusted) are desirable because they lower consumption and prevalence, and thereby in turn reduce mortality and morbidity and improve the health of the population. Increasing tobacco taxes is particularly important for protecting young people from initiating or continuing tobacco consumption.

1.3 Effective tobacco taxes are an important source of revenue

Effective tobacco taxes contribute significantly to State budgets. Increasing tobacco taxes generally further increases government revenues, as the increase in tax normally outweighs the decline in consumption of tobacco products.

1.4 Tobacco taxes are economically efficient and reduce health inequalities

Tobacco taxes are generally considered to be economically efficient as they apply to a product with inelastic demand. Low- and middle-income population groups are more responsive to tax and price increases; therefore consumption and prevalence are reduced in these groups by greater magnitudes than in higher-income groups, resulting in a reduction in health inequalities and tobacco-related poverty.

1.5 Tobacco tax systems and administration should be efficient and effective

Tobacco tax systems should be structured to minimize the costs of compliance and administration while ensuring that the desired level of tax revenue is raised and health objectives are achieved.

Efficient and effective administration of tobacco tax systems enhances tax compliance and collection of tax revenues while reducing tax evasion and the risk of illicit trade.

1.6 Tobacco tax policies should be protected from vested interests

The development, implementation and enforcement of tobacco tax and price policies as part of public health policies should be protected from commercial and other vested interests of the tobacco industry, including tactics of using the issue of smuggling in hindering implementation of tax and price policies, as required under Article 5.3 of the WHO FCTC and consistent with the guidelines for its implementation as well as from any other actual and potential conflicts of interests.

Scope of the guidelines

These guidelines focus mainly on tobacco excise taxes since these are the primary tool for raising the price of tobacco products relative to the prices of other goods or services. Other taxes or fees, such as income taxes, public fees, and investment encouragement provisions, are not within the scope of these guidelines. Value added tax (VAT) and import duties are briefly referred to in section 3.1.5.

In a broader perspective, it is important to note that tobacco taxation policies have the ability to affect the consumer price of tobacco products and thus reduce consumption, prevalence and affordability. However, tobacco taxes do not exist in a vacuum and should be implemented as part of a comprehensive tobacco-control strategy alongside other policies undertaken in line with other articles of the WHO FCTC. In that respect, broader economic policy considerations, notably the interrelationship between tax and price policies and income growth, and the consequential social effects on parts of the population, also need to be taken into account. Such an analysis, however, goes beyond the remit of the present guidelines.

Illicit trade in tobacco products is addressed in Article 15 of the WHO FCTC and the Protocol to Eliminate Illicit Trade in Tobacco Products. Many Parties have raised tobacco taxes effectively and experienced revenue increases without increases in illicit trade. Illicit trade in tobacco products undermines price and tax measures designed to strengthen tobacco control and thereby increases the

accessibility and affordability of tobacco products. Curbing illicit trade enhances the effectiveness of tobacco tax and price policies in reducing tobacco use and in achieving the public health and revenue goals of tobacco taxation.

Use of terms

For the purposes of these guidelines:

“Ad valorem excise tax” means a tax levied on selected products based on value, such as retail selling price, the manufacturer’s (or ex-factory) price, or the cost insurance freight price (CIF);

“Affordability” means price relative to per capita income;

“Bootlegging” means purchase of tax-paid tobacco products in a lower tax or price jurisdiction for resale in a higher tax or price jurisdiction;

“Consumption” means the absolute quantity of tobacco products used in the aggregate; “Cross-border shopping” means purchase of tax paid tobacco products in a lower tax or price jurisdiction for use in a higher tax or price jurisdiction;

“Excise tax” or “Excise duty” means a tax or duty imposed on the sale or production of selected products, such as tobacco products;

“Forestalling” means increases in production or stock of product in anticipation of a tax increase;

“General sales tax (GST)” means a tax imposed on a wide variety of products, typically based on retail price;

“Import tax” or “Import duty” means a tax imposed on selected imported products, such as tobacco products;

“Income elasticity of demand” means the percentage change in consumption resulting from a one per cent increase in real income;

“Intensity” means the quantity of tobacco products used by the average tobacco user;

“Mixed tax” or “Hybrid tax” means a tax that includes both a specific tax component and an ad valorem tax component;

“Negative externality” means costs borne by non-users;

“Prevalence” means the percentage of the population that uses a tobacco product;

“Price elasticity of demand” means the percentage change in consumption resulting from a one per cent increase in real price;

“Product substitution” means switching from the use of one tobacco product to another, for example from cigarettes to loose tobacco, in response to changes in relative prices or other factors;

“Real” means inflation-adjusted;

“Share of excise tax in retail price” means the percentage of the retail price of a tobacco product, inclusive of all relevant taxes, accounted for by excise taxes on that product.

“Share of taxes in retail price” means the percentage of the retail price of a tobacco product, inclusive of all relevant taxes, accounted for by all taxes on that product;

“Specific excise tax” means a tax levied on selected products based on quantity, such as number of cigarettes or weight of tobacco;

“Tiered tax” means a tax applied at different rates to different variants of a given product, based on various factors such as price, product characteristics, or production characteristics;

“Uniform tax” means a tax applied at the same rate to all variants of a given product, such as all cigarette brands and brand variants;

“Value added tax (VAT)” means a tax imposed on a wide variety of products (domestic and imported), based on the value added at each stage of production or distribution;

“Weighted average price (WAP)” means the average consumer price of a tobacco product based on the prices of individual brands and weighted by sales of each brand.

2. RELATIONSHIP BETWEEN TOBACCO TAXES, PRICE AND PUBLIC HEALTH

Taxes are a very effective tool for policy-makers to influence the price of tobacco products. In most cases, higher taxes on tobacco products lead to higher prices which, in turn, lead to lower consumption and prevalence and result in a reduction of mortality and morbidity and thus in the improved health of the population. The inverse relationship between price and tobacco use has been demonstrated by numerous studies and is not contested.

2.1 Relationship between price and consumption/prevalence (price elasticity)

Taxes and prices affect both the consumption of tobacco products and the prevalence of tobacco use. Worldwide evidence suggests that the impact of a price increase is felt approximately half on prevalence and half on intensity.

Any policy to increase tobacco taxes that effectively increases real prices reduces tobacco use. According to the studies referenced in the *WHO technical manual on tobacco tax administration* and *IARC Handbooks of Cancer Prevention: Tobacco Control. Volume 14*, the relationship between real prices and tobacco consumption is generally inelastic, meaning that the decline in consumption is less than proportional to the increase in real price. This relationship is defined by the price elasticity of demand. For example, if the price elasticity of demand is -0.5, a 10% increase in price will result in a 5% decrease in consumption. Most estimates of the price elasticity of demand lie between -0.2 and -0.8.

In all settings, studies have shown that the price elasticity of demand is higher (in absolute terms) in the long term, meaning that consumption will fall even more in the long term. People with lower socioeconomic status are more responsive to tax and price changes because such changes have a greater impact on their disposable income.

As regards the effect of higher taxes and prices on tobacco use by young people, it is estimated that young people are two to three times more responsive to tax and price changes than older people. Therefore, tobacco tax increases are likely to have a significant effect on reducing tobacco consumption, prevalence and initiation among young people, as well as on reducing the chances of young people moving from experimentation to addiction.

Equally important, higher taxes and prices reduce the demand for tobacco most sharply in lower-income population groups or in countries where tobacco users are more responsive to price increases, thereby contributing to the fight against health inequalities.

An increase in tax rates generally leads to an increase in revenues earned by governments. Since tobacco products are price inelastic, the increase in tax rates can be expected to be proportionally larger than the decline in consumption, meaning that revenues increase as a result of tax increases.

2.2 Taxation and affordability (income elasticity)

Increases in income generally result in increasing tobacco consumption and prevalence, particularly in low- and middle-income countries. Most estimates of income elasticity of demand for tobacco products lie between 0 and 1. An income elasticity of demand of 0.5 means that an increase in income of 10% will result in tobacco consumption rising by 5%.

Without price increases above the growth in income, tobacco products will inevitably become more affordable over time. This increase in affordability will generally result in growing consumption. Evidence suggests that tobacco products are becoming more affordable in many low- and middle-income countries and that this increase in affordability has accelerated in recent years. Instead, in many high-income countries tax and price increases have generally outpaced growth in incomes, which has resulted in a decline in the affordability of tobacco products in these countries in recent years.

Some tax policies can make some tobacco products more affordable to vulnerable segments of the population (young people and lower-income groups). Increases in tobacco use in these populations can increase inequalities in health, increase poverty and result in other consequences. Tobacco tax policies that reduce affordability may lead to proportionately larger reductions in tobacco use in vulnerable populations, given the greater price sensitivity of these populations.

Recommendation

When establishing or increasing their national levels of taxation Parties should take into account – among other things – both price elasticity and income elasticity of demand, as well as inflation and changes in household income, to make tobacco products less affordable over time in order to reduce consumption and prevalence. Therefore, Parties should consider having regular adjustment processes or procedures for periodic revaluation of tobacco tax levels.

3. TOBACCO TAXATION SYSTEMS

3.1 Structure of tobacco taxes (ad valorem, specific, mixture of both, minimum taxes, other taxes on tobacco goods)

Governments exercise their sovereign right to make decisions about the structure and system of tobacco taxes, taking into account their national circumstances, to achieve public health, fiscal and other objectives.

Tobacco tax systems can be made up of purely specific taxes, ad valorem taxes, or some combination of the two (mixed or hybrid systems). In some systems tax rates vary based on price or other product characteristics (tiered taxes). Generally, more complex tax systems, particularly tiered systems and those with exemptions, are more difficult to administer, and tax exemptions in particular, may diminish the effectiveness of tax policies on public health outcomes.

3.1.1 Types of taxes

In general, taxes levied specifically on tobacco products are excise taxes, while other non-tobacco specific taxes (e.g. general sales taxes (GST), value added taxes (VAT) and import taxes/duties) may also cover tobacco products. These guidelines focus mainly on tobacco excise taxes since these are the primary tool for raising the price of tobacco products relative to the prices of other goods or services.

3.1.2 Specific excise taxes

Specific taxes can either be uniform or tiered. Uniform specific taxes create a price floor (minimum price). Furthermore, uniform specific taxes tend to lead to relatively higher prices, even on low-priced brands.

Uniform specific taxes compared to ad valorem taxes may reduce incentives for consumers to switch to lower-priced brands because they generate smaller price differences between lower- and higher-priced brands.

A uniform specific tax is easy to implement and administer, because only the volume, and not the value, of the product needs to be ascertained. Since tax revenues are based on volumes rather than on prices, revenues from a uniform specific tax are easier to forecast, more stable, and less dependent on industry pricing strategies. However, the real value of the specific tax will be eroded unless it is regularly increased at least in line with inflation.

3.1.3 Ad valorem excise taxes

Ad valorem taxes are expressed as a percentage of a certain base value, which can be the retail selling price (containing all applicable taxes), the manufacturer's (or ex-factory) price, or the cost insurance freight (CIF) price. Compared to a uniform specific tax, an ad valorem tax leads to larger differences in price between lower and higher-priced brands and increases incentives for consumers to switch to cheaper brands. Used alone, ad valorem taxes can lead to more price competition, and consequently to a lower average price.

An ad valorem tax is more difficult to implement and administer, because both the volume and the value of the product need to be ascertained. Pure ad valorem systems may be susceptible to product undervaluation in order to reduce the taxable value of products, particularly when ex-factory or CIF price is used as the tax base. The undervaluation problem can be averted by implementing a minimum specific tax floor. The use of a minimum specific tax floor ensures that a certain minimum excise tax will be collected on all brands, regardless of their retail selling price.

Since tax revenues are based on both volumes and prices, revenues from an ad valorem tax are more difficult to forecast, less stable, and more dependent on industry pricing strategies. Ad valorem taxes have the advantage of maintaining their real value when prices rise with inflation.

3.1.4 Mixed specific and ad valorem excise taxes

Mixed (or hybrid) excise tax structures apply both specific and ad valorem excise taxes. Mixed systems usually combine a uniform specific tax (which has relatively more impact on less expensive brands) and an ad valorem tax (which has a greater absolute impact on more expensive brands). In a mixed system, the emphasis placed on either the ad valorem or the specific element depends on national circumstances and the policy objectives being pursued. While the ad valorem component increases absolute price differences and consequently promotes use of cheaper brands – undermining public health objectives – the specific component reduces the relative price differences between cheap and expensive brands and contributes to minimizing the variability of prices.

A mixed tax structure seeks to combine the advantages of pure specific and pure ad valorem taxes. It is more complex to implement and administer than a uniform specific tax structure, because both the volume and the value of the product need to be ascertained.

A mixed tax structure is less susceptible to product undervaluation than a pure ad valorem system. To further reduce susceptibility to undervaluation, a minimum specific tax floor can be applied. The use of a minimum specific tax floor ensures that a certain minimum excise tax will be collected on all brands, regardless of their retail selling price.

Since tax revenues are based on both volumes and prices, revenues from a mixed tax structure are more difficult to forecast, less stable, and more dependent on industry pricing strategies than tax revenues under a uniform specific tax structure. However, the real value of the total tax will be less eroded over time by inflation than under a uniform specific tax structure.

3.1.5 Other taxes on tobacco products

Other taxes that are not uniquely levied on tobacco products (e.g. GST or VAT) are outside the scope of these guidelines. Although they are applied to tobacco products and have a significant impact on retail prices of tobacco products, generally they do not affect the price of tobacco products relative to the prices of other goods and services and, consequently, have less impact on public health.

Some countries do not impose excise taxes on tobacco products and usually rely on other taxes such as import duties. Those countries should consider introducing excise taxes on tobacco products in order to effectively reduce tobacco use through price and tax policies.

Recommendation

Parties should implement the simplest and most efficient system that meets their public health and fiscal needs, and taking into account their national circumstances. Parties should consider implementing specific or mixed excise systems with a minimum specific tax floor, as these systems have considerable advantages over purely ad valorem systems.

3.2 Level of tax rates to apply

As recognized in Guiding Principle 1.1, Parties have the sovereign right to determine and establish their taxation policies, including the level of tax rates to apply. There is no single optimal level of tobacco taxes that applies to all countries because of differences in tax systems, in geographical and economic circumstances, and in national public health and fiscal objectives. In setting tobacco tax levels, consideration could be given to final retail prices rather than individual tax rates. In this

regard, WHO has made recommendations on the share of excise taxes in the retail prices of tobacco products¹.

When it comes to the most effective calculation base for the share of taxes in retail prices, the concept of “weighted average price” is preferred.

Countries should establish long-term policies on their tobacco taxation structure to achieve their public health, fiscal and other objectives. Affordability of tobacco products (see section 2.2) is an important consideration, and tax rates should be monitored, increased or adjusted on a regular basis to take account of this.

In addition, the share of taxes in tobacco product retail prices differs enormously around the world. Large differences in taxes and prices within regions or between neighbouring countries create incentives for product substitution, cross-border shopping and bootlegging and countries with relatively low tobacco product prices could consider raising taxes in order to raise prices to reduce such incentives.

Recommendation

Parties should establish coherent long-term policies on their tobacco taxation structure and monitor on a regular basis including targets for their tax rates, in order to achieve their public health and fiscal objectives within a certain period of time.

Tax rates should be monitored, increased or adjusted on a regular basis, potentially annually, taking into account inflation and income growth developments in order to reduce consumption of tobacco products.

3.3 Comprehensiveness/similar tax burden for different tobacco products

There is a wide variation in the types of tobacco products used in different parts of the world. Although much of the experience of Parties with respect to taxation of tobacco products refers specifically to manufactured cigarettes, Parties should recognize the need for a tax policy on all tobacco products. Furthermore, systems should be simplified and harmonized to ensure that different products are taxed with the same goals in mind.

Some consumers react to tobacco price increases, generated by tax increases, by switching from more expensive products or brands to cheaper products or brands, thus reducing (but not eliminating) the decrease in overall tobacco product consumption expected from a tax increase.

In addition, differences in prices generated by different tax rates on different tobacco products (e.g. manufactured cigarettes versus roll-your-own tobacco) or differences in prices generated by different tax rates within a product category (e.g. high-priced versus low-priced cigarettes) create incentives for some users to switch to cheaper products.

¹ WHO technical manual on tobacco tax administration. Geneva, World Health Organization, 2010. (Recommends that tobacco excise taxes account for at least 70% of the retail prices for tobacco products).

Recommendation

All tobacco products should be taxed in a comparable way as appropriate, in particular where the risk of substitution exists.

Parties should ensure that tax systems are designed in a way that minimizes the incentive for users to shift to cheaper products in the same product category or to cheaper tobacco product categories as a response to tax or retail price increases or other related market effects.

In particular, the tax burden on all tobacco products should be regularly reviewed and, if necessary, increased and, where appropriate, be similar.

4. TAX ADMINISTRATION**4.1 Authorization/licensing**

Controlling the tobacco supply chain is important for efficient and effective tax administration.

Licensing, equivalent approval or control systems should be applied to relevant entities for the control of the supply chain, in line with Article 6 of the Protocol to Eliminate Illicit Trade in Tobacco Products.

Recommendation

Parties should ensure that transparent licence or equivalent approval or control systems are in place.

4.2 Warehouse system/movement of excisable goods and tax payments

Since controls need to be carried out in production and storage facilities in order to ensure that the tax debt is collected, it is necessary to maintain a system of warehouses, subject to authorization by the competent authorities, for the purpose of facilitating these controls. Many countries oblige and authorize natural or legal persons (as authorized warehouse keepers) to produce, process, hold, receive and dispatch products subject to excise duty in the course of their businesses, under suspension of the excise duty. Guarantees can be requested from warehouse keepers to secure the payment of taxes. Features of such a system may include: strict criteria for granting authorization; warehouse pre-authorization visits; adequate stock control measures; checking the origin of excise products and the entire production process; and coding and marking products. Monitoring movements of excise goods under suspension of excise duty via a computerized system can also be used as a control tool.

Recommendation

Parties are urged to adopt and implement measures and systems of storage and production warehouses to facilitate excise controls on tobacco products.

In order to reduce the complexity of tax collection systems, excise taxes should be imposed at the point of manufacture, importation or release for consumption from the storage or production warehouses.

Tax payments should be required by law to be remitted at fixed intervals or on a fixed date each month and should ideally include reporting of production and/or sales volumes, and price by brands, taxes due and paid, and may include volumes of raw material inputs.

Tax authorities should also allow for the public disclosure of the information contained within the reports, through the available media, including those online, taking into account confidentiality rules in accordance with national law.

4.3 Anti-forestalling measures

In some cases, changes to taxes can be anticipated by manufactures or importers. This may be because taxes are indexed to inflation or known benchmarks. In anticipation of tax increases, manufacturers or importers may attempt to take advantage of the current or lower tax and increase production or stock of products (known as forestalling).

To prevent this from occurring and to ensure that authorities receive the extra revenue from tax increases, rather than producers or importers, Parties should consider implementing anti-forestalling measures, such as:

- restricting the release of excessive volumes of tobacco products immediately prior to a tax increase;
- levying the new tax on products already produced or kept in stock, and not yet supplied to the final consumer, including those in retail (known as a floor-stock or inventory tax).

Recommendation

In anticipation of tax increases Parties should consider imposing effective anti-forestalling measures.

4.4 Fiscal markings

Using fiscal markings is generally considered to be an appropriate tool to increase compliance with tax laws through monitoring of production and importation. Moreover, fiscal markings can help in distinguishing between illicit and legal tobacco products. Markings include tax stamps, enhanced tax stamps (also known as banderols) and digital tax stamps.

Fiscal markings are usually applied at the pack level at specified positions on the pack. Setting a certain standard pack size facilitates the application of fiscal markings and increases the efficiency of tax administration. In line with Article 15 of the WHO FCTC, the development of a tracking and tracing system including marking of tobacco products with a unique identifier may further secure the distribution system and assist in investigations of illicit trade.

Recommendation

Where appropriate, Parties should consider requiring the application of fiscal markings to increase compliance with tax laws.

4.5 Enforcement

Effective tobacco tax administration requires clear designation of responsible enforcement authorities. Tax authorities should generally have the authority and capacity to conduct investigations, search, seizure, retention and disposal activities in line with those of law enforcement agencies, and should be provided with necessary enforcement tools including appropriate technologies. In addition, the sharing of information among enforcement agencies is also a helpful feature for efficient enforcement in accordance with national laws.

Penalties for non-compliance with tax laws usually include suspension or cancellation of licence or the application of more stringent conditions on the licence, fines and/or jail, forfeiture of products, forfeiture of equipment used in the manufacture or distribution of products including machinery and vehicles, cease and desist orders, and other administrative remedies as appropriate. Penalties and interest are applied to the late payment of taxes, and back taxes and punitive taxes are applied to the non-payment of taxes.

Recommendation

Parties should clearly designate and grant appropriate powers to tax enforcement authorities.

Parties should also provide for information sharing among enforcement agencies in accordance with national law.

In order to deter non-compliance with tax laws, Parties should provide for an appropriate range of penalties.

5. USE OF REVENUES – FINANCING OF TOBACCO CONTROL

According to Article 6.2 of the WHO FCTC, Parties shall retain their sovereign right to determine and establish their taxation policies. An integral part of each Party's sovereign right is to decide how the revenue stemming from tobacco taxation is used.

As already noted in the guidelines for implementation of Articles 8, 9 and 10, 12, and 14, tobacco excise taxes provide a potential source of financing for tobacco control.

Parties could consider, while bearing in mind Article 26.2 of the WHO FCTC, and in accordance with national law, dedicating revenues to tobacco-control programmes. Some Parties dedicate tobacco tax revenues to tobacco-control programmes, while others do not apply such an approach.

Recommendation

Parties could consider, while bearing in mind Article 26.2 of the WHO FCTC, and in accordance with national law, dedicating revenue to tobacco-control programmes, such as those covering awareness raising, health promotion and disease prevention, cessation services, economically viable alternative activities, and financing of appropriate structures for tobacco control.

6. TAX-FREE/DUTY-FREE SALES

In duty-free shops in airports, on international transport vehicles and in tax-free shops, tobacco products are sold often without any excise tax burden. Generally, tax- or duty-free sales in airports

or in other designated places apply to travellers who will take the tobacco products out of the country and are exempted from the payment of certain local or national taxes and duties. However, in some countries, travellers can also buy from duty-free shops in airports not only when leaving but also when entering the country.

Tax- and duty-free sales generally erode the effects of tax and price measures aimed at reducing the demand for tobacco products, since tax-free tobacco products are cheaper and more affordable than those which are taxed. This is counterproductive to the health purpose behind taxation and harms public health by encouraging personal consumption. Moreover, these sales can adversely affect government revenues by creating a loophole in the tax structure as tax- or duty-free products can be an origin of illicit trade. There is growing evidence that governments are taking action to prohibit or restrict tax- or duty-free sales.

International actions to ban tax- or duty-free sales are built around three basic options:

- prohibiting tax- or duty-free sales of tobacco products;
- applying excise taxes on tobacco products sold in tax- or duty-free stores; or
- limiting travellers' allowances for tobacco products to restrict private imports of tax- or duty-free tobacco products, such as by applying quantitative limits.

Recommendation

Parties should consider prohibiting or restricting the sale to and/or importation by international travellers, of tax-free or duty-free tobacco products.

7. INTERNATIONAL COOPERATION

International cooperation in scientific and legal fields, provision of related expertise, and exchange of information and knowledge are important means of strengthening the capacity of Parties to meet their obligations under Article 6 of the WHO FCTC. Such measures should be in line with the commitments that Parties have undertaken with respect to international cooperation, particularly under Articles 4.3, 5.4, 5.5, 20 and 22 of the WHO FCTC.

The periodic reports of the Parties according to Article 21 of the WHO FCTC represent another important tool for international exchange and collaboration under the Convention. Article 6 of the WHO FCTC stipulates that the Parties shall provide rates of taxation for tobacco products, and trends in tobacco consumption in their periodic reports, in accordance with Article 21. Ideally this would include the absolute tax level and share of price accounted for by tax.

International cooperation helps to ensure that consistent and accurate information related to global, regional and national trends and experiences in relation to tax and price policies is provided, particularly through the global treaty implementation database maintained by the Convention Secretariat. Parties may consider the reports of other Parties, and the data and trends deriving from global progress reports presented to each regular session of the Conference of the Parties, to enhance their knowledge of international experiences with respect to tax and price policies.

Parties should also consider utilizing the multisectoral dimension of tax and price policies and cooperating within relevant bilateral and multilateral mechanisms and organizations to promote the implementation of relevant policies.

According to a mechanism and timeline to be established by the Conference of the Parties, Parties should cooperate in reviewing and, if necessary, updating these guidelines, to ensure that they continue to provide effective guidance and assistance to Parties in establishing their tax and price policies with respect to tobacco products.

8. GENERAL REFERENCES

Price and tax policies (in relation to Article 6 of the Convention): technical report by WHO's Tobacco Free Initiative. Report to the fourth session of the COP, Punta del Este, Uruguay, 2010 (document FCTC/COP/4/11). Available from: <http://www.who.int/fctc/publications/en/>.

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WHO technical manual on tobacco tax administration. Geneva, World Health Organization, 2010.

Curbing the epidemic: Governments and the economics of tobacco control, Washington, DC, World Bank, 1999.

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