PROPOSED “SIN” TAX ON SUGAR SWEETENED BEVERAGES

By Nthabiseng Baloyi, Senior Associate

LEGAL BRIEF
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The Minister of Finance announced in the February 2016 Budget a decision to introduce a tax on sugar-sweetened beverages (SSBs) with effect from 1 April 2017 to help reduce excessive sugar intake. On 8 July 2016 National Treasury published the draft Policy Paper and Proposals on the Taxation of Sugar Sweetened Beverages for public comments. The taxation of SSBs was arrived at as part of the action plan of the National Health Department’s Strategic Plan for the Prevention and Control of NCDs 2013 – 2017, and National Strategy for the Prevention and Control of Obesity 2015 – 2020.

INTRODUCTION

In its Action Plan, the Department of Health had identified unhealthy diets as one of four major risk factors. The research conducted by the department identified the consumption of excess sugar from SSBs and high caloric energy dense foods as major contributing factors to weight gain, in adults and children. The strategy also identified a number of measures to address non-communicable diseases (NCDs), and more especially unhealthy diets. Amongst these measures, taxes on foods high in sugar was listed as a potentially very cost-effective strategy to address diet-related diseases. The Department of Health’s strategies set an ambitious target of reducing obesity prevalence by 10% by 2020.

The proposed tax thus comes against the backdrop of a growing global concern regarding obesity stemming from overconsumption of sugar. Obesity is a global epidemic and a major risk factor linked to the growing burden of heart diseases, type 2 diabetes and some forms of cancers. NCDs are the leading causes of mortality globally, resulting in more deaths than all other causes combined, and the world’s low-and middle-income populations are the most affected. NCDs also have an effect on government healthcare spending. The problem of obesity has grown over the past 30 years in South Africa resulting in the country being ranked the most obese country in sub-Saharan Africa.

The World Health Federation fact sheet on obesity states that being overweight or obese is a result of consuming more energy (measured in calories) than is spent through daily activity. Studies on obesity have found that the increased consumption of free sugars, particularly in the form of SSBs, is associated with weight gain in both children and adults. The literature establishes the link between consumption of SSBs with obesity and increased prevalence of type 2 diabetes, coronary heart disease (CHD), other cardiovascular diseases (CVD), several cancers, and other NCDs.

The 2013 World Health Organisation (WHO) Global Action Plan encourages Member States to, as appropriate within the national context, consider the implementation of such as taxes and subsidies, that:

> create incentives to encourage behaviours associated with improved health outcomes;
> improve the affordability and encourage consumption of healthier food products; and
> discourage the consumption of less healthy options.
INTERNATIONAL INTERVENTIONS

In general, the governments’ interventions in the market are mainly characterised in three different forms, namely, appropriate regulations, information strategies and price instruments or a combination of all three. However, some researchers argue that most of the current nutritional policies relying only on information strategies for the consumers have had a weak impact on consumer choices. Using fiscal measures to promote health, prevent disease, and raise revenue is not a new idea. Standard economic theory suggests that prices do influence the level or quantity of demand of products. Prices do act as signals for consumers and have an important role in purchasing decisions.

The European Union food policy concluded that over the last few years, fiscal measures have increasingly been recognised as a plausible intervention to tackle the obesity epidemic at a population level and as an integral part of comprehensive intervention to improve diets and prevent NCDs. In this context, countries such as Denmark, Finland, France, Hungary, Ireland, Mexico, Mauritius and Norway have levied taxes on SSBs, while other countries such as the United Kingdom, Thailand and Australia have recently announced their intention to introduce such taxes.

These taxes are structured differently in each country and have reduced SSB consumption and increased health outcomes at various levels. Some taxes are based on the sugar content of products with a flat tax rate across the different products. Other structures include a weighting to the different types of sugars, while others use thresholds. Some of the challenges that have faced the imposition of a tax on sugar products include administrative considerations, job loses, product substitution by consumers and tax evasion because of classification anomalies. Although taxes on consumption have been contested by various stakeholders, taxes are likely to have a role to play in mitigating the effects that are related to NCDs. An increase in the prices of SSBs due to taxes is likely to encourage consumers to reduce their demand, which may lead to less production or changes in the formulation of the product.

THE SOUTH AFRICAN CONTEXT

Prior to 1 April 2002, South Africa imposed a tax on soft drinks and mineral water. The tax was levied on volume or per litre basis and was not related to any health benefit objectives or externalities and was thus abolished through lobbying by the non-alcoholic beverage industry. The rate ranged from a peak of 14.83c/litre to 6c/litre, before it was abolished (at an estimated revenue forgone to the industry. The rate ranged from a peak of 14.83c/litre to 6c/litre, before it was abolished (at an estimated revenue forgone to the fiscus amounting to R135 million).

In South Africa, the non-alcoholic beverage industry is made up of products such as juices, carbonated drinks, energy drinks, bottled water, ice tea, dilutable beverages, etc. However, it is dominated by carbonated drinks. This market predominantly consists of multinational beverage companies with large market share. Growth in the non-alcoholic beverage sector has increased significantly since the early 1990s. The soft drink market has been able to expand through increasing the affordability, availability, as well as acceptability of these products. Market research has also shown a higher proportion of consumption of SSBs by lower income groups.

While sugars are found naturally in many foods, including fruits and milk, the addition of sugars to food products adds to the total energy content of the product. SSBs contain added sugars such as sucrose or high-fructose corn syrup. A 330ml or 12oz portion of sugar-sweetened carbonated soft drink typically contains some 35g (almost nine teaspoons) of sugar and provides approximately 140 kcal of energy, generally with little other nutritional value.

SSBs have high sugar content, no nutritional value and are processed differently by the body when consumed compared to food. It should also be noted that fluid calories are not accounted for in the same way as calories from solid foods. Evidence suggests that SSBs are generally consumed quickly and do not provide the same feeling of fullness that solid food provides, such that consumers tend not to reduce intake of other foods sufficiently to compensate for the extra calories provided by sugar-sweetened beverages. The research has also shown that excess calories contribute to overweight and obesity as they can be readily converted to body fat and stored within various tissues. The literature suggests that a 20% price increase of SSBs may be required to have a significant impact on purchases, consumption, and ultimately on obesity and population health.

LEGISLATION ENABLING TAX ON SSBs

The enabling legislative framework for the successful implementation of the tax on SSBs includes the Foodstuffs, Cosmetics and Disinfectants Act (No. 54 of 1972); Agricultural Product Standards Act (No. 119 of 1990) and the Customs and Excise Act. The sale, manufacture and importation of food stuffs (including SSBs) are guided by the Foodstuffs, Cosmetics and Disinfectants Act and the Agricultural Product Standards Act which are administered by the National Department of Health and the Department of Agriculture, Forestry and Fisheries, respectively.

In terms of the Foodstuffs, Cosmetics and Disinfectants Act, No 54 of 1972, minimum mandatory nutritional information should be declared on the label of all foodstuffs and beverages. However, if any particular food or beverage does not make any claims with regards to nutritional or dietary value, such minimum nutritional information is not mandatory as stipulated in the current regulations to the Act. Many SSBs do not make claims to nutritional or dietary value and therefore do not have the labelling obligation. Draft regulations amending the claims requirement have been published but have not yet been promulgated.

A key consideration in the implementation of taxes on SSBs is its design, with specific focus on its coverage of a defined base (scope), tax rate and administration. The Ministry of Finance has therefore made the following proposals in relation to a tax on SSBs:

> Scope
In terms of scope, the tax is aimed at SSBs that are beverages containing added caloric sweeteners such as sucrose, high-fructose corn syrup, or fruit-juice concentrates, which include but are not limited to: (i) soft drinks, (ii) fruit drinks, (iii) sports and energy drinks, (iv) vitamin water drinks, (v) sweetened iced tea, and (vi) lemonade, among others. Any beverage that only contains sugar naturally built (i.e. intrinsic sugars) into the structure of the ingredients would be excluded from the tax (e.g. unsweetened milk and milk products and 100% fruit juice). The most accurate proxy for harm caused by SSBs is the (added) sugar content. The advantage of this approach is that it is better targeted and the tax is in direct proportion to the level of added sugar in SSBs.

> Tax rate
It is recommended that a tax on SSBs based on sugar content be implemented. This approach takes the view that SSBs have high sugar content but no nutritional value and therefore every gram of sugar in SSBs should be taxed.
A tax rate of R0.0229 (2.29 cents) per gram of sugar may be implemented based on the current product labelling framework. This rate roughly equates to a 20% tax incidence for the most popular soft drink (Coca Cola, averaging 35 g / 330 ml). Using the current available price and sugar content of soft drinks as a reference point, the estimated tax would be in the region of R2.29 per litre of SSB, or R0.0229 (2.29 cents) per gram of sugar contained in a litre of SSB.

For SSBs that currently do not apply nutritional labelling, it is proposed that a relatively higher fixed gram of added sugar is assumed (i.e. 50 grams per 330 ml or 15.152 grams per 100 ml or 151.52 grams per litre). This will hopefully act as an incentive for producers to move towards voluntary labelling in instances where a mandatory labelling system is not yet in place.

> Administration

The proposed tax on SSBs will be implemented through the Customs and Excise Act (Act 91 of 1964) as all other excise duties and product specific levies. An additional category for SSBs would have to be created under the Schedules to the Act as a levy on selected SSBs. The general principle for excise administration (i.e. duty-at-source (DAS)) will be applied for ease of administration.

CONCLUSION

The proposed fiscal intervention in the form of a tax on SSBs is just one tool in South Africa’s strategy of a comprehensive package of measures. Other planned interventions in the strategy include the following:

> creation of an institutional framework to support inter-sectoral engagement;
> creation of an enabling environment that supports the availability and accessibility of healthy food choices in various settings;
> increasing the percentage of the population engaging in physical activity;
> supporting obesity prevention in early childhood (in-utero - 12 years);
> communicating with, educate and mobilise communities; and
> establishing a surveillance system, strengthen monitoring and evaluation, and research.

It is hoped that these other measures receive attention as they are complementary to the fiscal intervention on the basis of sugar content. However, the employment risks associated with the taxation of sugar sweetened beverages in the current economic climate and in light of the media statements by the major beverage companies may delay implementation of the policy.

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Nthabiseng Baloyi joined Werksmans Attorneys as a senior associate in 2015, working in the firm’s Tax department. She has both law and audit firm experience in both international and corporate tax advisory services.

Her areas of speciality include domestic and multinational corporate tax advisory; corporate mergers, acquisitions and reorganisations; domestic and cross border transaction structuring and exchange control matters.

Nthabiseng holds a BCom and LLB from the University of the Witwatersrand and an Advanced Diploma in International Taxation (Africa) from the Thomas Jefferson School of Law, San Diego in association with the International Institute for Tax and Finance.

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