Rethink Your Drink

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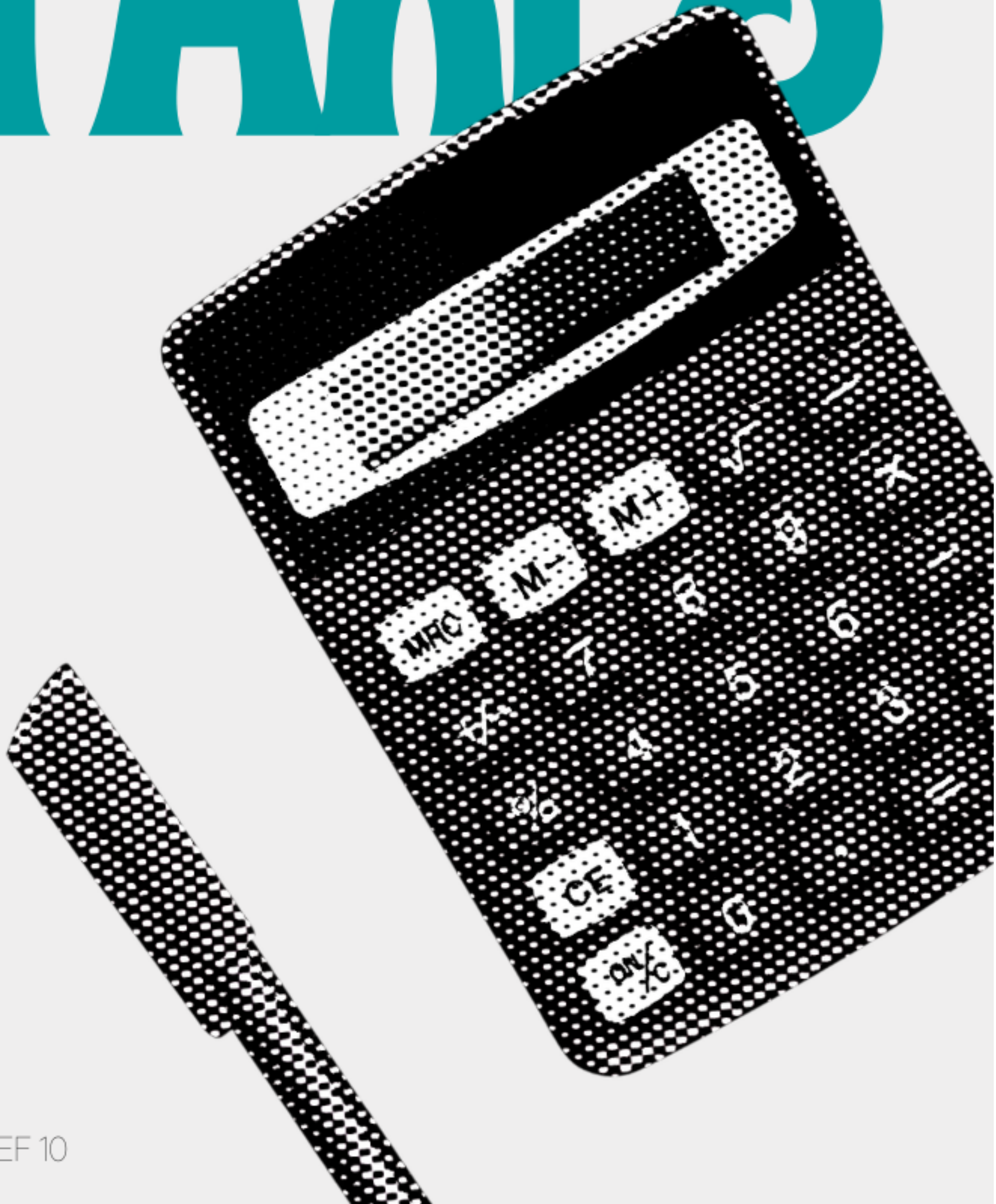
EXCISE TAXES



POLICY BRIEF 10

Towards Coherence in South Africa’s Excise Tax Framework for Alcoholic Beverages

South Africa’s alcohol excise system plays a critical role in shaping both consumption patterns and public revenue. This policy brief analyses whether current excise tax structures align with government’s stated objectives of reducing alcohol-related harm and recovering social and economic costs. By examining historical tax design, legislative foundations, and international best practice, it identifies structural inconsistencies across beverage types and argues for a simplified, alcohol-content-based excise system that better supports public health goals.

About the author

Stephen Harrison, attorney and sole proprietor of **Stephen Harrison Attorney**, a general legal practice with a focus on public interest law. His education and professional career have been at the interface of public law and public health, with experience in government, parastatal bodies, non-governmental organisations and higher education.

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Contents

Executive summary

Excise taxes in South Africa are indirect duties levied on certain locally manufactured and imported goods, including alcoholic beverages. These taxes serve the dual purpose of financing government expenditure and discouraging the consumption of harmful products. Excise taxes for alcohol have been levied for over a century.

The legislation governing excise taxes on alcohol is the Customs and Excise Act, No. 91 of 1964. Excise taxes are annually adjusted based on policy which sets the tax levied using the weighted average retail selling price of alcoholic beverages. The excise component of the taxes varies by product type, 11% for wine, 23% for beer, and 36% for spirits. The taxes levied on wine are set at a lower level, due to its apparent economic importance and tourism potential.

A World Health Organisation policy review and a National Treasury (NT) discussion document from November 2024, suggest that South Africa should reconsider its alcohol tax policy and legislation. Public health advocates argue that current excise taxes do not adequately address high alcohol consumption levels and associated harms. Industry stakeholders, particularly the beer sector, claim that the current regime is unpredictable and biased, favouring wine over other products.

The NT discussion document proposes reforms for the tax system, including a move away from tax incidence as a basis for annual adjustments to excise tax levels, and the introduction of tiered tax levels for alcohol and wine, with the tiers determined by alcohol content. Support is expressed in principle for the introduction of a Minimum Unit Price (MUP for alcoholic beverages – which we discuss in a separate Policy Brief.

We propose that a review of the alcohol tax framework should follow the principles for rationality of government action as outlined by the Constitutional Court in the matter of *Prinsloo v Van der Linde and Another.* These principles require governmental action to relate to a defensible vision of the public good, together with coherence and integrity of legislation to that vision.

We understand government's vision of excise taxes on alcohol to be encapsulated in the following statement in the 2024 National Treasury discussion document:

"The implementation of excise duties on alcoholic beverages seeks to internalise the socio-economic costs of alcohol consumption and reduce general alcohol consumption levels while simultaneously raising revenue."

As an outcome of the current review process, we propose that government explicitly confirms this statement, or a modified form of it, as its vision of excise taxes on alcohol. The vision is defensible given South Africa's high levels of harmful alcohol consumption, which impact on the fundamental of the people of South Africa as enshrined in the Constitution.

Various anomalies in South Africa's excise tax system for alcohol suggest a lack of integrity and coherence with that vision in the legislative and policy framework. These anomalies relate to:

relatively low overall tax levels in the face of harmful consumption levels in South Africa.

wide and growing disparities in tax levels between beverage types; differences in the basis for taxation between beverage types (volumetric versus taxation by alcohol content);

a significant range of tax rates applied to ready-to-drink beverages;

anomalies in the tax treatment of various spirit-based beverages and

the recent introduction of minimal taxes on instant beer powders.

As long as there are disparities in tax levels of different beverage types with similar ethanol content, incoherence with government's vision and concerns of unfairness will remain. We propose moving towards a single tax structure for all alcoholic beverage types, which differentiates taxes based on alcohol content rather than beverage type.

It is therefore proposed that government should explicitly frame the current NT tax proposals as the first phase of a transitional process towards a single tax structure for all alcoholic beverages. This transitional phase should be for a defined period, during which the gap between excise taxes for different beverage types based on ethanol content will be closed, while in the process ensuring that excise taxes are not reduced in real terms for any beverage.

A possible exception to a single tax structure may be made for Traditional African beer, although taxes on Traditional African beer should be adjusted to match inflation on an annual basis.

Further changes required during the transitional period could include taxing win based on alcohol content basis rather than a volumetric alcohol basis, and addressing the various other anomalies in tax rates that have been introduced into the excise tax framework over time.

The transitional period could be used as an opportunity to evaluate the supply and demand-side impacts of tiered taxes (as opposed to uniform tax rates), and to consider replacing the existing Harmonised System for classification of alcoholic beverages with a simpler classification framework for excise taxes on alcohol.

Introduction

The South African Revenue Services (SARS) defines excise taxes as

> *"indirect duties, levies and taxes imposed on certain locally manufactured and imported goods, which are consumed in South Africa."*[1]

In general, excise taxes[a] have the dual purpose of financing government expenditure through the annual budget, and serving as an instrument to discourage the consumption of certain products that are potentially harmful to citizens' health and the environment.[1]

Excise taxes are imposed on alcoholic beverages in most countries.[2] In South Africa, they have been levied on alcoholic beverages for more than 100 years.[3] Over that period, the excise tax regime has been subject to various reviews and adjustments to ensure that it meets its policy objectives. Most recently, in November 2024 National Treasury issued a discussion document on the taxation of alcoholic beverages (the 2024 NT discussion document), inviting input on some far-reaching policy proposals for reform of South Africa's excise tax regime for alcohol.[4]

This discussion document comes at a time when a World Health Organisation (WHO) policy review has suggested South Africa rethink its alcohol tax and pricing policy in light of the high level of alcohol consumption in South Africa, which is among the worst in the world. This includes setting targeted tax rates at a much higher level to better reflect the harm caused by alcohol consumption in the country.[5]

Public health advocates in South Africa have similarly argued that the South African government is not utilising excise taxes to reduce the high levels of alcohol consumption in the country, which would help reduce alcohol related harms.[6]

The rationality of South Africa's excise tax regime related to alcohol has also come under scrutiny from industry players. Industry has alleged that excise decisions have become unpredictable, and that government is unfairly exceeding its own benchmarks for calculating excise taxes in relation to the weighted average prices of alcoholic beverages.[6] The beer industry has claimed that it has "suffered serious bias" due to excise taxes, while other products, in particular wine, have been advantaged. It has called for a "more uniform tax regime within the alcohol industry".[7]

a Note that, in this document, the terms "excise duties" and "excise taxes" are used interchangeably.

National Treasury's review process will have to navigate the competing demands and perspectives of multiple stakeholders with vastly divergent interests and arrive at an outcome that is fair, rationally tailored to government objectives, and best serves the public good.

Guided by principles in the Constitutional Court judgment of *Prinsloo v Van der Linde and Another*,[8] we propose that this will best be achieved by government defining the role of excise taxes in providing a public good, with measures to ensure the coherence and integrity of the legislative and policy framework for that vision.

We suggest a formulation of government's vision of the public good derived from the 2024 NT discussion document, and discuss why this vision can legitimately be regarded as defensible. We then consider various anomalies in the current excise tax framework which suggest incoherence with that vision. Finally, we make recommendations for moving forward towards greater coherence and integrity of the excise tax framework with government's vision.

As context for this discussion, we begin with a brief descriptive overview of South Africa's legal and policy framework for excise taxes on alcoholic beverages.

An Overview of the Legal and Policy Framework

Excise taxes on alcohol are currently governed by the Customs and Excise Act, No. 91 of 1964 (the Act). Section 47(1) of the Act requires duties to be paid in respect of all excisable goods (including alcoholic beverages) in accordance with the provisions of Schedule 1 of that Act. Part 1 of that Schedule 1 deals with custom duties and Part 2 deals with excise taxes.

These Parts contain descriptions of dutiable goods, in the form of headings and explanatory notes. These descriptions are based on the Harmonised System (HS) for the classification of goods established by the Harmonised System Convention (HSC) to which South Africa is a signatory. The HSC falls under the purview of the World Customs Organisation.

In Part 2 of Schedule 1, applicable excise taxes are attached to every tariff item. While State parties to the HSC have limited powers to modify the HS tariff structure and descriptions, rates of applicable taxes are left to each State.[9]

In terms of section 47(9)(a)(iv) of the Act, every manufacturer or importer of an alcoholic beverage must apply to the South African Revenue Services (SARS) Commissioner for a tariff determination of that beverage. To determine which excise taxes are applicable to a particular product, the SARS Commissioner is empowered, in terms of section 47(9)(a)(a) of the Act, to determine the classification of a dutiable product for the purpose of imposing the appropriate excise duty on that product.

While the tariff structure remains largely unchanged from year to year due to its basis in the HS, in South Africa the quantum of the applicable excise taxes is adjusted annually. Determination of annual adjustments to excise taxes on alcohol are guided by policy guidelines, first implemented in 2004.

In terms of these guidelines, the total consumption tax burdens (excise taxes plus VAT) are based on a percentage of the weighted average retail selling price for wine, beer and spirits, respectively (so-called "tax incidence).[4]

This system was adopted as a policy solution to allow for periodic adjustments based on inflation, while reducing annual competing pressure from public health and industry lobby groups in relation to the quantum of adjustments.[10]

In its 2014 Tax Review, National Treasury indicated that the tax regime has been acknowledged as a transparent basis for determining the level of excise taxes on alcoholic beverages, has provided industry with a clear basis for planning, and has been successful in discouraging undue lobbying by the various stakeholders.[2]

In principle, the tax incidence should be higher for products with higher absolute alcohol content.[10] However, wine produced by South Africa's wine industry enjoys a special dispensation due to its perceived economic importance and tourism potential, a practice which is common globally.[4] Since 2015, the excise duty component of the tax incidence for alcoholic beverages has been 11% for wine, 23% for beer, and 36% for spirits.

Although the Minister makes the final decision on excise tax rates in the annual budget announcement, there is a policy guideline for excise tax in place to increase excise rates by the inflation rate or targeted incidence, whichever is higher, on an annual basis.[6] This is intended to ensure that alcoholic beverages do not become more affordable over time with resultant increases in consumption, as this would undermine public health policy objectives.[6]

Traditional African beer and beer powder taxes are not determined by tax incidence. Excise taxes on these products are negligible, at less than 8 cents per litre, and have not been increased at all even in nominal terms since 2001.[11]

Beer, ciders and spirits are taxed based on alcohol content per litre of absolute alcohol, wine and Traditional African beer are taxed on a volumetric basis per litre of beverage, irrespective of alcohol content and Traditional African beer powder and other beer powders are taxed per kilogram of the powder.[12]

In practice, changes to the excise taxes on alcohol in Part 2 of Schedule 1 of the Act are announced by the Minister of Finance during the annual Budget Speech in Parliament, usually in February of each year. The annual increases in excise duty rates currently take effect as soon as the Minister of Finance tables the Budget documentation containing the tax proposals in Parliament.[13]

Parliament then has the opportunity to consider amendments to Schedule 1 of the Act in the form of a Rates and Monetary Amendment Bill, which gets tabled before Parliament once the Minister of Finance has delivered the Budget Speech. Parliament effectively has a period of 12 months (before the next Budget Speech) in which to pass this legislation as a form of retrospective ratification of the changes made by the Minister.

The Case for Rationality

In 1994, jurist Etienne Mureinik explained the new Constitutional order as a

> *"bridge away from a culture of authority" to a "culture of justification, a culture in which every exercise of power is expected to be justified; in which the leadership by government rests on the cogency of the case offered in defence of its decisions, not the fear inspired by the force at its command."*[15]

In the Constitutional Court decision of *Prinsloo v Van der Linde and Another* (the Prinsloo judgment),[8] the court cited this formulation with approval when explaining what is expected of the State which differentiates regulation so as to manage impact on different people in different circumstances.

The Court states the following at par 24 and 25 of the judgment:

> *"It must be accepted that, in order to govern a modern country efficiently and to harmonise the interests of all its people for the common good, it is essential to regulate the affairs of its inhabitants extensively. It is impossible to do so without differentiation and without classifications which treat people differently and which impact on people differently. It is unnecessary to give examples which abound in everyday life in all democracies based on equality and freedom. Differentiation which falls into this category very rarely constitutes unfair discrimination in respect of persons subject to such regulation, without the addition of a further element. What this further element is will be considered later.*
>
> *It is convenient, for descriptive purposes, to refer to the differentiation presently under discussion as 'mere differentiation'. In regard to mere differentiation the constitutional state is expected to act in a rational manner. It should not regulate in an arbitrary manner or manifest 'naked preferences' that serve no legitimate governmental purpose, for that would be inconsistent with the rule of law and the fundamental premises of the constitutional state. The purpose of this aspect of equality is, therefore, to ensure that the state is bound to function in a rational manner.* ***This has been said to promote the need for governmental action to relate to a defensible vision of the public good, as well as to enhance the coherence and integrity of legislation.*** *In Mureinik's celebrated formulation, the new constitutional order constitutes 'a bridge away from a culture of authority . . . to a culture of justification'." (emphasis added)*

This legal reasoning has clear application to government regulation insofar as it pertains to excise tax frameworks, which necessarily involve differentiating dutiable payments between product categories to allow excise taxes to be a targeted instrument to address government's fiscal, social or economic policy objectives.

In this context, the Court's approach requires the State to act in a rational manner, which in turn requires the articulation of a defensible vision of the public good, together with coherence and integrity of legislation in relation to that vision.

The breakdown of rationality and the lack of coherence and integrity which would provide a defensible vision of the public good in the legislation governing South Africa's excise tax system has created unfairness, or at least perceptions of unfairness, which undermines the legitimacy of the system in the eyes of industry, consumers and the public at large.

The case for rationality and equality in the excise tax system, and the perception of unfairness when it is deemed not to exist, is powerfully illustrated in an article written by Fatsani Banda, South African Breweries' (SAB's) Senior Excise Tax and Public Policy Manager, in 2023.

An extract of the article, published on SAB's website,[16] is provided in the textbox alongside.

In her article, Ms Banda applies the principles of rationality with relation to the harm-reduction objectives of the excise tax system to support an argument for the taxation of all alcoholic beverages on an alcohol-content based system. The same principles can equally be applied to other anomalies in the excise tax system which are discussed further below.

ALL ANIMALS ARE EQUAL, BUT SOME ARE MORE EQUAL THAN OTHERS IN THE EXCISE SYSTEM[16]

The principle that taxes should be equitable in nature is at the heart of every well-established tax system. It forms the basis of tax policy and plays a key role in any design or re-design of tax systems across the world. It is based on the understanding that the type of tax imposed should present an equal burden on all taxpayers in the same economic condition. A tax should therefore not favour one group over another, so that one of them receives a tax benefit at the expense of the other. To paraphrase George Orwell's novel, Animal Farm, it should remove any risk of a situation developing where some taxpayers find themselves to be "more equal than others". In other words, the principled position would be to prevent, any signs of preferential or unequitable treatment that may find its way into the development of any given tax system.

But when it comes to the excise system as it pertains to the alcohol industry, it would seem that a different set of rules is applied to ensure that some are most decidedly "more equal than others". We have highlighted the distortionary nature of the excise tax framework as it currently exists. Our main argument has been that at its heart, an excise tax system should be based on the alcohol strength of the product. What should be strived for therefore, is a situation where all products are viewed through the same lens by the tax authority, with only their alcohol content being a differentiating factor . . . . This is not only to uphold this long-standing, egalitarian principle of tax, but also because there is something fundamentally rational about placing all alcohol beverages on an alcohol content-based excise system.

For one, given that ethanol consumption is the primary driver of the health, economic, and social consequences of excessive drinking, taxing alcoholic beverages based on ethanol content may be more effective in promoting health than taxing based on volume. ...

There is something fundamentally rational about placing all alcohol beverages on an alcohol content-based excise system. This all begs the question then, does preferential treatment belong in the excise policy on alcohol beverages? The answer is no . . . . Rather, it is essential and fair that the long-standing tax principle of equity should prevail. All indications are that the correct path is to tax all alcohol beverages on an alcohol-

Defensible Vision of the Public Good

It is evident from the *Prinsloo* judgment that the basis for rationality of legislation is the coherence and integrity of legislation with a defensible vision of the public good.

To ensure the rationality of South Africa's excise tax system with reference to taxes on alcoholic beverages, the starting point must therefore be to clearly understand what the government defines as their vision for public good in relation to excise taxes on alcoholic beverages, and to be satisfied that such vision is indeed defensible.

Over the years, government's emphasis in their rationale for imposing excise taxes on alcohol has shifted away from revenue raising objectives towards addressing the economic and social costs of alcohol consumption. National Treasury describes this shift in the 2024 NT discussion document as follows:

> *"Alcohol taxes have been applied on alcoholic products for many years, globally. Even though the introduction of excise taxes might have been mainly for revenue raising purposes, in the latter years the economic rationale for additional taxes was to internalise the socio-economic costs (i.e. negative externalities) associated with the consumption of these products, which are not adequately incorporated in product pricing. The excise duties structure therefore aims to internalise the external costs of over-consumption of alcohol, by adjusting alcoholic beverage prices, and to re-assign these costs to the relevant alcohol producers and consumers."*[4]

For purposes of this discussion, we will accept government's current vision of the public good in relation to excise taxes on alcohol as succinctly articulated on page 24 of the 2024 NT discussion document:

> **"The implementation of excise duties on alcoholic beverages seeks to internalise the socio-economic costs of alcohol consumption and reduce general alcohol consumption levels while simultaneously raising revenue."**[4]

This vision incorporates three government objectives:

- internalising the socio-economic costs of alcohol consumption;
- reducing general alcohol consumption levels; and
- raising revenue.

This vision is eminently defensible for the following reasons:

South Africa has a particularly poor record of harmful alcohol consumption patterns, ranking among the countries with the highest levels of alcohol consumption in the world.[5] The harms caused by high levels of alcohol consumption are widely documented. Alcohol consumption is linked to over 200 types of injuries and diseases, with about 6% of total deaths globally attributable to alcohol consumption.[17]

These harms adversely affect the enjoyment of people's fundamental rights enshrined in the Constitution of the Republic of South Africa, 1996 (the Constitution), including:

- the right to dignity – s. 10;
- the right to freedom and security of the person – s. 12(1)(c);
- the right to an environment that is not harmful to their health and wellbeing – s 24(a); and
- the right of children to be protected from maltreatment, neglect, abuse and degradation – s 28(1)(d).

In terms of section 7(2) of the Constitution, the State is required to respect, promote and fulfil the rights enshrined in the Bill of Rights. The State is therefore constitutionally obliged to implement measures which will effectively address harmful alcohol consumption levels and practices in South Africa. Increasing excise taxes on alcohol is a particularly effective way of doing so. In fact, the World Health Organisation (WHO) has determined that increasing excise taxes on alcoholic beverages is one of three "best buys" to reduce the harms of alcohol, in terms of both effectiveness and cost-effectiveness.[18]

The objective of internalising the costs of alcohol is eminently reasonable, given the significant costs to the economy arising from alcohol-related harms. In 2009, the combined tangible and intangible costs of alcohol harm to the economy were estimated at between 10 and 12% of the Gross Domestic Product (GDP).[13]

While the quantification of the socio-economic cost of alcohol harms will inevitably be an area of contestation, there is no doubt that they are substantial. It is therefore rational and reasonable to pursue a policy objective of adjusting alcoholic beverage prices to internalise the external costs of alcohol by re-assigning them to alcohol producers and consumers. These external costs include, for example, the costs of increased health care, lost productivity through absenteeism, domestic violence, and road accidents.[2]

The vision as articulated is aligned to international best practice and policy recommendations. Strengthening legislation to assist with the prevention and treatment of substance abuse, including the harmful use of alcohol forms part of target 3.5 of the third Sustainable Development Goal of the United Nations (ensure healthy lives and promote well-being for all at all ages).[19]

Furthermore, an increase of taxes on alcoholic beverages is a consistent recommendation of the WHO to address the harms of alcohol, included in:

- the WHO Global Strategy to Reduce the Harmful Use of Alcohol, 2010;[20]
- the WHO Global Action Plan for the Prevention and Control of Non-Communicable Diseases, 2013–2030;[21]
- the WHO Global Action Plan on Alcohol Control, 2022-2030;[22]
- the WHO "SAFER" initiative, 2018 – in which the "R" stands for "Raise prices on alcohol through excise taxes and pricing policies".[23.]
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As a member State of the WHO, South Africa is committed to implementing WHO guidelines and recommendations.[4]

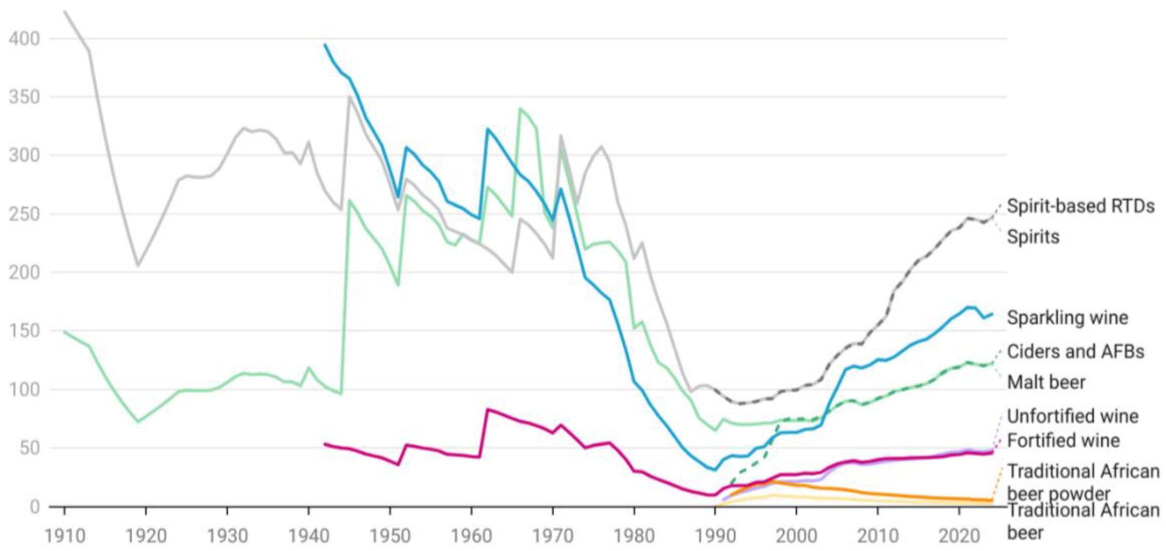
Areas of Incoherence

The defensibility of government's current vision for the public good in relation to excise taxes on alcohol, as articulated in the preceding section, is beyond question. In this section, we consider various anomalies in South Africa's excise tax system for alcohol which suggest a lack of integrity and coherence of the legislative framework with that vision. This section draws extensively on the excellent 2024 review of alcohol excise taxes in South Africa done by UCT's Research Unit on the Economics of Excisable Products (REEP).[3]

Overall Tax Levels

Although South Africa has consistently increased excise taxes on alcoholic beverages at rates above inflation since 1994, in real terms excise taxes today remain significantly below alcohol excise taxes in the 1960s (see Figure 1 below). The peak value of excise taxes on beer in the late 1960s was, in real terms, about 2.5 times the current value.[3]

South African excise taxes for wine, beer and spirits are also below the average duties for all these categories when compared to the European Union and the United Kingdom.[4]



The assumptions on the percentages of pure alcohol for drinks taxed by volume are as follows: Traditional African beer 3%, Traditional African beer powder 6%, unfortified wine 10.5%, fortified wine 18.5%, and sparkling wine 9.75%.

Figure 1: Excise rates based on pure alcohol content: 1910/11-2024/25 (Rands per litre of pure alcohol, 2022/23 prices)
Source: Vellios, N., Zondi, M. and van Walbeek, C. October 2024. A Review of Alcohol Excise Taxation in South Africa. UCT Research Unit on the Economics of Excisable Products (REEP)

The literature suggests that current excise tax levels are inadequate to realise government's vision for reducing alcohol consumption levels and internalizing the socio-economic costs of alcohol.

The negative externalities associated with alcohol, in terms of health and welfare costs, policing and justice system costs, lost productivity and so on, are substantial They were estimated at 10-12% of GDP in 2009[24], and there are indications that excise revenue generated from alcohol may not fully reflect the true cost of high alcohol consumption to the economy.[2,4]

Internationally, South Africa has a very high level of high-risk alcohol consumption.

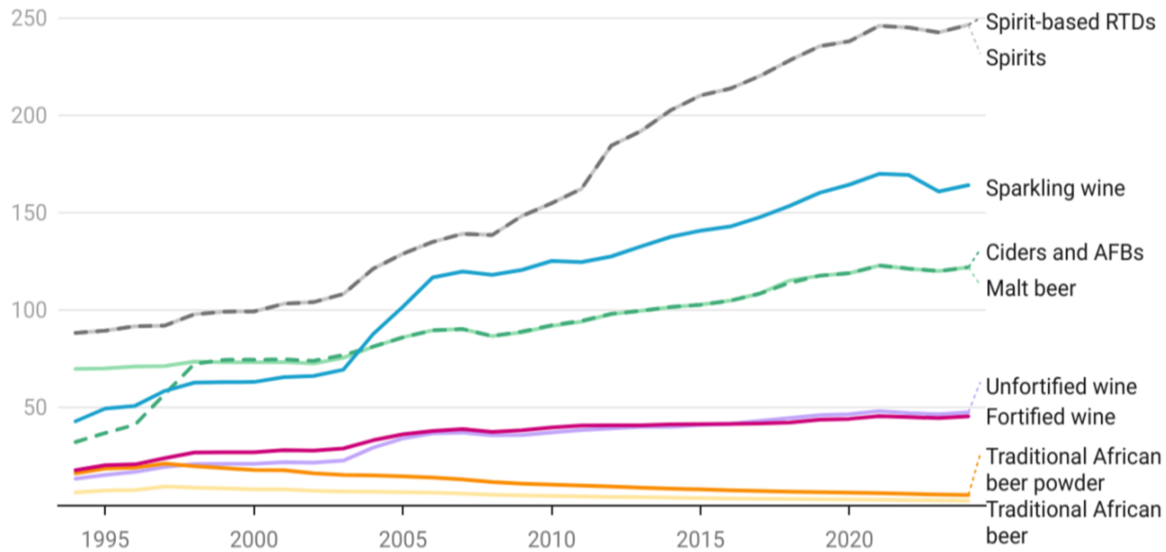
The 2018 WHO Global Status Report on Alcohol and Health estimates that the annual average per capita consumption of alcohol by South Africans 15 years and older is 9.3 litres of pure alcohol, compared to 6.4 litres globally and 6.3 litres in Africa. The South Africans who consume alcohol have an average annual alcohol consumption estimated at 29.9 litres per capita, compared to 15.1 litres globally and 18.4 litres in Africa.[25]

The fact that current excise tax levels for alcoholic beverages remain substantially below 1960s levels, while South Africa still has among the riskiest alcohol consumption levels worldwide, is indicative of the scope and need for significant increases in excise taxes on alcohol.

Increasing overall excise tax levels will also further government objectives of raising revenue. South Africa's experience of consistently increasing excise tax rates on alcohol since the mid-1990s has shown that increases in excise tax rates result in increases in tax revenue, contrary to industry arguments sometimes advanced that excise tax increases result in declines in government revenue.[5]

Relative Tax Levels

As is evident in Figure 2 below, there are significant and widening differences in excise rates based on pure alcohol content between the categories of alcoholic beverages.



The assumptions on the percentages of pure alcohol for drinks taxed by volume are as follows: Traditional African beer 3%, Traditional African beer powder 6%, unfortified wine 10.5%, fortified wine 18.5%, and sparkling wine 9.75%.

Figure 2: Excise taxes based on pure alcohol content: 1994/95-2024/25 (Rands per litre pure alcohol, 2022/23 prices)
Source: Vellios, N., Zondi, M. and van Walbeek, C. October 2024. A Review of Alcohol Excise Taxation in South Africa. UCT Research Unit on the Economics of Excisable Products (REEP)

Unfortified wine and malt beer are currently taxed at 19.3% and 49.5%, respectively, of the rate applicable to spirits in terms of litres of pure alcohol. The excise tax based on pure alcohol for Traditional African beer powder is only 4% of the excise tax for beer, and 1% of the excise tax for spirits.[3] On this measure, there is currently significant incoherence between applicable excise tax levels and government's vision.

There could be an argument that a coherent approach would entail levying higher taxes on beverages with higher consumption. There is however no correlation between excise tax levels and consumption levels in South Africa. In 2019, beer dominated domestic consumption by a large margin, at 74.5% of total consumption by volume, compared to ready-to-drink (RTD) beverages at 13.1%, wine at 9.3% and spirits at 3.1%.

Based on alcohol content, beer represented 55% of the market, spirits 18.9%, wine 15.8% and RTD 9.7%.[4]

A further argument could be made that excise tax levels could correlate with price elasticities of demand, with higher tax levels applied to beverages with more inelastic prices to more effectively reduce consumption. Yet, there is also no such correlation in current excise tax levels.

Estimates of price elasticity in South Africa suggest that malt beer is the most price inelastic (the least price sensitive) of alcoholic beverages, yet this is not reflected in relevant excise tax levels, with taxes on malt beer in 2024/5 at 49.5% of the spirit rate in terms of litres of pure alcohol.[3]

Volumetric Versus Alcohol-Content Based Taxation

As discussed above taxes on beer, ciders and spirits are based on alcohol content. Taxes on wine and Traditional African beer are based on volume, and Traditional African beer powder and other beer powders are taxed by weight.

The fact that wine is taxed by beverage volume while beer is taxed by alcohol content has been seen as unfair by industry players, particularly the beer industry, which has also relied on public health arguments to make its point. (See the quote from the article by SAB's Senior Excise Tax and Public Policy Manager above).

The beer industry's argument for all beverage types to be taxed on an alcohol content basis is aligned with recommendations for best practice from a public health perspective. In a 2020 update to recommended policy options on alcohol pricing, the WHO Regional Office for Europe said:

> *"As alcohol itself is the vector of harm, the most effective approach to taxation with a view to improving public health and reducing this harm is to tax the volume of alcohol directly through a fully specific system of taxation."*[26]

Ready-To-Drink Beverages

RTDs are pre-mixed drinks ready for consumption, with an alcohol base combined with mixers, fruit juices or other flavourings.[5] The alcohol base may primarily be a product of fermentation or distillation. The alcohol-by-volume (ABV) of RTDs typically ranges from 3% to 7%.[5]

The excise tax rates applicable to RTDs differ significantly based on technical considerations, irrespective of whether they have similar or identical concentrations of alcohol.

RTDs with a distilled alcohol base, such as spirit coolers, attract the higher rates applicable to spirits[2], which is currently R274.39 per litre of absolute alcohol. The rates applicable to RTDs with a fermented alcohol base vary between R109.76 per litre of absolute alcohol and R274.39 per litre depending under on which tariff code they fall.[12]

For example:

- The excise duty for mixtures of fermented fruit or mead beverages and non-alcoholic beverages, unfortified, with an alcoholic strength of at least 2.5% by volume but not exceeding 15% by volume, tariff heading (TH) 22.06.85, is the same rate currently applicable to malt beer, namely R135.89 per litre of absolute alcohol.
- Mixtures of fermented fruit or mead beverages and non-alcoholic beverages, fortified, with an alcoholic strength of at least 15% by volume but not exceeding 23% by volume (TH 22.06.87) attract a lower excise duty rate of R109.76 per litre , despite the fact that these beverages have a higher alcohol content than beverages classified under TH 22.06.85.
- "Other" RTDs with a fermented base may fall under TH 2206.00.90 – which attracts the higher rate of R274.39 per litre of absolute alcohol also applicable to spirits.
- In the 2018 case of *Commissioner for SARS v South African Breweries*[27] (the *SAB* matter), the decision on whether to classify certain flavoured alcoholic beverages under TH 22.06.85, attracting a lower rate of tax, or TH2206.00.90, attracting a higher rate of tax, turned on a definitional question of whether the added non-alcoholic flavourants constituted a "non-alcoholic beverage" or mere "ingredients".

These technical distinctions and variations in applicable excise tariffs create a framework for excise taxes on RTDs which at best seem anomalous and at worst arbitrary, at least from the perspective of coherence with government's stated vision of the public good with reference to excise taxes as articulated above. This is of particular concern given that RTDs are particularly popular among younger people, in particular young women,[5,28] who are specifically targeted by the marketing of these beverages.[29]

Liqueurs and Cordials

Liqueurs and cordials fall under TH 22.08.70. Depending on the particular tariff subheading under which they fall, they either attract an excise tax of R109.76 per litre of absolute alcohol, lower than the rate applicable to malt beer, or an excise tax rate of R274.39 per litre of absolute alcohol , the rate applicable to spirits.[12]

If liqueurs and cordials with an alcoholic strength of between 15% and 23% (in terms of TH 2208.70.21, 2208.70.91, 2208.90.21 and 2208.90.91) meet certain technical criteria set out in Additional Note 4 of Schedule 1, Part 1, Section IV under the Act,[b] the lower rate of R109.76 per litre of absolute alcohol applies.

The higher rate of R274.39 per litre of absolute alcohol applies to all other alcoholic liqueurs and cordials in terms of TH 2208.70.22, 2208.70.92, 2208.80.99 and 2208.90.92.

Given the technicalities of Additional Note 4, whether a beverage falls under the tariff headings attracting the lower rate or the tariff headings attracting the higher rate may require very fine distinctions to be drawn, as is illustrated by the November 2024 Supreme Court of Appeal (SCA) judgment in the matter of *Commissioner for SARS v Diageo (Pty) Ltd* (the *Diageo* matter).[30]

In the *Diageo* matter, the SCA's decision on the correct tariff classification of the product Cape Velvet Original turned on the question of whether a vanilla flavourant, which contributed 0.00004% to the alcohol by volume (ABV) of the final product, was properly regarded as an alcoholic or a non-alcoholic ingredient.

The SCA found that the alcoholic content of the vanilla flavourant constituted an alcoholic ingredient, effectively rendering Cape Velvet Original subject to much higher tariffs (in 2024/25 terms, R274.39 per litre of absolute alcohol as opposed to the alternative of R109.76 per litre of absolute alcohol). The SCA decision overturned a previous decision of the full bench of the Gauteng High Court, which had found that vanilla could not properly be regarded as an alcoholic ingredient with the result that the lower excise tariff applied.

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b Additional note 4 reads: "Tariff subheadings 2208.70.21, 2208.70.91, 2208.90.21 and 2208.90.91, shall only apply to liqueurs, cordials and other spirituous beverages containing the following:
(i) distilled spirits; (ii) the final product of fermentation of fruit stripped of its character to the extent that it is not classifiable within tariff headings 22.04, 22.05 or 22.06 and of which the volume exceeds the volume of the distilled spirits; and (iii) other non-alcoholic ingredients; or
(wine spirits to which other non-alcoholic ingredients have been added.

Pot-Stilled and Vintage Brandy

In 2016, a differential excise tax rate was introduced for pot-stilled and vintage brandy, which is 10% lower than the general rate for spirits.[4] This followed lobbying by brandy producers who argued that they were subject to more stringent regulatory requirements which put them at a competitive disadvantage relative to other spirits.[3] The current excise tax rates applicable to pot-stilled and vintage brandy is R246.95 per litre of absolute alcohol compared to the general spirit rate of R274.39 per litre of absolute alcohol.[12]

Alcohol Powder Products

Reference has already been made to the fact that Traditional African beer and Traditional African beer powder enjoy virtually negligible excise tax rates which have not been raised for the last couple of decades. This is already an anomaly when it comes to government's objectives of reduced alcohol consumption, internalizing the costs of alcohol-related harms and revenue generation.

In 2022, a new tax on non-traditional beer powders, which are preparations for making alcoholic beverages, was introduced. These preparations are defined as "preparations put up for retail sale as beer powder or ginger beer powder, which, when mixed with water and left to ferment will produce an alcoholic beverage with an alcoholic strength by volume exceeding 0,5 per cent vol."[12]

These beer powders are taxed at the same minimal rate as Traditional African beer powder (currently 34.7c/kg).

This has been flagged as a potential concern given the growth in the instant beer market in South Africa, its ready availability on supermarket shelves, and marketing of the product as a health food.[3] The example has been given of Supa Ginga, a ginger beer and pineapple juice brand which under proper conditions can be used to make an alcoholic beer with an alcohol content of 5-7% within 24 hours. The excise tax per 330ml standard drink of Supa Ginga is currently 1.1 cents, compared to R2.47 for 330ml of Carling Black Label malt beer.[3]

National Treasury Proposals

Based on its own situational analysis in the 2024 NT discussion document, National Treasury has concluded that the current excise tax framework may no longer be fit-for-purpose. Key proposals in the 2024 NT discussion document are outlined below.

Government proposes a significant shift away from the existing system whereby tax levels are based on different targets of "tax incidence" for wine, beer and spirits. A new banded system is proposed for excise taxes on both wine and malt beer, and other fermented beverages, where tiers with lower alcohol content are taxed at a lower rate than those with higher alcohol content. Current excise tax rates for wine and beer,[c] respectively, are proposed as the baseline for the lowest tier.

Wines with an alcohol content of 0.5-4.5% will attract the current tax rate, while those with 4.5-9% will attract 1.4 times the current rate, and those with 9-16.5% will be pegged at 1.8 times the current rate. In terms of this proposal, the taxes within each tier will still be applied on a volumetric basis (i.e. per litre of total beverage volume). An alternative proposal is to shift taxation on wine to taxation based on absolute alcohol content – which is the method currently applied to both wine and spirits.

Beers and other fermented beverages with an alcohol content of 0.5% to 2.5% will incur the current excise duty rate per litre of absolute alcohol, while those with alcohol content of 2.5% to 9% will attract 1.2 times the current rate and those with alcohol content of 9% to 15% will incur 1.4 times the current rate.

No changes are proposed in relation to the tax structure for spirits.

Government is proposing that future adjustments are made within the bounds of inflation, at a minimum, with an upper bound of either 10% or alternatively no more than 4 points above inflation.

The other major policy development in the document is the expression of support, in principle, for the introduction of a minimum unit price (MUP). We are excluding the MUP proposals from this document, as they form the subject of **Policy Brief 11**.

Conclusions and Recommendations

National Treasury's current review provides the opportunity to re-evaluate South Africa's excise tax system for alcoholic beverages from a perspective of rationality. Applying the principles set out in the *Prinsloo* judgment, rationality can be achieved through enhancing the coherence and integrity of the excise tax framework with a defensible vision for the public good. A principled approach to reviewing the excise

c Note that although the baseline rate for the targeted bands is stated in the 2024 NT discussion document as the "current rate", the figures provided for the baseline rates (R4.96 per litre for wine and R121.41/li aa) are those which were applicable in 2022/23 . . . . The corresponding currently applicable rates (2024/25) are R5.20 per litre for wine and R127.40 for malt beer . . . . For purposes of this discussion, it is assumed that Treasury intends that the baseline amount will be whichever rate is applicable at the time that the tiered structure is introduced.

tax framework will enable government to chart a defensible way forward in the face of resistance from a myriad vested interests and competing agendas.

The starting point for this principled approach is government's vision for the public good in relation to excise taxes on alcohol. As an outcome of the current review process, we propose that government clearly and explicitly articulates this vision. We propose that the following statement in the 2024 NT discussion document serves this purpose:

> **"The implementation of excise duties on alcoholic beverages seeks to internalise the socio-economic costs of alcohol consumption and reduce general alcohol consumption levels while simultaneously raising revenue."**

The tax structure most coherently aligned to government's vision, as articulated above, would be to differentiate applicable taxes based on ethanol content, rather than beverage type.

This is consistent with government objectives of internalizing the costs of alcohol consumption, and reducing harmful consumption levels, because ethanol is the harm-inducing chemical in alcohol irrespective of beverage type.[5]

This would allow for the introduction of a single tax structure for all alcoholic beverage types, which has been shown to lessen administrative complexity, reduce tax avoidance and increase tax revenue.[5] This will also avoid the kinds of anomalies resulting from the complex definitional issues which have characterised South Africa's excise tax framework for alcoholic beverages, as discussed above.

Moving towards a single tax structure for all beverage types will necessarily entail phasing out the favourable tax dispensation given to the wine industry. While this will undoubtedly be a politically fraught decision, it is required to achieve consistency and coherence with government's vision as articulated above and is justified given the need to prioritise a reduction in the harmful consumption of alcohol in South Africa.

Such a move is also consistent with WHO recommendations that countries reduce or eliminate support to the alcohol industry.[5] The likely impact on the wine industry is mitigated by the fact that local excise taxes do not impact on the export market,[3] and can be further reduced by phasing in increases to achieve parity between beverage types over a reasonable period.

In general, the tax proposals in the 2024 NT discussion document are to be welcomed as a move to ensure greater coherence with government's vision of excise taxes on alcohol. In particular, the move away from tax incidence as a basis for determination of year-on-year increases provides an opportunity to create a tax system which is more tailored to addressing alcohol-related harms.

The proposed introduction of tiered levels of taxes for wine and beer, based on alcohol content, is a useful starting point for encouraging lower ethanol consumption. However, for as long as disparities remain between tax levels of different beverage types despite similar ethanol content, incoherence with government's vision and concerns of unfairness will remain.

It is therefore proposed that government should explicitly frame the current tax proposals as the first phase of a transitional process towards a single tax structure for all alcoholic beverages (with the possible exception of Traditional African beer).

As part of this transitional process, to facilitate the move towards a single tax structure for all beverage types we present the following specific recommendations and additions to the proposals as outlined in the 2024 NT discussion document.

Time Frame

First, it would be useful to determine a time frame within which parity of tax levels based on alcohol content across beverage categories will be achieved. This time frame and objective should guide differential excise tax increases during the transition period, subject to the principle that all beverage types will be subject to a minimum annual inflationary increase during this period.

Tax by Content

Secondly, of the two options presented of taxing wines within each tier on a volumetric basis, or by alcohol content, it is recommended that the latter option should be adopted.

As discussed, taxation by alcohol content represents best practice from a public health perspective and the shift will also facilitate easier alignment of tax structures between wine and other beverage categories. Given that the proposed tier definitions are based on bands of alcohol content, verification of alcohol content of wines will in any event be required.

Evaluate Impact

Thirdly, the transition period should explicitly be used to evaluate the supply and demand-side impacts of the introduction of tiered tax levels for wine and beer respectively, with a view to informing a decision on whether to work towards a uniform tax rate, or tiered taxes, when a single tax structure for all alcoholic beverages is ultimately adopted.

Reform Anomalies

Fourthly, specific anomalies which have developed in the excise tax framework over time, and which introduce incoherencies with government's vision should ideally be addressed as part of the first phase of the transition process. This should include review of excise tax levels among RTDs, brandies, and liqueurs to ensure that they are consistent with harm reduction objectives rather than seemingly arbitrary definitional distinctions which detract from these objectives.

Traditional Beer Exception

Fifthly, it is acknowledged that an exception from the move toward a single tax structure may be needed for excise taxes on Traditional African beer. Such an exception may be warranted in light of the vastness of the disparity between tax rates historically and currently applied to these versus other beverages, their cultural significance, and concerns previously raised by National Treasury on risks of negative distributional effect on the poor and the risk of increased home brewing in response to tax increases, with potentially hazardous health impacts.[2]

Concerns about impact of increased taxes on Traditional African beer would benefit from further research. However, in the meantime, it seems reasonable to propose that inflationary increases should be applied year-on-year to their excise tax levels to reverse the practice over the last couple of decades of no nominal increases being applied so that these beverages do not become increasingly unaffordable.

No Exception for Beer Powders.

Sixthly, there seems no reason to apply a similar exception to other instant beers which have recently become subject to excise taxes. Encouraging growth in this market appears to encourage home brewing with attendant risks, which seems unnecessary given that these beverages do not hold the same cultural significance as Traditional African beer.

From an alcohol harms perspective, there seems no reason why these beverages should be subject to lower taxes than other beverages with similar ethanol content. It is accordingly recommended that these beverages should immediately be taxed based on their alcohol content once duly constituted, at a tax rate equivalent to malt beers.

Review Harmonisation

Lastly, it is proposed that a transition to a more uniform tax system across beverage categories is accompanied by a review of the desirability of continuing to use the Harmonised System for classification of alcoholic beverages for purposes of excise taxes.

The complexity of the categorization of products in terms of this system gives rise to interpretational challenges and disputes of classification, as exemplified by the legal cases discussed above, and paves the way for tax avoidance based on definitional issues.

Complexity in tariff definitions also reduces public understanding and scrutiny of tax determinations, reducing the potential for transparency in regulatory processes and industry conduct.

A more uniform tax structure for alcoholic beverages should pave the way replacing the HS, in as far as it applies to excise taxes, with a far simpler classification framework.

Simplify

Complexity adds administrative cost, creates costly disputes and litigation, generates tax avoidance opportunities, and diminishes public and industry confidence in the fairness of the system. A simple tax structure for all alcoholic beverage types simplifies administration, reduces tax avoidance, and increases tax revenue.[5] It is therefore not surprising that simplification of the tax system was one of the two key motivators for the 2023 overhaul of the UK's excise tax system for alcoholic beverages – the other being to create a system more closely aligned to public health objectives.[31]

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Stephen Harrison Attorney