



Guidebook

Taxing Sugar in Food and Beverage Products

by
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Executive Summary

Governments worldwide are facing increased demands on public finances with the resulting need to secure additional sources of revenue. This is particularly the case in sub-Saharan Africa as countries seek to move away from aid dependency, whilst funding major social and infrastructure initiatives. At the same time, there is a growing awareness of the way in which obesity contributes to development of non-communicable diseases (NCDs). The World Health Organisation (WHO) Global Action Plan encourages the implementation of taxes and subsidies that incentivize behaviours associated with improved health outcomes, improve the affordability and encourage consumption of healthier food products, and discourage the consumption of less healthy options.¹

However, the WHO's 2018 publication of "Best Buys"², formerly known as Appendix 3 to the Global Action Plan for the prevention and control of NCDs, excludes the taxation of sugar sweetened beverages (SSBs) from the "Best Buys" in tackling unhealthy diets, though it is still there as a lower ranking effective option. At the United Nations High Level meeting on NCDs in September 2018, Member States considered and rejected an explicit endorsement of taxation on SSBs or on any other food or beverage. In December 2018 the United Nations adopted the Global Health and Foreign Policy resolution that again rejected attempts to include SSB taxation as an effective approach to NCDs. This resolution was approved by the WHO Executive Board in late January 2019.

There is no "one size fits all" recipe for a sugar tax but the most common approach to date has been to tax sugar sweetened beverages (SSBs) using an excise tax, as part of a strategic plan to reduce obesity in society. Because the sugar tax has been introduced so recently in several countries its long term impact on health based on actual evidence has yet to be established. Most of the studies that report health improvements are modelling studies that have assumed a meaningful change in sugar intake with no compensatory substitution, rather than being based on observations of real behaviour. The exception is a WHO study in 2015 based on actual experience with sugar taxes particularly in Hungary, and this identified an impact on health outcomes.³

If the priority is to tackle the health issues then there are other ways of achieving reductions in sugar/unhealthy food consumption such as legislation or agreed codes of practice with industry to require food and drink products to contain less than a certain amount of added sugar. Governments may try to persuade industry with "codes of practice" and use taxation only on as a last resort. On the other hand, if revenue is needed to fund government initiatives, then a sugar tax based on the amount of sugar or added sugar in the product can be very useful and act very like a specific (or volumetric) tiered tax on alcoholic beverages.

There is an immense range of food and soft drinks that might be taxed under a sugar tax bearing on "added sugar." Many of the products likely to be taxed are considered everyday food and drink items such as confectionery, ice creams, sodas and processed foods. So far, many of the countries that have introduced a sugar tax have limited its application to sugar sweetened soft drinks and these are the products that this guidebook focuses on.

The key positive outcome from the sugar taxes so far is that a significant percentage of soft drinks manufacturers have reformulated products so that they are not subject to taxation and some are marketing new "sugar free" products. So, even if consumers do not switch products but remain with a reformulated lower sugar product, a health benefit will have been achieved indirectly. It may help to clarify the health objectives and the focus for a potential sugar tax if a thorough dietary study were to be undertaken to identify the key products that give rise to added sugars in a national diet. If the decision is taken to implement a sugar tax, governments are advised to ensure that the new tax minimises the adverse impacts on other

tax revenues (corporation tax, VAT, income tax), on employment directly in the trade sector affected, and indirectly in supporting trade sectors such as transportation, security, agriculture and retailing. The broader the base for a consumption tax, the more balanced the impact is likely to be and the more stable the ensuing revenue source. So, in considering the introduction of any narrow based excise tax, governments are advised to undertake careful economic modelling looking in particular at the demand elasticities for the products involved, to understand the potential consequences to employment, agriculture, poverty, crime, revenues from other taxes and inward investment. They should consult widely with stakeholders from both the public and private sectors.

Part 1: Context and Background

1.1. Why a "Sugar Tax"?

Excise taxes on sugar are not new. A few countries levy an excise tax on refined sugar (e.g., Uganda and Samoa) and many more have an excise tax on carbonated soft drinks ("sodas"). However, some countries (including South Africa and the UK) have opted for the taxation of sugar in soft drinks in an attempt to curtail the consumption of sugar from these products.

Medical evidence indicates that the consumption of too much sugar results in obesity as well as dental problems in both adults and children. Naturally occurring sugars in foods are vital to a healthy diet but "added sugars" (also termed "free sugars") are less welcome and contribute to these concerns. The WHO has suggested that the increasing intake of free sugars may reduce consumption of more nutritional foods containing adequate calories and lead to an unhealthy diet, weight gain and increased risk of non-communicable diseases (NCDs⁴). The WHO's Global Action Plan encourages the implementation of taxes and subsidies that incentivize behaviours associated with improved health outcomes, improve the affordability and encourage consumption of healthier food products, and discourage the consumption of less healthy options.⁵ More recently, however, the WHO's 2018 publication of "Best Buys⁶", formerly known as Appendix 3 to the Global Action Plan for the prevention and control of NCDs, excludes the taxation of sugar sweetened beverages for the "Best Buys" in tackling unhealthy diet, though it is still there as a lower ranking effective option. At the United Nations High Level meeting on NCDs on 27th September 2018, Member States considered and rejected an explicit endorsement of taxation as an effective approach to NCDs. The results of the UN High Level Meeting and the Global Health and Foreign Policy resolution were approved by the WHO Executive Board in late January 2019.

Developed economies have experienced both widespread advertising of high sugar content confectionery, other snacks and soft drinks and a reduction in consumption of home-cooked fresh food. High sugar content snacks and soft drinks have become the norm. These countries have also seen an increase in consumption of ready meals and prepared sauces with high sugar content. Governments elsewhere are also facing increased costs in the provision of basic health services. Where poverty and hunger exist, encouraging people to eat a balanced diet with healthy foods is particularly difficult.

Some governments are considering how best to persuade manufacturers to reduce free sugars in foods and non-alcoholic (soft) drinks, and to persuade people to consume food and beverages containing less added sugar. If the priority is to tackle the health issues then there are other ways of achieving reductions in sugar/unhealthy food consumption such as legislation or agreed codes of practice with industry to require food and drink products to contain less than a certain amount of added sugar. Governments may try to persuade industry with "codes of practice" and use taxation only on as a last resort. On the other hand, if revenue is needed to fund government initiatives, then a sugar tax based on the amount of sugar or added sugar in the product can be very useful and act very like a specific (or volumetric) tiered tax on alcoholic beverages.

Over recent years, taxation has been used to discourage consumption of products found to be harmful either to human health or to the environment, such as cigarettes and plastic bags. In some countries, the revenues acquired from certain excise taxes or levies have been earmarked specifically for spending on health or environmental programmes – for example, an alcohol levy in Botswana and a landfill tax in the UK. This is known as "hypothecation" and is not recommended by tax theorists because it limits the flexibility of governments in their use of revenues.

In many emerging economies, governments are searching for new sources of revenue in addition to

expanding their tax bases. These countries do not suffer from the obesity levels found in developed countries but they have increasing middle classes and increasing numbers of young people who are exposed to media portrayal of lifestyles in developed countries. Emerging economies may suffer also from already stretched revenue administrations with scarce skilled resources to implement new taxes successfully. Whilst it may be tempting for those countries to see new taxes being implemented in other countries as potential additional sources of revenue, it is essential that an overall economic and revenue impact assessment is carried out before taking decisions on the introduction of any new taxes. This is particularly so in considering a new excise tax, as excise taxes usually target a specifically selected type of product – for example, alcoholic drinks or fuel and their impact can be (and is often intended to be) discriminatory depending on decisions taken on scope, definitions of products, tax structure and rates of tax.

It will be important to ensure that decisions taken on any new tax minimise the adverse impacts on other tax revenues (corporation tax, VAT, income tax) and on employment directly in the trade sector affected and indirectly in supporting trade sectors such as agriculture, transportation, security and retailing. The broader the base for a consumption tax, the more balanced the impact is likely to be and the more stable the ensuing revenue source. So, in considering the introduction of a narrow based excise tax targeting high calorie products such as SSBs, governments are advised to undertake careful economic modelling looking in particular at the demand elasticities for the products involved, to understand the potential consequences to employment, agriculture, poverty, crime, revenues from other taxes and inward investment. They should consult widely with stakeholders from both the public and private sectors.

Decisions will be needed on the extent of any new tax. It may help to clarify the health objectives and the focus for a potential sugar tax if a thorough dietary study were to be undertaken to identify the key products that give rise to added sugars in the national diet. High levels of sugar are found in large numbers of products including soft drinks, confectionery, ice cream, prepared meals and many others. Health and equity arguments would favour wide tax coverage but issues of public acceptability and practicality (including limiting the number of businesses that will have to operate the tax) would tend to point to a narrow tax on, for example, soft drinks, and it is this that is the main product group that is focused on in this guidebook.

Excise taxes work most effectively as revenue raisers in circumstances where the taxed products are addictive in nature or for which there are few substitutes, such as tobacco products or road fuel products (inelastic), as the tax burden has relatively little impact on demand. For other non-addictive products or those for which there are many substitutes (elastic), it may be risky for governments to place too much reliance on revenue from a new excise tax intended to change consumer behaviour. The desired health outcome would mean less consumption of the product concerned and, ultimately, declining revenue from the new tax and other related taxes such as VAT.

1.2. International Position

Globally, fiscal measures are perceived increasingly as potentially effective complementary tools to help tackle obesity. As with tobacco and harmful alcohol use, taxes/levies can play a key role in correcting for market failures, and act as a price signal that plays a part in influencing consumers' purchasing decisions. Sugar taxes are not new. Ireland introduced a sugar levy on SSBs in 1916 (repealed in 1992) as an additional revenue raiser to help fund Ireland's participation in World War I. Denmark also introduced a sugar tax in the 1930s, which by 2013 was being levied at a rate of €0.22 a litre. This was repealed in 2014 because the Danish government estimated that it was posting €38.9m in VAT from illegal soft drink sales. Over recent years, countries such as Barbados, Chile, Denmark, Dominica, Finland, France, Hungary, Ireland, Mauritius, Mexico, Norway, Portugal, Sri Lanka, UAE, Vietnam, and several states in the USA, have levied taxes on

SSBs (though Denmark and Ireland subsequently withdrew them). South Africa, the UK, Ireland, Thailand, Australia and North West Territories in Canada have either introduced such taxes recently or are planning to do so. Unfortunately, there is no “one size fits all” structure as each government has decided to design their sugar tax differently though the majority of those countries that have introduced a sugar tax have based it on SSBs rather than on a wider range of food products. Annexe 1 provides brief outlines of the structures of some of the “sugar taxes” either already in force or about to be introduced across the world. Excessive consumption of sugar is considered the major cause of obesity, although most of the countries that have introduced a sugar tax have opted for a tax on sugar and/or sweetener in soft drinks rather than a tax on refined sugar or based on calories per gram or ml. of product. The reasons for this are not readily apparent.

In the UK, the Scientific Advisory Committee on Nutrition recommends that, for those aged two and upwards, average sugar consumption should not exceed 5% of total dietary energy. The Committee recommended that consumption of sugar-sweetened drinks should be minimized for both adults and children.

Several of the countries implementing a tax on sugar in food and beverages have confined the tax to soft drinks, but there are different approaches to the tax – for example, Mexico, Norway and Denmark have all introduced taxes on sugar in food products:

- *For Mexico, a specific excise tax of 1 peso per litre on non-dairy and non-alcoholic beverages with added sugar and an ad valorem tax of 8% of retail selling price was introduced in 2014 on calorie rich food with more than 275 calories per 100 grams.*
- *In Norway, a tax on sugar in chocolates and sugar products was introduced in 1981, alongside a tax on soft drinks and drink concentrates as well as a tax on sugar itself.*
- *Denmark had introduced a sugar tax on confectionary, ice cream and soft drinks in the 1930s. This was abolished in January 2014, apparently because of cross-border trade distortions as people were travelling to Germany to stock up on cheaper products.*

A comprehensive review of academic literature published about the impact of sugar taxes around the world was produced in 2018 by Peter Wilson and Sarah Hogan of the New Zealand Institute of Economic Research for the New Zealand Ministry of Health.⁷ This report provided an assessment of the evidence for sugar taxes as a fiscal instrument to improve health. Forty-seven peer-reviewed studies and working papers published between 2012 and 2017 were reviewed, summarised and assessed for key methodological issues.

The review of the literature found that:

- *Taxes do generally appear to be passed through to price and some reduced demand is likely.*
- *Estimates of reduced intake are often overstated due to methodological flaws and incomplete measurement.*
- *Price elasticities from early studies with fundamental methodological flaws have later been used in a number of other studies to assess the impact of sugar taxes, resulting in significantly overestimated reductions in demand.*
- *There is insufficient evidence to judge whether consumers are substituting other sources of sugar or calories in the face of taxes on sugar in drinks.*
- *Studies using sound methods report reductions in intake that are likely too small to generate health benefits and could easily be cancelled out by substitution of other sources of sugar or calories.*
- *No study based on actual experience with sugar taxes has identified an impact on health outcomes.⁸*

- *Studies that report health improvements are modelling studies that have assumed a meaningful change in sugar intake with no compensatory substitution, rather than being based on observations of real behaviour.*

The 2017 New Zealand review concluded that the evidence that sugar taxes improve health in practice is weak. On the other hand, a WHO study in 2015 based on actual experience with sugar taxes particularly in Hungary, identified an impact on health outcomes.⁹

On 19 July 2011 Hungary passed the law “Act CIII of 2011 on the Public Health Product Tax” related to tax on food and drink components with a high risk for health. The tax liability of a product depends on its sugar, salt and caffeine content. One year later, an impact assessment was conducted, based on surveys of the public and manufacturers. Results show that 40% of responding manufacturers changed the product formula to reduce the taxable ingredient. The sale of products subject to tax decreased by 27% and people consumed 25–35% fewer products subject to tax than one year earlier.

See Annexe 1 for examples of international taxes on sugar/added sugar/fat in food and soft drinks products.

1.3. How to Achieve Maximum Effectiveness in Changing Consumer Behaviour

If a government’s main motivation in introducing a sugar tax is to change consumer behaviour so that consumption of products containing “added sugar” is reduced, then implementing a new tax on sugar sweetened food and/or soft drinks products will need to be part of a comprehensive national strategy. This should include increased public awareness of the dangers of obesity and support for increased exercise and should focus particularly on poorer communities. Such a strategy will need to involve Health, Trade, Education and Consumer Protection ministries as well as the Ministry of Finance. This is the model that has had some success in respect of reducing consumption of tobacco products in the UK. If the public do not understand and buy into the rationale for changing their consumption patterns and ways of life, then the imposition of a tax on products that people enjoy may result in resentment and create demand for illicit goods.

It is worth noting that the McKinsey Global Institute analysed a wide range of interventions to tackle obesity and found that taxes fell outside the ten most effective interventions in the UK¹⁰. The report identified reformulation of products to reduce sugar content and smaller portion size as the two most effective interventions in tackling obesity. In countries where labelling requirements do not include the sugar and calorie content of manufactured food and drink products, legislation to require such labelling and the use of sufficient consumer protection officials to monitor the requirement should be a prime consideration. Without such labelling requirements and enforcement by consumer protection officials, a wide-ranging tax based on declared sugar and/or calorie content would require significant revenue resources to enforce.

Determining what are the most effective revenue controls requires a good understanding of the industry and of the production and distribution process. This should include understanding the structure of the industry, operating models, elasticity of the product(s) (see 2.5 below) and potential substitute product(s).

1.4. Conclusion

In general, the different sugar taxes have not been in place long enough for health experts and economists to assess their impact. Economists warn that the pass-through costs of a sugar tax may not be passed on in full to consumers, especially where there is a competitive market in the products concerned. Consumers may decide to down trade or move to a different sugar sweetened product. The substitution effect of the different sugar taxes on consumption is unpredictable and evidence that sugar taxes improve health is weak.

The key positive outcome from the sugar taxes introduced so far is that a significant percentage of soft drinks manufacturers have reformulated products so that they are not subject to taxation and some are marketing new “sugar free” products. So, even if consumers do not switch products but remain with a reformulated lower sugar product, a health benefit will have been achieved indirectly. The actual effect of consumers drinking a reformulated lower sugar product will need to be evaluated over time.

Part 2: Key Tax Policy Issues

2.1. Tax Design Checklist

Below is a checklist of the tax design issues that need to be covered in legislation:

- *Tax type (an excise tax or levy or VAT/sales tax);*
- *Tax rate structure (specific, ad valorem or mixed; one rate or multiple rates);*
- *Tax coverage (refined sugar, added sugar, sugar sweetened beverages);*
- *Taxable value (for an ad valorem rate structure);*
- *Taxable charging mechanism (under a specific rate structure);*
- *Tax point;*
- *Revenue administration requirements (for registration/licensing, rendering returns and payments, bond/guarantee requirements, record keeping, powers needed for revenue administration officials, assessments and penalties, appeals, imports and exports, taxpayer services); and*
- *Special provisions (e.g., for small operators).*

This is covered in more detail in this part and in part 3 and Annex 3.

2.2. Main Types of Indirect Taxes to Consider

Indirect taxes, known as consumption taxes, are levied on goods and services rather than on individuals or businesses. These are comprised of customs or import duties, excise taxes/duties or levies and Value Added Tax (VAT) or sales tax.

Import duties fall only on specified imports of goods according to the tariff set for each country or customs union region. Excise taxes fall on specified goods and services whether produced domestically or imported and can be (and are often designed to be) discriminatory in nature. So, excise taxes are levied in addition to any import duties.

In some countries, levies are imposed that are, arguably, akin to excise taxes in impact but the levy is likely to be based on the selling price (*ad valorem*) rather than the “harmful” content of the products concerned and the revenue may be ring-fenced for a particular purpose.

There are four main indirect tax methods under which to tax domestically produced sugar/high calorie products. These are a Value Added Tax (VAT), a sales tax, an excise tax or a levy:

- **VAT** – *is an ad valorem tax levied on the “value added” at each stage in the manufacture and distribution chain until final retail sale. The tax is charged and recovered at each stage so that it is the final supplier (normally the retailer) who collects the full amount of VAT (based on the selling price and including any import duty and excise tax.) for remission to the revenue administration. VAT is usually levied on a very wide range of goods and services and there are usually a very large number of taxpayers involved.*
- **Sales tax** – *A sales tax is a consumption tax imposed by the government on the sale of goods and services. A conventional sales tax is an ad valorem tax based on selling price and levied at the point of sale, collected by the retailer and passed on to the state or federal government. A retail sales tax is usually an alternative consumption tax to VAT rather than an additional consumption tax.*

- **Excise** – Traditionally, excise taxes have been imposed on the manufacture of a narrow range of goods (or on the supply of specified services). The manufacturer pays the tax or duty when the goods are released into the domestic market. Depending on the competitiveness of the market for the goods or services concerned, the full tax charged may or may not be passed on through the supply chain to the consumer. Excise taxes are most often levied upon cigarettes, alcohol, road fuels and on gambling. Excise taxes are typically imposed in addition to VAT or a sales tax.
- **Levy** – A levy operates similarly to an excise tax; the main difference being the fact that the revenue is normally ring-fenced (hypothecated) for specific purposes. This may be to make the tax more acceptable politically but in design and structure terms, the same factors apply to a levy as an excise tax. Whilst a levy may be imposed in addition to VAT or a sales tax, a levy should not be imposed in addition to an excise tax.

Revenue administrations should be clear on the leading policy purpose behind the tax. All taxes raise revenues. Historically, excise taxes were applied to products that were either addictive in nature (alcoholic drinks, tobacco products, gambling) or for which there are few substitutes (hydrocarbon oils) because they were relatively easy to administer and provided efficient sources of revenue. However, in addition to raising revenue, different taxes address different public policy objectives by creating economic incentives for consumers to make certain decisions or take certain actions. Multiple policy motivations can frequently end up at cross-purposes, complicating the tax and undermining its effectiveness.

2.3. Which Consumption Tax to Choose?

As the aim of a sugar tax is to target particular products, it is unlikely that a VAT will be sufficiently targeted to meet the policy aim. VAT could be levied at a higher rate on selected products, but this would add complexity to the VAT regime and risk liability and misdescription challenges, and multiple positive rate VATs are not recommended.

A sales tax in addition to or instead of VAT would involve a large number of importers and retailers as taxpayers and would therefore be difficult and comparatively expensive to administer and control.

An excise tax or levy is the most appropriate type of consumption tax if a government wants to influence consumer behaviour in respect of a few easily definable products or services manufactured/imported by comparatively few operators such as a tax on SSBs. On the other hand, if the intention is to target a wide range of goods and/or services such as all food and soft drinks containing more than X calories per gram or ml. of product then a higher rate of VAT may be more appropriate.

Most of the countries that have introduced a sugar tax have opted for an excise tax on SSBs instead of a higher rate of VAT/sales tax on all products containing more than X grams of sugar/or X calories per ml. For the purposes of design, this guidebook focuses on the supposition that an excise tax (or similar levy) is the likely choice for the sugar tax.

The following provides more detail on the nature, objectives and structural options for a new excise tax.

2.4. Nature of Excise Taxes

According to Prof. Sijbren Cnossen¹¹, excises are broadly defined to encompass all selective taxes on tobacco products, alcoholic drinks, petroleum products, motor vehicles, pollutants, luxury items and other goods selected for specific taxation – whether imported or produced domestically.

Excise taxes are unlike VAT and sales taxes in that they are applied in full at manufacture of the product or

initial supply of the service. They have the distinguishing feature of being selective in coverage. The basis for assessment for excise tax is usually a quantitative amount – for example, volume, weight or strength – to which a specific rate of tax per unit of measurement is applied (“specific excise taxes”). Alternatively, some excise taxes are levied at *ad valorem* rates with a percentage tax rate applied to the value or price of products (“*ad valorem* excise”).

Historically, excise taxation was applied – often at very high rates – to a narrow range of products such as hydrocarbon oils, tobacco and alcohol. Nowadays a much wider range of products and services may be subject to excise taxation (e.g., UK’s air passenger duty, aggregates levy, landfill tax, and climate change levy). Where the liability to the tax occurs on manufacture of the finished product, the revenue assurance of excise taxes on goods requires some form of physical control over production. VAT is then levied on the price of transactions at all subsequent points in the supply chain and compliance is verified through audit and accounting checks. sales tax and similar retail sales taxes are levied on the selling price at the retail stage.

The value or price for *ad valorem* excise taxes is normally the value of the first supply in the supply chain (e.g., from the manufacturer or at import of a finished product) rather than the value at the final retail stage. Excise taxes, whether specific or *ad valorem*, are usually levied early in the supply chain and there is no rebate or refund mechanism on domestic sales (as with a VAT). The excise tax element is therefore embedded (invisibly) in the value of the goods through the supply chain to be paid, ultimately, by the consumer. There is usually no requirement for manufacturers to pass on the full amount of the tax charged on production and, where there is a very competitive market, some manufacturers may choose to bear some of the tax themselves in order to gain an advantage in the market.

Revenues from customs duties on imports and exports have been falling worldwide in line with the increasing development of regional customs unions and free trade agreements. In consequence, governments – especially in emerging economies – have come to see excise taxes as a stable alternative source of revenue that can grow as economies develop and consumers are able to afford the products concerned. Countries with narrow taxpayer bases for levying traditional direct taxes on income, in combination with large informal economies, are likely to levy excise taxes more widely than countries with broad taxpayer bases. For example, some governments levy excise tax on items perceived as luxuries such as cosmetics, perfumes, yachts, etc., and goods such as soap and bottled soft drinks, producer goods and on selected services.

Excise taxes can combine the role of a consumption tax with cost-effective administration. For countries without effective income and property taxes, especially in regard to high net worth individuals, excises on perceived luxury goods can have a role to play in ensuring some progressivity¹² in the tax system. Unlike import duties, excises are not normally intended to have a protective function so they should apply equally to products whether imported or produced domestically. However, as free trade agreements dictate what may be charged for customs duty, so governments have been turning increasingly to excise taxes as a means of not just raising revenue but for penalising imports where there is no local comparator or there is a substitute local product. Governments often protect (or incentivise) their local industries by subjecting them to a lower excise tax rate – e.g., wine in South Africa and Australia – although this is not considered good practice and is contrary to World Trade Organisation (WTO) rules (see 3.9 below).

When a government introduces any excise tax structure for sugar, added sugar or SSBs and sets the actual tax rate, it needs to be clear about the public policy purpose or goal, and be fair and even-handed when dealing with industry members. Performance indicators should be set to monitor the success of the effort in achieving the desired outcomes such as revenue yield and numbers of manufacturers who reformulated their products to achieve a lower sugar content.

2.5. Objectives of Excise Taxation

Historically, the objective of excise taxes has been to raise revenue for general purposes. The main consideration has usually been that they can be administered more cheaply and easily than other taxes. This is because they are charged, initially, on only a small number of taxpayers – the manufacturers and importers of excisable products. Excises on tobacco products, alcoholic drinks, road fuels and motor vehicles are good sources of revenue because such products are easy to identify and measure, and the volume of sales is high.

There are no close substitutes for addictive or indispensable products that consumers find satisfactory so demand for these products is described as “inelastic.” Economic theory suggests that tax rates should be higher on goods with low elasticity of demand (inelastic) as consumer decisions are unlikely to be distorted by high tax rates. In practice, inelastic goods such as spirituous beverages (such as whisky and brandy) and cigarettes, subject to very high excise taxes, become attractive to smugglers and fraudsters when the very high tax rates make them unaffordable to consumers with low incomes. Excise taxes have been criticized over the years for being regressive in that they bear more heavily in relative terms on the poor than on the rich.

Over the 20th century, governments have also chosen excise taxation to:

- *Reflect external costs to society associated with consumption or production but not accounted for in price;*
- *Discourage undesirable consumption; and to*
- *Improve the progressivity of the tax system, (e.g., by taxing luxury goods).*

Recently, excise taxes have been used also to obtain revenue for specific initiatives. This includes an alcohol levy earmarked for use in health related programmes, a plastic bag levy with funds allocated to registered charities, and an excise tax on electricity to fund rural electrification, etc. Governments find that increases in excise taxation on products recognized as harmful to health or the environment, etc. are easier to sell to the general population than increases in direct taxes on income or company profits, or increases in VAT on a far wider range of goods or services.

2.6. Excise Tax Structure

2.6.1. Options

There are three options for the structure of an excise tax:

- *Specific – levied by reference to the weight, quantity, volume, size or contents of the product.*
- *Ad valorem – levied as a fixed percentage of (usually) the producer’s sales price, although sometimes values may be prescribed or computed (e.g., the SACU¹³ rules for the value of the goods subject to an ad valorem tax such as cars and mobile phones).*
- *Mixed – a combination of a rate applied as a specific tax and a rate based on price (sometimes with a caveat to apply the tax to the greater of the two).*

Effective administration of an excise tax begins with a tax structure that is as simple and uncomplicated as possible. Policy decisions, both in choosing the tax structure and setting an appropriate tax rate, must be taken carefully to respond to the demand and realities of the local market and to avoid unintended consequences.

2.6.2. Advantages and Disadvantages of a Specific Tax Structure

Advantages

- *The tax can reflect the amount of potential “harm” in the product – for example, by levying tax on the weight of tobacco/tar content or on alcohol content.*
- *The tax is generally very easy to calculate if based on something that is easily measurable.*
- *The tax can be relatively easy and efficient to administer and control if levied on production and import.*
- *The tax is more difficult to evade when based on an indisputable measurement and official control covers the whole production process.*
- *The tax is non-discriminatory if applied at the same rate for all directly competing products – for example, all spirits drinks or even all alcoholic drinks or all cigarettes (e.g., a bottle of champagne valued at \$100 and sparkling wine valued at \$5 are taxed the same for excise).*
- *The tax fosters consumer choice by not distorting underlying differences in prices based on differences in quality.*
- *The tax encourages investment and product development through not penalizing producers of high quality products. For example, under a specific tax regime the highest quality Scotch whisky bears exactly the same excise tax as blended supermarket own brands.*
- *By applying an equal tax burden to all similar products regardless of origin, type or value, specific taxes promote trade expansion, and can lead to an overall increase in economic activity. This can encourage start-up businesses and the emergence of new regional brands, especially where there are special rates for small producers.*

Disadvantages

- *The tax will not adjust automatically to reflect changes in price or inflation, so provision for regular adjustment needs to be built into legislation.*
- *The tax bears more heavily on cheaper products in comparison with premium products (e.g., the tax may reflect 30% of the value of cheap sparkling wine and maybe 5% of expensive champagne).*
- *The tax does not reflect the value of the packaging or convenience of sales outlet to the consumer. Ease of access to products can be an important factor in the development of illegal trade in excisable products, especially in rural areas where consumers are reliant on goods available locally.*

2.6.3. Advantages and Disadvantages of an Ad Valorem Tax Structure

Advantages

- *The tax adjusts automatically to reflect changes in price.*
 - *The tax is less regressive in that it bears comparatively less heavily on cheaper products.*
- Where based on retail price, the tax reflects the full value of the goods including packaging.

Disadvantages

- *The tax is more likely to be subject to undervaluation/evasion.*
- *The tax does not reflect the potential “harm” in the product and for high value/quality products may*

operate as a luxury goods tax.

2.6.4. Advantages and Disadvantages of a Mixed Tax Structure

Advantages

- *The tax can be constructed to reflect some of the benefits of both “specific” and ad valorem tax structures.*
- *Sometimes, a mixed tax structure provides an acceptable political compromise in a customs union where some countries have a history of “specific” excise taxes and others have a history of ad valorem excise taxes. An example is the mixed tax structure applicable to tobacco products in the EU.*

Disadvantages

- *The more complex structure is more difficult to administer both for revenue authorities and for business. There is more scope for errors – deliberate or otherwise.*
- *External factors outside the control of the manufacturers, such as increases in fuel prices or packaging, may distort costs and add significantly to the selling price on which ad valorem tax is charged.*

2.6.5. Adoption of "Whichever Structure Provides Most Revenue" Approach

Some governments have legislated for tax to be chargeable according to either specific or *ad valorem* calculations, on the basis that the tax due will be the higher of the two calculations. This is not recommended since it requires both revenue administrations and businesses to make two calculations, thus adding complexity and providing opportunities for errors – deliberate or genuine.

Part 3: Detailed Tax Design Issues

3.1. Policy Design Principles for a Sugar Tax

The principles of taxation (see Annexe 2) should help determine the rationale for coverage, ease of administration and control, impact on industry and the economy and the forecast tax yield from the different options. It is good practice to have a transparent impact assessment for the key options under consideration so that stakeholders can advise on any unintended consequences and costs through a consultation exercise.

Before embarking on the tax design for a sugar tax it will be important to consider the rationale for, and the likely impact of, the tax including:

- *Revenue rationale (impact on revenue yield);*
- *Health benefits;*
- *Wider economic benefits or costs; and,*
- *Impact on demand (including the Impact on domestic producers compared with importers; and monitoring of price changes (on tax introduction).*

In ascertaining the above, it will be necessary to judge whether sufficient evidence is available, or whether research specific to your country/region is needed and/or statistical sampling is required.

3.2. Policy Design Options for the Scope of a Sugar Tax

The main areas to cover for any consumption tax are:

- *Tax coverage (which products and or which consumers are impacted);*
- *Tax type (VAT, Sales Tax, Excise Tax, Levy);*
- *Tax rate structure;*
- *Taxable value (for an ad valorem structure);*
- *Tax point;*
- *Tax administration requirements (registration, returns and payment processes, audit needs, assessment and appeals, debt management, offences and penalties, enforcement powers); and,*
- *Special provisions/reliefs and exemptions.*

The following considers the main policy design options for a sugar tax designed to reduce consumption of added sugar.

3.2.1. Tax the Production of Refined Sugar

The principles of taxation suggest that the best option is one that is simple, easy to collect and control, and provides the optimum revenue for the state. Since it is overconsumption of sugar that leads to obesity, the most extreme option would be to tax all sugar since its use as an additive in manufacturing food and beverage products will result in added sugar. Even with this radical option there are choices – for example, should the tax be on all sugar produced or just on refined sugar that is used in processed or prepared food and beverages?

A few countries already impose an excise tax on the production of refined sugar, whatever its ultimate use

(e.g., Uganda). This option, whilst not yet in general application, does have the advantage of being justifiable to producers and consumers since it is consumption of “added sugar” which governments most want to reduce. Taxing all sugar produced would bring in a range of large and very small farmers as taxpayers, not all of whose products are used for human food and soft drinks. So taxing refined sugar on production would more accurately target the added sugar in both food and soft drinks. This would follow the standard excise practice of having a small taxpayer base rendering returns and payments. It would also make the tax more efficient and effective to administer.

An advantage of this option would be the neutrality of its application, since such a tax would apply across the board to all prepared or processed food and beverage products but would not impact on naturally occurring sugars. On the other hand, where there is sugar production and porous borders with neighbouring countries applying widely different rates of tax on sugar, it could lead to development of a new illegal trade in sugar smuggling.

Critics of this option might argue that the rate of tax needed to incentivise reduced consumption of excessive sugars would need to be high. The higher the rate of tax the more attractive the product is to the smugglers/fraudsters and the greater the demand for illicitly traded products from consumers.

Of course, in countries where VAT applies, an option that could well be easier to administer than the introduction of a new excise tax on the production of refined sugar, would be to simply apply a higher VAT rate to refined sugar (or to remove a zero-rating or exemption if one exists).

3.2.2. Tax Only Food and Drink Products Containing "Excessive Amounts" of Sugar

A variation of this option has been implemented in Mexico using the threshold of 275 calories per 100 grams.

A paper produced in 2016 by eminent academics for the African Tax Institute in response to consultation by the South African government on the introduction of a sugar tax suggested that a tax should be comprehensive covering a wide range of food and drink products on the basis of fat, salt and sugar content. They suggested that this would have a greater impact on obesity by eliminating the possibilities for substitution. Referring to the University of Sydney database¹⁴ Professor Roy Bahl, Prof Sijbren Cnossen, Prof Riël Franzsen and Dr Marius van Oordt explained that it is the high nutritional value in and glycaemic value of SSBs that increase the risk of obesity. They add that many other foods such as candies, French fries, ice cream and 100 per cent fruit juice have higher nutritional values and similar glycaemic index ratings and so should also be subject to the sugar tax. However, a threshold-based tax is likely to be very difficult to enforce unless there are highly developed product analysis and precise labelling requirements and the consumer protection resources available to enforce them effectively. In such circumstances, a higher rate of VAT might be the best way to tax such products as the final consumer pays the total VAT and revenue controls are applied as for other products subject to VAT.

To apply an excise tax to such products would, additionally, require identification/reporting of all those over the threshold and open up excise administration and enforcement requirements to numerous businesses new to excise. Administration and control then pose resource issues for revenue authorities and increased compliance burdens on business. Any threshold based tax would invite policy disputes over what is “excessive sugar” and what is an appropriate level for the threshold. Taxing any food or soft drinks containing large amounts of sugar may be politically difficult as this will inevitably bring into the scope of the tax many products that are considered everyday foods (e.g., ice cream, children’s sweets, chocolate

products, desserts, etc.). However, if the objective of a sugar tax is primarily to reduce excessive sugar consumption then it would be illogical to tax only one sort of food and soft drinks product (e.g., sugar sweetened soft drinks).

3.2.3. Tax All Sugar in Soft Drinks and in Food Products

Taxes on sugar in soft drinks come in several different forms. Some are based on total sugar content including natural sugars. Others apply a different tax rate according to the different type of sugar (natural or added). Denmark taxed according to the weight or volume of a product rather than taxing its actual sugar content. Some countries where sophisticated consumer protection is also in force apply thresholds (e.g., UK, Hungary and Finland). Thresholds based on sugar content are intended to encourage manufacturers to reformulate products and influence consumers to purchase those containing less sugar. Some governments have exempted products containing natural sugars; others have not.

Many countries in sub-Saharan Africa already have excise taxes on non-alcoholic soft drinks. Some have an excise tax on sugar in syrups.

To avoid double taxation, any new excise sugar tax introduced should replace any existing excise tax/levy on the same products, and so might not reap the same revenue or health benefits as are expected in countries with no pre-existing excise tax in place.

In setting the tax base consideration should be given to ease of administration as well as to limiting the scope for tax arbitrage.¹⁵

Options identified for a sugar tax on soft drinks are discussed below.

3.2.4. Tax the Total Sugar Content in Ready-to-Drink Soft Drinks

For countries where effective consumer protection legislation requires the sugar content to be printed on labels, it is comparatively easy to implement a tax on total sugar content as independent testing mechanisms are in place to enable tax declaration and enforcement. If there is no such legislation, or the legislation is poorly enforced, there are obvious risks of misdescription and under-declaration of tax. Taxing the total sugar content in SSBs might therefore have the added benefit of incentivising governments to introduce consumer protection legislation and labelling of contents to deliver wider public health benefits.

Where the primary objective is to reduce overall sugar consumption, the tax should cover all soft drinks including fruit juices and other products containing sugar. Different interests would undoubtedly lobby for exemptions/reliefs for their products – for example, fruit juices, milk drinks containing sugars and medicines containing sugar. The easiest and most equitable application of the tax can be sustained by granting no exemptions or as few as it is politically possible to entertain.

To avoid placing a compliance burden on very small producers and ensure the tax is efficient to administer, governments may wish to exempt them. The threshold for such an exemption (usually based on business turnover) should be determined in relation both to the revenue required and to the efficiency and effectiveness of the tax authority where the cost administration and audit of a large number of small producers would be disproportionate to the revenue obtained. This will depend on the market structure in individual countries. An analysis to identify how many and what size of businesses will be included in the tax net will be required.

3.2.5. Tax Ready-to-Drink Non-Alcoholic Drinks Containing "Free Sugars"

The WHO has identified that the most damage to health is caused by “free sugars” (added sugars). These

are defined by the WHO as including monosaccharides¹⁶ and disaccharides¹⁷ added to food and beverages by the manufacturer, cook or consumer plus sugars naturally present in honey, syrups, fruit juices and fruit juice concentrates. “Free sugars” do not include sugar that is naturally part of the structure of the food or soft drink, such as unsweetened milk or 100% fruit juice.

3.2.6. Tax Ready-to-Drink Sugar Sweetened Beverages by Volume Produced or by Value of the Ready-to-Drink Product

Established good practice in excise taxation leads us to consider that a specific tax rate based on a quantitative measure (e.g., cents per gram) would be both easier to administer and better reflect the “harm” in the product than an *ad valorem* rate based on a percentage of value. With a specific rate, provision should be made for rate updates/increases (e.g., to keep pace with inflation).

The alternative *ad valorem* duties are best avoided as being subject to under-invoicing in transactions between associated companies as well as time-consuming and expensive disputes over value. They encourage introduction of less expensive but lower quality products that attract the poorer members of society and thereby undermine the intention of the tax. Many emerging economies have *ad valorem* excise duties, and may choose to take this opportunity to move to specific structures for excise on SSBs.

3.2.7. Conclusions on the Scope of a Tax on Sugar in Food and Beverages

If the primary objective of a sugar tax is to target the “harm” in the product, as outlined above, a specific excise tax on either sugar or “added sugar” is preferred to the *ad valorem* option. Whilst most countries that have implemented a sugar tax so far have focused only on SSBs, there are a range of food products high in fat, sugar and salt. Countries experiencing an “obesity epidemic” may want to move quickly to a broader scope for a high fat, sugar and salt tax perhaps charging tax on the basis of “calories per gram” for food products. This should raise significantly more revenue as well as encourage producers to reformulate and consumers to consider changing their consumption behaviours.

For beverages, the threshold approach where tax becomes chargeable on the total content only when there are more than a set number of grams of sugar per 100 ml of soft beverage may be attractive. This is because it is expected to encourage manufacturers of soft drinks to reformulate their products to fit within the threshold and attract no excise tax. Early evidence in the UK suggests that this took place even before the introduction of the new tax. However, it may not be the most appropriate approach for countries with limited administrative expertise in excise taxation and high levels of informal economy. For these, the simpler option of a tax applied on the total sugar content would be preferable. This should still encourage manufacturers to reformulate or produce lower added sugar content products (that will incur less tax liability) whilst still bringing in a significant amount of tax revenue.

Legislation should define the type of products to fall within the scope of the tax and specify the criteria they must meet. An example of what is covered in the UK Sugar Levy legislation is at Annex 5.

3.3. Choosing the Tax Type

See Part 2 for information on determining the type of tax to adopt. Subjecting some goods containing “excess” sugar to a higher rate of VAT (or leaving the goods containing ‘excess’ sugar as taxable at the standard rate and giving a lower rate of VAT to goods that have an acceptable volume of sugar content) may require less overall legislative change though the definitions of products subject to either the higher rate of VAT or reduced rate of VAT will need to be set out in legislation.

If the primary objective is to bring in additional revenue efficiently and with the public health objective secondary, then a higher rate of VAT could be the easiest option to administer and should have the least impact on business. This option was adopted by Ireland for taxing sugar in soft drinks. Such a measure risks adding complexity to the VAT system and, because of the value-added nature of VAT, involves many taxpayers all along the supply chain. As an *ad valorem* option it does not address the “harm” in the products as accurately as a specific excise tax. It also requires all VAT taxpayers to complete a return that includes higher rate tax amounts, values, etc. – and administration processes that can cope with the additional processing. Revenue administrations would need to amend VAT return forms and computer systems to cope with an additional tax rate. For countries that do already have more than one VAT rate, applying an existing higher rate to sugar sweetened soft drinks is a less unattractive administrative option and less burdensome for taxpayers.

Taxation purists would argue for maintaining simplicity in the application of no more than one VAT rate. In emerging economies where there is a large informal sector, it will be easier, administratively, to impose an excise tax on the comparatively few manufacturers/importers of a product than to extend a VAT where much of the value-added at the retail stage could be lost to the revenue through evasion.

3.4. Options for Rates of Excise Tax on Sugars in Food and Beverage Products

Several countries have applied excise tax to a broader range of products high in sugar content than to just SSBs. These countries include Mexico, Finland, Norway and Hungary. By taxing a broader range of goods that are high in sugar content, substitutions that distort the goals of the tax are avoided.

In 2011, Hungary introduced a tax a broad range of sugar-added products. Excise tax applied only if the sugar content of beverages and “junk” foods exceeded specified thresholds. Sugary drinks were taxed at US\$0.02 cents if they contained more than 8 grams of sugar per 100 ml. Evidence showed that prices went up and consumption went down, while producers reformulated their products in line with the new requirements regarding sugar content.

In 2014, Mexico imposed excises on producers and importers of SSBs and “junk” food. The tax on beverages was one peso per litre (approximately 9 per cent of retail price) while “junk” food was taxed at 8 per cent if it contained more than 275 calories per 100 grams. Reportedly, soda purchases declined by about 10 per cent. There is, however, no evidence so far that obesity in the population has reduced.

Issues that should be addressed in opting for an excise tax on a broad range of food and beverage products is the need for labelling, independent analysis of product contents and the capacity of the administration to enforce the legislation efficiently and effectively.

Three main options for taxing sugar in beverage products were summarised in a policy paper produced by the National Treasury of South Africa in July 2016. The box below is based on the options in that paper. Ultimately, South Africa opted for the threshold approach and, in April 2018, introduced a levy set at 2.1 cents per gram of the sugar content that exceeds 4 grams per 100ml, which meant the first 4 grams per 100ml are levy free.

Excise regime	Advantages	Disadvantages
Flat levy on all sugar sweetened soft beverages (e.g., Rand 2.00 per litre)	<ul style="list-style-type: none"> • Easy to administer • Covers all sugar sweetened beverages including those with low sugar content 	<ul style="list-style-type: none"> • Taxes low sugar content beverages at the same rate as high sugar content beverages • No incentive for manufacturers/consumers to decrease tax liability by shifting to lower sugar content beverages
Levy based on absolute sugar content (e.g., Rand 0.04 per gram of sugar contained in the soft beverage)	<ul style="list-style-type: none"> • Closest proxy for targeting external harm • Provides incentive for manufacturers/consumers to decrease tax liability by shifting to lower sugar content soft beverages or reducing the size of their products 	<ul style="list-style-type: none"> • Administratively slightly more complex
Threshold approach (e.g., Rand 0.04 per gram of sugar above 5 grams per 100 ml of soft beverage)	<ul style="list-style-type: none"> • Provides incentive for manufacturers/consumers to decrease tax liability by shifting to lower sugar content soft beverages. 	<ul style="list-style-type: none"> • Administratively more complex – scope for underreporting sugar content in order to evade taxation. • Threshold may need adjusting over time to induce consumption of soft beverages with even lower sugar content.

Where consumer protection legislation and enforcement are in place, a further option is to introduce a “tiered” system based on the quantity of sugar added, with those products containing the most added sugar taxed most highly. A variation implemented in the Gulf Cooperation Council (GCC) States is an excise duty of 50% on sugar-sweetened soft drinks and of 100% on energy drinks. Here the tax structure is “ad valorem” and based on retail price. Countries without legislation requiring detailed product labelling (and therefore without an authority that enforces the labelling requirement) are likely to opt for an “ad valorem” tax until such time as labelling requirements are in place and enforced. Saudi Arabia, one of the countries that has implemented the GCC agreed tax with an “ad valorem” tax, has been called to account through the WTO in 2018 (by USA, EU and Switzerland) for levying a disproportionate rate of tax on energy drinks that did not contain double the amount of sugars in other carbonated SSBs and asked to consider modifications.

When selecting a tax option that best meets the health objectives of the tax, it is essential to bear in mind

the impact on business in terms of administration and compliance and also the efficiency and effectiveness of revenue administration. A new excise tax would apply to manufacturers and importers of the products involved. These would need to be educated in, understand and be able to apply the revenue requirements. It makes sense to design the tax to apply to a small number of taxpayers, i.e. the manufacturers of the products. Whilst manufacturers or importers of the selected products have to pay the tax, they may pass it on in whole or part to the consumer.

Tax payment may be deferred for a reasonable period after the liability accrues, so that producers' profit margins are not impaired through reduced cash flow whilst the tax still impacts on the consumer's purchasing decision. The Mexican experience indicated that this works well only in a less competitive market. In a competitive market, producers may choose to absorb some of the tax to gain a competitive advantage at the retail stage.

For simplicity of administration, tax equity and minimisation of opportunities for errors/evasion and exemption creep (pressure to grant exemptions to similar products), exemptions should be kept to the absolute minimum.

3.5. Other Tax Design Issues

3.5.1. Extend Scope of the Tax to Products Similar in Nature That Might Be Consumed as Substitutes if Not Subject to Tax

For a tax on SSBs, similar products include dilutable cordials, iced drinks, liquid drinks flavourings, milk based drinks, candy sprays, ice lollies, dissolvable powders, drinks with alcoholic content up to 0.5% alcohol by volume (ABV) and added sugar soft drinks used for medicinal purposes.

Subject to their contents, for reasons both of equity of treatment and ensuring potential substitute products are taxed, such products should be included in the scope of any tax on added sugars. This avoids distorting the soft drinks market, ensures that the tax policy meets its health objective and also brings in revenue although it adds to the administration costs in that there would be a larger taxpayer base to control. It is essential not to define the products by name in legislation to guard against producers changing the names of their products to avoid the tax.

3.5.2. Tax Rate

Governments should set appropriate tax rates to deliver the required tax revenues and or health benefits efficiently without undermining employment and economic development. Rates should not be set so high as to provide a real incentive to smugglers or fraudsters. If the tax rate is broadly comparable to that set in neighbouring jurisdictions it helps to reduce the incentive for smuggling, but not the incentive for illicit or undeclared production. This is especially so for small countries and countries with very porous borders.

For a sugar tax, a key outcome is intended to be improved health of citizens. So, the structure and rates introduced should not incentivise illicit trade. Illegal trade, whether through smuggling or undeclared domestic production, undermines the impact of the health related aims of the tax and thereby the health of those who consume it as well as reducing the revenue collected by the state.

The WHO¹⁸ maintains that health-related taxes do alter consumer behaviour and can positively impact health outcomes. In 2013, a WHO Sugar Tax Working Group explored three possible tax models, assessing their potential to expand central government revenues and promote healthy nutrition, as well as their suitability and impacts. The countries covered were Denmark, Finland, Hungary and France. The final report

discussed a broad tax on total sugar content (e.g., a given amount per kilo of sugar contained in certain products), an excise duty on specific products containing sugar (e.g., a given amount per kg/litre of the specific product), and a tax model combining the two.

A review of literature and some targeted sample research by Public Health England in 2015 of behavioural changes resulting from fiscal measures targeted at high sugar food and soft drinks¹⁹ recommended adoption of several non-revenue measures. As a means of reducing sugar intake, it suggested a price increase through a tax or a levy, whilst admitting this was likely to be less effective than the non-revenue measures recommended.

Understanding the domestic market in all relevant food and soft drinks products through retail and consumption surveys provides the basic information needed to estimate potential revenue yield from different tax rates. Research is also needed into the demand elasticity of such products to determine the optimal tax rate. Whatever the optimal rate, politically, it may make sense to set the initial tax rate at a lower level and increase it gradually over time so as to reduce the shock to the market and to consumers. If that is the intention, the government should consider putting sufficient legislation in place to enable effective administration of a high tax rate (see Annexe 6).

Consideration might also be given to hypothecation – ring-fencing some or all of the tax collected to be used on public awareness and health programmes. Hypothecation is not regarded as good practice in taxation since it reduces government flexibility in utilising tax revenues in accordance with the priorities of the day. However, a new sugar tax is more likely to be acceptable to consumers if they can see that the money raised is being spent on improving public health.

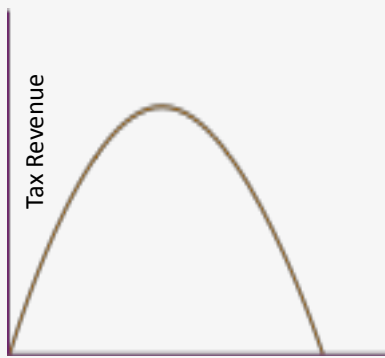
3.5.3 SSBs Included In or Excluded from Sugar Taxes

There is considerable divergence between the precise coverage of SSBs included in the tax. Some countries have included in the tax artificial sugars, others have not. Some countries have excluded sugar sweetened medicines, others have not.

3.5.4. Maximizing Revenue and Minimising Incentives for Evasion/Fraud

The setting of excise rates requires careful consideration if the revenue yield is to be maximised. Consumer behaviour is affected by tax rates that increase prices, so it is important to take into account demand elasticities of the products subject to the tax. Elasticities vary by product, by country and by age group and they need to be understood when determining tax rates. In economics, the **Laffer Curve** is a graphic representation of the relationship between an increasing tax rate and a government's total revenues. The relationship suggests that revenues decline beyond a peak tax rate. Logic suggests that relatively very high tax rates will be more susceptible to fraud and evasion. Once illicit trade in a product takes hold it is very difficult to reverse.

A Short Guide to the Laffer Curve



The Laffer Curve, developed by economist Arthur Laffer, demonstrates that there is a revenue-maximizing rate at which governments can apply an income tax, beyond which revenues will fall. At both extremes – an income tax of 0% and 100% – the government collects no revenue from income tax: a 0% tax rate means the government’s revenue is, of course, zero. By imposing a 100% tax rate, the government collects zero revenue because taxpayers have no incentive to work or earn as all earnings would go to the government in the form of taxes. But governments can (and do) impose some level of income tax without completely discouraging people from working, and therefore generate tax revenues. Somewhere between 0% and 100%, therefore, lies a tax rate that will maximize revenue (t^*). As tax rates increase from zero, government revenues will also increase up to the optimal, revenue-maximizing point (t^*). Beyond the optimal point, overall tax collections will begin to decline as people work less or evade taxes. Although the model was developed to describe income taxes, the basic concept holds true for other types of taxes, such as excise taxes.

3.6. The Taxable Charging Mechanism (for a Specific Rate Structure)

As an excise tax with a specific rate structure requires the tax to be charged on the sugar content in food and/or beverage products there are several options available:

- *Tax the total sugar content;*
- *Tax only the ‘added sugar’ content;*
- *Tax the ‘acceptable’ sugar content at a lower rate and the ‘excess’ sugar content at a higher rate; and,*
- *Have a number of different rates applicable to different levels of sugar content. For example, energy drinks containing very high amounts of sugar might attract a higher rate than those soft drinks that just exceed the threshold for taxation.*

It will be important to bear in mind that whatever option is chosen, product analysis including content measurements will be required to be performed by the manufacturer and checked by revenue officials. It is international good practice for manufacturers to display the contents (including sugar content) of a product on the label of finished product. Ideally, the selected products should be subject to independent testing either by an accredited independent institution or by a public-sector laboratory and at the manufacturer’s expense.

3.7. The Taxable Value (for an *Ad Valorem* Rate Structure)

The taxable value will need to be defined in legislation. The starting point is to determine the value upon which to charge the tax. Normally, the choice is between the actual ex-factory selling price or on the recommended retail selling price. The next step is to decide whether the taxable value should include commissions, royalties, discounts, advertising, returnable bottle costs, etc.

The value for imports should be determined according to the usual customs rules. The rules for arriving

at the customs value are normally based on the World Trade Organisation (WTO) Valuation Agreement (previously known as the 'General Agreement on Tariffs and Trade (GATT) Agreement'). With an *ad valorem* structure it will be important to set out the rules for sales to connected legal entities to avoid a sister company in the same country or abroad setting an unusually low value on goods imported by the taxable company.

Interestingly, Thailand implemented a new excise structure in 2017 where the taxable value is based on the suggested retail price (SRP). See the box below for more detail.

The Thai Approach to Establishing Taxable Value

"Excise tax shall be collected based on a suggested retail price (SRP) instead of the ex-factory price for goods manufactured locally or CIF (cost, insurance and freight) price for imported goods. An operator or importer has to submit an SRP application to notify the Excise Department of the SRP and its structure, which shall be determined on the cost of production, management cost and standard profit, excluding value added tax. Once notified, the Excise Department shall conduct an examination. In the case of the retail price for end customers, the examination shall be conducted from the selling price shown on the goods, on the printing media or electronic media, on the price list or the selling price notified to a government agency or a state agency.

In the case of the retail price of retail shops, the selling price of goods of the retail shops shall be used. If there are several retail prices, the highest price shall be used. It shall be regarded as a wrong declaration if the declared SRP is lower than 95% of the mode value of retail price ("mode price") or 85% of the highest retail price of such goods which are sold in the normal market (in the case that the mode price cannot be determined).

The mode price means the retail price found most in the normal market from goods that are of the same category, type, quality and quantity in the same survey of the Excise Department, excluding value added tax.

In addition, the declared SRP should be in line with market mechanisms. That is, it is not a price for sales promotion, for sale to privileged persons or a price under sale condition to an extent that the selling price thereof is not in line with the market mechanism. Any significant changes in the retail price may affect the declared SRP."

3.8. Tax Point and Storage/Movement of Taxable Goods Under Bond

Liable, chargeable and payable: A product normally becomes *liable* to an excise tax when it achieves its saleable character – for example, when a cigarette has been manufactured, when a spirituous beverage is produced, or for beer, when the mash is made and beer is produced or a product is imported. However, the tax is not normally *chargeable* until the product reaches a "tax point", which is the time that the tax becomes payable, as set out in legislation. In order to facilitate the cash flow of industry, the different products subject to excise tax may be stored in a bonded facility (factory or warehouse), tax unpaid, until required for consumption. The tax is often *payable* on a deferred basis to allow manufacturers to recoup their costs through sales.

A bonded warehouse is a specifically licenced or approved storage facility where a financial guarantee (a "bond") is in place to cover the revenue at risk should the untaxed products be unaccounted for (see Annexe 6 for information on bonded warehouses).

Many countries also allow for tax to be suspended whilst products are moved between licensed bonded warehouses (including third party owned warehouses) for further operations or storage. Where this happens the taxpayer is required to provide security/financial guarantees to cover the amount of tax at risk during transportation.

3.9. WTO Requirements

The World Trade Organization (WTO) comprises most of the world's trading nations and deals with the rules of trade between nations. The goal is to help producers of goods and services, exporters and importers conduct their business. The WTO requirements mean that Member States cannot discriminate between domestic and foreign produced goods.

The WTO requires that excise taxes be non-discriminatory and that they should not be applied, in law or in practice, in such a way that has the effect of protecting a domestic industry. In both tax rates and administrative procedures, WTO members must treat all imported and domestic products equally once imported goods have passed customs.

3.10. Labelling Requirements (Including for Imports)

Most countries have food and drink consumer protection legislation covering quality controls of contents, hygiene in preparation, labelling requirements and overseen by an independent authority tasked with ensuring compliance. It may be appropriate to “piggy back” on non-revenue legislation where food and beverage products are already subject to such controls with regular testing and enforcement, as producers are already familiar with the requirements. The revenue administration should work together with the consumer protection authority so that a need for further testing arises only in the event of suspicion of irregularity. If tax legislation is based on existing consumer protection legislation it is essential that the consumer protection authority consults with the revenue administration when considering any legislative changes.

In the absence of accurate information on sugar or added sugar contents on the label, the revenue administration should have power to assume a comparatively high added sugar or sugar content default level in order to encourage accurate labelling in future.

3.11. Small and Occasional Producers

As for alcoholic drinks, in countries with a large informal economy, there may be many small and occasional producers of food and/or soft drinks products. It may require extensive resources to identify these producers and bring them into the tax net, where the revenue returns from them may not merit the administrative expense. Revenue administrations are advised to provide an exemption from the sugar tax for small and occasional producers (e.g., based on business turnover).

From the perspective of consumer protection, it would be good to be able to regulate these small and occasional producers so that they are subject to quality control. Requiring small and occasional producers to register with consumer protection and revenue administrations without charging tax on their products would be a good way to identify them. The extent of production by those benefitting from the exemption can then be monitored by the revenue administration and the products will be subject to health and safety controls by the consumer protection authority.

It will be important to ensure that large and medium sized producers do not embark on disaggregation of their businesses so as to avail themselves of this exemption so a penalty for such actions should be included in legislation.

3.12. Other Reliefs

Provision will need to be made in legislation for reliefs from the sugar tax. As consumer taxes normally apply to goods consumed within a country, exports should always be relieved of the tax. Other situations where reliefs might be granted are for sales:

- *To diplomats and visiting armed forces;*
- *To any entitled organisations;*
- *For use in ship and aircraft stores; and,*
- *To the national armed forces.*

Reliefs should also be made available for losses of taxable goods during storage, operations or during movements under bond.

Part 4: The Revenue Administration Requirements

4.1. Characteristics of Effective Revenue Administration

For all taxes, the International Monetary Fund (IMF) recommends the following general characteristics as essential components of a modern tax administration appropriate for the digital age and a globalised economy.

Characteristics of Effective Tax Administration

A proper legal framework for tax administrations that provides an appropriate balance between the rights of taxpayers and the powers of the tax agency.

Efficient organisational and staffing arrangements, featuring: strong headquarters; function-based organizational design; minimal management layers and appropriate schemes of management oversight; streamlined field operations, and organizational alignment to key taxpayer segments (e.g., a large taxpayer office); and sufficient numbers of staff assigned to each level of the organization and each function.

A system of self-assessment directed at creating an environment of taxpayer voluntary compliance (thereby minimizing intrusion of revenue officials in the affairs of voluntary taxpayers, while concentrating enforcement efforts on those representing a higher risk).

Streamlined collection systems and procedures aimed at securing timely revenues without imposing undue compliance costs and inconvenience on the business sector.

Service oriented approaches whereby the tax administration operates as a trusted advisor and educator thus ensuring that taxpayers have the information and support they need to meet their obligations voluntarily.

Risk-based audit and other verification programs aimed at detecting taxpayers who present the greatest risks to the tax system, supported by effective dispute resolution.

Extensive use of IT to gather and process taxpayer information, undertake selective checking based on risk analysis, automatically exchange information between government agencies and provide timely information to support management decision making and tax policy formulation.

Modern human resource management practices that provide incentives for high performance and non-corrupt behaviour among tax officers as well as developing staff skills and professionalism.

Effective models for ongoing institutional change, including enhancing strategic planning capabilities, building coalitions with external stakeholders, and developing an internal culture that is receptive to change.

An environment of integrity and good governance with transparency of taxpayer rights and required staff conduct, with mechanisms to assure integrity of systems, procedures and staff practices, and to regularly inform the public of organizational goals, plans, efforts and outcomes.

4.2. Administration of Excise Taxes

Excise tax laws and the requirements have been designed, for the most part, to provide for the effective administration of excise taxes on “high risk” products such as cigarettes and alcoholic drinks. The provisions usually cover licensing, including vetting of directors to preclude persons with past revenue offences, premises and machinery that meet revenue standards, a financial security or bond, office accommodation

for excise officials, and controls over production, VAT, with its lower tax rates, on the other hand, does not require the above. The revenue risks of an excise tax levied at a low tax rate on sugar in food and beverages are broadly similar to those of a VAT and in this case, a revenue administration would probably seek to administer a low rate sugar tax in a similar way and would be unlikely to wish to apply the provisions of excise laws in full.

The rate of the excise tax on sugar, added sugar, or SSBs (combined with the VAT on the products) will inform the extent of the revenue risks (the higher the tax rates the greater the risks). In turn, the level of risk should determine the extent to which the procedures, processes, requirements and controls that are applied to traditional excise goods (alcoholic drinks, cigarettes, etc.) need to be applied to sugar or to food and/or soft drinks containing added sugar.

Licensing and approval to carry out the production, storage and movement of the traditional excisable products (hydrocarbon oils, tobacco products and alcohol) is linked to and conditional on compliance with excise tax requirements. These products are often subject to very high tax rates so the ability to produce, store and move excisable products under bond is viewed as a privilege not a right, so suspension or removal of approval to operate is a serious sanction for serious non-compliance. However, where a low rate of excise tax is applied to some products produced by a beverage or food producer a more proportionate sanction is recommended. In this case, suspending the licence to operate or shutting a business down should be considered only in the most serious circumstances of debt or criminal fraud.

The nature of the tax charge will also inform the level of risk – a tax charge levied on a small number of large businesses producing refined sugar (and on imports of refined sugar) would be likely to carry a much lower level of risk than a tax charge that applies to a myriad of small businesses producing soft drinks and/or high calorific food products.

4.3. Processes and Procedures

While the general principles described above provide a foundation for the establishment of an effective excise tax regime for a tax on food and/or soft drinks, they must be supplemented by processes and procedures. Often the type of excise tax regime selected (*ad valorem* or specific, based on sugar or added sugar content) will dictate some of the procedures that will be required. For example, if a country administers an *ad valorem* tax, it must control not only the quantity produced, imported or exported/shipped, but also must focus on the value of the product, including deciding which value (e.g., production or recommended retail selling price) is used. Accordingly, specific taxes usually demand less administration, though both structures require rigorous maintenance of the licence and approval records. The specific structure also requires a different emphasis for audit including a detailed understanding of production processes. Both structures require robust enforcement if illicit trade is to be minimised.

Overall, many of the procedures and processes outlined in the following paragraphs are relevant to the administration of both *ad valorem* and specific taxes on sugar, added sugar or SSBs.

Revenue administrations may consider that the full range of procedures applicable to goods subject to high rates of excise taxation such as alcoholic drinks and tobacco products are disproportionate in respect of a low rate of excise on a product that has not been subject to excise before. However, even a low rate of tax multiplied across millions of individual items produced by a large producer will result in a significant amount of revenue at risk, there is no reason why medium sized producers should benefit from more relaxed procedures when they are competing in the same market.

Industry members should, of course, be allowed sufficient time to implement the revenue administration

requirements such as: licensing and registration; providing an explanation of the production process with full plans of storage, machinery and/or pipework (with each pipe and valve identified); providing details of physical security at an operator's premises; and, where a high rate of tax is to be levied, complying with any requirement for financial bonds/guarantees to cover the revenue at risk at premises and for movements tax free under bond.

4.4. Efficient Revenue Administration

A key factor in revenue optimisation is the efficiency of tax collections. There is a cost to the tax authority to administer, collect, and process taxes. To increase net revenues, tax authorities can increase tax collection or look for cost savings and efficiencies in the revenue administration process.

The nature of a sugar related excise tax is an important factor impacting the cost of administration as, for example, an excise tax on refined sugar levied from a very small number of sugar mills is likely to be easier and cheaper to administer than an excise applied to a considerable number of soft drinks and food manufacturers.

Whatever the tax type, e-facilities should be made available to taxpayers for all administration processes including registration/licensing, rendering stock returns (if required) tax returns and payments.

Whatever the rate of tax applied, the administration requirements should cover:

- *Registration/licensing/approvals;*
- *Record keeping;*
- *Returns/declarations and payments;*
- *Debt management;*
- *Assessments;*
- *Supply chain controls;*
- *Compliance powers;*
- *Offences and penalties; and,*
- *Appeals.*

4.5. Identify and Categorise the Taxpayer Population

In planning for a new tax, the revenue administration will need to obtain information about the intended taxpayer population, which should be analysed by product, volume of production and/or type of involvement in the industry (e.g., producer, warehouse operator, importer), because the revenue administration may wish to administer the tax differently according to each category – for example, monthly returns and payments from large producers and quarterly returns and payments for small or occasional producers. It may also be appropriate to control different categories of the industry in different ways – for example, computer audit with back-up computerized records for a large producer and physical controls and paper records for a small producer. Multinational businesses and those with several premises should be subject to an overall co-ordinated revenue control whereas businesses with only one set of premises may be best controlled by a local office. Categorization by product type using the Standard Industrial Classification (SIC) enables the revenue administration to compare throughput and performance (e.g., all confectionery producers, all soft drinks producers, all potato crisps/chips producers, etc.).

4.6. Treatment of Manufacturing/Bottling Losses

Tax credits (against a future tax payment) should be allowed for taxable food and drinks that are:

- *Lost;*
- *Destroyed;*
- *Disposed of as waste;*
- *Reprocessed; and,*
- *Spilled, spoiled, time expired or otherwise cannot be used.*

Taxpayers should be allowed to claim a tax credit for lost or destroyed taxable goods provided that they keep evidence that shows that the goods have been lost or destroyed. Taxpayers claiming this credit should be expected to have records of:

- *Quantity (in litres if drinks), including how much of it was subject to the sugar or added sugar tax;*
- *Tax paid on all goods for which credit is claimed;*
- *Place and date the goods were lost or destroyed;*
- *Cause of the goods becoming lost or destroyed;*
- *Company, organisation or individual that had possession of the goods immediately before they were lost or destroyed; and,*
- *Refunds given to customers because of goods lost or destroyed (if this applies).*

Taxpayers do not need to have a single document showing all of this information, but all of the evidence together must show the required information. It must also allow the revenue administration to verify that this information relates to the goods on which tax had been paid and which are the subject of the claim.

4.7. Timely Revenue Collection/Debt Management

To protect revenues and ensure equal treatment, the revenue administration must commit to collecting all the revenue that is rightfully due in a timely manner. Taxpayers who do not pay their taxes on time benefit from an unfair cash flow advantage, placing them at a competitive advantage over other companies at the expense of government revenues. Inconsistent or lax enforcement of tax collection across taxpayers encourages complacency by non-compliant operators and creates unfair competitive advantages for taxpayers who fail to comply with legal requirements to pay the correct amount of tax when due.

Revenue administrations should warn taxpayers that delayed payments will not be tolerated. Taxpayers who pay electronically such as by direct debit are less likely to default. However, when a taxpayer does default without prior agreement of the revenue administration to delay the payment, the authority should pursue payment immediately. Interest at least equivalent to the prevailing commercial rate should be charged on any late payment and the taxpayer's compliance record noted. If there is a reasonable explanation for the delay (e.g., postal strike where e-facilities are not in place for payment) then no action should be taken. Otherwise, failure to pay the tax on time should result in a civil penalty of a small fixed amount or a percentage of the tax due whichever is appropriate. At any time after a default, the revenue administration should have the legal power to seize business assets including materials or choose to recover the debt through the civil courts. The threat by the revenue administration of suspending the licence to operate is usually an effective tool in securing timely payment of excise tax. For repeat bad payers the ultimate threat

would be to remove the licence(s)/approval(s) for all premises owned by that registered taxpayer.

4.8. Relief from Taxes for Approved Uses

For excisable products such as alcohol not used for consumption in drinks – for example, as in paint manufacture or for medical use (identified as “approved uses”), the tax is relieved/rebated. Whilst it is unlikely that there will be many approved uses for food or SSBs, if the tax is levied on refined sugar, then there are likely to be approved uses (e.g., in pharmaceutical products for children or rehydration medication). Samples used for tasting and for commercial or promotional purposes are not normally approved uses and should be taken only from tax-paid stocks.

4.9. Relief from Taxes for Exports

Taxpayers should be able to claim a tax credit for products subject to the tax that have been exported. To support such a claim, taxpayers should be required to have evidence of export. If the evidence is not available or unsatisfactory, then the tax due must be included in the next tax return.

The evidence of export will normally include customs documentation, consignment notes, authenticated air waybills or sea waybills, bills of lading, contracts of carriage, packing lists, insurance and freight charges documentation and evidence of payment of freight charges. Finally, there should be evidence of receipt of the goods in the importing country.

The documentation should show details of:

- *Supplier;*
- *Consignor (if different from the supplier);*
- *Customer;*
- *Brand of drinks that have been exported;*
- *Method of transporting the drinks;*
- *Route of movement of the drinks; and,*
- *Destination.*

If the export is not carried out as part of a supply to a customer, then the evidence does not need to show the supplier and customer, but it must show the owner of the food/soft drinks.

If someone other than the taxpayer arranges for the food/drinks to be exported, then the taxpayer must have a declaration from the person who arranged the export that:

- *Confirms that the food/soft drinks have been exported;*
- *Confirms that they hold documents that shows all of the required evidence for exports set out in this guidance;*
- *Commits to keep those documents for at least 5 years from when the claim for an export tax credit is made; and,*
- *Commits to provide those documents to the revenue administration on request.*

If a taxpayer does not provide satisfactory evidence to the revenue administration on request, the claim for an export tax credit should be refused and tax charged on the taxable products.

For products transported by rail, taxpayers should keep the consignor's copy of the consignment note signed by the railway official accepting the products for delivery.

If the food/soft drinks are collected by the customer or their representative, the taxpayer should keep the written order showing the customer's name, address and identification number (tax number or other acceptable evidence of identity), the name of the authorised representative collecting the drinks, the address the products will be delivered to, the vehicle registration number of the transport used and the signature of the customer or authorised representative confirming receipt of the goods.

4.10. Relief from Taxes for Duty-Free Consumption

Goods subject to excise taxes may usually be removed under bond as untaxed supplies:

- *To diplomats and visiting forces;*
- *To any entitled organisations;*
- *For use in ship and aircraft stores; and in some countries,*
- *To the national armed forces.*

The revenue administration should normally set controls/regulations on duty-free goods to ensure that they do not find their way to local commercial markets. Goods supply through duty-free channels can be susceptible to diversion and fraud. Lax controls can result in the growth of illicit, non-tax-paid trade in goods that will negatively affect revenue and encourage corruption

4.11. Products Sold or Given to International Passengers

If products liable to sugar tax leave the country as stores on international passenger transportation then in addition to the general export evidence required, taxpayers must provide more information. Taxpayers should include a signed statement from either the operator of the international passenger transport of business supplying taxable products on it, confirming that all the taxable products will be consumed on the international passenger transport.

4.12. Tax Refunds/Rebates

Because tax refund/rebate systems require validation and such systems have been subject to widespread fraud in some countries, it is better to allow credits of tax (to be shown on the next return and deducted from the next payment). Occasionally, there may be cause for special refunds/rebates of tax. For example, where goods originally destined for the home market are diverted unexpectedly to export.

Subject to presentation of evidence of export, the business should be able to claim a tax refund. There may be legitimate reasons for tax-paid products to be returned and/or destroyed by the producer. Again, subject to presentation of appropriate evidence, a refund may be issued. Producers should be required to keep records of all such returns and/or destructions for verification by the revenue administration.

4.13. Small or Occasional Producer Requirements

Some governments have chosen to exempt small or occasional producers from the sugar tax. Whilst it makes sense to not have to devote resources to monitor and audit the compliance of very small producers, such an exemption can lead to larger businesses trying to disaggregate their affairs so that the new small businesses all fall below within the exemption limit. Where there is a strong informal market, such an exemption can

make it more difficult for revenue administrations to determine who is claiming the exemption validly and who is not.

As an example of the kinds of exemption that can be applied, the UK exemption for small producers from sugar tax is reproduced in the box below.

UK Exemption from the sugar levy for small producers as at August 2018

If you produce less than one million litres of liable drinks, you're classed as a small producer and don't need to register for the levy if all the following apply:

- *You, and anyone connected to you, produced less than one million litres (worldwide) of liable drinks over the past 12 rolling months (including before 6 April 2018)*
- *You, and anyone connected to you, won't produce over one million litres of liable drinks in the next 30 days*

You can choose to register for the levy if you use a contract packager. You'll get a registration number that you can give to them so that they won't have to pay the levy on your drinks.

You must register as a producer if, at the end of any month, the amount of liable drinks you've produced over the past 12 rolling months (including before 6 April 2018) is more than one million litres.

If, over the past 12 rolling months, you've produced more than one million litres of liable drinks but have started to produce fewer liable drinks, you might need to register from 6 April 2018. When your production goes below one million litres over the past 12 rolling months, you can cancel your registration. You can then choose to register as a small producer if you use a contract packager.

Source: <https://www.gov.uk/guidance/check-if-you-need-to-register-for-the-soft-drinks-industry-levy#small-producer>

4.14. Proportionality in Excise Administration Requirements

Note: The Provisions in Paragraphs 4.15 to 4.26 (inclusive) are considered good practice where low rates of excise tax occur. If a Revenue Administration is implementing a high excise tax rate on selected products or across a wide range of food and soft drinks producers it will be appropriate to amplify the requirements proportionately. See Annexe 6 for guidance on requirements that are appropriate to a tax levied at a high rate.

Whatever the rate of tax applied, the administration requirements should cover:

- *Registration/approval/licensing of premises;*
- *Record keeping;*
- *Returns and payments;*
- *Debt management;*
- *Assessments;*
- *Supply chain controls;*

- *Compliance powers;*
- *Offences and penalties; and,*
- *Appeals.*

4.15. Administration Requirements for a Broad-Based Low Excise Tax Rate

Guidance in the following paragraphs relates to products subject to a low rate of tax and thus a low risk of being evaded. If the intention is to start with a low rate of tax applicable to a narrow range of products and to gradually increase the tax rate and coverage of the tax then it is best to set out in legislation the requirements for administration of a high tax rate from the start but not to apply the full provisions until such time as the high rate comes into force and/or illicit trade is found to apply to the products subject to the excise tax. It is for each revenue administration to determine the range of administration requirements proportionate to the tax at risk.

4.16. Registration

Food and soft drinks manufacturers subject to excise tax will need to register with the tax administration and provide information about their businesses such as:

- *Name and address of legal entity (and a copy of the certificate of incorporation, etc.);*
- *Mailing address of the business headquarters (if different from above);*
- *Name and contact details of senior person in the business who will be responsible for the tax returns and payments;*
- *Tax identification or reference numbers – for example, for VAT, Company Income tax, Personal Income tax and/or Payroll Tax as appropriate (these numbers should be linked on the tax administration's database so that comparison can be made across taxes with the tax administration having a complete picture of the company's tax affairs);*
- *Bank account details;*
- *Details of the services they provide including revenue by category types;*
- *Copies of their current tariff structures; and,*
- *Details of commercial records kept and software used.*

As part of the registration process a follow up visit will be required to explore and document the company software and accounting systems in detail.

4.17. Changes to the Registration Data

Any changes to the registration data must be notified to the tax administration without delay.

4.18. Deregistration

There will need to be a facility allowing companies to deregister where they cease trading in products and/or services subject to the tax or when businesses merge, etc.

4.19. Records to be Kept

The commercial records required for VAT and for Income Tax (on profits) should form the mainstay of the records required for an excise tax. Additional records may be required to support an excise tax structured on a “specific” basis (e.g., losses in operations/storage, machinery service records or a tax levied at a high rate) – see Annexe 6 for full details. It is essential for effective control that taxpayers are required to keep full, accurate and up-to-date records that are subject to audit at any time. When discrepancies are discovered, revenue authorities must take robust enforcement action.

4.20. Length of Time to Keep Records

A five year minimum period is commonplace but some tax administrations require a longer time period. In any event, the record keeping requirements should be set out in legislation and, ideally, be the same for all taxes.

4.21. Rendering Returns and Making Payments

Tax administrations will need to decide on the frequency with which to require returns from food and soft drinks manufacturing companies (but the frequency needs to tie in with the billing arrangements of the companies). Monthly returns and payments are likely to be preferred by government so as to ensure a consistent revenue flow. Linking return and payment dates to when VAT returns are due might simplify administration.

The information on the returns will need to reflect the detailed design features of the excise tax and be sufficient to provide some background information that can be verified during periodic audits. The return data anticipated as being required should cover production, operations, storage and movement of goods under bond. The detailed requirements should be discussed with the industry trade association to ensure that it is available on (e.g., a monthly basis).

Returns and payments should be required to be submitted electronically.

4.22. Debt Management

Overt powers to recover unpaid tax are frequently absent in excise legislation (the assumption being that the premises can be closed and stock can be detained, etc.). For an excise tax on food and soft drinks, powers that are akin to those of VAT are recommended – including powers to levy distress on assets; to attach a bank account; and to recover amounts owing from third parties.

4.23. Assessments

A power to assess (and call for) tax due is commonplace under a VAT and permits the administration to estimate the tax due if no return is submitted as well as calling for tax under declared found during an audit. Such powers could be important for an excise tax on added sugars in food and soft drinks where the comparison of inputs to declared outputs or of business records to declarations indicates that declarations are not credible.

4.24. Compliance Powers

Compliance controls by revenue administrations are designed to validate and assure the accuracy of taxpayer declarations and need to be adapted to the type of tax applied and the rate of tax levied. The tax administration must have powers to access records (including computer records) and to enforce all

requirements necessary to secure full compliance with the tax legislation.

These powers may need to be different to the traditional powers available for excise functions and more akin to those available for VAT. Necessary powers include:

- *Access, search and secure premises;*
- *Seizure of computers, records and other items;*
- *Record keeping requirements;*
- *Provision of information when required;*
- *Register/deregister compulsorily any business that fails to register/deregister when required;*
- *Challenge the content of any tax return or other relevant document; and,*
- *Assess additional liability where appropriate and enforce payment.*

4.25. Offences and Penalties

Penalties should be proportionate not only to the amount of tax involved but also to the compliance history of the company concerned. A first under declaration may be subject to a small penalty, in addition to an assessment for the unpaid tax or to a “suspended” penalty and a requirement for the operator to record and declare product tax liability correctly over a subsequent period (two or three years) whereupon the penalty would lapse. If, however, the operator were to make another under declaration within the period advised, then a larger penalty plus the original “suspended” penalty would be due.

Additional penalties and sanctions should include:

- *Sanctions for non-payment;*
- *Sanctions and penalties for irregularities or non-compliance; and,*
- *Criminal prosecution.*

Suspension or withdrawal of an operating licence would represent a very severe penalty and should only be used as a last resort.

4.26. Appeals

An appeals mechanism is an important part of good tax administration and helps to engender voluntary compliance. This should, ideally, cover any decision of the tax administration (including the withdrawal of a licence, to disputes over the amounts of tax payable). In order to deter frivolous appeals, rules should be in place to require some or all of the tax in dispute to be paid before the appeal can be heard.

4.27. Tax Collection Considerations

4.27.1. When Does Tax Become Chargeable and Payable?

Liability for a specific excise tax accrues when the taxable product is produced or imported (the tax point). However, the tax is not payable until the product is introduced in commerce or released from bond for consumption. All taxable product produced must be accounted for whether or not tax is due on it. For example, losses for spillage, evaporation, removals to approved users, exports or duty-free channels must all be accounted for. The revenue administration may require the producer or warehouse operator to pay tax on any losses or product that is not otherwise accounted for, to the satisfaction of the tax administration.

4.27.2. Tax Calculations

Applying specific taxes on food and drink products is straightforward as the amount of tax due is determined by multiplying the tax rate by the quantity/volume and sugar or added sugar content of the product. All the information needed to calculate the tax should be available on the label of the product and/or on the shipping documents for both bottled/canned/package and bulk goods.

Unlike the transaction values used as the basis for *ad valorem* taxes, the information on labels and shipping documents is usually extremely reliable.

If in doubt, the taxable content should be independently verified by revenue authorities through sampling and testing using an accredited independent or public sector laboratory. By contrast, for *ad valorem* taxes, an invoice value can never be verified with complete certainty.

The calculation of tax due is the same for imported and domestically produced taxable products.

4.27.3. Timing of Tax Payments

Although the tax liability accrues at the moment the taxable product is manufactured or imported, generally, specific taxes are not actually paid until the taxable product is introduced into commerce and made available for sale to consumers.

Modern electronic systems make it feasible to require tax payments on the day the product leaves bond. Historically, because of processing time and costs, revenue authorities have allowed taxpayers to account for specific tax due on a periodic basis – usually covering a calendar month's domestic deliveries – and to pay the tax some time later. However, daily electronic payments could not be expected in countries where the smaller businesses still rely on paper records. In those instances, a monthly or bi-monthly accounting period and payment, say, 10 working days, is likely to be the most practical solution. Where payments are not usually made electronically, administrations may prefer to deal with larger payments covering longer periods, which requires fewer transactions to process and provides some additional cash flow benefit for operators.

Payments by direct debit (debit order) are recommended for any tax as the easiest payment method to collect tax declared. Some countries encourage this by allowing those who pay by direct debit to have tax deferred for another two or three days.

In the UK, excise taxes are paid monthly. If a producer, warehouse operator or owner of taxable product is late in making his/her tax payment, s/he is assessed interest and penalties.

Part 5: Compliance, Tax Risks and Audit/Assurance

5.1. General Principles

Compliance is what is expected of all taxpayers and all actions by revenue authorities should aim to maximise taxpayer compliance with the law and published procedures. An effective modern strategy for compliance should aim to optimize tax revenues while facilitating legitimate trade. The strategy should therefore aim to maximise voluntary compliance by taxpayers balanced with effective audit and robust enforcement action in cases of wilful non-compliance and include the use of appropriate tools to respond to taxpayer behaviours. To achieve these objectives, regulations and procedures should be simple, with requirements based on modern commercial practice, including the use of electronic facilities for filing returns and making payments.

Much of an administration's time and effort is spent dealing with errors made, deliberately or unintentionally, by taxpayers. The intention should not be to penalize or put out of business those who make genuine mistakes but to show taxpayers how to get it right next time. Operators who are regularly negligent or are lax in their internal controls or documentation should be assessed the appropriate penalties, which should include suspension or, as a last resort for the most serious non-compliance revocation of licence. Those who deliberately evade must be addressed through penalties including suspension or ultimately, revocation of their excise registration, licence or approval plus enforcement and criminal investigation action. Successful prosecutions should be publicized to the maximum in order to deter others.

The compliance effect of a good audit can be expected to include the detection of errors with a view to future declarations by the taxpayer being accurate.

See also Annexe 7.

5.2. Risk-Based Compliance Management

The modern compliance approach is based on risk assessment and analysis of data pertaining to each taxpayer. As excise taxes are often levied at very high rates and on goods for which there is consumer demand, the compliance approach depends on tools to aid voluntary compliance backed by physical and audit based controls. In some countries, excise tax management is facilitated by partnerships with trade associations for the industries involved. For a lower rate sugar tax, the same principles apply but the extent of compliance oversight should be reduced in proportionate to the relative risk.

To control a specific excise tax effectively, revenue officials need to have a good understanding of the end-to-end production process used by each manufacturer, the key data points and potential risk areas involved as well as an ability (through liaison with colleagues and other public agencies) to oversee the supply chain in which each taxpayer operates.

As outlined above, much of a revenue administration's effort is spent dealing with errors and errors can be made by revenue officials as well as by taxpayers. The increasing use of electronic facilities reduces scope for unintentional human errors. If through having simple clear legislation, thorough training of officials and good electronic facilities a revenue administration can reduce errors to a minimum it will become easier to focus on the non-compliant and deliberately fraudulent taxpayers. However, it is important that revenue administrations do not become complacent after providing electronic facilities for taxpayers.

The following describes compliance management focussed on high revenue rated products such as alcohol and tobacco and while the same principles apply, will need to be utilised proportionately in respect of a low rate sugar tax.

Subject to the amount of tax involved and the credibility of declarations/returns by the excise operator, it may be necessary to use unannounced and physical checks even if audit reports indicate there is little risk. Powers for revenue officials to enter premises and seize taxable products, manufacturing equipment and vehicles will need to be provided for in legislation and budgets will need to be available to reimburse staff for visits outside normal working hours. Taxpayers with fraudulent intent will take advantage of regularly timed audits and inspections or physical checks that take place only during “office hours.” To guard against/identify incidents of staff corruption it will be important for unannounced visits to be carried out by staff who have not been involved in the audit of the taxpayer. Specific training in criminal procedures (including seizure, handling evidence, arrest, etc.) will also be required in addition to tax audit training.

Risk management should also be applied to all returns and declarations made. There may be millions of individual transactions in a year and risk factors need to be devised and set centrally according to the circumstances in each country. These are usually combined with parameters that can be set additionally by local officials (subject to approval by local management to guard against corruption).

Central to a modern risk management system is information and data analysis. This means that the revenue administration needs electronic information of all returns (tax declarations, stock returns, and other tax returns) and of all movements under bond (imports, exports, inter-warehouse movements). Weightings can be given to factors such as intelligence, results of spot checks, industry trends, assessments levied, compliance history, warnings and penalties issued and number of new and total customers. The set parameters are applied and the results both determine the frequency and level of audit interventions and can inform the need for specific enforcement interventions where the risk analysis indicates potential fraud.

5.3. The Compliance Spectrum of Taxpayer Behaviours

Taxpayers exhibit a spectrum of behaviours and attitudes that range from the honest person who understands the need to fund public services through paying taxes accurately and on time, to the criminal organizations that aim to evade taxes and profit from illicit activities. Each country will have different proportions of its taxpayer population in each part of the compliance spectrum and will need to use appropriate tools to tackle the range of behaviours. Modern tax administrations use data analysis techniques to estimate taxpayer compliance with each tax and make year-on-year comparisons identifying relevant changes – for example, in revenue administration resources deployed, tax rate applied, economic upturn or downturn, etc.

The honest taxpayer needs simple, straightforward requirements with support and encouraging thanks when they get it right! Those who make genuine mistakes can be helped through simpler legislation and requirements, better guidance, electronic facilities and support and warnings that penalties will be issued for subsequent mistakes. Operators who are regularly negligent or are lax in their internal controls or documentation should be assessed the appropriate penalties. Those who deliberately evade must be addressed through penalties, enforcement and criminal investigation with successful prosecutions publicized to the maximum in order to deter others.

5.4. Creating Effective Partnerships

Effective partnerships are built on mutual respect and an efficient, practical and transparent system of administration and enforcement. Both the revenue administration and the taxpayer have to take action to ensure that there is no corruption on either side. Some revenue administrations have developed voluntary Memoranda of Understanding (MoU) through the trade associations representing the producers and others in the industry subject to excise taxation under which both parties have obligations.

Because a number of government ministries and agencies have an interest both in effective tax policies and in reducing the ability of international criminals to operate illicit trade, strong inter-departmental collaboration can help build compliance and enforcement synergies. For example, tax authorities can work with police and customs officials to fight illicit trade. Health ministries will be keen to reduce the supply of illicit taxable products that undermine health objectives. Trade ministries have an interest in stopping counterfeit goods, facilitating trade and in promoting economic growth.

5.5. Voluntary Disclosure

Several countries have established a “voluntary disclosure” facility whereby an industry member may disclose to the revenue administration voluntarily any errors made regarding payment of taxes. Depending on circumstances, the revenue administration may reduce or remove any normally applicable penalties and require that the taxpayer pay only the tax owed and interest. If the revenue administration finds the error, full penalties are applied. This facility has proved successful in encouraging industry to audit itself rigorously to avoid penalties and the ability to make voluntary disclosure has helped to build trust between revenue authorities and industry.

5.6. Public Awareness

As key objectives of introducing a tax on sugar or added sugar is to encourage consumers into making healthier choices and manufacturers into reformulating products so that they contain less sugar, it will be important to inform consumers that the new tax is part of an overall strategy to tackle health issues such as obesity, tooth decay, etc. This also helps make the tax more politically acceptable.

5.7. Taxpayer Education and Support

Providing taxpayer service support to taxpayers is a critical function in achieving voluntary compliance.

The revenue administration should ensure that taxpayer obligations with regard to a new sugar excise tax are published clearly and in user-friendly language, not legal terminology. All those who request registration, a licence or approval should be provided with full information about the requirements and procedures they will be required to comply with.

The revenue administration should provide a website so that those with internet access can find all the information they need about revenue administration requirements, download and complete forms and/or make electronic declarations. In addition to information available on a revenue administration’s website, some revenue administrations also provide an e-learning package free of charge explaining the requirements and outlining the accounts and records that must be kept, what these need to include, and the physical controls needed for premises and machinery. Some revenue administrations provide seminars or face-to-face advice to those interested in applying for registration, approval or for a licence.

Additionally, the revenue administration should provide an adequately staffed and well-advertised telephone number or helpline so that taxpayers can get answers to queries quickly and easily and, where appropriate, register for a one to one telephone call with an official to seek specific technical guidance, set up direct debit payments, etc.

5.8. Industry Education for Revenue Administration Staff and Managers

In order for the revenue administration to gain and maintain credibility with the food and/or beverage

industry that it regulates, it is very important that staff and managers of the revenue administration have sufficient expertise not only in the laws and regulations they administer, but also in the production and distribution process of taxable products. This also ensures that, as new laws and regulations are contemplated by the revenue administration, staff and managers will have a good understanding of how they will affect the regulated industry and achieve the intended outcomes.

Very often industry members are most willing to provide the requisite training for revenue administration staff because they understand how important it is for the regulators to have a good understanding of industry operations. Ongoing, reciprocal training is important for a few reasons:

- *It helps to establish good relationships.*
- *There are many staff changes in both sectors, so training should be provided on a regular schedule.*
- *Other ministries (e.g., consumer protection, health) may make changes to laws and regulations affecting the industry. Additionally, the food and soft drinks industry are constantly developing new products and processes.*

5.9. Main Tax Risks

The main tax risks will vary according to the tax design however, genuine errors, negligence and deliberate non-compliance and fraud are common to taxes designed with either a specific or an *ad valorem* structure.

With an *ad valorem* tax, the key risks are likely to be:

- *Underdeclared/Incorrect values;*
- *Avoidance by separating out costs from production (e.g., marketing and overhead costs) and loading those onto a distribution company; and,*
- *Transfer pricing manipulation on purchases of key ingredients (e.g., drums of concentrate).*

With a specific tax structure and production and movement of taxable goods under bond, the key risks are:

- *Under declaration of taxable contents (if the tax is based on sugar or added sugar contents); and*
- *Diversion directly to the domestic market of untaxed goods and “ghost” (fictitious) exports.*

With either tax structure there will be revenue risks. The most common ones are:

- *Under declared production by registered producer;*
- *Undeclared production by unregistered illicit manufacturers including a “night shift” organized by a local manager and staff without the knowledge of senior management in the company;*
- *Fictitious exports / tax free sales including fictitious sales and fictitious removals (duty not paid) to bonded warehouses (including to non-existent bonded warehouses or for export); export diversions/round-tripping i.e. goods not leaving the country;*
- *Illegal leakage of products (including counterfeits) from Free Trade Zones where there are inadequate customs controls;*
- *Smuggling of products in from neighbouring countries or from other countries by sea /air or from transshipments (not being reshipped but diverted for home use). Includes misdescription/misdeclaration of dutiable goods as duty free products; and,*
- *Theft by employees/local managers where internal management controls are weak.*

5.10. Audit

An audit of a food or beverage company will need a carefully planned approach and ideally will cover three tax types - excise, VAT and Income tax on profits. Only if a sugar tax is charged at specific rates would a separate excise audit be likely to be warranted. The reason for covering all tax types is that the main source material for auditing will be the company IT system (for which the specialist computer audit skills will be required) with the same information being used as the basis for the verification of declarations for the three taxes. (Further information on Audit is at Annex 7.)

5.10.1. Risk-Based Compliance Audit Approach

Modern audit of excise taxpayers is based on risk assessment and credibility techniques utilising each taxpayer's compliance history (with excise and all other taxes). This means that the revenue administration needs up to date and accurate electronic information bringing together all the various interactions of the taxpayer (enquiry, audit visit or desk check, assessment, payment record, penalty and appeal, etc.). Ideally, there should also be a data feed from Customs showing all the import and export transactions involving the taxpayer. The different data items should be weighted and the results subjected to set parameters that determine both the frequency and the level of all audit interventions. The results can also indicate potential fraud and suggest enforcement interventions.

The audit should follow the usual methodology employed by the revenue administration for auditing any large business. This is likely to entail (for example):

- *Desk research (including past tax returns, financial accounts) and drawing up of an audit plan (this might also entail internet research on associated businesses) to assemble background information);*
- *Initial interviews at the business and assembling of the required information (including management accounts; and internal and external audit reports);*
- *Making a preliminary assessment of compliance and risk areas;*
- *Testing of individual risk areas and reviewing registration/licence/approval conditions; and,*
- *Producing (and discussing) the audit findings, etc.*

The selection for audit should, initially, be based on all the information and intelligence available in respect of the taxpayer whether from their history in complying with other taxes or from third parties such as consumer protection or food standards authorities.

When all the taxpayers who registered and were granted licences or approvals have been audited once in respect of the new tax, there should be sufficient data available to categorise taxpayers according to risk. Usually all excise taxpayers will be subject to audit over a given period known as the audit cycle (e.g., three years) but this is dependent not just on risk but also on the availability of audit resources. One of the benefits for the company of a maintaining a good compliance record would be a reduction in frequency of full audits with sample desk checks and occasional unannounced physical checks being carried out instead. For the revenue administration, the benefit of using this approach is to be able to devote more resources to those businesses and those transactions that pose the greatest risk of fraud.

5.10.2. Audit of an SSB Manufacturer — General Methodology

First of all, the audit team need a good understanding of the business process from raw materials and other inputs through to production and distribution of the finished products. They should then identify the key data points in the food or soft drinks production process that enable revenue officials to check the

credibility of a producer's records and declarations. Audit checks should include:

- *Inspecting premises to ensure all is in line with the plan submitted to the revenue administration on registration (or on application for a licence or approval);*
- *Noting stock levels of raw materials, presence of machine counters, record books/sheets, automated process control software, etc.;*
- *Identifying the procedure for receipts of raw materials, packaging, etc. ("goods inwards/deliveries");*
- *Noting the details of track and trace markings;*
- *Checking that service records of machinery accord with the declared production;*
- *Comparing declarations/inputs/stock and production/sales records with trader's business/financial records (purchase records for inputs including label and packaging materials) and other tax returns;*
- *Noting the hours of operation (one shift; 2 shifts, 24hr operation, days of week, any expected seasonal changes downtime for cleaning, annual maintenance records;*
- *Documenting the recipe(s) used and manufacturing process (protect commercially sensitive information). For SSBs the manufacturing process is usually a batched system involving:*
 1. *Diluting a drum of concentrate with defined quantity of water;*
 2. *Mixing a sugar and water syrup (to defined proportions);*
 3. *Mixing 1 and 2;*
 4. *Adding CO² and bottle/can product;*
 5. *Placing bottle/can/packet in packaging (cartons, trays, boxes, etc.).*
- *Where fruit is used (rather than a drum of concentrate) document the recipe in detail;*
- *Take note of all internal audit and management checks and how these are recorded and acted upon;*
- *Examine external audit reports and note items of interest;*
- *Note the annual stocktake records;*
- *Assemble records of quantities of raw materials used (concentrate; sugar; bottles/cans; labels, other packaging, CO², etc.);*
- *Check when production is counted and used for the tax point (usually movement from factory floor to storage warehouse);*
- *Note the returns/wastage procedures including sales of waste products (these can be compared with the records of the purchasers);*
- *Note the delivery contractors if used and the contracts applicable. Check the records for usage of each and payments made;*
- *Check that the records of payments to employees match with the numbers employed on shift patterns;*
- *Check the quality control records and records of any independent tests of products (e.g., by a Food Standards agency or accredited laboratory);*
- *Check the taxpayer's compliance record with other taxes and, as far as possible, with records held by other authorities (e.g., Food Standards/Consumer Protection);*

- *Check all pipework and valves against declared usage of pipework on the premises plan submitted at registration/application for licence or approval;*
- *Ensure appropriate liaison with consumer protection authorities retesting products and labelling contents; and,*
- *Subject the audit plan to regular review and intelligence.*

5.10.3. Audit Checks to Address Key Revenue Risks for Products Taxed with Either Specific or *Ad Valorem* Structures

1. Checks for undeclared production

- *Check the recipe (inputs to outputs);*
- *Cross-check recipe to concentrate purchases (use Customs records of imports);*
- *Cross-check declared production to use of packaging materials and labels (glass bottles = bottle tops; plastic bottles = PET preforms and bottle tops; tins = purchases of rolls/drums/sheets of aluminium, etc.; all = cartons/boxes/trays). Machine counters, etc. Scrap/waste/breakages/samples for independent analysis;*
- *Cross-check production to machine capacity, service records of machinery and hours of operation – invigilate if required/out of hours unannounced visits during declared downtime and declared machine maintenance. Use machine counters and computerised control software if available;*
- *Check declared losses are justifiable (invigilate if necessary);*
- *Check staff bonus scheme based on achieved production; and,*
- *Compare production to deliveries (cross-check to vehicle departure logs and delivery capacity).*

2. Checks for fictitious sales

Fictitious sales includes any untaxed disposal including fictitious exports, tax free sales (to duty free recipients) fictitious removals (duty not paid) to bonded warehouses (including to non-existent bonded warehouses or for export); export diversions/round tripping (e.g., goods not leaving the country), etc.:

- *Compare with customs declarations and VAT records if appropriate. Leakages from duty-free users (including from Government, diplomats, armed forces, ship and aircraft stores, etc.);*
- *Use Mutual Assistance agreements, where appropriate, to check that goods declared for export are being sent to/received by legitimate traders in the countries of import;*

3. Checks for unregistered illicit manufacturers: *Visit retailers and stockists of products (bars, street markets, etc.) and try to trace supply chain backwards.*

4. Checks for smuggled products

- *Initiate enhanced Customs spot checks. Cross-check with customs records of imports of inputs to the production process and of manufacturing equipment to identify imports by unregistered producers;*
- *Visit retailers and stockists of products (bars, restaurants, street markets, etc.) and try to trace supply chain backwards, identify any counterfeit products for sale and liaise with consumer*

protection authorities.

5.10.4. Audit Checks to Address the Key Revenue Risk of Incorrect Contents Declared for a Specific Structure Tax Based on Sugar or Added Sugar Contents

- *Take and have samples tested (in liaison with the appropriate food standards or labelling authority).*
- *Inspect production processes and cross-check a range of inputs to outputs to validate the declared recipe.*
- *Check free deliveries (to staff and for promotions, etc.).*

5.10.5. Audit Checks to Address the Key Revenue Risks of Under-declared or Incorrect Values Under an Ad Valorem Tax

- *Understand the product pricing structures (get price lists and monitor price changes) and audit the revenue received.*
- *Ensure sales to associated businesses (e.g., to a distribution company within the group) are valued on an “arm’s length” basis (and in accordance with legal provisions).*
- *Assess the cost of production (including the ingredients and packaging and ensure that all relevant overhead costs including marketing costs are included) and compare to the selling price to associated businesses.*
- *Check whether there are any management charges or royalties charged to reduce the value.*
- *If raw materials (e.g., drums of concentrate or sugar) are received from a parent company (or from an international associate) explore the possibility of transfer pricing manipulation. Cross checking with other revenue administrations in the region might reveal large (“profit shifting”) price differences (for similar quantities) in the cost of drums of concentrate.*
- *Ensure discounts given are bona fide (and allowable in law).*
- *Check records for any “free gifts” and for supplies at reduced cost (e.g., supplies to staff).*
- *Identify losses due to theft or other incidents (e.g., fire, accidents in warehouse). Ensure that any post production losses are correctly accounted for including exploring how: faulty batches; transit losses; and breakages, etc. are dealt with.*
- *Examine the (tax) treatment of credits given and any sales incentive schemes.*

5.11. Enforcement of Serious Non-Compliance (Criminal)

The revenue administration, in conjunction with the legal authority will have established investigative techniques and processes that must be followed regarding disclosure of the investigation, rights to due process and other pre-trial processes. Revenue administration staff must be trained investigators and capable of testifying in a court trial.

When revenue officials suspect deliberate violations of laws and regulations by a taxpayer, they should bring in an enforcement team to conduct a complete and thorough investigation gathering all the facts, including interviews and assembling documentation for potential presentation in court as evidence. The staff conducting the investigation must be credible and appropriately trained in criminal procedures.

When the investigation has been completed and documented in a case report, it should be passed to

a supervisor/more senior official for review of sufficiency and concurrence with the findings of the investigation. In the event of mitigating circumstances such as: a relatively small amount of tax; cooperation by the offender; or a minor and first violation by a taxpayer, the revenue administration may consider issuing a stern warning and penalty fine. If the violations are serious and involving a significant amount of revenue or fraudulent intent is involved, the revenue administration may seek counsel's advice to determine whether or not there is enough evidence of wrong-doing to proceed with a trial and prosecution.

As an alternative to prosecution or, if appropriate, issuing a compounded penalty²⁰ with or without publicity. Publicising compounded penalties is an effective tool in deterring criminal non-compliance.

Part 6: Implementing a New Tax on "X"-General Guidance

6.1. Process Guide

The introduction of any new tax will inevitably be a complex process. Annexe 8 highlights some of the high level activities that will be key to the successful implementation of a specific tax. It is recognized that a two-year implementation timescale may not be possible and that the planning and implementation processes may need to be telescoped into a shorter timescale. However, if that is the case, it is still important to undertake all of the project activities and to research thoroughly the areas that the tax is likely to cover. There are three main variables to consider in the preparation for implementation – time, cost and quality. Implementing a major tax change in a short time will require additional skilled resources (increasing the cost) or the scope/quality of the final product can be reduced. Timely decision making by Ministers and senior officials will also be essential.

A few of these areas to be considered are also amplified in the following paragraphs.

6.2. Set-Up Implementation Structure

It is good practice to set up a full time temporary programme or project team to oversee all the different aspects of introduction of a new tax, led by a dedicated programme director. Members of this team should include a Change Manager (HR change management specialist), programme/project management specialists and the programme team member(s) to be responsible for HR and other resources should be change-management trained.

The programme or project manager should report directly to the senior official in the business area concerned (known as the Senior Responsible Officer).

The first tasks for the programme team should include:

- *Undertaking stakeholder analysis, consultation and analysis of responses;*
- *Developing a communications strategy;*
- *Developing an outcome based comprehensive strategic plan with overall roadmap and detailed critical path analysis; and,*
- *Set outcome and output objective(s) and performance measures.*

The programme director should be directly responsible to a top revenue administration official and should provide regular reports on progress to a Steering Group comprised of the senior revenue administration officials, appropriate Ministry of Finance tax policy officials, plus administration, audit, enforcement, HR, IT and finance specialists.

6.3. Policy Consultation

It is good practice for a Ministry of Finance and revenue administration to consult stakeholders on all key aspects of an intended new tax. The Ministry of Finance usually deals with the policy issues whilst the revenue administration considers the implementation and revenue control issues. In particular, businesses should be invited to specify and explain their needs and highlight the areas where the proposed tax will create complexities that will need to be overcome. In regard to a potential sugar tax, businesses,

consumers and other public sector bodies (especially the Ministry responsible for Food Standards and for Consumer Protection) can provide very useful information that will help the Ministry of Finance and revenue administration decide on options for an excise tax on sugar or added sugar and on the detail of its administration. Stakeholder analysis should identify all public- and private-sector key stakeholders including any advisors, trade associations and civil society groups.

A consultation document should be published setting out the intended format for the new tax and the options under consideration with sufficient time for stakeholders to respond (say, three months). Responses should be analysed and appropriate changes made. In accordance with the timescale set in the overall road map, a summary should be published together with a revised tax outline if appropriate.

6.4. Legislation

Legislation should be drafted by the Ministry of Finance and/or revenue administration specialists and be subject to the usual Parliamentary scrutiny before it becomes law.

6.5. IT Systems

The aspect of implementation of a new tax that usually takes the most time and money is the IT development.

Wherever possible, electronic facilities for returns and payments should be the norm. Much will, of course depend on the numbers of companies likely to be involved in the excise tax; if it is only a small number, a simpler (spreadsheet) system for capturing bespoke information might be the best way forward.

Before IT systems can be developed and implemented, it is essential to have determined the detail required (e.g., for registration, for periodic declarations, etc.). This will require participation of IT staff in the policy development for the administrative processes and procedures from the early stages of planning the tax. Businesses who will be paying the new tax will also need time to adapt their own systems once they know exactly what the tax is to cover and what details are required. In a perfect world, the functionality and capability of the IT systems of the new excise taxpayers will be taken into account when designing the detail of the tax so that the administrative burden on the operators is reduced (and tax audit is made easier).

The implementation timetable for a new tax should take into account both the time needed by businesses to amend their record keeping and reporting systems and also the time required for development or adaptation of the revenue administration's IT and other systems and processes once the legislation is finalised.

Where practicable, the trade association representing the industry sector involved in the new tax should be asked to provide some "guinea pigs" to work with the IT developers in testing products such as stock and production returns. In this way, the potential for embarrassment of Ministers and the revenue administration on implementation of the tax can be minimised and industry will have "bought into" the design of the IT products that they should then find easy to use.

6.6. Development of "User Friendly" Forms for Returns and Payment

The project management team should oversee the design the administrative processes including all forms being devised by the revenue administration. It should be ensured that all the forms that the prospective taxpayers will be asked to complete include all the data required to facilitate risk and credibility based audit and in particular the registration form should contain all the information needed for administration/debt management. If any of the forms are to be made available for use as hard copy forms rather than for electronic

completion only then the trade association(s) representing the new taxpayers should be asked to provide some “guinea pigs” to test understanding of the forms and how to complete them. If trade associations are invited to help in designing forms and processes so as to minimise burdens on business whilst providing the revenue administration with the information needed, the final products should be subject to less criticism from the industry concerned and should result in far fewer mistakes due to misunderstandings of the law or requirements.

6.7. Public Awareness/Sensitization

It is vital to the successful implementation of the tax for the revenue administration to have developed a close working relationship with the food and soft drinks industries. Revenue administrations should also provide general awareness information targeted at potential taxpayers and consumers. They should have a website to promulgate information about the new tax with an FAQ section developed in liaison with the appropriate trade association/Chamber of Commerce, etc.

To reach as many consumers as possible, media messages should be circulated to local TV and radio stations and local press as well as to the national media so that, for example, the scope of the new tax on food or beverages are clearly set out. Articles about the new tax can be provided to trade associations, accountancy and legal associations as well as to Chambers of Commerce. In this way, consumers will be forewarned about any likely price changes (and to the extent of them – in case the food and soft drinks companies seek to impose other price hikes at the same time).

Since the producers of goods subject to the tax are likely to be new to excise requirements, revenue administrations should consider providing them with an e-learning package(s) to help them familiarize their employees with the new requirements. Requiring businesses subject to the tax to ensure all their employees have undertaken the e-learning package(s) within a specified period of entering their employment ensures employees have no excuse for failure to comply. In return, businesses should be expected to provide revenue officials with appropriate training in their business processes and information on trends and new developments in their trade sector.

A whistle-blower contact hotline should be advertised widely so that consumers and employees of the businesses subject to the new excise tax are able to provide intelligence to the authorities where illegal practices are suspected. This may be the same hotline used for reporting suspicions of evasion of other taxes.

6.8. Human Resources

The revenue administration may need additional resources to handle both the public awareness programme and preparation for the new tax including process administration, call or contact centre handling, audit and enforcement.

It is essential to make HR resource estimates to determine who will be involved in the different procedures and to train them accordingly. It is clearly vital that the staff who are to audit the tax understand the tax provisions in detail as well as the production process and the key risks to the revenue.

The key ingredient in the successful implementation of a new tax is often effective change management that ensures that the revenue administration staff, taxpayers and consumers are made aware of what to expect, and that they have the opportunity to contribute to the process. Staff are often concerned that their jobs will change, they may have to move to another region of the country, they may have to undertake training and formal examinations, etc. It will be important for the implementation team to include the

Change Manager (usually a senior person in the revenue administration HR team) who should be brought into the policy discussions at an early stage in order to assess the impact on resources and prepare the messages to provide to staff and other stakeholders.

6.9. Finance and Other Resources

Inevitably, there are some costs to the revenue administration in introducing a new tax successfully. The implementation programme team will need to estimate the additional costs in all areas and seek the financial allocation not only for implementation but for increased running costs – for example, a budget to cover the travel and subsistence costs of staff involved in invigilation or unannounced physical checks outside normal office hours.

6.10. Maintaining Partnerships

Since a tax on sugar or added sugar will be of interest to other Ministries or departments (e.g., those with responsibility for Agriculture in sugar-producing countries, Health, Food Standards, Customs, Trade and Economic Development), it will be important to set in place formal agreements to cover ongoing responsibilities and relationships in respect of the new tax (e.g., through a Memorandum of Understanding).

6.11. Set Up Taxpayer Services

Depending on the scope of the new tax there may be a large number of potential taxpayers who are unfamiliar with the requirements of excise taxation. In addition to publication of “user friendly” information on the revenue administration website, resources trained in the requirements of the new tax may need to be added to an enquiry or contact centre well in advance of the implementation date. Once the level of enquiries reduces (usually when the tax has been implemented for a few months with the first stock and production returns submitted), the staffing needs for taxpayer services on a permanent basis should be reviewed.

6.12. "Light Touch" for the First Year or if the Tax Rate Set is Very Low

If the scope of the new tax will result of creating a large number of new excise taxpayers, it may be considered appropriate to operate with a “light touch” during the first six months or year of operation or if the initial tax rate chargeable is very low. This would mean issuing warning letters rather than penalty fines if errors are detected or using the facility of a suspended penalty regime. This would be accompanied by an offer of a seminar or visit from an official to help ensure the taxpayer knows how to get things right next time.

However, where deliberate fraud is suspected the revenue administration should take robust action from the start of the new tax.

6.13. Review and Revise

It is unusual for a new tax to work 100% perfectly both from the perspective of the revenue administration and of the taxpayers. It is good practice to have a first post-implementation review of a new tax after a year or so and make whatever revisions to policy, legislation, administration or IT and other resources as are deemed appropriate. Subsequently, post-implementation reviews should take place regularly (e.g., every three years) to ensure that policy, legislation and procedures are up-to-date in a world where technological advances and product developments are happening at a faster rate than ever.

Annexe 1: Some International Examples of a Sugar/Fat Tax

Country	Date of Introduction	Tax Base	Tax Rate
South Africa	1 April 2018	All sweetened beverages excluding 100% fruit juices with a tax free threshold of sugar content not exceeding four grams per 100 ml.	2.1 cents per gram of the sugar content that exceed four grams per 100 ml. This equates to about R2.29 per litre.
United Kingdom	6 April 2018	<ul style="list-style-type: none"> • Soft drinks containing added sugar but with a content of 1.2% alcohol by volume or less • Charged on volumes according to total sugar content • Must be ready to drink or to be drunk must be diluted with water, mixed with crushed ice or processed to make crushed ice, mixed with carbon dioxide or a combination of these • Must be packaged ready for sale • Soft drinks containing at least 5 grams of sugar per 100 ml in its ready to drink or diluted form • Soft drinks with sugar added during production, including pure cane sugars like sucrose and glucose as well as substances (other than fruit juice, vegetable juice and milk) that contain sugar, such as honey • Excludes pure fruit juices • Excludes soft drinks that contain at least 75% milk • Excludes milk-substitute which contains at least 120 milligrams of calcium per 100ml, for example soya or almond milk • Excludes alcohol replacement drinks, for example de- alcoholised beer or wine • Excludes infant formula, follow-on formula, baby foods, formulated food intended as a total diet replacement or dietary food used for special medical purposes • Small producers/importers relief 	<p>18p per litre, or 24p per litre for drinks containing 8 grams or more of sugar per 100ml</p> <p>Companies that produce less than one million litres of liable drink in the relevant tax year, and alcohol replacement drinks (i.e. alcohol-free beer and wine) will be exempt.</p>

Mexico	January 2014	<ul style="list-style-type: none"> • Non-alcoholic drinks with added sugar • Junk food – calorie rich food with more than 275 calories/100 grams 	1 peso per litre: 9% of price 8% of price
Mauritius	2013	<ul style="list-style-type: none"> • Soft drinks based on sugar content • Excludes bottled water, pure fruit or vegetable juice and dairy products 	3 cents per gram of sugar content
France	January 2012	<ul style="list-style-type: none"> • Soft drinks containing added sugar or sweetener as well as fruit drinks and flavoured waters • Energy drinks 	Originally all soft drinks with added sugar were taxed at the same rate of Euros 7.53 per hectolitre This changed in 2017 to a sliding scale tax starting with soft drinks containing 1 g. of sugar per 100 ml. and rising to Euros 20 a hectolitre for soft drinks that contain more than 11 g of sugar per 100 ml.
Finland	January 2011	<ul style="list-style-type: none"> • Tax on sweets, chocolate, and ice cream (repealed 1 January 2017) • Tax on soft drinks 	€0.95 per kilogram €0.11 per litre of the product
Hungary	2012	<ul style="list-style-type: none"> • A Public Health tax applies to sugar, salt, fat, alcoholic and energy drinks. The rate changes depending on the type of food: the tax adds 250 forints (\$0.91) to the cost of a litre of energy drink, for instance, and 500 forints to the cost of a kilogram of jam 	
Norway	1922	<ul style="list-style-type: none"> • Norway introduced a generalized sugar tax on refined sugar products as a revenue earner 	
	2018	<ul style="list-style-type: none"> • The sugar tax level was increased by 83% for general sugar-containing ready-to-eat products, and 42% for beverages. The sugar tax per litre rose to 4.75 kroner, and applies to beverages that are either naturally or artificially sweetened. 	

Ireland	April 2018	<ul style="list-style-type: none"> Soft drinks tax of 30 cent per litre on sugar sweetened fruit and water based drinks with over eight grams of sugar per 100 millilitres Reduced rate of 20 cent per litre on drinks with between five and eight grams of sugar per 100 millilitres. Milk and yogurt based sugar sweetened drinks are excluded 	
Denmark	1930s (abolished in 2014)	<ul style="list-style-type: none"> Soft drinks tax 	1.64 Danish krone per litre
Saudi Arabia	June 2017	<p>Introduced following a GCC agreement.</p> <ul style="list-style-type: none"> Carbonated drinks including any aerated beverage except for unflavoured aerated water. Also considered to be carbonated drinks are any concentrations, powder, gel or extracts intended to be made into an aerated beverage. Energy drinks including any beverages which are marketed or sold as an energy drink, and containing stimulant substances that provide mental and physical stimulation, with includes without limitation: caffeine, taurine, ginseng and guarana. This also includes any substance that has an identical or similar effect as the aforementioned substances. Also considered to be energy drinks are any concentrations, powder, gel or extracts intended to be made into an energy enhancing drink. 	Rates under the “ <i>Ad valorem</i> ” structure are 50% for Carbonated drinks and 100% on Energy drinks.
UAE	October 2017		
Bahrain	December 2017		

Annexe 2: Principles of Taxation

Any government considering introducing a new tax should be aware of the generally accepted principles or canons of taxation that have been developed over centuries. Ideally, all tax systems should satisfy as many as possible of these principles.

The Scottish economist, Adam Smith, in his “Wealth of Nations” of 1776 first set out the four canons of taxation. These are:

Proportionality. “The subjects of every state ought to contribute towards the support of the Government, as nearly as possible, in proportion to their respective abilities, that is, in proportion to their revenue which they respectively enjoy under the protection of the State.”

Certainty. Taxpayers should be certain how much tax has to be paid, to whom and by when. Other procedural information should also be clear. This is to protect taxpayers from exploitation by tax authorities or unscrupulous officials and to enable them to manage their income and expenditure.

Convenience. Every tax should be levied in such time and manner as are convenient to the taxpayer.

Economy/Efficiency. To maximise the benefit to government and minimise the impact on taxpayers, the cost of tax collection should be as low as possible. *“Every tax ought to be contrived as both to take out and keep out of pockets of the people as little as possible over and above what it brings, into the public treasury of the State.”*

After Smith, other economists have propounded other important tax principles, in particular:

Productivity. Tax should be of such a nature as to work for the welfare of the people and yield sufficient income to the government to run the administration efficiently. Tax yield is important. Every government should consider the yield before proposing any new tax. If a tax yields poor income, it cannot be said to be good and productive.

Elasticity. Tax systems should be so elastic that tax rates may be increased or reduced as and when needs change. Inelastic tax systems may constrain governments in meeting the various exigencies that may arise.

Simplicity. The tax should be so simple that taxpayers can understand it without the help of any expert. This also reduces scope for errors and tax evasion.

Diversity. There should be a number of taxes of different varieties so that every class of citizen may be called upon to pay something towards the national exchequer. Because it may be possible for taxpayers to avoid/evade a single tax, the yield from a range of taxes is more dependable than from any one tax. If the government imposes a variety of taxes, it is difficult for people to evade/avoid them all. The burden of different types of tax should not focus on just one category of taxpayers.

Expediency. A tax should be so desirable that the government may defend it against public criticism. Any new tax must have a justification to create a feeling of acceptance in the minds of taxpayers. Unjust taxes will face sharp unwillingness on the part of taxpayers to pay, leading to evasion.

Annexe 3: Tax Design Considerations

(for use as a checklist to ensure appropriate coverage in legislation)

Tax Type		
1.1	Is this to be an excise tax covered by existing excise tax legislation?	
1.2	If a new VAT rate, what legislative and administrative VAT changes will be needed?	
1.3	If it is to be a new tax or levy how will it fit in with existing indirect taxes? What legislation will be needed (e.g., to cover the revenue administration requirements).	Include covering the taxable value for imports (and the tax base – customs duty inclusive CIF value?)
1.4	Is the proposed new tax consistent with regional/international agreements?	
Tax Rate Structure		
2.1	Ad valorem: one rate or several rates?	
2.2	Specific: one rate or several rates?	
2.3	Or mixed (ad valorem and Specific)	X% or Y per litre, whichever is the greatest
Tax Coverage		
3.1	All soft drinks? Only drinks above – for example, x grams of sugar per litre (or in varying rate bands)	A graduated tax charge (e.g., based on sugar content) may encourage manufacturers to produce healthier drinks
3.2	Only carbonated drinks (sodas)?	Excise taxes often already exist on carbonated soft drinks
3.3	Sugar rich foods as well as drinks?	
3.4	High caffeine / “energy” drinks?	(Iced teas; packaged coffee?)
3.5	Extend to other goods?	Fast sugar rich foods, jams, syrups, confectionery, bottled water?

Taxable Value (<i>Ad Valorem</i> Rate)		
4.1	Based on actual ex-factory price payable (or for example, recommended selling price)	
4.2	Define value (commissions? royalties? discounts? advertising? etc.)	
4.3	Value rules for sales to connected persons	
4.4	Returnable bottle charges	
4.5	Value for imports	
Taxable Charge (<i>Specific Rate</i>)		
5.1	Quantitative tax bands based on, for example, sugar content?	Tolerances for variations between production batches
5.2	Means of testing and measurement	Must be easy to measure – particularly as regards imports
5.3	Labelling requirements (including for imports)	
5.4	Treatment of manufacturing / bottling losses	Needs to align to tax point
Tax Point		
6.1	Leaving production line / entering storage? leaving factory / storage? delivery?	Losses after tax point are not usually allowable
6.2	Imports: time of entry?	
Revenue Administration		
7.1	Jurisdiction (who administers the tax)	
7.2	Registration and licensing (and approvals) and cancellation of registration / licence	
7.3	Facilities for tax staff	
7.4	Record keeping requirements	
7.5	Returns and Payments	
7.6	Non-payment: recovery	

7.7	Legal powers: noncompliance with requirements; search of premises; closure of premises; penalties for carelessness and errors fraud and other offences; access to records; seizure of goods, vehicles and equipment	
7.8	Appeals	
7.9	Requirements to lodge with revenue administration, plant diagrams, recipes used, etc. All changes to be notified.	
7.10	Sampling requirements and means to measure / test products (test equipment, laboratory facility or access, etc.)	
7.11	Small operators	
Special Provisions		
8.1	Exports (and required proof of export)	
8.2	Removals in bond	
8.3	Supplies to entitled persons (e.g., diplomats)	
8.4	Treatment of bad debts	
8.5	Returnable bottle deposits	
8.6	Mixer drinks (spirits and soft drinks – e.g., lemonade)	
8.7	Tax stamps?	Ghana introduced this in 2018 on soft drinks https://ghanataxstamp.com/Home/AboutUs
8.8	Self-supply (including free or reduced price supplies to staff)	
8.9	Free samples, gifts, promotional items	

Annexe 4: Administrative Provisions Checklist

Cover the following in law so as to provide the legal backdrop for the administration of the tax:

- *Jurisdiction (which authority administers the tax);*
- *Registration of taxpayers and licensing/approvals (of premises and operations) and cancellation of registration and licence/approval;*
- *Facilities for tax staff;*
- *Record keeping requirements;*
- *Returns and Payments;*
- *Non-payment: recovery;*
- *Legal powers: noncompliance with requirements; entry and search of premises; closure of premises; penalties for carelessness and errors; fraud and other offences; access to records; seizure (and destruction) of goods, vehicles and equipment;*
- *Appeals;*
- *Requirements to lodge with revenue administration, plant diagrams, recipes used, etc. All changes to be notified; and,*
- *Sampling requirements and means to measure / test products (test equipment, laboratory facility or access, etc.).*

Annexe 5: Scope of the UK Sugar Levy 2018

Drinks that are liable for the levy

A drink is liable for the Soft Drinks Industry Levy if it meets all of the following conditions:

- *It has had [sugar](#) added during production, or anything (other than fruit juice, vegetable juice and milk) that contains sugar, such as honey;*
- *It contains at least 5 grams (g) of sugar per 100 millilitres (ml) in its ready to drink or [diluted form](#);*
- *It's either ready to drink, or to be drunk it must be diluted with water, mixed with crushed ice or processed to make crushed ice, mixed with carbon dioxide, or a combination of these;*
- *It's bottled, canned or otherwise packaged so it's ready to drink or be diluted; and,*
- *It has a content of 1.2% alcohol by volume (ABV) or less*

You can reformulate your drinks to reduce the sugar content, which may either reduce or remove your drinks' liability to the levy.

What's classed as sugar

For the purposes of the Soft Drinks Industry Levy, sugar includes (but isn't limited to):

- *Sucrose;*
- *Glucose;*
- *Fructose;*
- *Lactose; and,*
- *Galactose.*

It doesn't include sugar replacements like:

- *Stevia;*
- *Aspartame;*
- *Sucralose; and,*
- *Erythritol.*

Drinks that aren't liable for the levy

Liable drinks packaged or brought into the UK before 6 April 2018 aren't included in the levy.

The levy doesn't apply to drinks that are:

- *At least 75% [milk](#);*
- *A [milk replacement](#), like soya or almond milk;*
- *An [alcohol replacement](#), like de-alcoholised beer or wine;*
- *Made with [fruit juice](#) or vegetable juice and don't have any other added sugar;*
- *Liquid drink flavouring that's added to food or drinks like coffee or cocktails;*
- *Sold as a powder;*

- *Prepared by mixing liquids and served in an open container, like cocktails*
- *Infant formula, follow on formula or baby foods; and,*
- *Formulated food intended as a total diet replacement, or dietary food used for special medical purposes.*

Milk and milk-based drinks

For your drink to be classed as milk or a milk-based drink, it must contain at least 75ml of milk per 100ml of prepared drink.

For the purposes of the levy, types of milk include:

- *Milk from an animal;*
- *Reconstituted or recombined milk;*
- *Fermented milk;*
- *Buttermilk;*
- *Whey; and,*
- *Reconstituted or recombined whey.*

Cream isn't included in the definition of milk.

Milk replacement drinks

For your drink to be classed as a milk replacement drink, it must:

- *Contain at least 120 milligrams of calcium per 100ml;*
- *Be derived from legumes, cereals, nuts, seeds or another type of plant;*
- *Have all or most of the same uses as milk;*
- *Have a consistency similar to milk; and,*
- *Not be carbonated.*

Alcohol replacement drinks

For your drink to be classed as an alcohol replacement drink, it must be all of the following:

- *Advertised and sold as a direct replacement for a particular type of alcoholic drink;*
- *In packaging that's similar to the alcoholic drink it's intended to replace;*
- *Marketed in a way that's similar to the alcoholic drink it's intended to replace; and,*
- *Not marketed in a way that targets or particularly appeals to people who are under the age of 18.*

Your drink must also be one or more of the following:

- *Made from an alcoholic drink through de-alcoholisation, which reduces the ABV to 1.2% or lower; and,*
- *Made by blending cider, beer, wine or other alcoholic drink with fruit juice (with or without the addition of water and other ingredients), to make a soft drink that's similar to the alcoholic drink used in its production;*

- *Made through fermentation or distillation, during which:*
 - *Alcohol is produced;*
 - *The ABV never goes over 1.2%; and,*
 - *The drink isn't diluted or mixed with anything else, apart from anything that's been dissolved into the drink through distillation.*

What's classed as fruit juice

For the purposes of the levy, fruit juice includes (but isn't limited to): Fruit puree; Dehydrated fruit juice; and Powdered fruit juice.

It doesn't include de-ionised fruit juice or juice drinks with added sugar.

How much you'll pay

The amount you'll pay depends on which band your liable drink is in.

You'll pay:

- *18p per litre on drinks that have a total sugar content of more than 5g and less than 8g per 100ml*
- *24p per litre on drinks that have a total sugar content of 8g or more per 100ml*

(Source: <https://www.gov.uk/guidance/check-if-your-drink-is-liable-for-the-soft-drinks-industry-levy>)

Annexe 6: Administrative Provisions Appropriate to a High Excise Tax Rate

6.1. Taxpayer Registration/Approval/Licensing

All businesses producing taxable goods will need to register with the revenue administration and, subject to the amount of revenue at stake, may also need to seek approval or a licence to produce, operate on and store taxable goods (e.g., similarly as for an alcohol producer). Revenue administrations should require registered taxpayers to seek separate licences (or approvals) for each set of premises. Licences and approvals are useful tools for a revenue administration in that, under the approval or licence provisions, the registered taxpayer may be required to:

- *Maintain secure premises, operations and transportation of bonded goods;*
- *Maintain, and make readily accessible to the revenue administration, accurate and up to-date accounts and records;*
- *Submit accurate returns and make timely payments of tax;*
- *Provide officials with full and up-to-date plans of the premises with pipe work color-coded in accordance with the revenue agency's specifications;*
- *Notify enforcement officials of leakages and other losses and provide explanations which satisfy the revenue administration or pay the tax due;*
- *Work with enforcement officials to secure the revenue throughout the supply chain;*
- *Ensure that all staff and managers are made aware of the requirements of the revenue administration and that the licensed person will apply strict enforcement of internal discipline;*
- *Provide financial security for product on the premises and for movements of bonded goods;*
- *Have a code of ethics in respect of taxation in place that all employees and contractors have undertaken to adhere to; and*
- *Carry out thorough management checks on all the above.*

The conditions attached to a licence/approval are extremely important as the revenue administration needs to be able to apply a range of sanctions if a taxpayer fails to comply with any of them. Sanctions should include financial penalties, suspension and, in the case of serious repeated non-compliance, revocation of the licence/approval.

6.2. Register of Taxpayers and Licenses/Approved Premises

The revenue administration should publish the criteria for registration and for licensing/approval of premises and the operations allowed in those premises. The revenue administration should establish a single national register of excise taxpayers and their licensed (or approved) premises. Revenue administrations are advised to make registration of excise taxpayers and licensing of their premises permissive not obligatory so that they can refuse registration if the applicant does not meet certain criteria and they can refuse licensing or approval of premises if the premises do not meet set security standards. The legislation should ensure that manufacturing the products subject to the sugar tax without having registered as a taxpayer and having secured a licence/approval for the premises is an offence.

The minimum details that prospective taxpayers should be required to provide in order to obtain a

registration are:

- *Name of legal entity;*
- *Mailing address of headquarters;*
- *Name of senior person in the business who will be responsible for the tax return and payment;*
- *Telephone number of responsible senior person's office and e-mail address;*
- *Type of business involvement – for example, producer, bottling/canning warehouse, distribution warehouse, transporter of bonded food/beverages, owner of bonded goods in third-party warehouse;*
- *Bank account details;*
- *Details of guarantor;*
- *Expected annual volume of production/ warehousing/bottling/canning and of which products;*
- *Expected annual volume of imports and/or exports;*
- *Expected annual volume of domestic market sales;*
- *Processes and operations for which approval is sought;*
- *Format of business records kept (e.g., computerized or paper); and,*
- *Any other nationally recognized government-issued numbers (e.g., VAT number or company registration number) to enable comparison of declarations across tax regimes and performance in complying with other legal requirements;*
- *No officer, director, or stockholder may have been convicted within five years prior to the date of the application of a criminal offence and has not, within three years prior to the date of the application, been convicted of a misdemeanour under any national law relating to taxation;*
- *The applicant by reason of business experience, financial standing, or trade connections is likely to commence operations within a reasonable period and to maintain operations in conformity with law (e.g., person of good standing).*

Each set of premises owned by the registered legal entity must be licensed or approved separately with the goods and operations on tax unpaid products in bond allowed at the premises specified on the licence. Registration and licences or approvals can and should be refused where the revenue administration has good reason, such as serious or repeated breaches of the conditions of the registration/licence or approval. In this way, the registration and the licence become a means of facilitating compliance. Where registration and/or a licence (or approval) has been refused, a record should be kept (including the reason for refusal) so that future applications can be considered against that background.

A single revenue administration processing team should be charged with setting up and maintaining/amending the national register. The excise register team should be the only persons able to record notified changes. They should also record the dates of issuance of licences and of approvals, details of any licence/approvals rejected, and reasons for rejection. The team should set up a system that will automatically flag licenses and approvals for annual review and approval. Licences/approvals need to be reviewed regularly at the trader's premises as there is a risk that information may have changed, new product lines may have been developed, compliance may have decreased, the premises or security may have altered, new personnel may have been appointed to positions of responsibility and there may be unusual trading patterns or sub-contractors (e.g., transporters which give rise to compliance doubts).

Local enforcement/audit officials should be able to access the register details for enforcement use but, as a safeguard against corruption and internal fraud, they should not be able to amend these key licence details—for example, they should not be able to extend an operator’s approval of operations or premises when such a change would not have been authorized according to normal procedures. Revenue administrations that have experienced such internal frauds have found that separation of the authority to change details from the ability to use those details for audit and enforcement has proved a good way of reducing opportunities for corruption. The register details may be linked with the records required for audit or enforcement by licence or approval number or in any way that can facilitate future analysis of the compliance history of the taxpayer.

6.3. Accounts and Records

Compliance controls by revenue administrations are designed to validate and assure the accuracy of taxpayer declarations and need to be adapted to the type of tax applied and the rate of tax levied. Where a high rate of tax is levied the more detailed accounts and record-keeping requirements set out in this Annexe should apply.

For a specific tax on refined sugar, revenue administrations should require taxpayers to record production, storage and any operations (e.g., packaging in bond). Tax would then become due when the finished refined sugar products leave the licensed (or approved) premises.

For specific taxes on sugar or added sugar content in food or drinks, revenue authorities must require taxpayers to record production, storage, operation and movement in bond processes in detail to enable verification both by systems audit and by risk-based announced and unannounced physical checks (see Part 5 Tax Risks and Audit). For both specific and ad valorem taxes, production, storage and shipping records should complement the financial records that are required for normal commercial purposes. In the event of discrepancies or inadequate records, the revenue administration should require payment of the maximum tax at stake and may issue a written warning and a penalty (depending on the seriousness of the inaccuracy).

6.3.1. Records – More Detailed Requirements

The objective of requiring taxpayers to keep full and accurate records for any tax is to enable revenue officials to verify that the declarations and tax payments accurately reflect the business activities. It should also enable revenue officials to inform risk management through analysis of trends, identification of new sources of supplies, new customers, new transporters, etc., and to verify the credibility of declarations with records for other taxes and duties (e.g., VAT, imports and exports).

All excise taxpayers should be required to keep records of stock, handling, all purchases and sales, losses and destructions, movements of goods on payment of tax, imports and exports, including receipts for movements of goods to other licensed excise premises or for approved use without payment of tax. These records should include details of suppliers, customers and licensed transporters used for each movement of bonded goods and should include the date and time for each entry.

For a specific tax, food and beverage producers should also keep records with dates and quantities (both raw materials and final quantities of products) involved in all production processes. These records will vary depending on the type of product produced but are likely to include:

- *Tonnage and type of raw materials used;*
- *Quantities of final product;*
- *Quantities of waste product and disposal thereof;*

- *Losses during production and disposal thereof;*
- *Quantities of ancillary inputs to production (e.g., labels, cartons, pallets bottle tops);*
- *Stocks in warehouse according to product type;*
- *Losses in warehouse with explanations;*
- *Movements of taxable goods under bond;*
- *Losses during movement of taxable goods under bond (e.g., due to road accident) with explanations and supporting evidence (e.g., police report and insurance claim);*
- *Deliveries to domestic consumption;*
- *Service records of production equipment; and,*
- *Products returned with details of each container and supported by commercial records.*

In addition, excise bottling/canning/packaging operators should record the quantity and type of bulk product received; time, date and type of processes and operations carried out; resulting bottled/canned quantities of product; losses (with reason/evidence); and date and destination of products removed from warehouse, including product removed on payment of tax for entry into commerce.

For an ad valorem tax, taxpayers should keep and make available full financial records of all transactions, both purchases of inputs to production and sales.

In countries where licensing of transporters of taxable food and/or beverages under bond applies, these transporters should be required to keep records of dates and times of all movements of taxable goods; source and destination of each journey; driver and vehicle number(s); quantities despatched and quantities delivered; and seal numbers. Revenue authorities should require records of operations and movements of bonded product to be completed within a set period of operations, for example one hour, unless specific permission has been given for a longer completion period.

Most of the information required is data that a business would normally keep for its own business purposes.

6.3.2. Format and Retention of Records

Records must be legible and permanent. Officials should allow for electronic records provided that the audit trail can be proved and all changes to the systems are acceptable to the revenue administration. Approval to keep computerized records may be refused if the revenue administration is not satisfied that the electronic records system provides an accurate audit trail. The revenue administration should determine a minimum length of time that records should be kept. In the UK this is six years from the date of the entry. Records must be kept at the approved premises and made available for inspection at all times. Normally, this means whenever operations or movements of bonded product are being conducted at the premises, i.e., during the normal business operating hours for the premises concerned.

6.3.3. Production Returns and Records

Production returns should include all taxable products and should be rendered by the operator to the revenue administration at set periods as required (normally a calendar month or quarter). Each production run must be identified separately and details recorded in the taxpayer's production records.

The revenue administration should require producers of goods subject to excise taxation to list their production under different categories that reflect the common types of food and/or soft drinks on the market, particularly if there are different tax rates.

6.4. Tax-Suspended Storage [bonded warehouse]

A well-managed bonded warehouse system allows industry to store products without payment of tax until they are ready to remove them for consumption. Where there is a high value of tax liability involved in operations at bonded warehouses, it is essential that the implementing regulations be clear that operating a bonded warehouse is a privilege not a right, and that the regulations requires the highest standards of record-keeping, internal security and anti-corruption controls.

Before a warehouse operator enters into any commercial contracts, the revenue administration should require that s/he obtain an excise licence and confirm that the premises are approved for storage of the type of excise products concerned. The premises approval should specify the type of goods allowed to be stored. If the warehouse operator is different from the owner of the goods, s/he should be required to obtain a copy of the license held by any owner who wishes to store goods under bond before taking the goods into warehouse. If the warehouse operator does not hold a copy of a valid owner's licence for products taken into the bonded warehouse, then the revenue administration may charge tax on the goods stored or seize them. The operator is jointly liable with the owner for tax due on goods correctly warehoused. If the owner ceases to be licensed and has not paid the tax due, then either the licensed warehouse operator must pay the tax or surrender the goods to the revenue administration.

When a warehouse operator takes goods into a bonded warehouse, s/he should:

- *Enter them into a stock account; and,*
- *Mark them in accordance with the revenue administration's requirements.*

The warehouse operator should be required to:

- *Inspect secured vehicles on arrival to confirm they are secure;*
- *Confirm identifying numbers with those advised prior to arrival;*
- *Check that all consignments have arrived intact;*
- *Make a thorough external examination of all containers, casks and packages;*
- *Investigate and record all deficiencies or any indication of interference;*
- *Place the goods in the warehouse without delay;*
- *Measure all bulk receipts of concentrate for quantity and strength; and,*
- *Adopt an appropriate system for checking bottles and strengths against the documentation. The warehouse operator should also be required to record:*
 - *The name, address and license number of the producer/consignor;*
 - *Description of goods;*
 - *Number and type of packages;*
 - *Commodity code;*
 - *Details of any excesses or shortages; and,*
 - *Name of the employee responsible for the receipt of the goods.*

The warehouse operator must provide a certificate of receipt to the consignor within a period set by the revenue administration.

If the warehouse operator has been advised to receive goods and they do not arrive within a reasonable time, s/he should be required to notify the consignor and the revenue administration immediately.

6.5. Tax-Suspended Operations [producer/bonded warehouse]

A licensed manufacturer/bonded warehouse operator may apply for approval to conduct certain operations in warehouse, for example:

- *Bottling;*
- *Canning; and,*
- *Packaging.*

6.6. Tax-Suspended Movements of Product [transport under bond]

There are many commercially valid reasons to move taxable products under bond from one location to another. Because of the possibility of diversion of bonded product when in transit between locations, it is advisable for revenue authorities to restrict movements of taxable products under bond to licensed transporters. Revenue authorities may wish to license transporters to move taxable products tax unpaid between import/export and approved bonded warehouses, between tax warehouses and from bonded warehouses for approved use or to duty-free channels. Where movement of non-tax paid product is permitted, containers should be sealed for transporting cased goods and the details of seals shown on the removal documents. The warehouse operator should be required to ensure that an appropriate security or guarantee is in place for all movements. The warehouse operator and the owner of the goods should be held jointly responsible for the tax on missing goods.

To enable the revenue administration to control the tax on a risk assessment basis, all movements of goods should be pre-notified (preferably electronically). The legal principle should be that movements of goods under bond can take place only with approval of the revenue administration. Because modern industry is fast moving and “just-in-time” stock systems require flexible and speedy movements to take place, electronic pre-notification and authorisation is a practical way forward. Each movement should be subjected to an individual risk assessment according to factors pre-determined by the revenue administration—for example, new or long-standing transporter, new or long-standing route, new or long-standing customer/destination, previous compliance history of all parties. Risk management and risk assessment are discussed in more detail in Part 5 - Compliance, Tax Risks and Audit.

6.7. Charging Duty at Source

Some governments (e.g., South Africa and the other SACU countries) have moved away from allowing tax-suspended storage because of fraud and they now operate on the basis of “duty at source” with only goods for export being allowed to go into tax suspended storage. If “duty at source” is the route chosen, then the revenue administration will need to consider how best to compensate the producers for their loss in cash flow. This might mean allowing a long deferral time after the goods leave the warehouse before the tax becomes payable. The big advantage of duty at source is that the revenue administration then has far fewer excise operators to control and there is less scope for fraud, however this needs to be balanced with the potentially significant economic impact on business.

6.8. Bonds/Guarantees [production/bonded warehouse]

If taxable food or soft drinks are to be produced, stored or moved under bond irrespective of the excise tax regime, the amount of excise tax payable in the event of illegal removal should be secured under a financial

guarantee given by an approved guarantor (normally a reputable financial institution), who undertakes to pay the revenue administration in the event of an irregularity covered by the guarantee. The terms of the guarantee should be set by the revenue administration taking into account the size of the taxpayer's operations and amount of revenue likely to be at stake. Taxpayers will have to pay their guarantors for this service, so revenue authorities should be mindful of the likely impact of this cost on business and take into account the revenue compliance and general legislative compliance history (health and safety and employment laws and regulations, etc.) of the taxpayer as this will provide a good indication of the standard of internal controls in operation. Very large operators with a good compliance history may be allowed to hold a much reduced level of financial security.

There are normally two sorts of guarantee required – a premises guarantee and a movement guarantee. A premises guarantee normally applies to a bonded warehouse and should cover the potential tax liability for all finished untaxed products in storage in the premises. A movement guarantee, for taxpayers selling or moving goods between bonded premises under the same ownership, should cover the amount of tax at risk on one week's movements. This should be calculated by reference to all movements in the last 12 months allowing for seasonal variations. The sum required may be adjusted to lower levels subject to the good compliance history of the guarantee holder. A movement guarantee may be provided by the licensed transporter or the purchaser of the goods instead of by the taxpayer selling the goods. In this case, the warehouse operator must hold written confirmation from the principal confirming that the warehouse operator may use the guarantee specified.

The revenue administration should review the level of security held by all those guaranteed every six months. The warehouse operator must notify the revenue administration if s/he expects a significant change in trading pattern so that the financial security required may be reviewed. The revenue administration may increase the amount of financial security required if weaknesses have been identified in the warehouse operator's control and record-keeping systems.

6.9. Stock Returns [production/bonded warehouse]

Licensed bonded warehouse operators should be required to submit to the revenue administration periodic returns (normally by calendar month) of bonded goods (untaxed) held in stock. These should include:

- A signed **declaration** by the licence holder (or agreed deputy) that the declaration is true and complete (this is essential to enable the authority to issue a penalty or take legal action in the event of a false declaration or discrepancies found on audit);
- **Opening stocks** by product type for each product subject to a different rate of tax;
- **Any adjustments** with a note of the reason for adjustment (e.g., error found on previous return with cross-reference);
- **Receipts** for the stock period with separate lines for receipts from imports, domestic production and other approved warehouses, returns or goods taken back into warehouse due to change of destination, and changes resulting from operations such as mixing, canning, bottling or packaging.
- **Removals** during the stock period, which should be shown with separate lines for:
 - Commerce on payment of tax;
 - Export (with column for details of proof of export);
 - Aircraft and ships' stores;

- *Other approved bonded warehouses;*
- *Other approved uses;*
- *Other duty-free channels;*
- *Losses allowed in storage;*
- *Losses resulting from operations;*
- *Authorised destructions; and,*
- *Stock in warehouse at end of period.*

6.10. Licensed Transporter Returns [transport under bond]

Where revenue administrations are able to require transporters of taxable goods untaxed under bond to be licensed, they should be required to submit monthly returns detailing all their movements of bonded goods. Details should include:

- *Approved warehouse of dispatch;*
- *Approved destination warehouse or licensed approved use recipient;*
- *Journey time;*
- *Quantity and type of product;*
- *Any changes in vehicle used, for example, due to breakdown; and*
- *Any losses, for example, due to an accident en route. Losses en route should be supported by a police report and insurance claim if appropriate.*

6.11. Supply Chain Controls – In Bond Systems [production/bonded warehouse]

Revenue administrations often allow specified operations and storage of taxable finished products untaxed, in approved (bonded) tax warehouses. All manufacturers and registered warehouse operators should be required to check the validity of anyone to whom they sell or send bonded goods and must implement and maintain robust internal controls. All operators must provide evidence of removals of taxable goods and of receipts of goods whilst they are under bond. When taxable goods leave the bonded premises for entry into the domestic market tax must be accounted for. This “bond” provision reduces the cash flow impact on the manufacturer and importer of the goods as the tax is paid only when the goods enter commerce.

Anything not accounted for is, by definition, illicit product and should be the subject of investigation and tax/penalties applied as appropriate.

6.12. Other Methods of Supply Chain Control

Tax stamps/banderols and digital coding of the bottle tops are methods that have been used to indicate that tax has been paid. In some countries, tax stamps have been used as a direct means of collecting the tax – for example, the stamps have to be purchased at a cost equal to the tax due. Unfortunately, in many countries where tax stamps were introduced for alcoholic drinks and/or for tobacco products, even the most advanced designs have been counterfeited – sometimes within weeks of introduction. There have also been instances in some countries where tax stamps have been stolen for use by counterfeit manufacturers. A requirement for tax stamps may be considered unwarranted where a low level of tax is charged on each product, as the cost of introducing the stamps into the production lines can increase manufacturers’ costs

considerably and thus affect profitability and economic growth. Subject to the amount of tax charged on each product, QR coding or digital coding using unique numbers printed on bottles/cans/packaging may be warranted. These codes should be supported by a data base maintained by the manufacturer and made accessible to the revenue administration. Where containers can be refilled or packaging re-used it is not advisable to use digital codes other than on bottle tops as it could provide revenue authorities with false confidence in the legitimacy of the products.

Annexe 7: The Audit Approach

The normal practice should be for audits on food and soft drinks companies to be conducted using a Systems Based Control approach – and by the revenue administration’s large taxpayer team personnel (using computer audit expertise as required). Any audit approach must be used flexibly with the audit tailored to meet the need of assurance for that individual taxpayer. If this approach is not possible due to – for example, the quality of the taxpayer’s internal controls, and instead, substantive testing may be more reliable, easier or more cost effective to perform.

For the food and soft drinks industries it may also be possible to utilise independent substantive evidence from Consumer Protection officials to amplify risk information.

Systems-based audit controls

All taxpayers need systems to organise and control their businesses. Systems Based Control (SBC) exercises control by identifying the systems that affect revenue activities and evaluating the effectiveness of those systems in ensuring compliance with tax requirements. As this method of control is both expensive in resources and requires a high level of training, it is normal for the full SBC approach to be aimed predominately at the large/significant taxpayers. Ones where the amount of revenue involved justify the use of this method and multinational companies are likely to fall into this category.

Under SBC, the control effort is concentrated on the areas such evaluation shows as weak and revenue significant. Where deficiencies are found and a tax liability is established, this amount should be collected and the taxpayer encouraged to take action to correct the deficiencies in his systems.

The need for a systematic approach is clear, the benefits being greater management control, a consistent standard of audit work being completed, staff focused clearly on what is expected of them and a consistent approach to control being exercised over all taxpayers.

There is a point at which the risk to the revenue will demand a lower level of audit control and as a result these taxpayers should be subject to more substantive based transactional or credibility testing.

PERCET RR is the acronym that summarises the processes involved in the systems based (SBC) approach to taxpayer control:

- *Plan: Audit plans will determine priorities and establish the best way to achieve the overall aim, scope and conduct of the audit based on identified risks and defining tasks to be carried out and the resources allocated.*
- *Establish: Obtain comprehensive information about the system and identify the objective of the system being examined.*
- *Record: Document the system as appropriate.*
- *Confirm: Check the information recorded using walkthrough tests. This will confirm the correctness, or otherwise, of information obtained from the taxpayer.*
- *Evaluate: Assess whether the systems procedures and controls will provide accurate and timely information to enable the taxpayer to declare the right amount of tax/duty and comply with their legal obligations at the right time.*
- *Test: Perform compliance and substantive tests derived from the evaluation of taxpayer’s systems.*
- *Review & Recommend: This is where the audit information is examined and conclusions formed on*

the adequacy of the taxpayer's systems and controls in meeting their revenue objectives. Where weaknesses exist, taxpayers should be reminded of their responsibilities and any proposed remedial action, demands for tax/duty, discussed and recorded.

Other audit methods

There will be circumstances, including situations where systems and procedures are in place, where an alternative to the systems based approach will be the best method of gaining assurance. In these situations, a limited form of Audit or Alternative Means of Gaining Assurance (AMOGA) must be considered. A systems-based approach may not, for example, be suitable if verification of the accuracy and completeness of declarations and payments can be made through the examination of reliable, independent, data.

When deciding to use the AMOGA audit approach the basic principles of SBC must still be followed in that a systematic approach to the audit process must be adhered to but will primarily consist of Planning, Testing and Reporting instead of the full approach. Options open to auditors are:

- **Full Premises Audit** – *this option is for use when conducting audits to the large/significant taxpayers. The full approach would be utilised and all aspects of the taxpayer's tax activities would be tested.*
- **Premises Audit** – *this option is designed to look at and test a number of areas of non-compliance but not all aspects of taxpayer's tax activities. The AMOGA approach is adopted for such audits (e.g., looking at the computerised account records and sales/export documents).*
- **Premises Issue Audit** – *this option is designed to look at and test a single area of (possible) non-compliance.*
- **Desk Audit** – *this option is designed to look at and test a single/number of areas of non-compliance using information obtained from – for example, the Consumer Protection authority.*
- **Sample Audit** – *this option is designed to test the taxpayer audit risk model. Where the model has identified taxpayers who should not receive an Audit a percentage from this list, picked at random, should be subject to a Premises Audit. This will act as validation of the risk system (or not) as well as maintaining a "light touch" control of the lowest risk taxpayers. (This option will only become available once a taxpayer audit risk model is operational.)*

Regardless of the type of visit chosen, one of the most important challenges for an auditor is being comfortable with less than '100% checking'. All audit testing plans should be based on sufficient information that allows for a percentage based testing programme. For example, where 5% of sales within a given time period, have been selected for testing and the results show a high level of compliance then that output should be used to determine whether further time is spent on the audit or not. Likewise, if the testing reveals errors then that would support a case for more time to be spent on the audit.

Annexe 8: Implementation Critical Path

Listed below are very high-level activities that are key to the successful implementation of a specific tax. It is important to develop a comprehensive and detailed project plan for each of the aspects shown, to assign responsibilities and for the programme manager to monitor progress on a weekly basis and ensure that top management are aware of any significant issues and proposals to resolve them at an early stage. The timescales shown are indicative and based on delivering a major tax change/new tax in an already complex tax structure involving many IT systems. In emerging economies with a less complex tax and IT structure, it should be feasible to deliver a new tax or a major tax change in less than two years. Whatever the timescale, it is still important to undertake all of the project activities and to research thoroughly the areas the tax is likely to cover. Timely decision making by Ministers and senior officials will be essential.

Project	24-18 Months Before "Go"	18-12 Months Before "Go"	12-6 Months Before "Go"	6-0 Months Before "Go"	6-12 Months After "Go"
Policy	<p>Key decisions made on rates and scope by 24 months before "Go".</p> <p>Proposals published before 24 months before "Go" in consultation document with three month deadline for feedback. Feedback analyzed.</p> <p>Policy decisions revised in the light of taxpayer and other agency feedback. Final key policy decisions taken and published.</p>	<p>Operation policy and more minor decisions taken and fed to Legislation, IT, Publications and Training teams.</p>	<p>Policy team continually updates other teams.</p> <p>Once IT systems development starts, policy changes will incur additional costs.</p>	<p>Policy team work with Legislative team to implement legislation for the new system and closure of the old tax regime.</p>	<p>Policy team assess success of change, achievement of tax and other objectives and consider any necessary amendments to the law.</p>
Legislation	<p>Lawyers commissioned to work up legislative proposals with Policy team.</p>	<p>Lawyers can now start work developing primary legislation in liaison with policy team.</p>	<p>Lawyers work closely with Policy team in developing legislative proposal.</p>	<p>Legislation achieved.</p>	<p>Lawyers consider any amendments suggested by Policy team.</p>

Project	24-18 Months Before "Go"	18-12 Months Before "Go"	12-6 Months Before "Go"	6-0 Months Before "Go"	6-12 Months After "Go"
IT system changes	Initial scoping of business requirements developed in liaison with Policy team and based on policy decisions. Tender document produced within three months or (if changes developed in house) change order produced within three months.	Detailed business requirements, e.g., details needed for each box on the tax return, agreed in liaison with Policy team. Tender documents revised and published or change order finalized and costed. Budget approval sought.	Ongoing liaison with policy and operational areas to ensure IT developed understand business needs and provide a user friendly system.	System is thoroughly tested by internal users and piloted with a selection of taxpayer users (large, medium and small operators) before implementation. Delay implementation, if necessary, until the system works satisfactorily.	Review of success of IT changes and potential for amendment to facilitate use by taxpayer or internal users.
Media and Publications	Communications/media team commissioned to provide costed options for general publicity. Publication team commissioned to develop taxpayer guidance booklet(s).	Decisions made on publicity options and budget allocated. Initial high-level publicity published. Work starts on detailed guidance booklet(s). Assistance provided to Helpline team in developing helpline scripts.	Publicity campaign starts. Guidance booklets published to taxpayer. All paper forms agreed and sent to print.	Final high key publicity campaign. Publications available. Paper forms available. Q/A briefing available.	Review success of publicity campaigns and publications. Make amendments to publications in the light of taxpayer feedback.
Resources	Analysis of current excise resources by grade, location and skills carried out. In liaison with operational managers, resource requirements drawn up indicating numbers needed by grade, location and skills. Liaise with Trade Unions throughout (as appropriate).	Gap analysis between excise tax resources and skills available and those required. HR needs assessed, costed and budget agreed.	Resources to be moved to work on new tax selected or recruited. Decisions taken on future of staff no longer required (e.g., wrong grade, wrong location). Helpline resource put in place.	Resources in place ready for rolling training programme. Deal with outstanding issues.	Review success of resource plan. Deal with outstanding issues. If former tax issues completed, resources devoted to "tidying up" the old tax move to new work.

Project	24-18 Months Before "Go"	18-12 Months Before "Go"	12-6 Months Before "Go"	6-0 Months Before "Go"	6-12 Months After "Go"
Accommodation	Excise resource accommodation stocktake carried out.	Locations, accommodation requirements costed and budget agreed.	New accommodation acquired and decision taken on future of accommodation no longer needed. Helpline accommodation set up.	Accommodation filled as resources arrive.	Review success of accommodation plan.
Equipment	Excise equipment stocktake carried out.	Excise resource equipment needs agreed, costed and budget agreed.	Equipment ordered. Helpline equipment set up.	Any minor changes accommodated.	Review success of equipment plan.
Training and Awareness for: (1) Internal staff and managers; (2) Taxpayers and their staff; (3) Other national enforcement agencies; and (4) Revenue authorities and enforcement agencies in neighboring countries or any mutual assistance partners.	Training team to start work developing training and awareness programmes, identifying target audiences/type of training to be provided.	Training proposals agreed and budget allocated. Training team start to develop courses and other learning materials for each of the target audiences. Training delivery plan agreed for each target audience and trainers selected.	Training delivery starts according to plans for each target audience.	Training delivery ongoing until a month before "Go" date then "tidy up" training starts for staff working on former tax system.	Review success of training plan.

Project	24-18 Months Before "Go"	18-12 Months Before "Go"	12-6 Months Before "Go"	6-0 Months Before "Go"	6-12 Months After "Go"
Helpline	Options costed and considered for provision of assistance to taxpayers both on the new tax system and on the process for terminating the existing tax system.	<p>Decision taken on helpline provision, e.g., number of staff required, level of service to be provided, e.g., acceptance of tax payments over the phone or written enquiries only on complex policy issues, hours available. Feed resource needs to the Human Resource team.</p> <p>Feed IT system requirements, e.g., routing system and call recording and analysis to the IT Project team.</p> <p>Feed other equipment requirements to Equipment team.</p> <p>Feed training needs to the training team.</p>	<p>Helpline preparations continue in liaison with other teams. Staff recruited and trained.</p> <p>Helpline to go live six months before "Go" date.</p>	<p>Helpline resources under continual review allowing for additional resources to be added for the transition period if call volumes warrant this.</p> <p>Call analysis fed back to policy team so they are aware of "burning issues" and to publications team so they are aware of any issues which require further clarification.</p>	

Project	24-18 Months Before "Go"	18-12 Months Before "Go"	12-6 Months Before "Go"	6-0 Months Before "Go"	6-12 Months After "Go"
<p>Implementation team (Keeps log of risks and issues, monitors budget, holds checkpoint meetings with <u>every</u> other project and ensures they keep to time resolving issues as they occur under oversight of Change Programme Manager.)</p>	<p>Co-ordinates activity by all other projects. Puts together budget proposal on behalf of all projects and seeks budget approval. Also monitors expenditure by all projects.</p> <p>Provides regular programme reports to Steering Group and implements Steering Group decisions on changes to budgets, etc.</p>	<p>Ongoing monitoring and support to all other projects.</p>			<p>Review success of implementation and ensures that "lessons learnt" are captured for the benefit of future major change programmes.</p>

Annexe 9: Glossary of Definitions, Terms, and Abbreviations

Ad valorem	A tax rate expressed as a percentage of the value
ABV	Alcohol by volume
AMOGA	Alternative means of gaining assurance (on an audit)
CIF	The value being the total of the cost (purchase price), insurance and freight
Direct taxes	Taxes that are paid directly to the government by the person or business that is subject to them. Some examples of direct taxes include income taxes, corporate taxes, capital gains, and some estate or inheritance taxes.
EU	European Union
Excise tax	A tax levied on the manufacture, sale or consumption of a single good or service or on a relatively narrow range of goods or services. Excise taxes are narrow-based consumption taxes applied to specific goods or services above and beyond the taxes that are normally applied in the course of trade. In contrast, broad-based taxes such as a general sales tax or value added tax (VAT) are generally applied to all goods and services in commerce
Illicit trade	All trade involving products on which tax is due but the full amount owed is not paid, including under-invoiced goods, exports diverted to the domestic market, unlicensed or undeclared domestic production, smuggled genuine products, and the production or importation of counterfeit products.
Indirect taxes	Taxes collected by intermediaries who are responsible for filing the related tax return and paying over the tax to the government. VAT, General Sales Tax, Customs duties, excise and environmental taxes are indirect taxes.
ITIC	International Tax and Investment Center
NCDs	Non-communicable diseases
SACU	Southern African Customs Union (Botswana, Lesotho, Namibia, South Africa and Swaziland)
SADC	Southern African Development Community
Sales Tax	Goods and Services Tax or General Sales Tax
SBC	Systems-based (audit) control
SIC	Standard industrial classification using four digit codes to classify industry types
SSB	Sugar sweetened beverage

SRP	Suggested retail price
VAT	Value Added Tax
WCO	World Customs Organization
WHO	World Health Organization
WTO	World Trade Organization

Endnotes

¹ WHO (2013) Global action plan for the prevention and control of non-communicable diseases 2013-2020.

² <https://www.who.int/ncds/management/best-buys/en/>.

³ WHO (2015) Guideline: Sugars intake for adults and children.

⁴ WHO (2015) Guideline: Sugars intake for adults and children.

⁵ WHO (2013) Global action plan for the prevention and control of non-communicable diseases 2013-2020.

⁶ <https://www.who.int/ncds/management/best-buys/en/>.

⁷ <https://nzier.org.nz/publication/sugar-taxes-a-review-of-the-evidence>.

⁸ http://www.euro.who.int/__data/assets/pdf_file/0008/273662/Using-price-policies-to-promote-healthier-diets.pdf.

⁹ Act CIII of 2011 on the Public Health Product Tax. Budapest: Hungarian National Institute for Health and Development; 2013, http://www.oe.hu/NETA_hatasvizsgalat.pdf, accessed 6 Nov.

¹⁰ Overcoming obesity: An initial economic analysis. McKinsey Global Institute. November 2014 (https://www.mckinsey.com/~media/McKinsey/Business%20Functions/Economic%20Studies%20TEMP/Our%20Insights/How%20the%20world%20could%20better%20fight%20obesity/MGI_Overcoming_obesity_Full_report.ashx).

¹¹ *Excise Tax Policy and Administration in Southern African Countries* (2006). Sijbren Cnossen, ed.

¹² Progressive taxation takes a higher proportion from the wealthy than the poor.

¹³ SACU – Southern African Customs Union (<http://www.sacu.int/>).

¹⁴ <http://www.glycemicindex.com/foodSearch.php>.

¹⁵ “Tax arbitrage” The practice of profiting from differences between the way transactions are treated for tax purposes. The complexity of tax codes often allows for many incentives that drive individuals to restructure their transactions in the most advantageous way in order to pay the least amount of tax.

¹⁶ A “monosaccharide” is defined as a simple sugar, such as glucose or fructose, that does not hydrolyse to yield other sugars. *Collins English Dictionary*.

¹⁷ A “disaccharide” is defined as any of a class of sugars, such as maltose, lactose, and sucrose, having two linked monosaccharide units per molecule. *Collins English Dictionary*.

¹⁸ WHO (2015) Using price policies to promote healthier diets.

¹⁹ See <https://www.gov.uk/government/news/new-evidence-review-of-measures-to-reduce-sugar-consumption>.

²⁰ A compounded penalty should not be confused with civil penalties issued for circumstances such as late payment or breaches of regulations etc. A compounded penalty is a fine issued “in lieu” of criminal prosecution in addition to any tax and interest arrears. This means it is an alternative to criminal prosecution and should only be issued where there is sufficient evidence to prosecute and in the event of non-payment of the penalty prosecution should be carried out. If the penalty is not paid in full (part payment is made) double jeopardy rules will determine if prosecution can proceed or refund of the part payment must be made before prosecution.

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