Tax Campaign Case Study

Successful Passage of the Kenya Excise Duty Act, 2015

OUTCOME Successful Passage of the Excise Duty Act, 2015

On December 1, 2015, the Kenya Excise Duty Bill 2015[1] went into effect, switching the tax system from a hybrid to a uniform specific rate of KShs 2,500/1,000 cigarettes, or "*mille*", increasing tax over the previous Finance Act 2012 system (i.e., KShs[2] 1200/mille), and adjusting the tax for changes in inflation. **It is estimated that the tax increase will result in a 3.4% decline in consumption and 0.3% decline in adult smoking prevalence.[3]**

Tobacco Tax Structure History and Improvements to Reduce Illicit Trade

The success of this tax campaign, started in 2010, is the outcome of the Government of Kenya and tobacco control (TC) advocates working to: 1) simplify the tax structure to a single band for all tobacco products; 2) switch the form of the tobacco tax (from a mixed system to a uniform specific rate); and 3) increase the overall tobacco tax more in line with WHO recommended rates.

Tax Structure Transitions

Kenya's excise tax system has been through several transitions, switching from specific taxes (1986) to *ad valorem* (1992); to a hybrid system of minimum specific tax plus an additional *ad valorem* rate based on ex-factory selling price (2003).[4,5] After ratifying the WHO Framework Convention on Tobacco Control (FCTC) in June 25, 2004, Kenya enacted the Tobacco Control Act 2007, the principal tobacco control law. The 2007 Act established a tobacco control fund (Section 7) to support tobacco control programs and obligates the National Treasury (Section 12) to use price and tax policies to reduce consumption. This law provided a legal and legislative basis for TC advocacy work to support subsequent adjustments, including the Excise Duty Bill 2015.

In 2007, there was a shift away from the use of ex-factory price to one based on cigarette length and packaging; however, industry lobbying caused the Parliament to reverse this change in 2010.[4,6] The Finance Act 2010 created a four-tiered specific tax system, based on the retail selling prices (RSP) and type of cigarette, with a minimum specific floor. The Finance Act of 2012 simplified the tax structure by reducing the four-tiered specific tax system to a single tier system and also provided for changing the tax rate to adjust automatically for inflation. The new excise tax system under the 2012 Act also introduced a tobacco tax equal to KShs 1200/mille or 35% of RSP, whichever is higher (e.g. premium brands were 35% RSP).

The most recent change represents a further improvement. The Excise Duty Bill 2015, further enhanced the cigarette excise tax structure by introducing uniform specific excise for cigarettes at the rate of KShs 2500/mille or KShs 50/pack to all brands. This represented a nominal tax increase of 108% and also made administration easier, which is in line with the recommendations of the guidelines for effective implementation of Article 6 of the WHO FCTC.

Tax System Improvements to Prevent Illicit Trade

Simultaneous to the tax transitions, the Kenya Revenue Authority (KRA), the government entity charged with administration of tobacco excise taxes,[4] implemented a strong system for monitoring tobacco products. In 2014, Kenya started using technology to enhance tobacco tax collection and reduce vulnerability to illicit trade with KRA's Excisable Goods Management System.[7] The system uses an electronically enhanced excise stamp, combined with multiple security layers, that tracks the tobacco products along the supply chain (e.g. producers, manufacturers, and distributors). This system aligns with the WHO FCTC's protocol to eliminate illicit trade in tobacco products (ITP) track and trace provisions, and could help reduce non-compliance and unfavorable pricing strategies among producers.

Key Components of Tax Campaign Success

Evaluation of the recent success of the tax campaign in Kenya finds that five elements were critical to its accomplishments:

1. Advocacy by a local civil society partner with macroeconomic expertise;
2. Nurturing the commitment of the National Treasury (or Treasury, formerly Ministry of Finance);
3. Effective engagement and collaboration of key local and international partners;
4. Effective countering of tobacco industry tax arguments and strategies with research and action; and
5. Strategic use of media to engage the public around complex tax issues and gain public support.

Advocacy by a Local Civil Society Partner with Macroeconomic Expertise

Section 12 (1 & 2) of the Tobacco Control Act 2007 obligates the Cabinet Secretary to the National Treasury to use tax and price polices to reduce consumption of tobacco, thus making the Treasury a necessary ally for a successful tax campaign. It was crucial for tax advocacy efforts to be led by a local partner with macroeconomic expertise that could develop a viable tax proposal and engage in detailed technical discussions with the Treasury about tobacco taxation, affordability and accessibility in a manner that would cultivate champions among members of the government finance team. This included anticipating the economic data needed to motivate support throughout the parliamentary process.

The local partner in Kenya with the critical macroeconomics expertise, CTFK grantee International Institute for Legislative Affairs (IILA), a not-for-profit civil society organization (CSO) formed in 2004, understood the subject matter and the policy process and worked with policymakers and other stakeholders to advocate for public health policies and legislation. Specifically, IILA provided macroeconomics expertise during Kenya's several tax transitions by cultivating relationships with the Treasury and other policy decision-makers (e.g. MoH, Members of Parliament). It created key partnerships with the Kenya Tobacco Control Alliance (KETCA)

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and the Non-Communicable Diseases Alliance of Kenya (NCDAK) to exert pressure on key decision-makers, including the President, and collaborated with research entities and international CSO's to generate Kenya-specific TC data.

Nurturing the Commitment of the National Treasury

The tax campaign commenced in April 2010 and was informed by the experience from both the Kenya Situational Analysis (KTSA)[8] and the enforcement trainings carried out in partnership with MoH. It was evident that one of the areas that needed more work was on the use of fiscal policy to promote public health. High level commitment of the relevant departments in the Treasury was necessary, because of the critical role they play in the budget process.

In order to increase TC policy capacity and enthusiasm for tobacco control in the Treasury, IILA organized a week-long workshop in 2010 for the Ministers of Finance, Trade and Health, and KIPPRA (a policy think tank) in Kenya to visit researchers at the University of Cape Town to participate in a "Tobacco Economics 101" seminar. The seminar provided clear policy action points (i.e. collapsing the tax structures and adjusting tax increases to account for inflation).

Following the detailed work with UCT, continued advocacy work that built on the progress made in the training, resulted in the publication of a report on *Economics of Tobacco Taxation in Kenya*[4] in 2011 published by IILA with funding from CTFK. The major policy gain resulting from this workshop and subsequent advocacy was the Finance Bill 2012 that collapsed the tax structures and the provision for adjusting tax to cater for inflation. In addition, the National Treasury moved to strengthen controls in tax administration through Excisable Goods and Management System regulations in 2013.

In January 2014, WHO and CTFK supported the East Africa Community (EAC) by hosting a regional meeting on tobacco taxation and a complementary regional meeting on non-communicable disease

(NCD)-TC strategy. This meeting was key in that it was consistent with the National Treasury's desire to ensure regional harmonization and Kenya's leadership role in it.

That year, advocates continued to champion the need for tax increases and worked closely with government allies. Two important policy wins resulted. First, the Treasury supported tobacco control in the Budget Statement to the National Assembly in June 2015. In this statement, the Cabinet Secretary to the Treasury made progressive proposals supporting TC, calling for the deepening of tax administration reforms to ensure compliance, an excise tax on all tobacco products, and converting the hybrid tax regime into a specific tax regime.[9]

This Treasury Budget Speech, with language closely reflecting IILA's tobacco tax proposal for FY 2015-2016[3] (submitted to the Treasury in March 2015), specifically called for a flat rate of KShs 2500/mille for all cigarettes and switched the tax system from a mixed to a specific rate, as per the FCTC Article 6 implementing guidelines.

The second policy win occurred in July 2015, when the Treasury presented the Excise Duty Bill 2015 to the National Assembly (i.e. specific tax rate of KShs 2500/mille). The Treasury proposal resulted from a culmination of collaborative technical and advocacy work since 2010 involving the MoH, KRA, and IILA, with technical support from CTFK. In addition to the Treasury, advocates also effectively engaged in TC lobbying efforts with other government entities, such the MoH, KRA, the Budget Office, and Health Committee at the National Assembly, to support TC developments and counter tobacco industry interference.

Effective Engagement and Collaboration of Key Local and International Partners

A working coalition of groups enabled effective and systematic execution of the successful tobacco tax campaign and included Kenya-based KRA's, international CSO, media, research entities, and Kenya government officials:

- **Kenya-based CSO's:** International Institute for Legislative Affairs (IILA), Kenya Tobacco Control Alliance (KETCA), Non-Communicable Diseases Alliance of Kenya (NCDAK)
- **International CSO's:** American Cancer Society (ACS), Campaign for Tobacco-Free Kids (CTFK)
- **Media:** Digital Branding Ltd (DB Agency), a social media firm supported by CTFK
- **Research and Technical Support:** Center for Tobacco Control in Africa (CTCA), Kenya Institute for Public Policy Research and Analysis (KIPPRA), University of Cape Town (UCT)
- **Kenya Government:** Kenya Revenue Authority (KRA), Ministry of Health (MoH), National Treasury (formerly Ministry of Finance [MoH])
- **World Health Organization** (WHO) Regional office.

IILA led the interactions with the Kenya Government, and in collaboration with research partners and international CSO's, generated and disseminated Kenya-specific data (e.g. GATS, a TC taxation policy survey, etc.) for lobbying and advocacy efforts. DB Agency provided the media expertise and actively cultivated and mobilized strong public engagement and support on social media platforms. Research partners KIPPRA, UCT, and CTCA generated key data on several key TC issues (such as the current status of cigarette affordability and illicit trade[10] in Kenya) to use for TI pushback, media messaging, and lobbying efforts. WHO collaborated with IILA, the Treasury, KRA, and other stakeholders to coordinate a research study to develop policy briefs on *"Taxation of the tobacco industry in Kenya: the case of excise duty on cigarettes,"* and partnered with the MoH to organize a meeting on the effect of trade, international trade agreements, and World Trade Organization principles and agreements on TC in April 2014.

Effective Countering of Tobacco Industry Tax Arguments

Based on previous experience, CTFK and IILA identified the tobacco industry arguments that typically arise during tobacco tax advocacy campaigns (e.g. illicit trade, loss in revenue, smokers' rights) and worked with partners to prepare for industry arguments by ensuring the availability of local data and building TC support. In anticipation of tobacco industry pushback, IILA collaborated with several governmental and non-governmental partners

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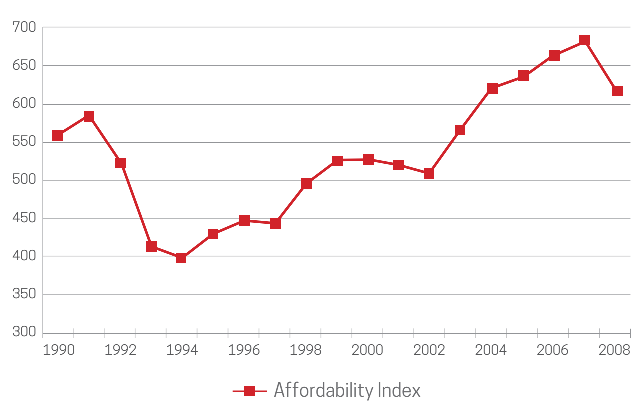
(MoH, KRA, Treasury, KIPPRA, IEA, KETCA, ACS, UCT, and CTFK) and commissioned several studies to generate reliable Kenya-specific data related to TC, including tobacco tax and illicit trade. As a result of the Kenya-specific data generated by these studies, IILA was able to use both fiscal and public health messaging (e.g. reports, policy brief, budget proposals)[4,5,10,11] to request higher tobacco prices, while also addressing potential policy-maker concerns and anticipated tobacco industry pushback.

In August 2015, the Finance Committee of the National Assembly (NA) made amendments to weaken the proposed Excise Duty Bill 2015 using language that was consistent with anticipated and outspoken tobacco industry arguments, and a pro-industry paid advertisement that ran on October 22, 2015 warning that increases in illicit trade will deprive the government of revenue and that a tax increase violated smokers' constitutional rights. The tiered specific excise tax structure, as proposed by the industry in the Amendment of the Excise Duty Bill 2015, would have increased the administrative burden of the tax authority in collecting revenue, and would have decreased excise tax, resulting in a 14% reduction in real prices.[5]

In response to tobacco industry interference aimed at weakening of the Excise Duty Bill (Mastermind Tobacco Kenya in 2015), IILA hosted a stakeholders forum on the current status of TC in Kenya (½ day Project Dissemination and Stakeholders meeting in October 2015) and used Kenya-specific data to show that cigarette affordability has increased (see Figure 1). In addition, as described in Section 3.5, TC advocates used data from an IILA-commissioned TC taxation policy survey showing public support for TC and increased taxation to rally public support for the original Excise Duty Bill 2015.

Figure 1: Affordability of cigarettes



Strategic Use of the Media

Media was a powerful tool during the time period leading up to the passage of Excise Duty Bill 2015. TC advocates developed and utilized a proactive communications strategy that focused on galvanizing public engagement and support and putting pressure on the President and policymakers to refrain from proceeding with adoption of the weakened Excise Duty Bill 2015. The core messaging was centered on why the proposed regime was flawed and not good for TC in Kenya. Key elements of the communications strategy, which focused on reaching key target audiences where they were, included: the dissemination of strong key messages calling for the prioritization of the health of the public over the commercial interests of the tobacco industry; a direct letter to the President addressing the negative ramifications of the amended bill; proactive online and offline media activities geared towards building public awareness; cultivation of champions and credible spokespeople to speak against the amended bill; countering of tobacco industry arguments; and the distribution of policy briefs and reports focusing on Kenya-specific data such as GATS.

Both traditional and digital media were powerful public communications channels used to educate and mobilize the public to send strong messages of public support to decision-makers.

On social media, advocates, champions, and followers directly tagged the digital accounts of the President and key influencers in his circle with posts, blogs, infographics, and personal messages, calling on the President to withhold signature on the weakened Bill.

With the vibrant conversation going on online, IILA and partners capitalized on the huge showing of public engagement by ensuring that the same conversation occurred simultaneously offline. IILA and partners, including the MoH, appeared on various print and broadcast media interviews, and held a media breakfast meeting (September 1, 2015) to issue a press statement enumerating the items in the Bill that were detrimental to the country. IILA heightened the pressure, with support from CTFK, by placing an advertorial in newspapers frequently read by the President, policymakers, and government officials.

The persuasive, consistent, and persistent online and offline communications campaign, which built upon a strong foundation of TC advocacy efforts, resulted in the President refusing to sign the modified Excise Duty Bill and referring it back to Parliament for reconsideration (October 2015). Following this success, IILA and partners reached out to the public, champions, and the President to thank them for taking action and fighting for the public's health.

CONCLUSION

The Excise Duty Bill 2015 that supported public health measures, was passed on October 28, 2015 by the National Assembly, assented to by the President, and gazetted on November 6, 2015. The Act came into effect on December 1, 2015.

LESSONS LEARNED

Tax advocacy campaigns can be challenging, because typically TC advocates have developed relationships with Ministries of Health and not the Treasury. It is clear that the commitment of the Treasury and the consistent advocacy by a strong local partner with macroeconomics expertise, IILA, was critical to the successful tax campaign. Additional tax campaigns in Kenya, as well as other countries may want to consider the following lessons learned:

- Advocates must understand the subject matter, the policy processes, and the role played by the different agencies in the process. Therefore, advocacy by a technical in-country partner that can lead the effort on the ground (e.g. IILA) is an essential component in increasing policymakers' commitment and in engaging the public.
- Sustained advocacy and lobbying efforts must continuously apply pressure with key government officials and/or stakeholders during the entire lawmaking and budgetary process.
- Critical country-specific data must be generated to inform and support advocacy messaging.
- Effective advocacy requires anticipating tobacco industry interference and arguments, followed by constant monitoring, exposing, and countering industry tactics and interference.
- The public can be proactively engaged using appropriate media channels and messages to cultivate support for strong taxes and other TC policies.
- A solid in-country technical partner with macroeconomics expertise (e.g. IILA) is critical for developing a successful tax proposal and to ensure a credible voice in the public debate.
- Engaging the Finance Committee of the National Assembly before the Bills (e.g. Finance Bill, Excise Bill, etc.) ensures that there are informed Policy Champions present during discussions once tax proposals are tabled.
- Building relationships with critical actors in the process is also vital to gain critical and timely information and access to decision-makers throughout the process.
- Partnership with different departments within the Treasury (e.g. Department of Budget Fiscal and Economic Affairs) helps to build a broad and robust commitment to tobacco tax among key decision-makers.

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