Implementation of WHO Framework Convention on Tobacco Control Article 6 in ASEAN Countries

2015

SEATCA

Southeast Asia Tobacco Control Alliance

Acknowledgements

We would like to express our gratitude to the country partners, coordinators and tobacco control focal points in the ten ASEAN countries for providing information and other inputs to this report.

The Southeast Asia Tobacco Control Alliance (SEATCA) is a regional multi-sectoral, non-profit, non-governmental alliance that supports ASEAN Member States in developing and implementing effective, evidence-based tobacco control policies in line with the World Health Organization Framework Convention on Tobacco Control (WHO FCTC). SEATCA works closely with governments, non-government organizations(NGOs), development agencies, and the academe to advance tobacco control in the ASEAN region by facilitating increased participation and cooperation among advocates, organizing regional forums for sharing best practices and lessons learned, and acting as a regional leader to tackle urgent priority issues affecting the region.

SEATCA Tobacco Tax Index

Editorial Team: Sophapan Ratanachena, Ulysses Dorotheo, Bungon Ritthiphakdee, Mary Assunta Kolandai, May Myat Cho, Tan Yen Lian, and Jennie Lyn Reyes.

Citation: Southeast Asia Tobacco Control Alliance. (2015). *SEATCA Tobacco Tax Index: Implementation of WHO Framework Convention on Tobacco Control Article 6 in ASEAN Countries, 2015*. Bangkok. Thailand.

Any factual errors or omissions are unintentional. For any corrections, please contact SEATCA via email: info@seatca.org.

For more information, visit: www.seatca.org.

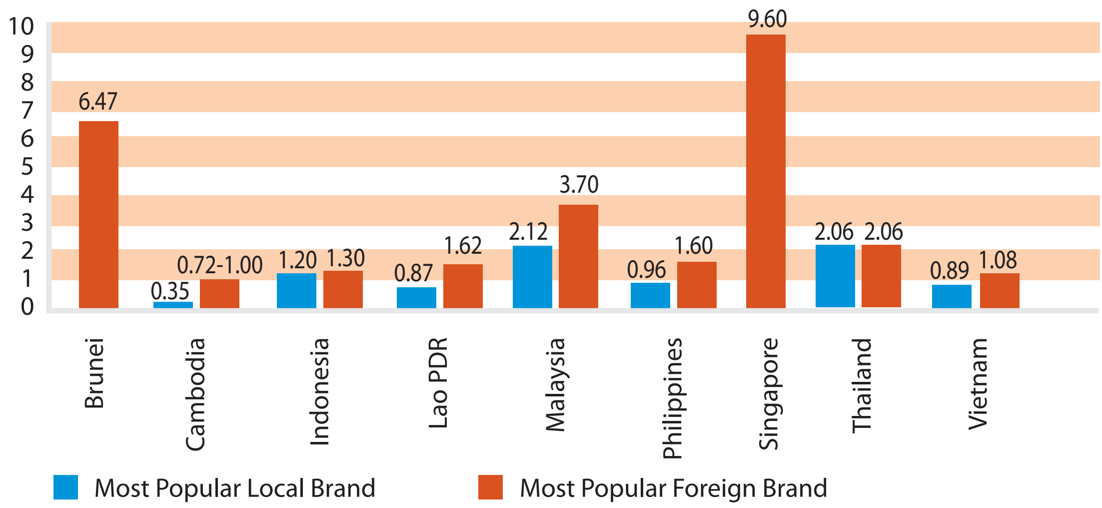
The SEATCA Tobacco Tax Index: what it is and why it is important

To grow their profits, tobacco companies are targeting Southeast Asia, home to about one-tenth of the world's 1.2 billion smokers (about 125 million smokers), in particular, countries with large smoking populations such as Indonesia (65 million smokers), Philippines (17 million), and Vietnam (15 million). As a result, it is expected that tobacco-caused deaths (premature and entirely preventable) among Southeast Asians, currently estimated at 500,000 annually, will increase even further in the coming years.

The 180 States Parties to the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC) have committed to continually and substantially reduce the prevalence of tobacco use and "recognize that price and tax measures are an effective and important means of reducing tobacco consumption by various segments of the population, in particular young persons" (FCTC Article 6).[1] As such, the WHO has described tobacco tax increases as a "best buy" intervention that has significant public health impact and is highly cost-effective, inexpensive and feasible to implement.[2] However, according to the 2015 WHO Report on the Global Tobacco Epidemic, only 10% of the world's people live in countries with sufficiently high tobacco taxes.[3]

Retail prices of cigarettes are varied across the region (Figure 1). High-income countries have higher prices, while low- and middle-income countries have generally much lower prices; however, these are not an indicator of how affordable they are. Excise tax policies that do not result in prices keeping pace with economic and income growth contribute to climbing smoking prevalence rates and their related socio-economic costs.

Figure 1: Prices of most popular cigarette brands (USD per pack, 2014)[4]



This civil society report gauges the implementation of tobacco tax measures in ASEAN countries in relation to the recommendations of the FCTC Article 6 Guidelines, which the FCTC Conference of Parties (COP) adopted by consensus" to assist Parties in meeting their objectives and obligations

[1] World Health Organization Framework Convention on Tobacco Control (adopted 21 May 2003, entered into force 27 February 2005).
[2] World Health Organization. (2011). *Prevention and Control of NCDs: Priorities For Investment,* a Discussion Paper for the First
[3] Global Ministerial Conference on Healthy Lifestyles and Noncommunicable Disease Control (Moscow, 28-29 April 2011). World Health Organization. (2015). *WHO Report on the Global Tobacco Epidemic, 2015: Raising taxes on tobacco*. Geneva, Switzerland.
[4] Southeast Asia Tobacco Control Alliance. (2014). *ASEAN Tobacco Tax Report Card: Regional Comparisons and Trends*. Bangkok, Thailand.

under Article 6 of the WHO FCTC," drawing on the best available evidence, best practices, and experiences of Parties that have successfully implemented tax and price measures to reduce tobacco consumption. [5]

Implementing FCTC Article 6 in ASEAN countries

The FCTC Article 6 Guidelines are based on six guiding principles:

1. Determining tobacco taxation policies is a sovereign right of the Parties.
2. Effective tobacco taxes significantly reduce tobacco consumption and prevalence.
3. Effective tobacco taxes are an important source of revenue.
4. Tobacco taxes are economically efficient and reduce health inequalities.
5. Tobacco tax systems and administration should be efficient and effective.
6. Tobacco tax policies should be protected from vested interests.

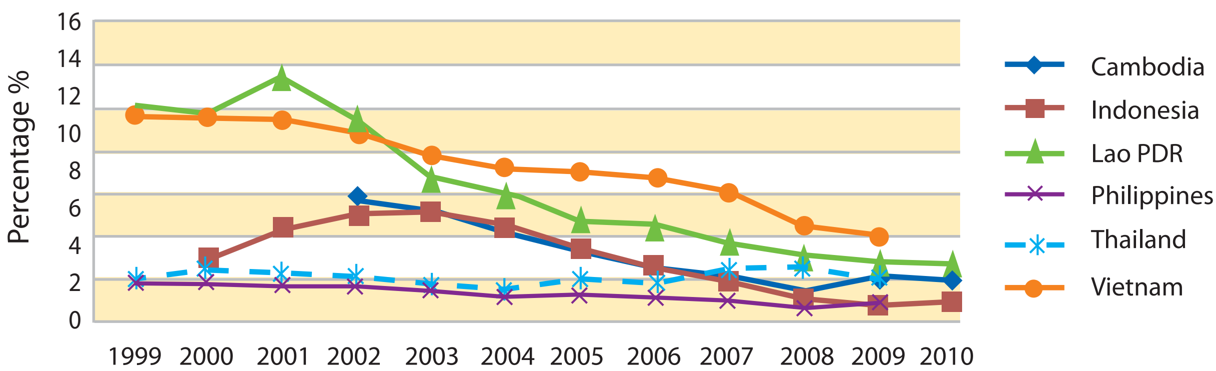
The guidelines are divided into various sections covering the relationship between tobacco taxes and prices and public health, tobacco tax systems, tax administration, financing for tobacco control, and duty-free sales. Each section contains a number of recommendations, which are discussed below.

1. Relationship between tobacco taxes, price and public health

Article 6 Guidelines: When establishing or increasing their national levels of taxation Parties should take into account – among other things – both price elasticity and income elasticity of demand, as well as inflation and changes in household income, to make tobacco products less affordable over time in order to reduce consumption and prevalence. Therefore, Parties should consider having regular adjustment processes or procedures for periodic revaluation of tobacco tax levels.

A recent analytical report on the affordability of cigarettes in six ASEAN countries (Cambodia, Indonesia, Lao PDR, Philippines, Thailand and Vietnam) showed cigarettes becoming increasingly more affordable from 1999-2010. The Relative Income Prices (RIP)[6] of cigarettes were low in all those countries and had steadily declined (except Thailand which had a slight increase), indicating increasing affordability over time (Figure 2).[7] This is primarily driven by the inability of retail prices to keep pace with economic and income growth.

Figure 2: Relative Income Prices (RIP) of cigarettes, 1999-2010



---

[5] WHO FCTC Article 6 Guidelines (adopted by the Conference of Parties to the WHO FCTC at its sixth session, October 2014).
[6] Relative Income Prices (RIP) of cigarettes: calculated as the percentage of per capita GDP required to purchase 100 cigarette packs
[7] Southeast Asia Tobacco Control Alliance. (2012). *Cigarette Affordability in 6 ASEAN countries*. Bangkok, Thailand.

Four out of ten ASEAN countries (Indonesia, Philippines, Singapore and Thailand) have regular adjustment processes or procedures for periodic revaluation of tobacco tax levels.

- Indonesia's Ministry of Finance (MOF) has increased tobacco taxes almost annually: when cigarette production is high, the government will consider increasing tobacco tax to be at par with the inflation rate; however, the MOF objective for tax increases is to increase revenues only and not to reduce tobacco affordability and consumption.
- In passing its Sin Tax Reform Act 2012 (Republic Act (RA) 10351), the Philippine government took into account both price elasticity and income elasticity of demand with the aim of decreasing tobacco consumption over time, thus mandating excise tax increases annually by specific amounts till 2017 and by 4% (as a proxy for inflation) thereafter.
- In Singapore, the government has adjusted tobacco tax rates to reduce affordability, taking into account a range of factors such as price elasticity, income and inflation.
- In Thailand, tobacco tax rates have been adjusted regularly since 1994. The latest tax increase was in 2012 from 85% (in 2009) to 87% causing the smoking prevalence rate to drop further from 20.7% in 2009 to 19.9% in 2013. [8]

The remaining six ASEAN countries have faced difficulty in regularly adjusting tobacco tax rates to make products less affordable over time in order to reduce consumption and prevalence. The most common challenges are the lack of political will of policymakers to prioritize tobacco tax policy in the national agenda and the significant interference of the tobacco industry. For example, in Lao PDR, the government has not adjusted tobacco tax rates since 2011 and has not enforced the existing tobacco tax law for fear of violating a 2001 Investment License Agreement (ILA) between the Lao government and Imperial Tobacco that gives the tobacco company a 25-year tax holiday.

2. Tobacco taxation systems

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

Article 6 Guidelines: Parties should implement the simplest and most efficient system that meets their public health and fiscal needs, and taking into account their national circumstances. Parties should consider implementing specific or mixed excise systems with a minimum specific tax floor, as these systems have considerable advantages over purely ad valorem systems.

For this section we are primarily considering taxes on cigarettes, which are the most prevalent tobacco product used in the region. Non-cigarette products (cigars, roll-your-own, smokeless, etc.) will be covered in future reports.

Within ASEAN, four countries have specific tobacco excise systems, three have ad valorem systems, and three apply a mixed system (Table 1). Some highlights include:

- While specific taxes are the easiest to implement and administer, Indonesia's multi-tiered system is extremely complicated and mimics the less efficient ad valorem system.
- Having learned from its past experience with ad valorem and multi-tiered specific systems, the Philippines is implementing tax reforms that have simplified its previous four-tiered system and will apply a uniform specific tax by 2017.
- Countries with purely ad valorem systems (Cambodia, Myanmar, and Vietnam) are at risk for product undervaluation (reducing the taxable product values), especially if based on ex-factory prices. Countries with mixed systems are less prone to product undervaluation depending on whether the specific or ad valorem component has a greater weight.

---

[8] Southeast Asia Tobacco Control Alliance. (2014). *ASEAN Tobacco Tax Report Card: Regional Comparisons and Trends.* Bangkok, Thailand.

Table 1. Cigarette tax systems in ASEAN

Countries	Type of Tax Applied			
	Excise Rate	**VAT/GST**	**Import Tariffs**	**Others**
	Specific Tax			
Brunei Darussalam	BND 0.25/stick	N/A	N/A	N/A
Indonesia	IDR 80-380/stick, (multiple tiers)	8.40%	0% from ASEAN plus China 40% from outside ASEAN plus China	Local cigarette tax 10% of excise tariff
Philippines	PHP 21 or 28 per pack (2 tiers)	12%	3%-10%	Single uniform rate by 2017, then annual 4% increase starting in 2018
Singapore	SGD 0.388/stick	7%	N/A	N/A
	Ad Valorem Tax			
Cambodia	15% of 90% of invoice price	10%	7%-35% plus 10% import VAT	Public lighting tax 3% of invoice value, Profit tax 20% of profit, Turnover tax 2% of invoice value
Myanmar	120% of retail price (Commercial tax)	none	30% on CIF	1% special excise duty, profit tax, income tax
Vietnam	65% ex-factory price	10%	30-135%	N/A
	Mixed System			
Lao PDR	15-30% of production cost, plus LAK 500 additional specific tax	10%	Flat rate USD 0.40/pack	Royalty fee 15% of production cost
Malaysia	MYR 0.25/stick specific taxand 20% ad valorem tax	5%	MYR 0.20/stick	N/A
Thailand	87% of ex-factory price or THB 1/gram, whichever value is higher	7%	Exempted but other local taxes are applied	Local tax THB 0.093/-stick, ThaiHealth tax at 2% of excise, and TV tax at 1.5% of excise

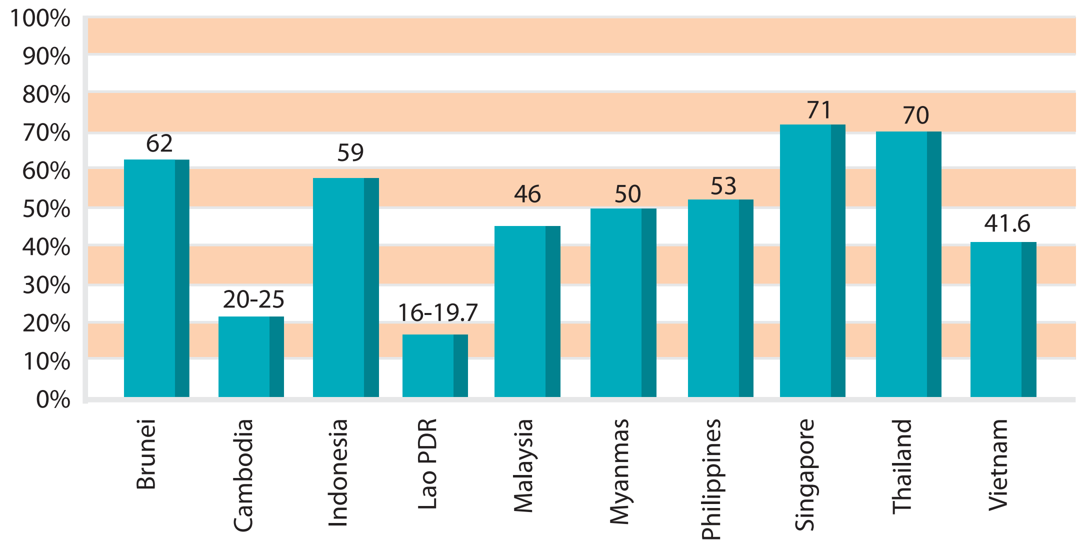
2.2 Level of tax rates to apply

Article 6 Guidelines: Parties should establish coherent long-term policies on their tobacco taxation structure and monitor on a regular basis including targets for their tax rates, in order to achieve their public health and fiscal objectives within a certain period of time.

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

In the ASEAN region, Singapore currently has the highest tax burden as a percentage of retail price (71%), followed closely by Thailand (70%) and Brunei Darussalam (62%) (Figure 3). In contrast, countries with the lowest tax burdens are Cambodia (20-25%) and Lao PDR (16-19.7%).

Figure 3: Tobacco tax burden as percentage of retail price, 2014 [9]



Note: Rates for countries following the tier-system are based on average/most applied rates.
The estimate was calculated based on premium cigarette brand for Brunei, Malaysia and Singapore.

Among ASEAN countries, only Indonesia and Philippines have long-term policies on their tobacco taxation structure with regular monitoring and adjustments; however, Indonesia's tobacco tax roadmap (2007-2020) that specifies the tax rate for tobacco and revenue targets, while adjusted to keep up with inflation, is intended to achieve revenue goals with no real positive impact on reducing affordability or consumption due to its low tax rates and complex multi-tiered tax structure.

In the Philippines, RA 10351 increased excise rates by as much as 340% to 820% (for low-priced brands) in 2013 and stipulates annual excise increases of specific amounts till 2017 with a 4% annual increase thereafter to keep pace with inflation, while tobacco tax tiers were reduced from four tiers to two, which will become a uniform specific rate by 2017, to more effectively reduce consumption by discouraging downtrading to less-taxed and lower-priced products. Monitoring since 2013 has shown that actual revenues have surpassed revenue targets every year since 2013, while early survey results show decreases in consumption among the youth and the poor.

[9] Southeast Asia Tobacco Control Alliance. (2014). *ASEAN Tobacco Tax Report Card: Regional Comparisons and Trends.*

In both Singapore and Thailand, ministries of finance and health have contributed over the past two decades to tobacco tax policies with periodic but ad hoc increases of excise tax rates in order to reduce affordability and raise revenue with monitoring showing declining smoking prevalence rates among adults and youths as well as increased revenues. Similarly, while there have been periodic tax increases in Malaysia, there is no long-term tobacco tax policy, and increases have been small and ad hoc, such that cigarettes continue to be affordable, contributing to a very small reduction in smoking prevalence over the past 2 decades.

While Brunei's large (733%) excise tax increase on tobacco in 2010 was intended to reduce affordability and consumption, there is no long-term tax policy to regularly increase rates and no monitoring against fiscal and health objectives.

Cambodia, Lao PDR, Myanmar, and Vietnam have no long-term tobacco tax policies, no regular tax increases, and only some attempts to monitor for health and/or revenue impacts in Cambodia and Myanmar or to consider affordability and inflation in Cambodia.

Only Brunei, Philippines, Singapore, and Thailand have had tax increases that are discouraging consumption. Overall, tobacco taxes in all ASEAN countries are not high enough to substantially and continuously reduce consumption.

2.3 Comprehensiveness/similar tax burden for different tobacco products

Article 6 Guidelines: All tobacco products should be taxed in a comparable way as appropriate, in particular where the risk of substitution exists.

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

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

Only three (Brunei Darussalam, Malaysia and Singapore) out of the ten ASEAN countries tax all tobacco products in a comparable manner, reducing the price difference between various types of tobacco products (cigarettes, cigars, pipes and other tobacco products), although the Philippines is moving toward a uniform specific tax rate by 2017. Monitoring by Singapore after their tax hike in 2014 showed no major shifts in consumption patterns because of the comparable tax on all types of tobacco products. The remaining six countries in ASEAN continue to face challenges in taxing all tobacco products in a comparable manner. For example, although taxes in Thailand are raised periodically and the cigarette excise rate is as high as 87%, Roll-Your-Own (RYO) tobacco taxes are very low, making RYO prices lower and permitting consumers to shift from manufactured cigarettes to the cheaper RYO cigarettes. Countries with purely ad valorem excise systems also have larger price differences between lower and higher-priced products, providing an incentive for some consumers to downtrade to cheaper products, thereby reducing the decrease in consumption expected from a tax increase.

3. Tobacco tax administration

3.1 Authorization/licensing

Article 6 Guidelines: Parties should ensure that transparent license or equivalent approval or control systems are in place.

All countries in ASEAN have a license or control system on the manufacture and import or export of tobacco products (note: Brunei Darussalam has no tobacco manufacturers in the country.), while all countries in ASEAN, except Indonesia and Myanmar, license wholesaling, brokering, warehousing or distribution of tobacco and tobacco products. In addition, Brunei Darussalam, Singapore, and Thailand enforce a license system on retailing of tobacco products, while Malaysia, Myanmar, Thailand, and Vietnam have a control or license system for tobacco farmers and producers. Brunei Darussalam, Lao PDR, Malaysia, Philippines, Singapore and Thailand also license the transporting of commercial quantities of tobacco products. Licenses for manufacture, import/export, and transporting of tobacco manufacturing equipment are required in Brunei Darussalam, Lao PDR, Malaysia, Philippines, and Vietnam, while Cambodia, Indonesia, and Myanmar require licenses for manufacture and import/export, but not transporting, of tobacco manufacturing equipment.

3.2 Warehouse system/movement of excisable goods and tax payments

Article 6 Guidelines: Parties are urged to adopt and implement measures and systems of storage and production warehouses to facilitate excise controls on tobacco products.

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

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

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

All countries in ASEAN (except Brunei Darussalam, which has no local manufacturers) impose excise taxes at the point of manufacture and at the point of importation; however, only five countries in ASEAN have adopted and implemented measures and systems of storage and production warehouses to facilitate excise controls on tobacco products, namely Brunei Darussalam, Malaysia, Philippines, Singapore, and Vietnam, but only Philippines, Singapore and Vietnam impose excise taxes at the point of releasing tobacco products for consumption from the storage or production warehouses. For example, the Philippine government requires tobacco companies to post a bond equivalent to taxes to be paid for products intended for domestic sale when tobacco products (whether locally manufactured, imported or in transit) are placed in a warehouse.

All countries, except Brunei Darussalam (and no data for Myanmar), require cigarette producers or taxpayers to submit a report at fixed intervals. Information reported commonly includes production and/or sales volumes by brands, price by brands, and taxes due and paid each month, and less commonly the volumes of raw material inputs. Among the ten countries in ASEAN, only Singapore allows disclosure to the public of the information contained in the industry's tax reports.

3.3 Anti-forestalling measures

Article 6 Guidelines: In anticipation of tax increases Parties should consider imposing effective anti-forestalling measures.

Only three ASEAN countries implement anti-forestalling measures to prevent or reduce tax avoidance. In Indonesia, a new tax rate is usually announced in October and enforced in January the following year, and the MOF limits the time frame for applying tax stamps to just one month after the new excise rate announcement. In the Philippines, at the end of 2014, in anticipation of the 1 January 2015 tax increase, the Bureau of Internal Revenue (BIR) issued a memorandum circular[10] to inventory all tax stamps held by manufacturers to determine if there are any tax differentials to be collected. For Singapore, the tax increase is applied on the same day it is announced.

3.4 Fiscal markings

Article 6 Guidelines: Where appropriate, Parties should consider requiring the application of fiscal markings to increase compliance with tax laws

All ASEAN countries, except Brunei Darussalam and Singapore, require the application of fiscal markings, such as tax stamps, although Singapore requires "Singapore Duty-Paid Cigarettes (SDPC)" markings on individual cigarette sticks sold in the country. Most tax stamps carry security features such as a hologram, watermark, or *intlagio*.[11] In addition to tax stamps, Malaysia also requires invisible security ink markings, but there are no ASEAN countries that implement a standard pack size policy [12] in order to facilitate the application of fiscal markings and increase the efficiency of tax administration. The tax stamps and other markings in all ASEAN countries, however, are not part of a track and trace system to secure the supply chain of tobacco products.

3.5 Enforcement

Article 6 Guidelines: Parties should clearly designate and grant appropriate powers to tax enforcement authorities. Parties should also provide for information sharing among enforcement agencies in accordance with national law. In order to deter non-compliance with tax laws, Parties should provide for an appropriate range of penalties.

In addition to licensing, enforcement is the most well implemented measure of the FCTC Article 6 Guidelines in ASEAN countries. All countries in the region (note: no data for Myanmar) have clearly designated and granted appropriate powers to tax enforcement authorities. There is information sharing among enforcement agencies in accordance with national law, and an appropriate range of penalties is enforced on non-compliance of tax laws; however, information sharing and the range of penalties could be improved in Cambodia.

4. Use of revenues – financing of tobacco control

Article 6 Guidelines: Parties could consider, while bearing in mind Article 26.2 of the WHO FCTC, and in accordance with national law, dedicating revenue to tobacco control programs, such as those covering awareness raising, health promotion and disease prevention, cessation services, economically viable alternative activities, and financing of appropriate structures for tobacco control.

---

[10] Revenue Memorandum Circular No. 89-2014

[11] printing techniques in which the image is incised into a surface, and the incised line or sunken area holds the ink

[12] Some countries require a specific number of cigarettes per pack.

Only four ASEAN countries (Lao PDR, Philippines, Thailand, and Vietnam) dedicate tobacco tax revenues to tobacco control programs.

The Lao Tobacco Control Fund is by law[13] financed from 2% of tobacco companies' profit tax and a LAK 200 per pack specific tax for health. However, the government is unable to collect the funds for tobacco control programs because the industry refuses to pay the tax by referring to the unfair 25-year ILA between the tobacco industry and the government.

As part of the tobacco tax reform in the Philippines, 15% of the incremental revenue collected from excise on tobacco products is earmarked exclusively to promote economically viable alternative livelihoods for tobacco farmers; however, while the remaining balance of the incremental revenue is earmarked for health purposes (primarily universal health care under the National Health Insurance Program), there is no specific allocation for implementation of other FCTC measures.

The Thai government imposes a 2% surcharge tax on tobacco and alcohol producers and importers,[14] which is used to fund the Thai Health Promotion Foundation (ThaiHealth) for tobacco control and health promotion activities. The current annual ThaiHealth budget is approximately USD 125 million.[15]

The Vietnam Tobacco Control Law established a Tobacco Control Fund, whose budget also comes from a surcharge on tobacco manufacturers and importers; this compulsory contribution is currently 1% per pack but will increase to 1.5% in 2016 and to 2% in 2019. The fund is allocated exclusively for tobacco control activities in the country.

Only Malaysia and Singapore have sufficient funding for tobacco control programs, but these are financed by the state treasury and not from earmarked tobacco excise revenues. For other ASEAN countries, despite having insufficient tobacco control funding, none of them have plans to increase their budgets for tobacco control and health promotion activities.

5. Tax-free/Duty-free sales

Article 6 Guidelines: Parties should consider prohibiting or restricting the sale to and/or importation by international travelers, of tax-free or duty-free tobacco products.

In the ASEAN, only Brunei Darussalam and Singapore prohibit the sale to and/or importation by international travelers, of tax-free or duty-free tobacco products. All other countries in ASEAN restrict the sale to and/or importation by international travelers, of tax-free or duty-free tobacco products (Table 2). In addition, the Philippines applies excise taxes on tobacco products sold in tax- or duty-free stores.

[13] Lao PDR Tobacco Control Law 2009
[14] in accordance with the Thai Health Promotion Foundation Act B.E. 2544 (2001)
[15] Bureau of the Budget, Office of the Prime Minister, Kingdom of Thailand. *Thailand's Budget in Brief, Fiscal Year 2014.*

Table 2: Duty-free tobacco products allowance for international travelers in ASEAN countries

Countries	Duty-free allowance for international travelers
Brunei Darussalam	Not permitted
Cambodia	400 sticks of cigarettes, 100 sticks of cigars
Indonesia	200 sticks of cigarettes
Lao PDR	200 sticks of cigarettes
Malaysia	200 sticks of cigarettes or 225 grams of other tobacco products
Myanmar	400 sticks of cigarettes, 100 sticks of cigars, 250 grams of pipe tobacco
Philippines	200 sticks of cigarettes
Singapore	Not permitted
Thailand	200 sticks of cigarettes, 500 grams of other tobacco products
Vietnam	200 sticks of cigarettes, 100 sticks of cigars, 500 grams of other tobacco products

6. Protection of tax policies from vested interests

Article 6 Guidelines: The development, implementation and enforcement of tobacco tax and price policies as part of public health policies should be protected from commercial and other vested interests of the tobacco industry, including tactics of using the issue of smuggling in hindering implementation of tax and price policies, as required under Article 5.3 of the WHO FCTC and consistent with the guidelines for its implementation as well as from any other actual and potential conflicts of interests.

Only Brunei Darussalam, Philippines, and Singapore have a procedure/policy that protects tobacco tax and price policies from commercial and other vested interests of the tobacco industry. For example in the Philippines, the Civil Service Commission and Department of Health (CSC-DOH) joint Memorandum Circular (JMC) 2010-01 was issued specifically to protect the bureaucracy against tobacco industry interference. In addition the governments of Brunei Darussalam, Malaysia and Singapore do not consult with tobacco companies or their front groups in a non-transparent manner or accept policy/legal drafts from them.

Unfortunately, the Lao government is the only ASEAN government that has an agreement with the tobacco industry in implementing tobacco tax policies. Although the Tobacco Tax law stipulates a 60% excise tax rate, the government's contract with the tobacco industry has meant the application of a much lower excise rate of 15 – 30%. In addition, the industry refuses to pay the tax to be utilized for the Tobacco Control Fund by referring to the ILA.

In addition to opposing effective tobacco taxes, the tobacco industry promotes its Codentify system for use as fiscal markings and/or track and trace system. Philip Morris Fortune Tobacco Company (PMFTC) unsuccessfully promoted Codentify to the Philippine Department of Finance, BIR, legislators, and the media, while the Codentify system has been implemented in Vietnam.

Conclusions

Raising tobacco taxes is one of the most effective and cost-effective measures to reduce tobacco consumption and prevalence of tobacco use. Cigarette price increases discourage new smokers who are sensitive to price changes, particularly preventing the youth from smoking.

This world's first Tobacco Tax Index by SEATCA compares the current progress of tobacco tax policy in the region against the WHO FCTC Article 6 Guidelines to help governments identify and close gaps in and strengthen implementation of tobacco tax policies in their countries.

This Index shows that while some countries have made significant progress in formulating and implementing tobacco tax policies, the region as a whole has advanced slowly in the past few years, outpaced by economic and income growth. Most countries also do not have any long-term tobacco tax policies with regularly evaluated fiscal and public health targets. Important obstacles in some countries are their ineffective tobacco tax structures (e.g. Indonesia's multi-tiered system or those with purely ad valorem tax systems) and weak tax administration (e.g. inadequate licensing and reporting requirements or lack of anti-forestalling measures), as well as tobacco industry interference in tobacco tax policy formulation (e.g. by claiming that implementing tobacco tax measures will lead to increased illicit trade and declines in tobacco tax revenue or create a burden for poor smokers) or in tax administration (e.g. through Codentify).

Recommendations

1. The WHO FCTC Article 6 Guidelines clearly state that implementation of Article 6 of the treaty is an essential element of tobacco-control policies; however, while all ASEAN countries recognize tobacco taxes as a significant source of government revenue, not all countries consider tobacco tax policy as public health policy. All governments should **develop and implement long-term tobacco tax policies that include public health targets** with periodic evaluations and adjustments.

2. Downtrading or shifting to lower-priced tobacco products is expected and has been observed in countries where tax systems allow for wider retail price gaps. Because this diminishes the public health objective of reducing consumption, governments should **apply a uniform specific tax system or a mixed system with a minimum specific tax floor**, and should **tax all tobacco products in a comparable way**, such as in Brunei Darussalam, Malaysia, and Singapore.

3. Because licensing is a vital requisite for controlling the supply chain and for effective tax administration, all countries should **implement a comprehensive licensing system** for all parts of the tobacco supply chain. This should cover manufacturing equipment and, where appropriate, retailers and tobacco growers.

4. In combination with licensing, adequate record keeping is also crucial for governments to know the whole range and magnitude of the tobacco business. In line with FCTC Articles 5.3 and 6 and their implementing guidelines (and also listed in the FCTC Protocol to Eliminate Illicit Trade in Tobacco Products), governments should **require the tobacco industry to periodically submit detailed**

financial reports that include information on tobacco production, manufacture and sales volumes, price by brands, market share, marketing expenditures and revenues, taxes due and paid, and volumes of raw material inputs, among others. This evidence will help governments monitor the impact of tax increases on employment and illicit trade in the tobacco sector and respond to arguments from the industry. Making these reports publicly available allows for independent analysis of the reports and may be a critical means for governments to effectively regulate the tobacco industry and prevent the submission of fraudulent reports.

5. While most countries make **use of fiscal markings**, such as tax stamps, to increase tax compliance, countries should also **standardize pack sizes** to increase the efficiency of tax administration and **establish a tracking and tracing system**, including markings with a unique identifier, to further secure the supply chain, reducing the risk of tobacco products entering the illicit market, and assist in investigations of illicit trade. All countries should also **implement anti-forestalling measures** as recommended in the Article 6 Guidelines to prevent tax avoidance and ensure that governments collect the additional revenues from tax increases, learning from the experience of countries, such as Philippines and Singapore.

6. All countries should follow the lead of Brunei Darussalam and Singapore that **prohibit duty-free tobacco sales** or of the Philippines that imposes excise on duty-free products, as exempting duty-free tobacco products from excise taxes is contrary to the overall objectives of increasing tobacco tax revenues and discouraging tobacco use. Banning duty-free tobacco will also reduce large-scale smuggling of tobacco products through economic free zones and duty-free channels.

7. In accordance with the FCTC Article 5.3 implementing guidelines and the guiding principles of the FCTC Article 6 implementing guidelines, governments should **implement a code of conduct for all government ministries and officials that prohibits unnecessary government interactions with the tobacco industry** and requires full transparency and accountability of any interactions necessary for the effective regulation, supervision, and control of the industry, including in the formulation and implementation of tobacco tax policies.

8. Since most countries have insufficient resources for tobacco control, they should seriously **consider dedicating tobacco excise revenues for FCTC implementation**, such as in Lao PDR, Thailand, and Vietnam.

ANNEX: Summary Table of Tobacco Tax Index

✓	:	Yes, the country has or implements this
X	:	No, the country does not have or does not implement this
N/A	:	not applicable
NDA	:	no data available
BRN	:	Brunei Darussalam
CAM	:	Cambodia
IDN	:	Indonesia
LAO	:	Lao PDR
MYS	:	Malaysia
MMR	:	Myanmar
PHL	:	Philippines
SGP	:	Singapore
THA	:	Thailand
VNM	:	Vietnam

A. Relationship between tobacco taxes, price and public health

Article 6 Guidelines: When establishing or increasing their national levels of taxation Parties should take into account – among other things – both price elasticity and income elasticity of demand, as well as inflation and changes in household income, to make tobacco products less affordable over time in order to reduce consumption and prevalence. Therefore, Parties should consider having regular adjustment processes or procedures for periodic revaluation of tobacco tax levels.

	BRN	CAM	IDN	LAO	MYS	MMR	PHL	SGP	THA	VNM
1. Does your government have regular adjustment processes or procedures for periodic revaluation of tobacco tax levels?	X	X	✓	X	X	X	✓	✓	✓	X
2. Do tax increases take into account both price elasticity and income elasticity of demand, as well as inflation and changes in household income to make tobacco products less affordable over time in order to reduce consumption and prevalence?	X	X	✓	X	X	X	✓	✓	✓	X

B. Tobacco taxation systems

B.1. Structure of tobacco taxes (ad valorem, specific, mixture of both, minimum taxes, other taxes on tobacco goods)

Article 6 Guidelines: Parties should implement the simplest and most efficient system that meets their public health and fiscal needs, and taking into account their national circumstances. Parties should consider implementing specific or mixed excise systems with a minimum specific tax floor, as these systems have considerable advantages over purely ad valorem systems.

	BRN	CAM	IDN	LAO	MYS	MMR	PHL	SGP	THA	VNM
1. Does your country apply a purely specific excise system?	✓	X	✓	X	X	X	✓	✓	X	X
2. Does your country apply a purely ad valorem excise system?	X	✓	X	X	X	X	X	X	X	✓
3. Does your country apply a mixed (specific and ad valorem) excise system?	X	X	X	✓	✓	✓	✓ *cigars	X	✓	X
4. Does your country apply other taxes on tobacco products?	X	✓	✓	✓	✓	✓	✓	✓	✓	✓

B.2. Level of tax rates to apply

Article 6 Guidelines: Parties should establish coherent long-term policies on their tobacco taxation structure and monitor on a regular basis including targets for their tax rates, in order to achieve their public health and fiscal objectives within a certain period of time.

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

		BRN	CAM	IDN	LAO	MYS	MMR	PHL	SGP	THA	VNM
1.	Does your government have long-term policies on tobacco taxation structure?	x	x	✓	x	x	x	✓	x	x	x
2.	Does your government regularly monitor the tax structure and targets for tax rates in order to achieve its public health and fiscal objectives within a certain period of time?	x	✓	✓	x	x	✓	✓	✓	✓	x
3.	Does your government increase or adjust tax rates on a regular basis, potentially annually?	x	x	✓	x	x	x	✓	x	✓	x
4.	When increasing or adjusting tax rates, does your government take into account inflation and income growth in order to reduce consumption of tobacco products? Are your tax rates indexed to inflation (i.e. rates automatically increase with inflation)?	x	x	✓	x	x	x	✓	✓	✓	x
5.	Are your country's tobacco tax rates sufficiently high to reduce consumption?	✓	x	x	x	x	x	✓ *Cigarettes still affordable to the young and poor	✓	✓	x

B.3. Comprehensiveness/similar tax burden for different tobacco products

Article 6 Guidelines: All tobacco products should be taxed in a comparable way as appropriate, in particular where the risk of substitution exists.

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

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

		CAM	IDN	LAO	MYS	MMR	PHL	SGP	THA	VNM
1.	Does your government tax all tobacco products in a comparable way?	x	x	x	✓	x	x	✓	x	x
2.	In your country, there is no risk of substitution or shifting to cheaper products, whether in the same product category or to a different product category in response to tax/price increases.	x	x	x	✓	x	x	✓	x	x
3.	Is your country's tobacco tax system designed in a way that minimizes the incentive for users to shift to cheaper products in the same product category or to cheaper tobacco product categories as a response to tax or retail price increases or other related market effects?	x	x	x	✓	x	✓	✓	x	x
4.	Does your government regularly review tax burdens on all tobacco products?	x	✓	x	x	x	x	✓	✓	✓
5.	After each review of the tax burdens on all tobacco products, are they increased and made similar?	x	x	x	x	x	x	✓	x	x

C. TAX ADMINISTRATION

C. 1. Authorization/licensing

Article 6 Guidelines: Parties should ensure that transparent license or equivalent approval or control systems are in place.

	BRN	CAM	IDN	LAO	MYS	MMR	PHL	SGP	THA	VNM
1. Does your country have a license or equivalent approval or control system for:										
a. manufacture of tobacco products and manufacturing equipment?	N/A	✓	✓	✓	✓	✓	✓	✓	✓ * except manufacturing equipment	✓
b. import or export of tobacco products and manufacturing equipment?	✓	✓	✓	✓	✓	✓	✓	✓	✓ * except manufacturing equipment	✓
c. retailing of tobacco products?	✓	x	x	x	x	x	x	✓	✓	x
d. growing of tobacco, except for traditional small-scale growers, farmers and producers?	N/A	x	x	x	✓	✓	x	N/A	✓	✓
e. transporting commercial quantities of tobacco products or manufacturing equipment?	✓	x	x	✓	✓	x	✓	✓	✓ * except manufacturing equipment	x
f. wholesaling, brokering, warehousing or distribution of tobacco and tobacco products or manufacturing equipment?	✓	✓	x	✓	✓	x	✓ * for wholesaling	✓	✓ * except manufacturing equipment	✓ * except manufacturing equipment

C.2. Warehouse system/movement of excisable goods and tax payments

Article 6 Guidelines: Parties are urged to adopt and implement measures and systems of storage and production warehouses to facilitate excise controls on tobacco products.

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

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

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

	BRN	CAM	IDN	LAO	MYS	MMR	PHL	SGP	THA	VNM
1. Has your country adopted and implemented measures and systems of storage and production warehouses to facilitate excise controls on tobacco products?	✓	x	x	x	✓	x	✓	✓	x	✓
2. Does your country impose excise taxes at the point of: a. manufacture?	N/A	✓	✓	✓	✓	✓	✓	✓	✓	✓
b. importation?	✓	✓	✓	✓	✓	NDA	✓	✓	✓	✓
c. release for consumption from the storage or production warehouses?	x	x	x	x	x	NDA	✓	✓	x	✓
3. Are tax payments required by law to be remitted at fixed intervals or on a fixed date each month? Do tax payments include the reporting of: a. production and/or sales volumes by brands? b. price by brands? c. taxes due and paid? d. volumes of raw material inputs?	x	✓ * unknown if raw material input volumes are covered	✓ * Except volume of raw material inputs	✓ * no details of reported info	✓ * no details of reported info	NDA	✓ * unknown if raw material input volumes are covered	✓	✓ * tax payments are not required by law to be remitted at fixed intervals or on a fixed date each month	✓
4. Do tax authorities allow for the public disclosure of the information contained within the reports, through the available media, including those online, taking into account confidentiality rules in accordance with national law?	x	x	x	x	x	x	x	✓	x	x

C.3. Anti-forestalling measures

Article 6 Guidelines: In anticipation of tax increases Parties should consider imposing effective anti-forestalling measures.

	BRN	CAM	IDN	LAO	MYS	MMR	PHL	SGP	THA	VNM
1. In anticipation of tax increases, does your government impose effective anti-forestalling measures, such as: • restricting the release of excessive volumes of tobacco products immediately prior to a tax increase; or • levying the new tax on products already produced or kept in stock, and not yet supplied to the final consumer, including those in retail (known as a floor-stock or inventory tax)?	x	x	✓	x	NDA	x	✓	✓	x	x

C.4. Fiscal markings

Article 6 Guidelines: Where appropriate, Parties should consider requiring the application of fiscal markings to increase compliance with tax laws.

	BRN	CAM	IDN	LAO	MYS	MMR	PHL	SGP	THA	VNM
1. Does your government require the application of fiscal markings, such as tax stamps, enhanced tax stamps (also known as banderols), and digital tax stamps?	x	x	✓	x	NDA	x	✓	✓	x	x
2. Does your country apply other kinds of fiscal markings, to make it easier to distinguish legal, tax-paid product from illegal, tax-unpaid products are in place?	x	x	x	x	✓	x	x	✓	x	x
3. Are the required fiscal markings parts of a track and trace system to secure the supply chain?	x	x	x	x	x	x	x	x	x	x
4. To facilitate the application of fiscal markings and increases the efficiency of tax administration, does your government set a certain standard pack size?	x	x	x	x	x	x	x	x	x	x

C.5. Enforcement

Article 6 Guidelines: Parties should clearly designate and grant appropriate powers to tax enforcement authorities. Parties should also provide for information sharing among enforcement agencies in accordance with national law.

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

	BRN	CAM	IDN	LAO	MYS	MMR	PHL	SGP	THA	VNM
1. Does your government clearly designate and grant appropriate powers to tax enforcement authorities?	✓	✓	✓	✓	✓	NDA	✓	✓	✓	✓
2. Does your government provide for information sharing among enforcement agencies in accordance with national law?	✓	x	✓	✓	✓	NDA	✓	✓	✓	✓
3. In order to deter non-compliance with tax laws, does your government provide for an appropriate range of penalties?	✓	x	✓	✓	✓	NDA	✓	✓	✓	✓

D. USE OF REVENUES – FINANCING OF TOBACCO CONTROL

Article 6 Guidelines: Parties could consider, while bearing in mind Article 26.2 of the WHO FCTC, and in accordance with national law, dedicating revenue to tobacco-control programs, such as those covering awareness raising, health promotion and disease prevention, cessation services, economically viable alternative activities, and financing of appropriate structures for tobacco control.

	BRN	CAM	IDN	LAO	MYS	MMR	PHL	SGP	THA	VNM
1. Bearing in mind Article 26.2 of the WHO FCTC, does your government dedicate tobacco excise revenue to tobacco-control programs, such as those covering awareness raising, health promotion and disease prevention, cessation services, economically viable alternative activities, and financing of appropriate structures for tobacco control. Are there sufficient funds for tobacco control programs? Is there a sustainable, stable and reliable source of funding for tobacco control programs?	x	x	x	✓	x	x	✓	x	✓	✓
2. Are tobacco tax revenues specifically dedicated to tobacco control programs?	x	x	x	✓	x	x	x	x	✓	✓
3. Are there any approved plans to change the budget for health promotion and tobacco control (eg. plans to earmark tobacco tax revenue for health promotion, plans to increase or decrease the budget etc.)?	x	x	x	x	x	x	x	x	x	x

E. TAX-FREE/DUTY-FREE SALES

Article 6 Guidelines: Parties should consider prohibiting or restricting the sale to and/or importation by international travelers, of tax-free or duty-free tobacco products

	BRN	CAM	IDN	LAO	MYS	MMR	PHL	SGP	THA	VNM
1. Does your country prohibit the sale to and/or importation by international travelers, of tax-free or duty-free tobacco products?	✓	x	x	x	x	x	x	✓	x	x
2. Does your country apply excise taxes on tobacco products sold in tax- or duty-free stores?	✓	x	x	x	x	x	✓	x	x	x
3. Does your country restrict the sale to and/or importation by international travelers, of tax-free or duty-free tobacco products?	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

F. Protection of tax policies from vested interests

	BRN	CAM	IDN	LAO	MYS	MMR	PHL	SGP	THA	VNM
1. As required under Article 5.3 of the WHO FCTC and consistent with the guidelines for its implementation, is there a procdure /policy that in development of tobacco tax and price policies in order to protect such policy from commercial and other vested interests of the tobacco industry?	✓	x	x	x	x	NDA	✓	✓	x *Within Ministry of Health only	x
2. Your government never consults tobacco companies or their front groups (e.g. ITIC) in a non-transparent manner (e.g. private/non-public consultations) or accept policy/legal drafts from them.	✓	x	x	x	✓	x	x	✓	x	x
3. The tobacco industry does not promote its Codentify system as fiscal marking and/or track and trace system in your country.	✓	✓	✓	✓	✓	✓	x	✓	✓	x
4. Your government does not have any MOUs, non-binding agreements, or partnerships with the tobacco industry in implementing/enforcing tobacco tax policies.	✓	✓	✓	x	✓	✓	✓	✓	✓	✓

SEATCA

Published by:

Southeast Asia Tobacco Control Alliance
Thakolsuk Place, Room 2B, 115 Thoddamri Road,
Dusit, Bangkok 10300 Thailand
Telefax: +66 2 241 0082
Email: info@seatca.org
Website: www.seatca.org