Tobacco Industry Interference in Tobacco Tax Policies in ASEAN Countries
Acknowledgment:
We wish to express our gratitude to our country partners for their support with this report. This report would not have been made possible without their invaluable input and patience in gathering and reviewing country information and evidence.

- Cambodia: World Health Organization (WHO) Cambodia and Cambodia Movement for Health (CMH)
- Indonesia: Tobacco Industry Monitoring team in Indonesia
- Lao PDR: SEATCA Coordinator in Lao PDR
- Myanmar: People’s Health Foundation (PHF)
- Philippines: HealthJustice Philippines (HJ)
- Thailand: Tobacco Control Research and Knowledge Management Center (TRC)
- Vietnam: HealthBridge Foundation of Canada in Vietnam (HBV)

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About SEATCA (www.seatca.org)
SEATCA is a multi-sectoral non-governmental alliance promoting health and saving lives by supporting ASEAN countries to accelerate and effectively implement the evidence-based tobacco control measures contained in the WHO Framework Convention on Tobacco Control. Acknowledged by governments, academic institutions, and civil society for its advancement of tobacco control in Southeast Asia, the WHO bestowed upon SEATCA the World No Tobacco Day Award in 2004 and the WHO Director-General’s Special Recognition Award in 2014. SEATCA is an official NGO Observer to the WHO FCTC Conference of Parties and a co-initiator of the Global Center for Good Governance in Tobacco Control (GGTC).
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**Executive Summary**

With an annual global death count of 8 million people (including 1.2 million non-smokers), the dangerous effects of tobacco consumption and exposure are well-known and well-documented. But tobacco is a deeply profitable product, and industry giants like British American Tobacco (BAT), Philip Morris International (PMI), Japan Tobacco International (JTI), and Imperial Brands (formerly Imperial Tobacco Group) continue to make billions of dollars annually off the backs of their consumers, particularly those in low-and-middle income countries.

Article 6 of the World Health Organization Framework Convention on Tobacco Control (WHO FCTC) - tax and price policies for tobacco products – aims to mitigate the damage by reducing the affordability of tobacco products and thereby discourage consumption. It is both an economical and practical measure to improve a country’s public health outcomes, while also serving as a sustainable source of financing for health and social development programs. In response, the tobacco industry persistently uses its considerable influence and wealth to protect its bottom line by undermining, delaying, and diluting tax policymaking efforts in ASEAN countries and globally.

Leaked internal documents have exposed and confirmed key tobacco industry strategies and tactics used to interfere with tobacco tax policies, including lobbying non-health ministries, such as Ministries of Finance, and using front groups to advocate for pro-industry measures at the national and international level. The industry also routinely inserts itself into tobacco tax policymaking processes on the pretext of fairness and facilitates avenues for establishing profitable partnerships with governments.

Research sponsored by tobacco companies generates manufactured evidence that enables the industry to make false claims about how taxation policies drive illicit trade of tobacco products, decrease government revenues, and harm the livelihood of tobacco farmers and investors. The industry maintains and exaggerates these claims despite evidence showing that tobacco companies themselves have been engaging in the illicit trade activities that they blame on taxation policy.

In January 2020, the Southeast Asia Tobacco Control Alliance (SEATCA) conducted a survey in seven countries (Cambodia, Indonesia, Lao PDR, Myanmar, Philippines, Thailand and Vietnam) to develop a situational analysis of industry interference in tobacco tax policy. The survey confirmed that tobacco industry interference is a current and significant threat to the development and implementation of effective tobacco tax policies across the region. This report describes the current tobacco taxation systems in ASEAN countries as well as the most common tobacco industry arguments, tactics, and allies identified by respondents from the seven countries.
To support efficient, effective, and transparent policymaking free from tobacco industry interference, SEATCA urges all ASEAN governments to consider and implement the following recommendations:

<table>
<thead>
<tr>
<th>Recommendations</th>
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<tr>
<td>• Take into account the WHO FCTC Article 6 and Article 5.3 Guidelines when developing tobacco tax policies.</td>
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<td>• Conduct regular capacity-building for senior and technical officials among non-health government agencies in order to build understanding of the importance of tobacco tax policies.</td>
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<td>• Collaborate with government agencies and civil society organizations to establish tobacco industry interference monitoring systems.</td>
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<td>• Enforce rules of engagement among government officials for interacting with tobacco industry representatives.</td>
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<td>• Seek technical advice and research findings only from experts, institutions, and organizations with high integrity when developing or amending tobacco tax, trade, and illicit trade policies.</td>
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<td>• Collect and analyze key data in order to respond to industry arguments that commonly blame illicit trade on tobacco tax increases.</td>
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<td>• Strengthen legislative and other measures to curb illicit tobacco trade, including ensuring sufficient human, financial, and technical resources.</td>
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Anticipating the tobacco industry’s relentless efforts to interfere with tobacco tax policies, tobacco control advocates in governments and civil society organizations, including SEATCA, monitor these actions closely and launch decisive counter-actions against industry interference, which include:

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<th>Measures</th>
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<td>• Exposing and critiquing fraudulent research funded by the tobacco industry</td>
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<td>• Disseminating evidence-based counterarguments to support tobacco tax policy in response to the industry’s claims</td>
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<td>• Strengthening tobacco tax policies and administration/enforcement</td>
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<tr>
<td>• Implementing clear rules of engagement/codes of conduct based on the WHO FCTC Article 6 Guidelines to protect tax policies from commercial and other vested interests of the tobacco industry</td>
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To support efficient, effective, and transparent policymaking free from tobacco industry interference, SEATCA urges all ASEAN governments to consider and implement the following recommendations:
1. The Tobacco Industry: Harming the ASEAN Region

Tobacco remains a significant global health threat, causing multiple diseases and killing more than 8 million people every year, including around 1.2 million non-users. The Association of Southeast Asian Nations (ASEAN) region is home to 122 million adult smokers (10% of the world’s smokers), over half of whom reside in Indonesia alone (65 million). In the ASEAN region, tobacco already causes more than half a million deaths every year. The world is also learning that COVID-19 can be exacerbated by tobacco use, with emerging evidence showing increased risk and worse outcomes among users.

Tobacco use also has significant economic implications, costing an estimated US$ 1.4 trillion in global health expenditures and loss of productivity. The environmental impacts of tobacco production and cigarette manufacture and consumption are also alarming; cigarette butts are non-biodegradable and remain the most common type of discarded waste in the world, with their hazardous contents leaching into soil and bodies of water.

Three of the world’s five largest transnational tobacco companies – British American Tobacco (BAT), Philip Morris International (PMI), and Japan Tobacco International (JTI) control the cigarette markets in several ASEAN countries including Cambodia, Malaysia, and the Philippines. Tobacco companies in six ASEAN countries (Indonesia, Malaysia, Philippines, Singapore, Thailand and Vietnam) manufactured nearly 586 billion cigarettes in 2016 and 580 billion cigarettes in 2017 (2017 data for Indonesia is not currently available). PMI, BAT, JTI, and Imperial Brands (formerly Imperial Tobacco Group) made an estimated USD 27 billion in combined profits in 2017.

In addition, the influx of electronic nicotine delivery systems (ENDS) and heated tobacco products (HTPs) is expanding the landscape of tobacco use, snowballing industry profits, and addicting ever-growing numbers of young people who are easy and lucrative targets for the aggressive and influential tobacco industry. ENDS (which include e-cigarettes) and HTPs are aggressively promoted by the industry as less dangerous alternatives to conventional cigarettes, but a growing body of evidence is showing that these products are harmful and should not be promoted as safer alternatives. Currently, many of these products are not subjected to regulation and taxation in the manner of conventional cigarettes.

2. Addressing the Problem: WHO FCTC Article 6 is Key

The World Health Organization Framework Convention on Tobacco Control (WHO FCTC) is a public health treaty that sets standards to regulate the production, distribution, demand, advertisement, and use of tobacco. Parties to the treaty “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” (WHO FCTC Article 6). 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.12

Strengthening implementation of the WHO FCTC Article 6 contributes to the fulfillment of the Sustainable Development Goals (SDGs) including SDG 3 (good health and well-being) Target 3.4 (a one-third reduction in premature mortality from non-communicable diseases by 2030) and others including the reduction of poverty (SDG 1) and inequalities (SDG 10) and boosting economic growth (SDG 8).13 Revenues from tobacco tax collection could serve as a sustainable source of financing for health policies and programs when channeled into the health promotion funds of the respective country. Several ASEAN countries established robust health promotion or specific tobacco control funds, such as the Thai Health Promotion Foundation (ThaiHealth), the Malaysian Health Promotion Board (MySihat), and the Vietnam Tobacco Control Fund (VNTCF),14 although MySihat has since been abolished via a June 2018 cabinet decision as part of the government’s rationalization plan.

The WHO FCTC Conference of Parties has provided international guidelines and standards for Parties to protect their nations’ tobacco tax policies from the vested interests of the tobacco industry. The WHO FCTC Article 6 Guidelines recommend that: 15

“In order to protect tobacco tax policies from the vested interest of the industry, the guiding principles of the WHO FCTC Article 5.3 Guidelines need to be considered: 16

1. There is a fundamental and irreconcilable conflict between the interests of the tobacco industry and public health policy interests.
2. Parties, when dealing with the tobacco industry or those working to further its interests, should be accountable and transparent.
3. Parties should require the tobacco industry and those working to further its interests to operate and act in a manner that is accountable and transparent.
4. Because its products are lethal, the tobacco industry should not be granted incentives to establish or run its businesses.

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And in accordance with these guiding principles, there are 8 key recommended actions:

1. **Raise awareness** about the addictive and harmful nature of tobacco products and about tobacco industry interference with Parties’ tobacco control policies.
2. **Establish measures** to limit interactions with the tobacco industry and ensure the transparency of those interactions that occur.
3. **Reject partnerships** and non-binding or non-enforceable agreements with the tobacco industry.
4. **Avoid conflicts of interest** for government officials and employees.
5. **Require that** information provided by the tobacco industry be transparent and accurate.
6. **Denormalize** and, to the extent possible, regulate activities described as “socially responsible” by the tobacco industry, including but not limited to activities described as “corporate social responsibility”.
7. **Do not give preferential treatment** to the tobacco industry.
8. **Treat state-owned tobacco industry in the same way** as any other tobacco industry.

### a. Tobacco Tax Implementation in ASEAN Countries

All ASEAN countries have laws/regulations on tobacco taxation, with government attempts or plans to amend/update the laws/regulations over the years. However, most countries face challenges in making their tobacco tax systems effective, and Lao PDR has been unsuccessful at enforcing its tax law at all to date.

#### Table 1: Tobacco taxation in ASEAN countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Tobacco tax laws and regulations</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brunei Darussalam</td>
<td>Tobacco excise duties are imposed on a per stick basis on cigarettes. The current tax rate is BND 0.50/stick.</td>
<td>The uniform specific tax system prevents the industry from avoiding taxes such as with a tiered or ad valorem system and provides a tax floor that reduces affordability of tobacco products. The cigarette price in Brunei is considered to be one of the highest in the region (USD 5.11 per pack). Nonetheless, the industry uses the illicit trade argument to undermine effective tax systems.</td>
</tr>
<tr>
<td>Cambodia</td>
<td>The Law on Taxation (2004) stipulates tobacco excise tax measures. A 2014 Sub-Decree increased the tax base from 65% to 90% (as opposed to 100%) of invoice prices. In addition, the Royal Government of Cambodia signed the Sub-Decree on Reforming of Customs Duty and Excise Tax Rate on Certain Products (2015), which led to the excise tax rate of tobacco products being increased from 15% to 20% in 2016. The current ad valorem excise is 20% of 90% of the invoice price.</td>
<td>The ad valorem tax system is vulnerable to industry exploitation by manipulating the tax base. It is recommended that Cambodia should implement the simplest and most effective tax system by shifting from ad valorem taxes to either specific or mixed (specific and ad valorem) taxes.</td>
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</table>
Tobacco tax laws and regulations

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<thead>
<tr>
<th>Country</th>
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<tbody>
<tr>
<td>Indonesia</td>
<td>Indonesia implements a complicated multi-tiered specific tax system. Law No. 39 (2007) on Excise Taxes stipulated the excise tax regulations imposed on tobacco products. The law is scheduled to be amended after the Tax Extensification Law, currently being finalized by the Ministry of Finance to cover other excisable goods such as plastic bags and packaging, is issued.</td>
<td>The complexity of the multi-tiered tax structure creates wide price gaps and allows the industry to introduce cheap and affordable tobacco products to consumers. It is recommended that Indonesia should urgently reduce the tobacco tax tiers to a single tier and further increase tobacco tax rates, to minimize switching or downshifting to cheaper products and reduce the affordability of tobacco products.</td>
</tr>
<tr>
<td>Lao PDR</td>
<td>The Tax Law No. 023 issued in 2015 stipulates a tax increase schedule as follows: a tax rate of 30% (of the wholesale price) in 2016-2017, 45% in 2018-2019 and 60% from 2020 onwards. Additionally, the law imposed a specific tax increase from 500 to 600 LAK from December 2018. The current Excise Tax Law No. 258 (2019) imposed a new excise tax rate of 50% of the wholesale price, increased the tobacco industry profit tax rate from 24% to 26%, plus a surcharge tax of 2% to be dedicated to the Lao PDR Tobacco Control Fund. Nonetheless, the tobacco industry does not comply with the above-mentioned laws.</td>
<td>Although Lao PDR implements a mixed tax system, which is more effective than a purely ad valorem system, the government is unable to enforce the Tax Law No. 023. Instead, the industry refuses to comply, using the Investment License Agreement (ILA) as an excuse. Therefore, the tobacco tax burden (16-19.7% of retail prices) in Lao PDR is among the lowest in ASEAN. It is recommended that the government should enforce the Tax Law No. 023 and punish companies that are not compliant with the law.</td>
</tr>
<tr>
<td>Malaysia</td>
<td>Malaysia applies a specific tax system on tobacco products. In 2015, Malaysia barely increased the tobacco excise tax rate and introduced a 6% Goods and Services Tax (GST), which raised the overall excise duty on cigarettes from MYR 0.28 per stick in 2014 to MYR 0.40 in 2015. In September 2018, the government replaced GST with sales and service tax (SST) which adds 10% to the excise duty.</td>
<td>The industry regularly uses the illicit trade argument to oppose tax increases, claiming Malaysia has among the highest rates of illicit trade in the world. The government has not increased tobacco tax since 2015 though the cigarette prices have increased.</td>
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<tr>
<td>Myanmar</td>
<td>The Union Tax Law is approved by the Parliament every budget year. The 2019-2020 law is under discussion in the current Parliamentary session; the draft is not yet available to the public. The Specific Goods Tax (SGT) Law 2016 specified six tobacco products that are covered by the taxation policies. There is no plan to update or amend the SGT Law 2016 yet.</td>
<td>The four-tiered specific tax system in Myanmar leaves room for the industry to avoid taxes and sell more affordable tobacco products. It is recommended that Myanmar should implement a unitary specific rate for cigarettes and tax all tobacco products (including cheroots) in a comparable manner.</td>
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Table 1: Tobacco taxation in ASEAN countries (continued)
### Tobacco taxation in ASEAN countries (continued)

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<tr>
<th>Country</th>
<th>Tobacco tax laws and regulations</th>
<th>Comments</th>
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<tr>
<td><strong>Philippines</strong></td>
<td>Excise tax on tobacco products has been imposed since the 1970s with subsequent amendments to the National Internal Revenue Code in 1997, 2004, 2012, 2017, 2019, and 2020 (Republic Act (R.A.) 11467). It is worth noting that R.A. 11346 (2019) stipulated 1) imposing an excise tax on ENDS and HTPs; 2) increasing of the penalties for violations of provisions subjected to excise taxes; and 3) earmarking a portion of the total excise taxes collected from sugar-sweetened beverages, alcohol, tobacco, and ENDS and HTPs for the Universal Health Care (UHC) budget (tobacco and alcohol tax earmarking was first stipulated in R.A. 10351). R.A. 11467 further raised tax rates on ENDS and HTPs and raised the minimum age for ENDS and HTP sale to 21 years old. There are currently no pending bills or proposals to amend the tobacco tax rates.</td>
<td>The 2012 tobacco tax reform in the Philippines is recognized as one of the international best practice examples in the ASEAN region and globally, because of the shift from a four-tiered system to a unitary specific tax system for cigarettes, coupled with a large increase in tax rates that effectively reduced the affordability of cigarettes, minimized the downtrading to cheaper brands that had been supported by a multi-tiered system, and ensured government tax revenues by closing loopholes that had allowed the industry to avoid paying higher taxes. At the same time, tax revenues were earmarked for universal health care and alternative livelihoods for tobacco farmers and workers. It is recommended that the tax rate should be monitored and increased on an annual basis to continually reduce the affordability of tobacco products in the country by taking into account income growth and inflation rates.</td>
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<tr>
<td><strong>Singapore</strong></td>
<td>Singapore applies a specific tax system on tobacco products. The excise rates increased from SGD 0.32 per stick in 2014 to SGD 0.427 in 2018.</td>
<td>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. Therefore, the current tobacco tax system is reaching towards the goal of reducing affordability of tobacco products.</td>
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<tr>
<td><strong>Thailand</strong></td>
<td>The Excise Act B.E. 2560 (2017) and corresponding Ministerial Regulations stipulated a mixed excise tax system for tobacco products. The current excise tax law imposes a specific tax rate of 1.20 THB plus an ad valorem rate of either 20% of the retail price for 20-stick packs selling for less than or equal to 60 THB per pack or 40% of the retail price for 20-stick packs selling for over 60 THB. A uniform ad valorem tax rate of 40% was scheduled to be enforced from October 2019; however, this was postponed to October 2020.</td>
<td>Thailand’s two-tiered mixed tax system protects the interests of the industry, which claimed that its business could not survive the increased tax rates. However, this system is ineffective because it allows the industry to manipulate the system to avoid paying the higher tax rate and creates wide price gaps for consumers to shift to cheaper products. It is recommended that Thailand should implement a unitary tax rate across all tobacco products as soon as possible.</td>
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3. Tobacco Industry Tactics and Arguments to Undermine Tobacco Tax Policy

a. Common Tobacco Industry Tactics and Arguments

Since tobacco tax and price measures are considered to be one of the most effective measures to reduce tobacco consumption, the tobacco industry continues to undermine their effectiveness, as it has done for decades. According to leaked internal 10-year corporate plan documents by PMI, a key industry strategy is to interfere with fiscal policies to maintain affordability and increase pricing power. They do this by ensuring that tobacco tax policies are driven by the Ministry of Finance (not the Ministry of Health), safeguarding national fiscal sovereignty (to oppose global guidelines on taxation), and blocking regional tax initiatives (such as tax harmonization and earmarking). Another priority PMI strategy is to continue to “normalize” its business and products through internal and external corporate social responsibility and public relations, promoting “reduced risk”, and tracking and challenging tobacco control advocates and organizations, including through industry front groups, politicians, and other third parties.\(^\text{17}\) Specifically, the leaked PMI documents list key strategies and actions to influence and interfere in fiscal policy as excerpted below.\(^\text{18}\)

- **Improve fiscal competencies and research capabilities**
  - Establish Philip Morris International as tax and economic experts, and leverage on this expertise
  - Provide tailored solutions supported by credible 3rd-party networks
  - Politicize the tax debate and engage other industries especially regarding profit taxes and earmarking
  - Approach fiscal reform using a tested recipe and with a campaign approach, including: identify “real” government problems to create a sense of urgency; develop a solid win/win/lose solution and build broad political support; anticipate and deflect reactions from opponents; deploy a fiscal campaign using all corporate affairs tools and tactics relevant for the market, led by the market; and pro-actively build political goodwill towards Philip Morris International
  - Avoid upward fiscal harmonization, including avoiding extreme interpretations of Article 6 Guidelines, and addressing regional developments (European Union Excise Directive, Russia Customs Union, etc.)

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\(^\text{18}\) Ibid
Since effective tobacco tax policies are deemed to negatively impact its business, the tobacco industry regularly argues against them. Below are common industry arguments against tobacco tax policies.

### Table 2

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<tr>
<th>Tobacco Industry Arguments</th>
<th>vs</th>
<th>Reality</th>
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<tr>
<td>1. High taxes will lead to more illicit trade in tobacco products.</td>
<td>Illicit trade is not necessarily a result of high tax rates in most countries according to surveys conducted in several countries with high tax rates. Conversely, a European study revealed a high magnitude of illicit trade in countries with low tax rates. Corruption and weak regulatory enforcement are among the main drivers of illicit trade; in some cases, the industry itself is involved in the smuggling activity.</td>
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<tr>
<td>2. Raising taxes will lead to decreasing government revenues.</td>
<td>A number of studies and various country case studies, such as those from the Philippines and South Africa, have proven that raising taxes will lead to increased government revenues. Given that demand for tobacco is relatively inelastic, reduced consumption does not lead to declining revenues, which would also be offset by increased human productivity and savings from health care costs. Taking illicit trade into account, any revenue losses from illicit trade are dwarfed by tax revenues collected by the government.</td>
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<tr>
<td>3. High taxes will have a negative impact on trade, investments, employment, and livelihoods, particularly those of tobacco farmers.</td>
<td>Tobacco tax increases do not have a negative impact on over-all trade, investments, and employment. Job losses within the tobacco sector are often a result of industry shifts in production methods, and tobacco companies raise threats of investment losses even when their business decision to withdraw or move their investment is unrelated to a pending tax increase. In the first place, trade and investment incentives should not be given to health-harming industries, such as the tobacco industry, which has been prosecuted for various instances of tax evasion. In contrast, reduced tobacco consumption resulting from effective tax increases will be an investment in health and human capital and will also strengthen the workforce. Additionally, tobacco tax revenues can be utilized to support tobacco farmers through alternative livelihood programs.</td>
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2. Joossens L, Raw M. Cigarette smuggling in Europe: who really benefits? Tob Control. 1998;7(1):66–71. ([https://tobaccocontrol.bmj.com/content/7/1/66](https://tobaccocontrol.bmj.com/content/7/1/66)).
In addition to these arguments, the industry uses several tactics to interfere with tobacco tax policies. For example, PMI and BAT have provided funding to Oxford Economics and the International Trade & Investment Center (ITIC) to conduct a series of studies on illicit trade in tobacco products called the *Asia Illicit Tobacco Indicator* that uses low-quality data and unreliable methodology, leading to biased results to support the industry’s illicit trade arguments. The industry also lobbies governments to implement small and predictable tax increases in a gradual or step-by-step process to protect the business and investment. It also uses the media to publicize its false arguments and front groups (retailer and farmer associations) to protest against high tax increases. Below are some international case studies of tobacco industry interference in tobacco tax policy.

### The tobacco industry smuggled illicit tobacco products into the United Kingdom (UK)

The UK has successfully implemented comprehensive tobacco control policies over the past 20 years. Tobacco tax measures have been key for the UK to curb tobacco consumption and increase government revenue; adult smoking prevalence decreased from 19.8% in 2011 to 14.4% in 2018 while tobacco tax revenue increased from GBP 7.6 billion in 2000 to GBP 9.29 billion in 2018. The UK began imposing high taxes on tobacco products in the 1990s, with the aim of taking tobacco product prices above the inflation rate as the products were then highly affordable. The government also announced an annual increase of tobacco duties, starting at 3%.

Also in the 1990s, illicit trade of cigarettes increased (up to 21% in the year 2000), which the tobacco industry attempted to attribute to the tax increases; however, parallel to continuing tax increases, the level of illicit trade dropped sharply following sustained government enforcement measures to curb the illicit trade of tobacco products that included investing in human resources and surveillance equipment, supply chain control legislation, and imposing tougher sanctions and penalties. In addition, despite the industry blaming increased illicit trade of tobacco products on high taxes, UK civil society organizations (CSOs) and the media uncovered massive smuggling by tobacco companies of their own tobacco products.
Internal documents revealed that BAT engaged in smuggling its products globally to boost sales and evade taxes. The Health Select Committee was appointed to investigate this matter to uncover evidence that smuggling had always been a part of BAT’s policy since the late 1960s; their executive directors and a majority of their management board were involved in “planning, organizing or managing” the smuggling of contraband BAT products.\(^{34}\) In spite of this exposé, BAT maintained that higher taxes and pricing caused high illicit trade. In the UK, the industry presents exaggerated and misleading illicit trade data through empty pack surveys (using an unreliable research methodology) and funds well-known consulting firms like KPMG, Deloitte, and PricewaterhouseCoopers to conduct research, which regularly overestimates the magnitude of illicit tobacco product trade in the UK.\(^{35}\)

**The tobacco industry claimed tax increases would lead to job losses and increased smuggling in South Africa**

In the 1970s-1980s, when the South African government consulted the tobacco industry before every excise tax increase, tax increases were very modest in order to protect industry interests. This changed in 1994, after the country’s first democratic election, when the African National Congress was elected as the Government of National Unity, and the Ministry of Finance set a goal of increasing tobacco taxes from 20% to 50% of the retail price by 1997. This goal was achieved, and the government has continued to strengthen tobacco tax measures to date. As a result, the price of cigarettes increased steadily, while cigarette sales fell from 1.91 billion packs annually in 1991 to 1 billion packs annually in 2016.\(^{36}\) This also contributed to the decrease of smoking prevalence from 33% in 1993 to 20% in 2017.\(^{37}\)

In 1996, the industry, led by the Rembrandt Group, the country’s largest cigarette manufacturer, wrote an open letter to the Ministry of Health to raise their concerns about increased cigarette smuggling due to tax hikes. Additionally, the industry argued that the tax increase was discriminatory as it could cause considerable unemployment in South Africa; they argued that a large number of workers would lose their jobs since consumers would stop buying tobacco products, and the government would lose substantial revenue.\(^{38}\) Despite the persistent arguments of the industry, tobacco control in the country was strengthened, particularly tobacco taxation. The Economics of Tobacco Control (ETC) project was established at the University of Cape Town in 1996, involving high-profile economists and producing rigorous research that translated to evidence-based tax policy recommendations to the government. The ETC project computed the government’s revenue loss during the 1970s and 1980s when weak tax measures were implemented and successfully countered the industry’s argument claiming government-incurred losses due to tax increases (as a result of reduced consumption).\(^{39}\)

Although the industry has not ceased disseminating false arguments and claims against tobacco tax policy, the South African government has had access to reliable evidence since the establishment of the ETC project. In 2018, nominated by the South African National Department of Health, the ETC project was established as a Knowledge Hub of the WHO FCTC Secretariat to support implementation of WHO FCTC Article 6 around the world.

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\(^{37}\) Ibid


\(^{39}\) Ibid
The tobacco industry committed tax fraud by producing counterfeit tax stamps in the Philippines

In 2012, the Philippines enacted the “Sin Tax Reform” law to address the weaknesses of the existing tobacco tax system. The cigarette excise tax system shifted from a four-tiered excise tax classification based on frozen net retail prices to a single-tiered specific excise system. In addition, the excise tax rates increased by as much as 340% to 820% (for low-priced brands) in 2013 with further annual increases until 2017 and a 4% annual increase thereafter to keep pace with inflation. Since then, further cigarette excise tax increases have been legislated (RA 11346). Currently, cigarettes are taxed at PHP 45 per pack with 5-peso increases to be implemented annually till 2023. As a result, the Philippines has seen significant declines in smoking prevalence as well as substantially increased tobacco tax revenue which funds universal health coverage through the National Health Insurance Program.

Subsequent to the major tax reforms in 2013, Big Tobacco in the Philippines continued to claim negative impacts as a result of the tax reform. For instance, in 2015, Philip Morris Fortune Tobacco Corporation (PMFTC), a joint-venture between Philip Morris Philippines Manufacturing Inc. (PMPMI) and Fortune Tobacco Corporation (FTC), cut over 600 jobs and restructured its company, blaming the high excise rates and increased illicit cigarettes in the market. During the same period, Mighty Corporation, which had been a minor industry player (<5% of market share), became the second-largest cigarette manufacturer in the Philippines (>25% market share) after PMFTC. It was discovered, however, that Mighty Corporation had committed tax fraud by producing and affixing counterfeit tax stamps on its cigarette packs. The government seized nearly 120 million packs of illicit cigarettes bearing Mighty Corporation brands in several operations across the country. The company paid PHP 30 billion to the government in what became the largest tax settlement in the country’s history and was forced to sell its manufacturing assets to JTI.

b. Experiences from ASEAN Countries

SEATCA and key partners from seven countries (Cambodia, Indonesia, Lao PDR, Myanmar, the Philippines, Thailand, and Vietnam) identified tobacco industry interference in tobacco tax policy as a major hindrance to tobacco control in their countries. A situational analysis survey was conducted in early 2020 to collect country-specific information pertaining to this issue. A survey questionnaire was filled out by country partners in consultation with other tobacco control advocates and relevant policy makers from various government agencies (i.e. Ministry of Finance, Ministry of Industry and Investment, and Ministry of Health). The results of the survey found that the tobacco industry uses various arguments and tactics to undermine tobacco tax policy in ASEAN countries as it does globally.

• Common tobacco industry arguments in ASEAN countries

The survey respondents of all seven countries echoed the common industry arguments discussed above whenever there is a tax increase proposal in their countries.

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41 Ibid
The industry argues that high tax rates/tax increases will:
- Lead to decreased government revenue
- Increase smuggling and illicit trade of tobacco products
- Have a negative impact on employment particularly for tobacco farmers
- Lead to high cigarette prices that negatively impact poor smokers
- Have a negative impact on investment and business sector
- Halt economic growth in the country

In addition, the industry argues that:
- The tobacco industry is a stakeholder that needs to be heard and consulted.
- A balanced approach (public health vs trade/business) is needed for tobacco regulation.

Nonetheless, the three most common arguments used by the tobacco industry when opposing tax increases were identified by respondents as listed below:

1. **High tax rates increase smuggling and illicit trade of tobacco products.**
2. **High tax rates have a negative impact on employment, particularly for tobacco farmers; and**
3. **High tax rates lead to decreased government revenue and have a negative impact on investment and the business sector.**

### Common tobacco industry tactics in ASEAN countries

All surveyed countries reported experiences of tobacco industry interference in tax policy, including:

#### Mobilizing pro-industry/front groups to oppose tax policy

In the Philippines, the tobacco companies mobilized front groups or related groups to show policy makers that they have support in opposing tobacco tax policies, often requesting Congress to invite front groups such as the Philippine Tobacco Institute, the Philippine Tobacco Growers Association, and other related groups representing tobacco businesses/employers, retailers, and consumers to Congressional hearings.

#### Sponsoring research to create misleading evidence for policy makers

In Indonesia, the PMI-sponsored Asia Illicit Tobacco Indicator annual reports for Indonesia were prepared by the Economics and Business Research and Development Agency of Gadjah Mada University. In October 2018, when deliberations on tobacco excise intensified, a new voice from academia suspiciously surfaced in the media. This postgraduate lecturer from Padjadjaran University had conducted a simulation study and concluded that excise simplification will slow down the industry volume and reduce the government’s revenue.

#### Using media to convey their messages to policy makers and the public

The Vietnam Tobacco Association (VTA) is quoted in the news as claiming that increasing tobacco taxes will increase cigarette smuggling. According to the VTA, the increase of excise tax on cigarettes from 55% of factory price in 2006 to 75% of factory price in 2019 raised cigarette prices, and the proposal of the MOF, supported by tobacco control advocates, to add a specific tax of VND 2,000 (about USD 0.08) per pack would bring even more smuggled cigarettes into the market.
Creating industry representatives/lobbyists in the government to oppose tobacco tax increases
In Indonesia, throughout 2018, various government officials made media statements, either supporting or opposing tax increases and tier simplification for 2019. Statements that opposed tax increase and simplification were from ministries closely associated with the tobacco industry.

Interfering with the tax policymaking process
In Cambodia, the industry lobby against tax increases takes place internally within the Ministry of Economy and Finance, commonly arguing that tax reform will increase illicit trade in the country. In Myanmar, the industry advised the government on the development of the 2016 Specific Goods Tax (SGT) law which prescribes a tiered specific tax for tobacco products despite the known weaknesses of tiered taxes. There is no specific evidence of this incident. However, this weakened tobacco tax policy has been left uncorrected despite annual adjustments to tax rates.

Entering into joint-venture business with the government and receiving preferential treatment on taxation
Countries like Thailand and Vietnam have state-owned tobacco businesses in which the industry is considered an equal partner, and their opinion is taken into account during policymaking for tobacco taxes.

In Lao PDR, the government signed a lopsided 25-year Investment License Agreement (ILA) with Coralma International and S3T Pte Ltd (later acquisitioned by the Imperial Tobacco Group) to form a joint venture, Lao Tobacco Ltd. (LTL):
- The ILA affords privileges to LTL to pay very low tax rates for 25 years and exempted LTL from profit taxes for the first 5 years of the contract.
- The Tax Law No 023 is not enforced on LTL as it is only obliged to the ILA.
- If the Lao PDR government violates the ILA, ensuing legal processes will take place in Singapore.

- Groups that are against tobacco tax policy and support the tobacco industry
Respondents in all surveyed countries reported a wide range of pro-industry groups that oppose tobacco tax policy in their countries, such as the business sector, nonprofits, experts and researchers, government agencies, and tobacco industry-related groups. The top group types regularly opposing tobacco tax policy reported by the seven countries are:

1. The business sector (e.g. retailers, hotels, cafés and restaurant associations)
2. Government agencies (e.g. local governments in the tobacco farming region)
3. Tobacco industry related groups (e.g. tobacco farmers, employees, and tobacco retailer associations), and
4. Experts and researchers (e.g. economists, academics, universities, and lawyers)
4. Counteractions to Protect Tobacco Tax Policy from Tobacco Industry Interference in ASEAN Region

Example of key counteractions

- Expose tobacco industry-funded research

SEATCA released a series of critiques to expose the poor data quality, flawed methodology, and deceptive presentation of study results of the industry-funded *Asia Illicit Tobacco Indicator* series of reports by Oxford Economics (OE) and the International Trade & Investment Center (ITIC) that were disseminated to a number of government policy makers and journalists in Asian countries to support industry claims that tobacco tax increases will increase the magnitude of illicit trade. The SEATCA reports recommended that governments reject the industry-funded ITIC/OE reports highlighting their scientifically unsound and biased information. SEATCA released 4 key reports:

1. *Asia-11 Illicit Tobacco Indicator 2012: More Myth Than Fact* 47
2. *Asia-14 Illicit Tobacco Indicator 2013: Failed* 48

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Image 1: SEATCA’s first critique report “*Asia-11 Illicit Tobacco Indicator 2012: More Myth Than Fact*”

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Tobacco Industry Interference in Tobacco Tax Policies in ASEAN Countries

**Image 2: SEATCA’s second critique report “Asia-14 Illicit Tobacco Indicator 2013: Failed”**

Dissemination of counter-arguments in response to the industry’s arguments

Tobacco control networks in Indonesia, the Philippines, Thailand, and Vietnam invite experts, particularly economists and public health experts to provide evidence-based arguments in support of tobacco tax policy. Press conferences and meetings are commonly conducted among the tobacco control network to provide policy makers and the public with evidence and arguments against the tobacco industry claims.

Vietnam case study

In October 2017, a growing tobacco smuggling situation in Vietnam causing great damage to the Vietnamese economy was presented by a national assembly member at the National Assembly session without evidence other than the presenter’s personal experience of encountering smuggled cigarette products in Southern Vietnam, arguing that the tax increase policy will worsen this situation.

To counter this argument, HealthBridge Vietnam (HBV) alerted the Tobacco Control Working Group and the Vietnam NCDs Prevention Alliance (NCDs-VN) and called for an emergency response. In November and December 2017, NCDs-VN and HBV conducted the following activities:

- Issued a press release to provide evidence surrounding cigarette smuggling, the consumer’s behavior of using these products, and the benefit of tobacco taxation in reducing consumption while increasing government revenue and urged the government and the National Assembly to increase the excise tax on cigarettes as a means to increase state revenues and to reduce the risks associated with tobacco-related deaths and diseases. They sent the press release to their network of 400 journalists and to the editorial offices of 27 newspapers.
Conducted a live talk show session with guest speakers from Thuongmai University and the Vice President of Democratic Law Council of the Central Committee of the Vietnamese Fatherland Front. The talk show focused on three issues: the need for a tobacco tax increase, the fact that a tobacco tax increase does not lead to increased cigarette smuggling, and the roles and responsibilities of NA members to protect the rights and the greater good for the majority of citizens. It was livestreamed on the fan page of GTV (managed by the Center for Media in Educating Community (MEC), a member of NCDs-VN) and posted on YouTube. The talk show had 16,033 broadcast views, 4,625 streaming video views, 621 reactions, comments, and shares including many positive comments supporting raising tobacco taxes.

Cooperated with the Press and Publication Department of the Ministry of Information and Communications to organize a workshop on “Promoting the implementation of the WHO FCTC in Vietnam”. The workshop attracted participants from several Ministries, members of the Department, and journalists. During the workshop, HBV’s Country Director made a presentation about challenges faced in implementing WHO FCTC Article 5.3 in Vietnam and provided information about tobacco industry tactics to interfere in the development of tobacco tax policy. After the workshop, about 20 news articles were written sharing this information and other messages from the workshops.

**Organization of workshops, advocacy meetings, and study tours to raise awareness of policy makers**

The activities geared towards raising awareness through workshops, advocacy meetings, and study tours aim to create a venue to exchange opinions and information. Most importantly, these events are conducted to equip policy makers with trustworthy and reliable knowledge and information. These counteractions are commonly practiced in Cambodia, Lao PDR, and Myanmar.

In Myanmar, the People’s Health Foundation (PHF) organized a series of discussions, study tours, tax modeling workshops, and technical and policy briefings over the past three years to raise awareness among high-ranking policy makers and make them understand the importance and technicalities of tobacco tax policy.

In Lao PDR, collaboration between the WHO country office, SEATCA, and the Ministry of Health National Tobacco Control Unit has taken place over the course of a decade to propose solutions and raise awareness among policy makers on effective tobacco tax policies and how to address the joint venture business under the 25-year ILA with the tobacco industry.
• **Strengthen tobacco tax policies and administration/enforcement**

As stated in the WHO FCTC Article 6 Guidelines, “efficient and effective administration of tobacco tax systems enhances tax compliance and collection of tax revenues, while reducing tax evasion and the risk of illicit trade.” Strengthening tax administration and enforcement is thus a key factor to protect tobacco tax policies from industry interference.

The Article 6 Guidelines recommend that Parties implement the simplest and most efficient tobacco tax structure to meet public health goals (such as uniform specific or mixed excise systems with a minimum specific tax floor) and that they tax all tobacco products in a comparable manner.

In addition to strengthening tobacco tax policies, it is equally important to strengthen tobacco tax administration/enforcement. The Article 6 Guidelines highlight the importance of establishing authorization or licensing of tobacco businesses, systems of production and storage warehouses, anti-forestalling, and fiscal markings to ensure the transparency of tobacco business transactions and to facilitate excise controls on tobacco products. Furthermore, these will help governments to reduce the illicit trade of tobacco products.

The **SEATCA Tobacco Tax Index 2019** shows all ASEAN countries enforce one or more tax administration/enforcement measures recommended in the WHO FCTC Article 6 Guidelines. However, there is certainly room for improvement, particularly for licensing measures and tracking and tracing of tobacco products.

The Philippines provides a good example of effective tobacco tax administration. In 2014, the Bureau of Internal Revenue (BIR) implemented the Internal Revenue Stamp Integrated System (IRSIS). The measure aimed to control the supply chain of tobacco products by using new internal revenue stamps on both imported and locally manufactured cigarettes, whether packed by machine or hand. The tax stamp is equipped with sophisticated security technology though it does not have complete tracking and tracing information. The stamps feature the Philippine Tarsier, use different color designs, and are embedded with an IRSIS-generated unique identification code and quick reference code containing information pertinent only to the cigarette container. The tobacco industry is required to pay the tax stamp cost at 15 centavos/piece.

**Image 5: Tobacco excise stamp, Philippines**

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52 Ibid.
• Implement clear rules of engagement/code of conduct

The WHO FCTC Article 6 Guidelines recognize that tobacco tax policies are public health policies. Therefore, they 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. Among ASEAN countries, only Brunei Darussalam and the Philippines have procedures/policies that protect tobacco tax and price policies from the commercial and other vested interests of the tobacco industry. The Civil Service Commission and Department of Health (CSC-DOH) Joint Memorandum Circular (JMC) 2010-01 was issued in the Philippines to protect the bureaucracy against tobacco industry interference, while Brunei Darussalam has implemented rules not to consult with tobacco companies or their front groups in a non-transparent manner or accept policy/legal drafts from them.
The implementation of tobacco tax policies that reduce affordability is an economical and practical measure to improve public health outcomes in a given country. Such policies have yielded positive results for reducing tobacco consumption, particularly among young people.

SEATCA’s survey underscored the significant threat of the tobacco industry to tobacco tax policy in ASEAN countries. The industry pushes fraudulent claims decrying tobacco taxation, even in the face of evidence that tobacco companies themselves have been engaging in illicit trade activities that they blame on taxation policy. Any “evidence” against taxation used by the industry should not be accepted without a thorough investigation of the methodology and findings to ensure the transparency and accuracy of those claims.

It is possible for governments and tobacco control networks to fight tobacco industry interference and win. Consistent monitoring and continued collaboration between relevant government agencies and CSOs have been critical in efforts to counteract incidents of tobacco industry interference in tobacco tax policy.

The survey responses provided SEATCA with critical information on the state of tobacco industry interference in tobacco taxation policymaking. The industry has utilized different approaches to lobby the government towards protecting their interests. Currently, the countries have limited systems to control and respond to this situation. SEATCA urges all ASEAN governments to consider and implement the following recommendations.

- As echoed in the WHO FCTC Protocol to Eliminate Illicit Trade in Tobacco Products, take into account the WHO FCTC Article 6 and Article 5.3 Guidelines when developing tobacco tax policies in order to protect these policies from commercial and other vested interests of the tobacco industry, including refusing assistance from the tobacco industry when establishing legislation and enforcement measures.

- Conduct regular capacity-building for senior and technical officials among non-health government agencies such as the Finance, Customs, Trade, Industry and Commerce ministries in order to build understanding of the importance of tobacco tax policies as a public health tool and tobacco industry tactics to undermine tax effectiveness.

- In collaboration with government agencies and civil society organizations, establish tobacco industry interference monitoring systems to monitor tobacco industry actions, particularly their interference in the development of tobacco control policies. The information generated from the monitoring system should be shared among government agencies in order to facilitate timely responses to interference by the tobacco industry.
• Enforce rules of engagement among government officials for interacting with tobacco industry representatives. The rules of engagement should address the criteria and standard of engaging with the tobacco industry in order to prevent potential conflicts of interest among government officials.

• When developing or amending tobacco tax, trade, and illicit trade policies, seek technical advice and research findings only from experts, institutions, and organizations with high integrity, that do not have a conflict of interest with the tobacco industry, and that are able to provide accurate and transparent data/information.

• Collect and analyze key data, particularly data relevant to tobacco tax revenue and the illicit trade of tobacco products, in order to respond to industry arguments that commonly blame the illicit trade issue on tobacco tax increases.

• Strengthen legislative and other measures to curb illicit tobacco trade, including ensuring sufficient human, financial, and technical resources that are protected from tobacco industry interference.