

# South Africa

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## Summary of Findings

### 1. Industry participation in policy development

The Ministry of Health (MOH)/National Department of Health (NDOH) is responsible for the development of public health policies, in relation to tobacco control. Other government departments address non-health-related tobacco (e.g., taxation, customs, excise, revenue, production, trade and industry, cooperative governance and traditional affairs, environmental affairs, and tourism). The Department for Rural Development and Land Reform (DRDLR) continued with an existing contract with the NGO, Mobile Agricultural Skills Development (MASDT) (funded by British American Tobacco South Africa [BATSA]), and the Eastern Cape local government continued to accept assistance for agriculture and skills development from the tobacco industry. However, the government fully implements Recommendations 4.9 and 8.3 of the Article 5.3 Guidelines of the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC) by excluding tobacco industry representatives in the government delegations to the FCTC Conference of the Parties (COP) meetings (last held in 2018) and its related meetings.

### 2. Industry CSR activities

The current Tobacco Products Control Act bans corporate social responsibility (CSR) contributions from the tobacco industry but allows for charitable contributions, provided they are not for the purpose of advertising. This loophole in the current Tobacco Products Control Act is to be removed, should the new Tobacco Bill be passed in its current form.

In this reporting period, some government departments and officials engaged in activities that were funded by the tobacco industry as is illustrated under Section 2 of the Global Tobacco Industry Interference Index. The tobacco industry indirectly formed partnerships with the government by funding non-governmental organizations to support government with agricultural projects, community projects (water supply and food parcels), personal protective equipment for health care workers and education programs.

### 3. Benefits to the industry

South African Revenue Service (SARS) cancelled the tender for a track and trace system and the delay in implementing an effective and independent system benefits the industry.

The government started taxing heated tobacco products in 2021, however, the government has been criticized for taxing the heated tobacco products at 75% of the rate of cigarettes, which gives the impression that these products are less harmful than cigarettes. Philip Morris South Africa (PMSA) continued with its expansion program, opening new retail stores in shopping malls, during this reporting period.

After the 2021 tax increase, the tax incidence on cigarettes is still lower than the WHO's recommendation of a minimum tax of 70% of the retail price. However, the Minister of Finance announced an 8% increase in the excise tax on cigarettes, raising it from R17.40 to R18.39 per pack of 20. This above-inflation increase in the excise tax is substantially higher than previous years' tax increases. In light of this, the Department of Finance needs to review



current policies to align with the guidelines for the implementation of Article 6 of the WHO FCTC on Taxation that recommends that "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," however, the industry continues to make recommendations to the government and recently proposed the introduction of a Minimum Price Level (MPL) for cigarettes and a freeze on tax increases on tobacco products. These proposals were rejected by the Parliamentary Standing Committee on Finance.

#### 4. Unnecessary interaction

The media reports on interactions between the industry and SARS and the industry and enforcement agencies but there were no reports/minutes of meetings that were published. Examples include members of the South African Police Services (SAPS) and SARS having collaborated with the industry to tackle illicit trade of tobacco products during this period as reported under Section 9 in the Index.

The draft Code of Conduct (in accordance with guidelines for the implementation of FCTC Article 5.3) for politicians and government officials in South Africa is still to be finalized, approved and implemented. Some government departments and local authorities continue to interact with the industry through previous agreements/Memorandums of Understanding (MOU) as reported in the Global Tobacco Industry Interference Index of 2019 and through partnerships with NGOs that are funded by the industry.

#### 5. Transparency

The government does not disclose meetings and/or interactions with the tobacco industry. In contrast, the government does accept assistance from the tobacco industry and the tobacco industry continues to publicly announce its partnership with the government as illustrated in Section 11 of the Index. This was illustrated in the partnership with the Eastern Cape (EC) government and municipal officials, the Eastern Cape Development Cooperation (ECDC) farmers project and the Makana Municipality through the involvement of Kagiso Trust.

#### 6. Conflict of interest

The government does not have a policy to prohibit contributions from the tobacco industry, however for the first time, political parties will need to disclose the sources and amounts of private funding received and this will be made public.

The President signed the proclamation on the Commencement of the Political Party Funding Act, 2018 (Act no. 6 of 2018), which came into effect on April 1, 2021. This will regulate public and private funding of political parties and for the first time, political parties will need to disclose the sources and amounts of private funding received which will be available to the public. But this does not prohibit contributions from the industry.

#### 7. Preventive measures

The government has no protocols or policies in place to record interactions with the tobacco industry. There are no formal procedures to disclose and record interactions (such as agendas, attendees' registers or meeting minutes) with the tobacco industry and its representatives that are in accordance with the recommendations of FCTC Article 5.3. The draft code of conduct in Article 5.3 Guidelines for public officials was discussed, however, to date, no further progress has been noted and this continues to work in favor of the tobacco industry.

The current Tobacco Products Control Act empowers the Minister to request information on, inter alia, ingredients and additives in tobacco products. However, regulations for FCTC Articles 9 and 10 have not yet been developed and implemented. Although SARS requires the tobacco industry to submit information on production, manufacture, market share, expenditures and revenue, the National Department of Health does not require information on lobbying, philanthropy or political contributions.

Without an independent and effective track and trace system, SARS relies on placing customs officers in production facilities, which requires counting devices to monitor cigarette production. Both measures are insufficient at addressing illicit trade and lead to favorable outcomes for the industry. Automated approaches provide a clearer audit trail and more accountability, and lead to fewer face-to-face interactions where corruption could occur. A new track and trace system would incorporate key supply chain provisions of the Protocol to Eliminate Illicit Trade in Tobacco Products and improve the government's efforts to address the illicit tobacco trade in the country.

The government does not have a dedicated program to raise awareness within government departments on policies relating to guidelines on FCTC Article 5.3, however there have been consultations with other government departments on the proposed Tobacco Bill.



**The tobacco industry indirectly formed partnerships with the government by funding non-governmental organizations to support government with agricultural projects, community projects, and provide personal protective equipment for health care workers and education programs.**



## Recommendations

### **The government must fully implement the WHO FCTC Guidelines on Article 5.3.**

1. Advocate for and fast-track the passing of the new proposed Control of Tobacco Products and Electronic Delivery Systems Bill (2018), inclusive of a ban on all forms of contributions (CSR and political) from the tobacco industry.
2. Restrict interactions between tobacco industry representatives and government.
3. Develop and implement a policy (for government officials and politicians) with protocols and procedures to record all government-tobacco industry interactions.
4. Develop and implement an immediate and comprehensive awareness campaign for government officials, decision-makers and political leaders on FCTC obligations with a special focus on Guidelines on FCTC Article 5.3, tobacco industry tactics and tobacco CSR activities and programs.
5. Introduce a higher excise tax with rapid increases in the excise tax, possibly following the U.K. and Australian examples of increasing the excise tax with a predictable percentage each year.
6. Develop and implement a code of conduct (based on FCTC Article 5.3 recommendations) for government officials and political leaders.
7. Ratify the Protocol to Eliminate Illicit Trade in Tobacco Products (which was signed by the government in 2012).
8. Implement Part III, Articles 6 – 13 on Supply Chain of the Protocol to Eliminate Illicit Trade in Tobacco Products which is inclusive of an independent and effective track and trace system, with immediate effect.
9. Implement harsher sanctions for non-compliance and those found guilty of illicit trade.
10. Advocate for political commitment to strengthen enforcement agencies to implement stronger border control interventions to tackle illicit trade of tobacco products.