PHILIPPINE INSTITUTE FOR DEVELOPMENT STUDIES
Surian sa mga Pag-aaral Pangkaunlaran ng Pilipinas
Service through policy research
18F Three Cyberpod Centris, North Tower EDSA corner Quezon Avenue, Quezon City
Tel: (632) 372-1291 / 372-1292 ▪ http://www.pids.gov.ph

Comments on **Senate Bill No. 987**, authored by Senator Emmanuel D. Pacquiao, entitled: "*An Act Increasing the Excise Tax of Heated Tobacco Products and Vapor Products, Amending for this Purpose Sections 144(B), 144(C), 147 and 150 of the National Internal Revenue Code of 1997, as Amended, and For Other Purposes*"; and **House Bill No. 1026**, authored by Representatives Joey Sarte Salceda, et.al. entitled, "*An Act Amending Sections 141, 142, 143, 144, 147, 150, 152, 263, 265 and Adding a New Section 290-A to Republic Act No. 8424, as Amended, Otherwise Known as the National Internal Revenue Code of 1997"*

Prepared by Charlotte Justine D. Sicat[1]
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1. The arrival of heated tobacco and vapor products in recent years has led to questions and investigations on the short- and long-term effects of these as well as design and creation of public policy to be able to address this new product and all health issues and threats that may come with it. There is still mixed evidence as to the health effects of these heated tobacco and vapor products as well as the fear of increased consumption of the youth, especially with the flavored nicotine that have some evidence of association with lung diseases when inhaled (National Center for Chronic Disease Prevention and Health Promotion (US) Office on Smoking and Health 2016; World Bank n.d.; Kreiss et al. 2002; Barrington-Trimis et al. 2014).

2. Despite the limited evidence, countries have responded by imposing taxes on these, e.g. Argentina, Azerbaijan, Bahrain, Barbados, Brazil, Colombia, France, New Zealand and Singapore (Global Tobacco Control n.d)

3. For Heated Tobacco Products, the proposed excise tax levies for are consistent in the two bills, with specific tax for years 2020 to 2023[2] and ad valorem rates subsequently in succeeding years subject to Revenue Regulations by the Secretary of Finance[3]. Furthermore, the latter provision of ad valorem tax rates starting in year 2024 and identified as the responsibility of the Secretary of Finance are consistent with the **principle of flexibility of a tax system**, one of the desired characteristics of tax systems as defined by economic theory (Stiglitz and Rosengard 2015). **Flexibility of a tax system ensures automatic adjustments in tax revenues** whether to changes in incomes, prices or whichever is the appropriate tax bases. **It also precludes the need for subsequent legislation** in years after the effectivity of the specific tax. In the Philippines, there was evidence that cigarette excise tax effort declined in the shift from ad valorem to specific tax after the 1997 Comprehensive Tax Reform Program (CTRP) (Sicat 2016).

[1] Asst. Prof. Charlotte Justine D. Sicat, Ph.D., Research Fellow, Philippine Institute for Development Studies (PIDS)
[2] In SBN 987, on p. 1, Lines 6 to 13and in HBN 1026, on p. 24 Lines 11 to 26.
[3] In SBN 987, on p. 1, Lines 14 to 16 and in HBN 1026, on p. 25, lines 1 to 5.

Furthermore, said study argued that it was for political reasons that there was a shift to specific cigarette excise tax as well as failure to implement the provision in the 1997 CTRP that attempted to incorporate flexibility (Chaloupka, et al. 2012, Diokno 2005).

These said **flexible provisions must be kept and not compromised** in subsequent deliberations and finalization of bills SBN 987 and HBN 1026.

4. For Vapor Products, **the specific taxes levied in the two bills differ from each other with more detail in HBN 1026, distinguishing between and taxing 'Nicotine Salt or Salt Nicotine' and 'Conventional Freebase or Classic Nicotine' differently**. As proposed in HBN 1026, on pp. 27 to 28, 'Nicotine Salt or Salt Nicotine' has a higher specific tax per milliliter than 'Conventional Freebase or Classic Nicotine.' If implemented as such, this would discourage the consumption of both vapor products but discriminates against 'Nicotine Salt or Salt Nicotine' products more. Therefore, it might be the case that if HBN 1026 is passed as currently proposed, heated tobacco/vapor product consumers might choose to consume heated tobacco/vapor products and simply substitute 'Conventional Freebase or Classic Nicotine' for 'Nicotine Salt or Salt Nicotine.'

   In contrast, **SBN 987 taxes vapor products uniformly, without discriminating between one type of nicotine versus another**. By economic principles, taxing the two types of nicotine uniformly is consistent with the concept of horizontal equity and will therefore discourage the consumption of both types of vapor products equally, if this is the intent of the Bill.

   Is the intention of the proposed HBN 1026 to decrease the consumption of these products all together or direct consumers to consume a certain type of heated tobacco/vapor product (as HBN 1026 is stated, the law is giving preferential treatment to 'Conventional Freebase or Classic Nicotine')? Is there any evidence that one form of vapor product is more harmful than the other which is why this is proposed to be taxed differently? These questions would best be answered by the authors and medical professionals.

5. Still on Vapor Products, it is good to see the inclusion of an ad valorem tax, similar to the provisions for the Heated Tobacco Products in the two Bills, identified as the responsibility of the Secretary of Finance because of its consistency with the desired characteristic of flexibility of the tax system.[4] AS mentioned above, these said **flexible provisions must be kept and not compromised** in subsequent deliberations and finalization of bills SBN 987 and HBN 1026.

[4] In SBN 987, on p.3, Lines 17 to 20. In HBN 1026, (1) for 'Nicotine Salt and Salt Nicotine' on p. 27, Lines 20 until p. 28 Lines 1 to 2; and (2) for 'Conventional Freebase or Classic Nicotine' on p. 28, Lines 22 to 26.

6. In SBN 987, p. 2, Line 21 and p. 4, Line 7, and in HBN 1026 p. 26, Line 7 and p. 29, Line 26, it might be considered to replace "…FLOOR PRICE.." with "…PRICE FLOOR.." as the more appropriate term consistent with economic theory.

7. In HBN 1026, on p. 35, Lines 13-14: Sec. 288-A of the NIRC of 1997 is proposed to be amended to reflect an **increase in the earmarked revenues from the excise tax on alcohol products from 50% to 100%**. It is also specified that the said revenues be allocated:

   Sec. 288 B.1: [E]ighty percent (80%) to the financing of the 'Universal Health Care Act of 2019' (instead of to PhilHealth); and,

   Sec. 288 B.2: [T]wenty percent (20%) be allocated nationwide, **based on political and district subdivisions, for medical assistance, the Health Facilities Enhancement Program (HFEP), the annual requirements of which shall be determined by the DOH**.

   The implication of increasing the earmarked portion of the Excise Tax on Alcohol Products to 100% is that the uses, the 'Universal Health Care Act of 2019' and HFEP projects identified based on political and district subdivisions will also receive increased funds. For the 'Universal Health Care Act of 2019' the justification is straightforward and transparent.

   As for the **proposed Sec. 288 B.2** provision in HBN 1026, it might be helpful to clarify:

   a. **HBN 2016, p. 35, Lines 21 to 25**. If the proposed use of the 20% be for medical assistance (which are commonly defined as transfers to individuals for health services and are classified as maintenance and other operating expenditures) or the HFEP (which is commonly understood to mean health facilities or capital outlays) or both. As this is stated now the comma ',' after medical assistance creates ambiguity whether this fund can be used for medical assistance and the HFEP **OR** if the HFEP is what is solely meant by medical assistance.
   b. **HBN 1026, p. 35, Lines 24-25**. If it is just the annual requirements, i.e. budgetary requirements or costing of the health facilities, that the DOH will identify **OR** if the DOH will be the one to identify where the medical assistance and/or[5] Health Facilities will be given/built.

[5] This 'and/or' depends on how the preceding comment on the clarification as to whether the intention of Sec. 288 B.2 is earmark the 20% for (1) medical assistance defined as HFEP only; or, (2) medical assistance such as transfers and the HFEP.

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