

Ajagunna

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Taxation and Public Health Regulation in Nigeria: Prospects and Challenges

Folakemi O. Ajagunna*

Abstract

Unhealthy behaviours such as smoking, drinking excess alcohol and unhealthy diets have been identified as key drivers of poor health outcomes and have significant consequences for individuals. One of the core duties of the state via the instrument of public health law is to ensure that individuals stay healthy through maintaining healthy lifestyle choices. In most instances, this is not really the case as individuals engage in activities that are detrimental to their health. Whilst individuals have rights to privacy and freedom of choices, nevertheless the state has an inherent duty under the Constitution to ensure the populace stays healthy. This paper examines the prospects and challenges of regulating unhealthy behaviours through taxation. It adopts a desk-based method to examine the prospects and challenges associated with health taxes. It cautions against having economic motives alone for imposing health taxes and recommends that other approaches like increasing awareness about unhealthy habits should be embraced alongside health taxes. The paper concludes that health taxes are relevant to curb increasing disease burden in Nigeria.

Keywords: Public Health, Taxation, Health tax, Sin tax

I. Introduction

The burden of Non-Communicable Diseases (NCD) has been on the increase globally and a number of factors account for this increase. Factors such as dietary habits and rapid urbanization all account for the surge in the prevalence of NCD's. Smoking, drinking and poor nutrition all form dietary habits that are predicated in the onset of development of NCD's. ¹According to the World Health Organisation (WHO), NCD's account for one of the major health and development challenges of the 21st century, in terms of both the human suffering they cause and the harm they inflict on the socioeconomic fabric of countries, particularly low- and middle-income countries such as Nigeria.²Tobacco use, physical inactivity, harmful use of alcohol and unhealthy diets all increase the risk of dying from an NCD. As stated by the WHO³, globally, forty-one million deaths were attributed to NCDs in the year 2021 and out of these, more than fifteen million were deaths of people between the ages of thirty and sixty-nine. Similarly, it was reported that 77% of all deaths attributed to NCD's occur in low and middle- income countries.⁴

Recently, scientific evidence has demonstrated linkages between heavy intake of foods or beverages high in sugar—in any of its forms—and the development of

*Lecturer, Department of Private and Property Law, Faculty of Law, University of Ibadan, Nigeria.e-mail: fo.ajagunna@mail.ui.edu.ng; folakemiajagunna1@gmail.com; Mobile: 080-3831-4324

¹Idris, I.O., Oguntade, A.S., Mensah, E.A. Ekow A. Mensah 'Prevalence of non-communicable diseases and its risk factors among Ijegan-Isheri Osun residents in Lagos State Nigeria: a community based cross-sectional study' [2020] (20) *BMC Public Health* 1258

²World Health Organisation 'Global Status Reports on NCDs' 2014 <www.who.int/news-room>accessed November 5, 2021

³Ibid

⁴World Health Organisation 'Non-communicable diseases' 2021<<http://who.int/news-room>> accessed July 17, 2022

overweight, obesity, and diabetes mellitus. Analysis conducted by Adeniran et al⁵ found that the Nigerian health system spends a whopping 526.4 billion Naira annually in healthcare treatment of illnesses caused by smoking. Also, 29,472 deaths were attributable to smoking in 2017, which represents about 4.9% of all deaths. The burden of NCDs was initially conceived as a problem of developed countries, however statistics in recent times has shown that the disease burden now affects developing nations more than developed nations.⁶ Deaths from cardio-vascular diseases have dramatically reduced in high income countries, and this is traceable to the effects of government policies which encourage the adoption of healthier lifestyles. It has therefore been recognised as imperative for this practice to be encouraged as well in low and middle-income countries such as Nigeria.

Health taxes are taxes on commodities and products that are considered harmful, unhealthy and have a negative public health impact such as tobacco, alcohol, sugar-sweetened beverages and fossil fuels. Taxes on tobacco and alcohol were the original “sin taxes”, invented by the modern state as revenue generating measures. However, in the last decades, these have been increasingly recognized as core health protection and promotion policies. In recent times, evidence has been adduced to show that when the price of food items are increased, it results in a remarkable change in the consumption and purchase of target foods, especially for lower-income, less-educated, younger populations, and populations at greater risk for obesity. It has likewise been proven that even small changes in dietary behaviour can lead to large reductions in population-level morbidity, mortality and associated costs to society.⁷ At its onset, health taxes were used to raise funds

⁵AdeniranAdedeji, Castradon Marco, MuntakaFaisa and Precious Akannonu ‘Health Burden and economic cost of smoking in Nigeria’ 2021 <www.media.africaportal.org>accessed 4 December, 2021

⁶Baba Mayaki Musa and Musa AbubakarGarbati ‘The Burden of Non-communicable diseases in Nigeria: in the context of globalization [2104] (13) *Annals of African Medicine* 1

⁷Walter C. Willett, Jeffrey P. Koplan, Rachel Nugent, Courtenay Dusenbury, PekkaPuska, and Thomas A. Gaziano in Jamison DT, Breman JG, Measham AR (eds) ‘Prevention of Chronic diseases by means of diet and lifestyle in Disease Control Priorities in Developing Countries (2nd Edition, Oxford University Press 2006)

for public spending but in recent times, the aim has shifted towards using it to actualize public health goals.⁸

Research on health taxes have focused primarily on high income country settings, although, these understandings may be predominantly relevant for low- and middle-income countries as well. Previous research has focused on health taxes imposed specifically on tobacco products and its effects in many countries including Nigeria, however, the role of health taxes in other unhealthy consumables has not been properly explored. This paper article therefore examines prospects and challenges associated with regulating health choices of individuals, and in particular regulating unhealthy lifestyle decisions through the medium of health taxes on other unwholesome products such as sugar sweetened beverages⁹ and alcohol.

The article is divided into five sections; the first part contains an introduction to the article. Part II examines the historical evolution of health taxes in public health regulation. Part III explores the legal framework and theoretical justification for imposition of health taxes. Part IV examines the various arguments canvassed for and against the imposition of health taxes. Part V discusses the prospects and challenges of using health taxes as a regime for public health regulation in Nigeria, and Part VI concludes the article.

II. Evolution of Health Taxes in Public Health Regulation

Health taxes are defined as taxes imposed on products with the aim of increasing production costs, distribution, retail and consumption costs of health damaging goods.¹⁰ Health taxes differ from health-related taxed taxes in that health-related taxes have direct linkages between tax and health such as environmental taxes, however health taxes are directly made on goods in order to improve health outcomes. In some other climes, health taxes have been described as excise taxes to suppress demand for tobacco and for other products whose consumption may carry health risks, such as alcohol and sugar-sweetened beverages. Health taxes

⁸Alex Wright, Katherine E. Smith and Mark Hellowell 'Policy Lessons from health taxes: A systematic review of empirical studies [2017] (17) *BMC Public Health*1

⁹Sugar sweetened beverages are drinks to which sugar has been added. They include soft drinks (carbonated drinks), tea flavoured coffee, juices and sport drinks

¹⁰Ibid

are employed for two main reasons, first, to improve the health of individuals by changing behaviours and secondly, to collect more tax revenues to finance health care systems. Health taxes have been used for a while. It is reported that Pope Leo X of Florence legalized and taxed prostitution in order to support his lifestyle. The Puritans in Massachusetts used laws to control excesses in food, tobacco use and drinking. In 1971, the Whisky Rebellion was sparked off by the United States government imposition of tax on alcohol.¹¹

Historically, the principal objective of introducing health taxes was for the fiscal revenues they produced. However, as time progressed, evidence of the social, economic and health harms associated with products considered harmful grew, thus necessitating an increase in policy and research interest of the capacity of such taxes to increase the production cost of unhealthy products, and thereby plummeting their consumption. In particular, administrations in numerous countries have employed taxes on tobacco and alcohol products to promote reduced consumption.

From an economic standpoint, *ad valorem* excise duties are a form of indirect taxation because they are levied on goods or services rather than on firms or personal incomes. This gives them greater capacity to shape consumer behaviour. Health taxes can be applied in two different ways, either per unit which is defined as a fixed amount for each unit of a good or service sold, e.g. Naira per kilogram/litre) or bytax which is levied on spending and set as a percentage of the value added by a firm, as is the case of a value-added tax (VAT). With the former, the tax is represented by a fixed amount per unit, while with the latter, the tax is made up of a fixed percentage per unit.¹²

According to Wright et al,¹³ an international review of pricing policies and tobacco control in Europe identified extensive evidence regarding the effects of traditional taxes on tobacco products (customs duties, excise taxes and value added taxes), concluding that such taxes represent one of the most effective

¹¹Rebecca Green 'The ethics of sin taxes' [2010] (28) *Public Health Nursing* 68

¹²MiracoloAurielo and Marisa Sophiea and Mackenzie Mills and Panos Kanavos 'Sin taxes and their effect on consumption, revenue generation and health improvement: A systematic literature review in Latin America'[2021](36) (5) *Health Policy and Planning* 790

¹³Alex Wright and Katherine E. Smith and Mark Hellowell 'Policy Lessons from health taxes: A systematic review of empirical studies [2017] (17) *BMC Public Health* 1

means of tobacco control in that region. Taxation and other regulatory policies have a long history of use by governments to create better health – for instance, the Clean Air Act of 1956 and the smoking bans which prohibited smoking in public spaces in a number of countries including Nigeria. The use of fiscal policies such as taxation to improve public health outcomes is a more recent development. Governments across the world have long levied taxes on tobacco and alcohol, however, this has mainly been a way of raising revenue. In recent times, these policies have been applauded and rated as being successful in promoting health of the populace.¹⁴

Health taxes and Tobacco regulation

Various interventions have been carried out to discourage the uptake and use of tobacco products. These interventions include smoke free policies, counter advertisements and banning of tobacco advertisements. Studies have shown that these interventions do in actual fact reduce the attraction of tobacco and discourage its uptake. The most effective of these interventions is an increase in the excise tax on cigarettes. An increasing number of countries since 2010 have imposed taxes on products deemed unhealthy to their populace. In Scotland¹⁵ for example, ‘public health supplement’ was introduced from 2012 to 2015 on large retailers (in effect large supermarkets) selling both alcohol and tobacco. In some of these countries, the proceeds generated by these taxes have been reserved for specified health-related spending.

Tobacco has been estimated to have killed some 100 million people worldwide, and is still a rising cause of preventable deaths. States took an approach to regulating tobacco use by facilitating the adoption of the Framework Convention on Tobacco Control (FCTC) in 2003. The objective of the Convention was to protect people from the social, environmental, economic and health consequences of tobacco consumption and exposure. The guiding principles of the Convention recommend demand reduction of tobacco through pricing and taxation.¹⁶ Nigeria

¹⁴World Health Organization (2021) ‘Countries share examples of how tobacco tax policies create win-wins for health development and revenues’ <www.int.newsroom.feature>accessed 24 February 2022

¹⁵Hollowell M and Smith KE and Wright A. ‘Hard to avoid but difficult to sustain: Scotland’s innovative health tax on large retailers selling tobacco and alcohol [2016] (94) *Milbank Quarterly Review* 800

¹⁶G.T Laurie and SH Harmon and E.S. Dove, *Mason and McCall Smith;s Law and Medical Ethics* (5th edn Oxford University Press 2019) 28

ratified the FCTC in October 2005, thus committing herself to adopting evidence-based policy to reduce tobacco use. In implementing the FCTC guidelines as recommended, it imposed a tax regime on tobacco products from N20 per pack in 2018, to N40 in 2019 and N58 in 2020.¹⁷ Although the prevalence of smoking in Nigeria is relatively low when compared with some other countries (at 5.6 percent, or 6 million adults), nevertheless, the prevalence is growing at an average of 4 percent per year according to the Global Adult Tobacco Survey).¹⁸ Recent evidence also suggests that the tobacco industry increasingly markets its products to women and children in rural areas in efforts to increase their market share.

Health taxes and alcohol regulation

Taxes on alcohol are common and are used largely to raise revenue. Governments typically impose taxes at the producer, wholesale, and retail levels that are levied as a percentage of the sale price or are based on a flat amount per unit. Harmful alcohol consumption is controlled through prohibition, government monopolization of sales, "dry" days, restrictions on hours when sales are legal, restrictions on age and locations for sales and consumption, laws against drinking and driving, limits to alcohol content, laws against the sale of certain types of alcohol, and licensing.¹⁹ According to WHO, alcohol taxes do contribute revenue to government coffers in developing countries, generally in higher proportions than in developed countries.²⁰ Reports of taxation and alcohol use have varied amongst different countries in the world. While some developing countries have lowered alcohol taxes with consequent negative results, Mauritius experienced a dramatic increase in drunk-driving arrests, alcohol-related fatalities, and hospital admissions after it reduced taxes on alcohol. In all, it has been established that

¹⁷GATS 'Global Adult Tobacco Survey Country Report' 2012
<https://www.int/tobacco/surveillance/survey/Nigeria/country_report.pdf> accessed 4 December 2021

¹⁸Ibid

¹⁹Rachael Nugent and Felicia Knaul 'Fiscal Policies for Health Promotion and Disease Prevention' in Jamison DI, Breman J.G and Meashar A.R (Eds) *Disease Control in Developing Countries* (2ndedn Oxford University Press 2006)

²⁰World Health Organization 'Alcohol in Developing Societies: A public health Approach (WHO, 2002)

alcohol taxes do reduce alcohol consumption, but the evidence that such taxes are well targeted to those most at risk of problem drinking is not certain.²¹

In Nigeria, alcohol is the sixth leading risk factor contributing to most deaths and disability. Nigeria ranks 27th globally in respect of adult alcohol consumption.²² However, data on alcohol consumption in Nigeria does not take into recognition the unrecorded production and consumption of locally made alcoholic beverages. Although, Abiona et al²³ reported that Nigeria has a weak regulatory regime on alcohol use and consumption, President MuhammaduBuhari, based on the recommendation of the Tariff Technical Committee of the Finance Ministry, approved a moderated increase in excise taxes on alcoholic drinks over a three-year period. The aim of the moderated excise tax was to buffer the impact of the increased tax on the prices of the product. Thus, an excise rate of 30k per centiliter was charged in 2018. This was increased to 35k per centiliter in 2019 and 2020 respectively. On wines, N1.25k per centiliter was approved in 2018 and this was increased to N1.50k per centiliter in 2019 and 2020. The increment in the alcohol tax was to make the country's tax align with the recommendation of ECOWAS amongst other reasons. This also came after the government suspended excise taxes on other goods such as soaps and detergents.²⁴

Health taxes and unhealthy foods

In 2004, the issue of taxing unhealthy foods received attention when member countries of the World Health Assembly approved the Global Strategy on Diet, Physical Activity, and Health. The global strategy identified the rising prevalence of obesity and overweight in developing countries, along with that of nutrition-related non-communicable diseases, and recommended that countries consider fiscal policies and other measures to reduce those problems.²⁵ Governments could levy health taxes to reduce the consumption of unhealthy foods if the tax

²¹Ibid

²²Opeyemi Abiona and Mojisola Oluwasanu and Oladimeji Oladepo 'Analysis of alcohol policy in Nigeria: Multi-sectoral actions and the integration of the WHO 'best buy' intervention' [2019] (810) *BMC Public Health* 9385

²³Ibid

²⁴Pricewaterhousecoopers 'FG increases excise duties on tobacco and alcoholic beverages' (2017) <pwcnigeria.typepad.com> accessed 25 February 2022

²⁵World Health Organization 'Global Strategy on Diet, Physical Activity and Health' <www.who.int.diet> accessed 24 February 2022

rates are sufficient to change consumption in a way that improves health outcomes and if the taxes are levied in an effective manner. Governments may also choose to address food-related health problems by taxing imports of high-fat or high-sugar food; however, such efforts conflict with rules governing international trade. Fiji, for example, tried to ban the import of mutton flaps, an extremely fatty food that was contributing to the country's obesity problem. To comply with its World Trade Organization obligations, Fiji had to ban the sale of all mutton flaps, not just imports.

It has been established that price is an important determinant of food choice and diet. Economic theorists have ascertained that where the price of an item increases, the consumption of that item will fall. Over the years, research has been carried out to ascertain the immediate effects of health taxes on food consumption. In Ireland, it was found that there was an 11 percent decrease in consumption for each 10 percent increase in price. In the United States, it was found that there was no significant association between food taxes and obesity (which was a direct effect of consumption of foods with high sugar content).²⁶ However, evidence has shown that, when other threats to health are addressed, people can remain healthy up till their seventh, eighth and ninth decades, via a range of health-promoting behaviours, including healthy diets.²⁷

Sometimes around January 2022, the Nigerian government announced the introduction of excise duty of N10 per litre on all non-alcoholic, carbonated and sweetened beverages in the country. The reason adduced for the introduction of this tax was to raise excise duties and revenue for health and other critical expenditures in line with the 2022 budget. Another reason for the tax was to discourage excessive consumption of sugar in beverages which contributes to obesity, diabetes and other ailments. The Manufacturers' Association of Nigeria immediately kicked against this policy describing it as being counter-productive, as it would eventually lead to revenue loss for the government in the form of

²⁶Oliver T Mytton and Dushy Clarke and Mike Rayner 'Taxing unhealthy food and drinks to improve health' [2012] (344) *British Medical Journal* e2931

²⁷Walter C. Willett, Jefferey P. Koplan, Rachel, Courtenay Dusenbury, Pekka Puska and Thomas A. Gaziano 'Prevention of chronic diseases by means of diet and lifestyle changes' in Jamison DT, Breman JG, Measham AR (eds) *Disease Control priorities in Developing Countries*(Oxford University Press, 2006) <<http://www.ncbi.nlm.nih.gov/books>> accessed July 18, 2022

decrease in value added tax and company income tax from manufacturers of soft drinks.²⁸

III. Legal and Theoretical framework for Health Taxes

The Constitution of a nation shows what the government of that nation is empowered to do or not to do, and in so doing defends the common welfare of the citizenry. The 1999 Constitution enables and recognises the powers of the Federal Government to legislate on income tax, capital gains tax and stamp duties.²⁹ It thus lays down the taxing powers of the federating units in Nigeria and gives the federating units power to make laws regulating taxation within their respective jurisdictions. However, as it relates to health or sin taxes, there are no direct provisions in the Constitution but by inference, the provisions of S.17(3)(c) empowers the Nigerian government to do all within its power to ensure that the population remains healthy. It provides that ‘the state shall direct its policy towards ensuring that the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused.’³⁰ The above mentioned provision like some others in this category are non-justiciable. States’ responsibility based on social contract and the demands of the human rights regime posits that the state has an inherent responsibility to protect its citizens from harm. This responsibility dovetails into the roles of health promotion and health protection. It is indeed believed that there is a lot individuals can do to attain health and these include deliberate acts of eating healthy foods and avoiding consumption of alcohol and drugs. However, when this state of health slips out of individuals’ control or even becomes a threat to others, then personal action can be superseded by government action aimed at protecting the community. The role of law here is to ensure that there are reasonable justifications for state actions that encroach or restrict individuals’ actions.³¹

This article relies extensively on the social engineering theory of law, as propounded by Jean Roscoe Pound. Social engineering as a legal theory is based

²⁸ChikeOlisah ‘FG introduces N10 per litre tax on carbonated drinks as MAN kicks against it’ Nairametrics<<https://www.nairametrics.com>> accessed January 6, 2022

²⁹Item 58 and Item 59 Exclusive Legislative List CFRN(1999) as amended

³⁰S17(3)(c) CFRN (as amended)

³¹G.T Laurie and SH Harmon and E.S. Dove, *Mason and McCall Smith’s Law and Medical Ethics* (Oxford, University Press 2019) 21

on the notion that laws are used as a medium to shape and regulate people's behaviour in the society. It is an attempt to control human conduct through the help of law. According to Pound, 'Law is social engineering which seeks a balance between the competing interests in society', in which applied science is used for resolving individual and social problems and the immediate task of lawyers and legislators is social engineering.³² Law as a social engineering tool provides general rules and framework within which men are to be free to manage their personal affairs and arrangements, however, when private interests are left too much to themselves, issues in exploitation arise with injustice and disorder as the immediate consequences. The task of the law then shifts to regulating the forces at play in the society and organizing social efforts towards clearly defined goals. In this wise, law becomes an instrument for achieving a new social order.³³ The end of law for Roscoe Pound is to satisfy a maximum of wants with minimum friction or confrontation. The role of law is to reconcile the conflicting interests of individuals in the community and harmonise their inter-relations. Pounds thus affirmed that the main task of social engineering is to enhance the process of social ordering by making all possible efforts to avoid conflict of interest among individuals in the society. Thus, law implementing and law-making organs must work with a purpose and strive to achieve and maintain a balance between the competing interests in the society. According to Pound, there are three categories of interests that law ought to protect. These include: Public interests, Social interests and Private interests.³⁴

While public interests connote interests such as protection of territorial waters, regulation of land borders and public employment, private interests include interests of personal nature such as ownership of chattel, physical integrity, which are controlled under criminal law, succession laws, land law, law of Torts and Law of contract. The third interest which the law ought to protect is social interests. This category of interest exists to ensure the preservation of peace, security and well-being of the society. The protection of public health which is

³²Raymond Wacks, *Jurisprudence: An Introduction to Legal Theory* (Oxford University Press, 2012) 164

³³Jenkins Iredell, *Social Order and the Limits of Law (A theoretical Essay) Law as Social Engineering* (Princeton University Press 1980) 10

³⁴Linus J. McMananan, 'Social Engineering: the Legal philosophy of Roscoe Pound' [1958] (33)(1) *St John's Law Review* 17

the overall aim of proposing a tax regime for harmful products falls under the social interest function of law in the society.³⁵

Pounds' reasoning when applied to this research advances an understanding of the role of law as an instrument to regulate public health, in order to enable individuals, make healthy lifestyle choices. Fiscal and regulatory policies are significant tools for policy-makers to correct harmful market failures. They have a long history of being used to influence people's conduct with a view to improving health and, in many cases, measures put in place to cut smoking and reduce the amount of sugar in soft drinks have yielded positive outcomes. Some however are of the opinion that such fiscal and regulatory interventions are signs of a 'nanny state'.³⁶ Roscoe Pound through the social engineering theory attempts to strike a balance between competing interests in the society for the greatest benefit of all. Law thus procures the greatest good of the largest number in the society. The concept of social engineering as propounded by Pound would inspire judges and lawmakers to adjust law to the needs and interests of the community, and because society is always changing, law should always change to adapt to the needs of the individual and the community.³⁷

The function of law in adapting to the changing needs of the society depict that the function of law a decade ago will differ from its function in the present times. The changing function is determined by the changing needs. The current need of the society is determined according to available data which suggests that the increase in the prevalence of non-communicable diseases is attributable to the diet and lifestyle choices of individuals in recent times. Law in response to this comes in as a tool to regulate and shape behaviour and conduct of the populace in order to promote and achieve better health outcomes.

IV. Arguments for and against health taxes in public health regulation

³⁵Ibid

³⁶Jake Beach and Emily Cooper and Jonathan Holmes and Helen Mckenna 'What role do taxes and regulation play in promoting better health?' <www.kingsfund.org.uk>accessed from November, 18 2021

³⁷Chumbow Beban Sammy 'Social Engineering theory: A model for the appropriation of innovations with a case study of the Health MDG's' [2012] *Social Sciences and Cultural Studies*<<https://www.intechopen.com>> accessed 16 February, 2022

Excise taxes perform a number of functions apart from health-related functions in the society. For instance, they have been used as a medium of executing an ability-to-pay approach to taxation. This function is more aptly described in luxury taxes. Some developed countries levy luxury taxes as a form of an excise tax on expensive passenger vehicles. This tax could be set at a certain percentage in excess of a fixed and determined amount. The tax on high-value automobiles serves as a means of making foreign imports (which comprise a large percentage of such vehicles) more expensive than domestic automobiles. By taxing items consumed disproportionately by higher-income individuals, excise taxes can achieve an element of progressivity.³⁸ Excise taxes can also be used as a way of dealing with negative externalities. In this way, the tax is imposed as a corrective tax to help reduce the divergence of the private and social costs relating to pollution or congestion. For instance, taxes imposed on gas guzzling vehicles to achieve reduction in pollution emanating from such vehicles.³⁹

Key proponents who have argued extensively for the use of taxation as a means of promoting public health affirmed that it is well established that unhealthy behaviours such as smoking and consumption of alcohol have a significant role to play in poor health outcomes for individuals, the health system and the society at large. Reliance on individual responsibility alone may not be sufficient to change such behaviour thus necessitating a much stronger focus on creating enabling environments that can support people in making healthier lifestyle choices. This they maintained can be achieved through the means of health taxes.⁴⁰ Others have argued that the imposition of taxes on unhealthy products especially cigarettes has increased the retail price of cigarettes thereby making it less affordable and discouraging its use on the one hand, whilst it has also resulted in an increase in government revenue.⁴¹

³⁸J Fred Giertz 'Excise taxes' <<http://www.urban.org/sites>>accessed 24 February 2022

³⁹Ibid

⁴⁰Ibid

⁴¹Corne Van Walbeek and Adedeji Adeniran and Iraoya Augustine 'The Fiscal and health impact of increases in the tobacco tax in Nigeria' (2021) <cseafrica.org/wp-content/uploads/2021> accessed 22 February, 2022

A commonly held argument against health taxes is that they are regressive⁴² and more often than not, they tend to shift the tax burden on lower income groups. Hattersley et al⁴³ in this light opined that this occurs because low-income households tend to spend a higher proportion of their income on foods such as sugar sweetened beverages. Sassi⁴⁴ however disagreed with this assertion by affirming that health taxes ought to be encouraged because low-income consumers are more price responsive and as such are expected to reduce their spending on the products on which the taxes have been imposed. Hattersley⁴⁵ argued further that the greatest health benefits of taxes on sugar sweetened beverages are meant to be enjoyed by low-income consumers who experience disproportionately greater health and economic burdens associated with obesity and diet-related ailments.

The major opposition against the imposition of health taxes is that it has more effects on the poor than on the rich. However, some advocates of health taxes have viewed it as progressive⁴⁶ from the health benefits it gives. Reports have proven contrary as studies have shown that in some countries such as Britain, tobacco use is higher amongst the low-income groups than amongst the high- and medium-income groups. Health taxes which are one of the forms of excise taxes are said to also have the capacity to raise significant amounts of funding for government expenditure because it is rather unrealistic to expect that government will only be funded by taxes on the rich.⁴⁷ This assertion in the opinion of the writer of this article alludes to the fact that health taxes in some countries are disproportionate and tilts more towards the poor rather than on the rich in the

⁴²A regressive tax is a tax that takes a larger percentage of income from low-income earners than from high income earners and affect people with low income more severely than people with high income.

⁴³Libby Hattersly and AlessiaThieband and Lynn Silver and Kate Mandeville 'Health Nutrition and population global practice' <www.openknowledge.worldbank> accessed 14 February 2022

⁴⁴Franco Sassi and Annalisa Belloni 'Fiscal incentives behaviour change and health promotion: what place in the health in all policies toolkit? [2014] (1) *Health Promotion International* 103

⁴⁵Libby Hattersly and AlessiaThieband and Lynn Silver and Kate Mandeville 'Health Nutrition and population global practice' <www.openknowledge.worldbank> accessed 14 February 2022

⁴⁶A progressive tax applies higher tax rate as income increases. It is also described as 'Pay as you earn tax'

⁴⁷Franco Sassi and Annalisa Belloni 'Fiscal incentives behaviour change and health promotion: what place in the health in all policies toolkit? [2014] (1) *Health Promotion International* 103

society. Other opponents of health taxes on unhealthy foods such as sugar sweetened beverages are quick to affirm that the causal link between high consumption of sugary foods and ailments such as obesity has not been fully established to warrant the imposition of the tax. They expressed fears that once government has successfully imposed tax on foods with high sugar content, other foods such as those with high sodium or fat content may be taxed by the government as well.⁴⁸

V. A health tax regime for Nigeria?

Available statistics reveal that alcohol consumption is a big business in Nigeria. In the year 2016 alone, Nigerians spent a whopping N208b on alcohol alone. Interestingly, statistics also showed that rural communities spent more on alcohol consumption than urban communities. Although this higher rate was attributed to the easier availability of alcohol in smaller disposable sachets which predisposes individuals to higher consumption.⁴⁹ In the interest of public health, the Nigerian government showed concern for the alarming rate of alcohol consumption and sought how regulation can be effective in protecting public health. Existing policy actions to address harmful use of alcohol were proposed in the 2007 Federal Road Safety Act and the 2013 Non-Communicable Disease Prevention and Control Policy as well as the 2015 Strategic Plan of Action on Prevention and Control of NCD's. In addition to these, the World Health Organization recommended specific best-buy interventions. These are described as interventions for which there is compelling evidence that is not only cost effective, but also feasible.⁵⁰

When compared with the global statistics, the prevalence of smoking in Nigeria is not high. According to the 2020 Tobacco Atlas⁵¹, about 7.1 million males and 400, 000 females in Nigeria smoked or used tobacco products. Despite the fact that the smoking prevalence among men is more than 15 times higher than among

⁴⁸Rebecca Green 'The ethics of sin taxes' [2010] (28) *Public Health Nursing* 68

⁴⁹AdedigbaAdebowale 'South- south Nigeria's huge alcohol consumption: NBS data shows' Premium Times June 13, 2019 <www.premiumtimes.com> accessed 14 February 2022

⁵⁰OpeyemiAbiona and MojisolaOluwasanu and OladimejiOladepo 'Analysis of alcohol policy in Nigeria: Multi-sectoral actions and the integration of the WHO 'best buy' intervention' [2019] (810) *BMC Public Health*9385

⁵¹Drope J. Schulger N. 'Tobacco Atlas: Country Nigeria' (2020) <www.files.tobaccoatlas.com> accessed 22 February 2022

women, women still suffer tobacco-related premature deaths because they are more exposed to second-hand tobacco smoke.⁵²The immediate challenge for Nigeria is to ensure that the prevalence of smoking remains low and if possible lower. Nigeria has a young and vibrant population most of who are youths and are more vulnerable to the active marketing efforts of the tobacco industry. As the average income of the Nigerian youth increases, so does the means to purchase tobacco products. As it is in Nigeria, the regulatory environment in which the tobacco industry operates is relatively weak.⁵³

Nigeria is a member state of the Economic Community of West African States (ECOWAS). Previously, the ECOWAS Directive on tobacco taxation prescribed that its members impose an *ad valorem* excise tax of between 15% and 100% of the cost, insurance and freight value of imported products and the same percentage on the ex-factory value of domestically produced products. However, in December 2017, the ECOWAS member states adopted a new Tobacco Tax Directive which increased the minimum *ad valorem* rate, from 15% to 50%, and removed the maximum rate.⁵⁴ In 2019, the World Health Organization reported that, Nigeria does not follow the ECOWAS directives fully.⁵⁵ This is because the *ad valorem* excise tax in 2020 was still at 20%, which was below the recommended minimum guideline of 50%. The specific excise tax on cigarettes was increased from 40 naira per cigarette pack to 58 naira in the year 2020, this brought the specific excise tax rate in conformity with the ECOWAS directive. The relatively low mortality impact (from tobacco use) for Nigeria is likely to increase in future. The reason is that there are several years, even decades, between when people start smoking and when they start dying from tobacco-related diseases. Compared to the US, UK and Canada, tobacco use in Nigeria is relatively new. If, hypothetically, nobody smokes cigarettes at a certain time, and suddenly people start smoking in substantial numbers, the mortality effect might

⁵²Stephen Hamil and FarhadIslamid and Alex Liber ‘The Tobacco Atlas’ in NigarNargis and Michal StoklosaJefreyDrope and Neil W. Schluger (eds) (American Cancer Society Inc 2018)

⁵³Corne Van Walbeek and AdedejiAdeniran and Iraoya Augustine ‘The Fiscal and health impact of increases in the tobacco tax in Nigeria’ (2021) <cseafrica.org/wp-content/uploads/2021/> accessed 22 February, 2022

⁵⁴ECOWAS Directive CIDIR 1.12.17 on the harmonization of excise duties on tobacco products in ECOWAS member states

⁵⁵World Health Organization ‘Global report on the tobacco epidemic: offer help to quit tobacco use 2019’ <<https://www.who.int/publications>> accessed 22 February 2022

not be felt for quite a few decades. As people age, they will become more likely to succumb to tobacco-related diseases, pushing up the mortality rate. The size of the future mortality impact is open to debate, but it seems reasonable to suspect that it will be substantially higher than 0.9 deaths per million cigarettes smoked. The first reason is that the smoking population is aging, based on the argument presented above. The second reason is that, because the smoking intensity (i.e. the average number of cigarettes smoked per smoker) in Nigeria is less than the smoking intensity in the US, UK and Canada, a greater number of smokers are required to smoke a million cigarettes, and thus a greater number run the risk of dying from a tobacco-related disease. Walbeek⁵⁶ et al had examined the likely impact of a change in excise tax on the Nigerian tobacco industry and documented that the incorporating an increase in excise taxes especially on tobacco will present a win-win situation for the government and public health as it increases tobacco tax revenue and decreases cigarette consumption. A decrease in the consumption of cigarettes can reduce the number of deaths attributable to tobacco use in Nigeria. According to the WHO, if the price of tobacco cigarettes were to be raised by 50%, 23,838 deaths and 602,325 disability adjusted life years from smoking-attributable diseases would be averted in 10 years, with subsequent savings on healthcare costs, and increased tax revenue.⁵⁷

The main idea behind the regulation of unhealthy foods is twofold, first to improve the health of the public and secondly, to increase revenue for public spending by the government. The writer of this article is of the opinion that before there can be any successful health tax regime in Nigeria, the rationale behind the action would justify the means. If the interest of the government is to generate more revenue for public spending, then there is the likelihood that such taxes over the years may be extended to other consumables and may not necessarily benefit the public health. However, if the rationale for such taxes is in the interest of the public health, other efforts may likewise be combined to ensure that the public are encouraged to make lifestyle choices to strengthen their health. Other efforts that can be used alongside the excise taxes include raising public

⁵⁶Corne Van Walbeek and Adedeji Adeniran and Iraoya Augustine 'The Fiscal and health impact of increases in the tobacco tax in Nigeria' (2021) <cseafrica.org/wp-content/uploads/2021/> accessed 22 February, 2022

⁵⁷World Health Organization 'Tobacco-Key facts' <<https://who.int/newsroom/>> accessed 18 July 2022

awareness on the dangerous effects of sugar sweetened beverages, incentivizing non price industry response such as reformulation, resizing and so on.⁵⁸

While excise taxes on alcohol and tobacco have been in existence in Nigeria for a while the introduction of taxes on sugar sweetened beverages are more recent. Another technique to the taxation of sugar and sweetened beverages is to adopt a progressive rate of tax based on the sugar content in the beverage. In other words, beverages with higher sugar content will have higher taxes when compared with beverages that have lower sugar content. If this is achieved, it could actually reduce consumption of sugar.

It has also been suggested that consumption of unhealthy foods and beverages may be tackled from another angle other than through taxation. It is believed that taxation may not necessarily achieve the exact aim for which it has been introduced. Gostin⁵⁹ therefore opined that another approach to this may include compelling or requiring manufacturers and retailers to take or avoid certain actions and modifying the informational environment. More precisely, industry packaging, labeling contribute to a large extent the informational environment in which foods products are circulated. Mandating producers of goods to include information on the health hazards of high consumption of the products may be helpful. Another ambit to this could be in regulating the content of multimedia advertising of such products. These approaches have been widely used in the sales and marketing of tobacco related products, and have been found to be helpful. This approach can likewise be extended to unhealthy foods such as sugar sweetened beverages.

VI. Conclusion

This article has examined the regulation of public health through the means of health taxes. It has brought to bear the prospects and challenges associated with imposition of such taxes. The article has advocated for the continued imposition of health or excise taxes as a means of promoting healthy lifestyle by Nigerians. Nigerians consume a lot of sugar sweetened beverages and alcohol both in its

⁵⁸ChukwumaMuanya 'Why Nigeria needs a sugar tax by experts' *The Guardian Newspaper*(Lagos, 27 January 2022)

⁵⁹Lawrence O. Gostin 'Public health law in a new century' [2000] (283) (21) *Health Law & Ethics* 2837

bottled and unbottled forms. An increase in the unit prices of these products can positively lower the demands for their consumption amidst other socio- economic factors that has recently reduced the economic purchasing power of many Nigerians. A setback that may be encountered however in the pursuit of alcohol tax is that while the beer and wine producing companies are known and can be targeted to pay excise taxes, what happens to the local gin producers in the rural suburbs who produce their alcoholic drinks locally? This raises another pertinent challenge that needs to be addressed.

It has also established that one of the foremost reasons for health taxes apart from public health concerns is to raise revenue for public spending. This has been achieved and established in some developed nations. Nigeria allocates a paltry sum of N194.6bn to health. This translates to about N2,178 for each Nigerian.⁶⁰ This amount is grossly inadequate to cater for the health needs of an individual for a day. While health taxes can achieve a major role in subsidizing the budget for health, a major concern for Nigeria as a country is to ascertain if additional revenue accruing from health taxes will actually be used to subsidize the health sector, or will be diverted to other sectors of the economy such as security which has over the years attracted more funding. Health taxes have proven to have the ability to control the demand for harmful goods and where the poor and low-income earners seek other alternatives to the unhealthy foods, the high- and medium-income earners may still be able to afford the products. This in effect means that higher taxes are paid by the rich than the poor in the society. A successful health tax regime for Nigeria will also form a part of the global outlook of international bodies to which Nigeria is a signatory to. Success stories recorded in other parts of the world can likewise be duplicated in Nigeria if other policy measures (such as enforcing guidelines on nutritional/harmful information on products) are used alongside with imposition of health taxes to reduce disease burden in the country.

Health taxes have been shown to produce significant health gains when applied to tobacco products and alcoholic drinks, in addition, they give increased revenue for public spending. In the case of sugar sweetened beverages, the negative effects of consumption tend to build up over time and are more evident in people

⁶⁰Tony Ademiluyi 'Budget 2022: Betrayal of the health sector' *The Guardian Newspaper* (Abuja, 2 November, 2021)

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with lower socio-economic status. Despite the potential gains that can accrue from imposition of health taxes, a number of potentially undesirable effects suggest that governments should exercise caution in planning and implementing health taxes on commodities. Where not properly implemented, health taxes may negatively impact on economic efficiency and social welfare, and may encourage clandestine and illicit activities.