

# Let's hope cooldrink tax isn't just a sugar rush

VIRUSHA SUBBAN  
and YONATAN SHER

THE tax on sugar-sweetened beverages, announced by Finance Minister Pravin Gordhan in his February budget speech, will come into effect on April 1 next year.

Strangely, the date it will come into effect is all anyone knows about the new excise tax category.

We are in the dark about whether it will be levied at the consumer or manufacturer level; whether it will be indiscriminate or will correlate to the sugar content; and what beverages it will target.

That is a lot of detail to work out in less than 12 months and little time to iron out all the issues involved in its implementation.

Compare this with the UK's sugar tax proposal announced by Chancellor George Osborne in his budget less than a month after Gordhan delivered his budget.

Osborne detailed how he envisioned the tax would work. He said it would be levied at the manufacturer level, taxed according to two categories of sugar content, and would exclude boutique producers, pure fruit juice and milk-based beverages.

He assured the UK public the government would consult on the tax's implementation. Still, he is giving the UK legislature and beverage industry until April 2018 before the tax becomes effective.

There are several ways that the Treasury could institute SA's sugar tax. The most transparent route would be through a full legislative process, which begins with the relevant government department publishing progressively more refined discussion documents — called green and white papers —



Both the UK and SA plan to tax sugary drinks, but Britain's finance minister has provided far more details. Picture: REUTERS

that detail the department's policy considerations and thought processes, and opening them for public comment.

Draft legislation is prepared and considered by the Cabinet. The draft legislation is sometimes published in the Government Gazette, or given to certain organisations for further comment.

After all comments have been considered, it is introduced as a bill in Parliament, in line with the processes set out in chapter four of the Constitution.

Bills that impose taxes, levies, or duties, such as the sugar tax, are distinguished by the Constitution as money bills and can be introduced only by the minister of finance in the National Assembly.

The Constitution envisions a participatory democracy in which Parliament is transparent, accountable, and facilitates public

involvement in the legislative process. These principles urge public participation in the drafting and adoption of proposed new laws.

However, there is no obligation on the government to publish discussion papers or draft bills for comment. It can, and often does, skip right to tabling a bill for consideration by the Cabinet, with minimal public engagement.

The Constitutional Court has found that Parliament has broad

**“Gordhan can circumvent the public engagement process in getting his sugar tax on the statute books**

“whenever he deems it expedient in the public interest to do so” by mere notice in the Government Gazette, without going through any further legislative process.

This is how the levy on incandescent (electric filament) light bulbs was introduced in 2009. It was announced in then finance minister Trevor Manuel's 2009 budget speech and introduced by notice in the Government Gazette by then deputy finance minister Nhlamhla Nene in terms of section 48. No further legislative process was necessary or engaged in.

Gordhan, thus, has a speedy option to push through his sugar tax without a full legislative process that would normally involve layers of thorough and transparent consultation with affected industries and the public.

After industry expressed much concern about the lack of information and communication on the new tax, it appears that the Beverage Association of SA managed to secure a meeting with the Treasury today.

The Consumer Goods Council of SA and other organisations are still waiting for feedback on their requests to meet with the Treasury.

Hopefully, these meetings will clarify some of the proposed details of the tax and allay some of the concerns. The public and industry should be thoroughly engaged, as envisioned by the values enshrined in the Constitution. There should be no secret ingredients in a sugar tax proposal.

■ Subban is a partner at Bowman Gilfillan Africa Group specialising in customs, excise and international trade, and Sher is a candidate attorney at the law firm.

discretion to determine how best to fulfil its constitutional obligation to facilitate public involvement, as long as it acts reasonably.

More worrying, however, is that there is another method that Gordhan can potentially use to get his sugar tax on the statute books that circumvents the entire public-engagement process.

The Customs and Excise Act of 1964 and its schedules contain all the excise taxes and environmental taxes, payable in SA. The schedules to the act detail which products are taxed and by how much.

Such taxes include the environmental levy, on plastic bags, the fuel levy and excise duties on alcohol and tobacco. It makes sense that a sugar tax would be instituted as an amendment to this act.

Section 48 of the act provides that the minister of finance may amend the tariff schedules