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**THE ANALYSIS OF SUGAR TAX ON SUGAR –
SWEETENED BEVERAGES IN SOUTH AFRICA: A
COMPARATIVE STUDY WITH MEXICO, DENMARK
AND ILLINOIS COOK COUNTY**

By

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DECLARATION

I, Tarryn Perumal, hereby declare that the work on which this thesis is based is my original work (except where acknowledgements indicate otherwise) and that neither the whole work nor any part of it has been, is being, or is to be submitted for another degree in this or any other university.

SIGNATURE**DATE**

DEDICATION

I would like to dedicate my dissertation in loving memory of my late brother Stanton Gregory Perumal.

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First and foremost, I would like to thank Jesus, my constant faith kept me going throughout writing my dissertation. I would like to quote my favorite bible verse “For we walk by faith, not by sight” - 2 Corinthians 5.7.

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1. CHAPTER 1 - INTRODUCTION

1.1 Introduction

There is an overwhelming increase of obesity percentages in countries internationally which has governments and other shareholders trying to look for actual solutions.¹ Furthermore, some countries have begun to address obesity, unhealthy eating habits, and less physical exercise of their citizens, all of which are key causes of the present outbreak of non-communicable sicknesses.² In October 2016, the World Health Organization (WHO) suggested that governments should tax sugary beverages and other unhealthy foods and drinks to promote healthier choices, such as fresh fruits and vegetables.³ Therefore tax rates are intended to track public health efforts, which is aimed at rising prices to cut consumer consumption by lowering the consumer's willingness to pay these increased taxes.⁴ The outline of excise on sugar sweetened beverages (SSBs) requires countries to increase the price of drinks, in order to persuade consumers to decrease their intake of such drinks and consequently bring about a decline in the rate of obesity.

In the 1980s, numerous countries have applied economic and governing procedures to grow taxes on SSBs, to produce revenue, but also to decrease demand and the actual intake of sugary drinks.⁵ As a result several countries, for example Mexico, have implemented an excise on SSBs. It appears Mexico is ranked as one the highest consumers of sugar worldwide.⁶ In January 2014

¹ F Sassi , 'An old idea with a new place in the fight against obesity?', (06 January 2016 available at <https://www.bmj.com/content/352/bmj.h6904>) accessed on 9 April 2018.

² Ibid.

³ Gostin, L.O, 'The Year of the Soda Tax. (7 March 2017 available at <https://onlinelibrary.wiley.com/action/showCitFormats?doi=10.1111%2F1468-0009.12240>), accessed on 11 April 2018).

⁴ F Sassi, A Belloni, & C Capobianco , 'OECD Health Working Paper No.66 'The Role of Fiscal Policies in Health Promotion' (11 December 2013 available at <http://www.oecd.pdf>), accessed on 08 April 2018.

⁵ Pan American Health Organization., 'Taxes on Sugar-sweetened Beverages as a Public Health Strategy: The Experience of Mexico'. (2015 - available at http://iris.paho.org/xmlui/bitstream/handle/123456789/18391/9789275118719_eng.pdf?sequence=1&isAllowed=y, accessed on 08 April 2018.

⁶ Ibid at 1.

the country imposed an ‘SSB tax which was levied at 1 peso per litre.’⁷ The excise is levied and founded on the sugar content held in a beverage. The implementation of such taxes was introduced as part of a national plan to curb and regulate, obese and diabetic citizens.⁸

Similarly in Denmark, ‘there was excise duties on chocolate, candy, ice cream and soft drinks, commonly referred to as a sugar tax which was intended to curb obesity.’⁹ The sugar tax was based on the weight or volume of the product and not the content of the sugar.¹⁰ However in 2014 Denmark announced that it had abolished its sugar tax on soft drinks, which was part of a range of actions planned to produce careers and improve the financial system of the country.¹¹

In addition to the above two countries, Illinois Cook County, United States of America announced a sugar tax on both sugary and artificially sweetened beverages. The ‘Cook County Beverage Tax Ordinance was enacted on 10 November 2016, with the primary purpose of raising revenue to alleviate budget deficit.’¹² It is submitted that unlike Mexico and Denmark, which enacted legislation to curb obesity and other non-communicable diseases together with raising revenue, Cook County, Illinois enacted its legislation with the goal of increasing revenue only, making consumers pay more for sweetened beverages.¹³ The tax was eventually repealed following a rejection by the Cook County Board of Commissioners as there was constant community and beverage business influence which allegedly guided masses into broadcasting, petitioning and political action to object the tax.¹⁴

⁷ J Urbach, ‘Countries that taxed calories, Why it was abolished in some, increased revenue in others’ (11 October 2016 available at <https://www.biznews.com/sa-investing/2016/10/11/countries-that-taxed-calories-why-it-was-abolished-in-some-increased-revenue-in-others/>), accessed on 09 April 2018.

⁸ Ibid.

⁹ O Nieburg ‘Very Difficult to be a Danish Food produced under sugar tax system, says Tom’, (19 February 2013 available at (<https://www.foodnavigator.com/Article/2013/02/18/Sugar-tax-in-Denmark-a-burden-for-food-and-drink-firms>), accessed on 10 April 2018.

¹⁰ Ibid.

¹¹ C S Thomas – ‘Denmark to Scrap decades old soft drink tax’ (25 April 2013 available at <https://www.foodnavigator.com/Article/2013/04/25/Denmark-to-scrap-decades-old-soft-drink-tax>), accessed on 10 April 2018.

¹² K Backholer, M Blake, & Vandevijvere, ‘ Sugar-sweetened beverage taxation: An update on the year that was 2017, (21 November 2017 available at <https://www.cambridge.org/core/journals/public-health-nutrition/article/sugarsweetened-beverage-taxation-an-update-on-the-year-that-was-2017/613B1B139D15C1F152EA5920DD357E2B>), accessed on 11 April 2018.

¹³ Ibid.

¹⁴ Ibid.

Further, South Africa's 'obesity rates have become greater in men by 10.6% and 39.2% in women during the period 2003-2012, scientists have argued that the increasing intake of SSBs is a significant contributor to this issue.'¹⁵ 'The Sugary Beverages Levy (SBL) is a new Health Promotion Levy in support of the Department of Health's goals to decrease diabetes, obesity and other related diseases in South Africa.'¹⁶

1.2 Statement of purpose

This dissertation seeks to analyze the obligation of excise on SSBs in South Africa, in relation to Mexico, Denmark and Illinois Cook County (United States of America).

This dissertation will study the meaning of sugar excise on SSBs in South Africa and how such tax is incorporated in South African Legislation. This dissertation will also deal with a discussion on how sugar tax may help to curb obesity and its effect on the fiscus.

The research will examine sugar tax on SSBs internationally by comparing legislation in countries such as Mexico, 'who announced a sugary drinks tax of around 10 per cent on SSBs in January 2014'¹⁷ and further the dissertation will discuss how Denmark 'also had a tax on soft drinks in place for 80 years before repealing it in 2014.'¹⁸ The latest international analyses will be on Illinois Cook County which enacted the SSB tax in November 2016, at \$0.01 per ounce tax, which was obligatory on the purchase of all sweetened drinks on 11 October 2017 such tax was officially repealed by the Cook County Board of Commissioners.¹⁹

¹⁵KPMG, 'Taxing your sweet tooth effective nudge or economic burden?', available at <https://assets.kpmg.com/content/dam/kpmg/pdf/2016/05/KPMG-Taxing-Your-Sweet-Tooth.pdf>, accessed on 27 March 2018.

¹⁶SARS, 'Sugar Beverages Levy', available at <http://www.sars.gov.za/ClientSegments/Customs-Excise/Excise/Pages/Sugary-Beverages-Levy.aspx>, accessed on 11 April 2018.

¹⁷S Lis, 'Sugar taxes: A Briefing, available at <https://iea.org.uk/wp-content/uploads/2016/07/IEA%20Sugar%20Taxes%20Briefing%20Jan%202016.pdf> accessed on 27 March 2018.

¹⁸ Ibid at 2.

¹⁹ Deloitte & Touché, 'Cook County repeals sweetened beverage tax—Effective December 1, 2017' available at <https://www2.deloitte.com/us/en/pages/tax/articles/cook-county-repeals-sweetened-beverage-tax-effective-december-1-2017.html>, accessed on 27 March 2018.

1.3 Rationale of the study

This study is important because the commonness of obesity in South Africa has grown rapidly between 2003 and 2012, together with excessive sugar intake which is linked to obesity.²⁰ South Africa has therefore introduced an excise tax, which is an SSB tax, which the South African Revenue Service (SARS) placed into effect from 1 April 2018. The reasoning for an excise on SSBs is that the resulting growth in the cost of SSBs would reduce the net consumption of sugar therefore lowering the total intake of calories and the levels of obesity in South Africa.²¹

The dissertation also endeavors to study the international practice of excise on SSBs, but the study will be limited to a comparison of countries such as Mexico which implements such an excise, Denmark where such excise was implemented on soft drinks and later repealed and lastly a latest development in the law which is Illinois Cook County where such excise was implemented but later repealed as well.

The dissertation will also examine other effective measures that governments can use to reduce obesity rates, such as programs to raise awareness around sugar intake and obesity. It appears SSB taxes have been found to be among the least effective policy methods that governments can use to confront obesity.²²

This dissertation will also consider whether the implementation of the excise on SSBs will increase revenue in South Africa. The tax is further likened to a sin tax as both have a similar resolve which is to lower utilization and grow income.²³

²⁰ Ibid at 5.

²¹ Ibid.

²² Ibid.

²³ C Smith, '#Budget2017: Tax on sugary drinks - health aid or budget band aid?' (23 February 2017 available at <https://www.fin24.com/Budget/Budget-and-Economy/budget2017-sugar-tax-health-aid-or-budget-band-aid-20170223>, accessed on 2 April 2018).

1.4 Research Questions

1. The meaning of Sugar Tax on SSBs?
2. How is Sugar Tax on SSBs incorporated into South African Legislation?
3. An International Comparison of Sugar Tax on SSBs:
 - 3.1 A study of Mexico, a country that implements such tax;
 - 3.2 A short analysis of Denmark, a country that implemented such tax on soft drinks and repealed the legislation.
 - 3.3 An analysis of Cook County which implemented and repealed the legislation on such tax.
4. Would the application of such an excise on SSBs curb obesity in South Africa or is such excise implemented to increase revenue?

1.5 Research Methodology

The research process used in this dissertation is qualitative analysis, which is used in examining the meaning, effect and application of the excise on SSBs. The study will comprise of an analysis of existing literature on the stated topic, legislation, journal articles, and various reputable internet sources. All these aforesaid sources will be available via online databases and the internet.

1.6 Literature Review

The outline of sugar tax on SSBs is to help lower extreme sugar utilization and the rising worry of obesity from the over intake of sugar, was broadcasted by the Minister of Finance in the February 2016 Budget Speech with the aim of decreasing the amount of individuals who are obese by 10% by 2020.²⁴ It is therefore an essential strategy for preventative measures to be in place and the regulation of obesity, which has recognized that the taxing of foods that have a huge content of sugar is a very good method to tackle diet related diseases.²⁵

²⁴ 'Tax on Sugary Beverages' available at <http://www.treasury.gov.za/public%20comments/Sugar%20sweetened%20beverages/2017022701%20%20QandA%20Tax%20on%20Sugary%20Beverages.pdf>, accessed on 27 March 2018.

²⁵ Ibid.

The excise on SSBs has consequently been expected to successfully lower the obesity rate in South Africa by influencing purchasers conduct in respect of the idea of buying or by altering the comparative price of healthy goods which is associated with fewer healthy products.²⁶The study,²⁷ in respect of the policy paper by the South African National Treasury, further sets out the different tax structures on SSBs in different countries which are relevant to this dissertation, being countries such as Mexico and Denmark and their impact and how the utilization of SSBs have reduced and increased health results or have not, and further outlines the tax proposal South Africa will embark on in respect of excise on SSBs.

Further the relevance of the study on the policy paper to the research is that it will demonstrate the background scope of tax on SSBs, the administration of such tax and how such tax will be applied in respect of the Customs and Excise Act.²⁸A further discussion will be why is sugar tax being implemented, which is to curtail obesity in South Africa as such sickness is a global epidemic.

SARS has implemented provisions in the Customs and Excise Act in respect of sugar tax on SSBs which is defined as a sugar beverages levy (SBL) in the aforesaid act. All goods specified in Schedule No. 1 Part 7, Section A, which are factory-made, or the bringing of goods into South Africa from abroad, will be subject to a charge of a SBL, specifically: 'Identified imported products will be taxed when it is cleared for home consumption and locally manufactured products will be taxed at source.'²⁹An analysis of the implementation of the legislation will be undertaken in the dissertation.

While the above depicts South Africa's reasoning and the legislative outcomes for excise on SSBs, an international comparison of excise on SSBs in respect of the following countries such as Mexico, Denmark and Illinois Cook County (USA) will be discussed in the dissertation.

²⁶ Ibid at 1.

²⁷ Ibid.

²⁸ GN 630 of GG 41323, 14/12/2017,46.

²⁹ Ibid.

Mexico appears to be facing key health and monetary problems, owing to the growing number of grownups and kids who suffer from obesity. Further, Mexico has one of the largest percentages of obese adults amongst OECD countries.³⁰Sugar taxes on SSBs in Mexico was not passed in isolation but was part of an all-inclusive plan to avoid and regulate overweightness and diabetes.³¹Furthermore in light of economic procedures and directives, this approach comprised of other health advancements and preventive measures as well as procedures to safeguard better entry to actual health care facilities.³²These taxes are planned to stop obesity, but were also part of an all-inclusive economic restructuring, planned at growing tax income.³³The relevance of this study demonstrates Mexico's application of sugar tax on SSBs. Also, the study depicts the potential reduction in the rate of obesity with the introduction of such tax as well as how the tax was implemented which is part of economic restructuring intended to grow tax income. The increase of tax revenue will be used to demonstrate how South Africa also implemented such tax with the expectation of also increasing the country's revenue substantially.

A further study on Mexico used 'data on the buying of beverages in Mexico from January 2012 to December 2014 from a panel of 6253 families which provided 205 112 explanations in 53 towns with more than 50 000 residents, to examine whether the post-tax movement in buying was meaningfully dissimilar from the pretax movement.'³⁴The results to which the aforesaid study answers and limits are relative to what actually happened 'in 2014, purchases of taxed beverages decreased by an average of 6% (-12 mL/capita/day) and decreased at an increasing rate up to a 12% decline by December 2014.'³⁵All three groups decreased buying of taxed beverages, but the decreases were higher amongst the families of low income earners, which was

³⁰ Bonilla-Chacín, M E & Iglesias, R & Agustina, S & Trezza, C & Macías, C "Learning from the Mexican Experience with Taxes on Sugar-Sweetened Beverages and Energy-Dense Foods of Low Nutrition," June 2016 available at <http://documents.worldbank.org/curated/en/185621467088129330/pdf/106654-BRI-ADD-SERIES-PUBLIC.pdf> accessed on 20 April 2018

³¹ Ibid.

³² Ibid.

³³ Ibid.

³⁴ Colchero, M. A., B. Popkin, J. A. Rivera-Dommarco, S. Wen Ng. 2016. "Beverage Purchases from Stores in Mexico under the Excise Tax on Sugar Sweetened Beverages: Observational Study." Available at <http://dx.doi.org/10.1136/bmj.h6704>, accessed on 20 April 2018.

³⁵ Ibid.

more or less a 9% fall during 2014, and up to a 17% reduction by December 2014 associated with pretax movements.³⁶

This study demonstrates how the obligation of an excise on SSBs in Mexico was connected to the decrease in buying of taxed drinks and rises in buying of untaxed drinks, which shows the application of such tax can reduce the purchase and intake of SSBs. Therefore, over time constant monitoring is needed to interpret possible replacements, and the health consequences of the excise on beverages and the decrease in purchases of such beverages.

In Denmark, ‘one of the first taxes on soft drinks dates to the 1930s.’³⁷In order to limit obesity in the Danish society, an excise tax on ‘chocolate, candy, ice cream and soft drinks’ was introduced. However, this tax was not founded on the sugar content but on the weight or volume of the product.³⁸

This has led to increased prices for customers, and Danish citizens travelled to Sweden and Germany to purchase low-priced goods either of the same brand or alternatives, raising fears that such increase was adversely influencing the Danish financial system and leading to those companies moving their manufacturing out of Denmark.³⁹Because of this, in April 2013, the Danish Government announced that it would renounce the tax on SSBs on soft drinks only. The excise on soft drinks was eradicated in January 2014.⁴⁰

The studies reveal even though the legislation on excise on SSBs tried to limit the rate of overweightness in Denmark, citizens travelled across borders to buy cheaper substitutes of products therefore this negatively impacted on the economy, and companies also moved their production to different locations. The studies further show that even if legislation is enacted in a

³⁶ Ibid at 30.

³⁷ Edfeldt J, Edfeldt L.P, Should Sweden impose excise tax on sugar sweetened beverages in order to improve public health? (unpublished MBA Thesis, Blekinge Institute of Technology, 2017).

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Northern Ireland Assembly, “Taxing Sugar Sweetened Beverages: A Comparative Perspective, 16 December 2015 available at <http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2015/hssps/13815.pdf>, accessed on 5 January 2018.

country it can have a negative impact on the economy to such an extent that the legislation in this regard which is excise on SSBs had to be repealed eventually.

The last international comparison is based on Illinois Cook County which the ‘Cook County Board of Commissioners enacted the Cook County Sweetened Beverage Tax Ordinance, which imposed a \$0.01 per ounce tax on the sale of sweetened beverages in Cook County.’⁴¹The tax was due to start on 1 July 2017. The tax was enacted to increase revenue and reduce the percentage of obesity. However, an Illinois trial court temporarily halted the tax pursuant to litigation challenging the constitutionality of the tax. On July 28, 2017, the court dismissed the challenge.⁴²

The tax took effect on August 2, 2017, with the first returns due by September 20, 2017. The excise is compulsory for the purchase of sweetened drinks in the County and is generally collected by distributors when delivered to retailers, with some exceptions. The ultimate accountability for the tax is to be accepted by the retail purchaser.⁴³On 11 October 2017, the Cook County Board of Commissioners had to cast a vote which results revealed a score of 15-2 to rescind the SSB tax. The Cook County Sweetened Beverage Tax ended on December 1, 2017,⁴⁴due to many commissioners supporting the view to rescind the tax, due to the uproar from residents.⁴⁵A survey showed that approximately ninety percent of Cook County residents were against the tax. The Tax Coalition was on behalf of residents, small industries, eateries, grocery stores and beverage corporations, who disagreed the tax in stating that the increases in beverage prices were damaging to home grown industries and working folks and therefore directed a movement influencing the Cook County Board of Commissioners to rescind the SSB tax .⁴⁶The repeal of the tax was also instituted by the commissioners of Cook County who supported the

⁴¹ PWC, ‘Cook County’s Sweetened Beverage Tax effective August 2, 2017, first returns due September 20, 2017’ - August 2017 available at <https://www.pwc.com/us/en/state-local-tax/newsletters/salt-insights/cook-countys-sweetened-beverage-tax-effective-august-2-2017.html>, accessed on 24 April 2018.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Sales Tax Institute, ‘Cook County Sweetened Beverage Tax – What’s so hard about it , August 2017 available at <https://www.salestaxinstitute.com/resources/cook-county-sweetened-beverage-tax-whats-so-hard-about-it>, accessed on 24 April 2018.

⁴⁵ Moye J, ‘Cook County Board Votes to Repeal Chicago – Area Beverage Tax’ available at <https://www.coca-colacompany.com/stories/cook-county-board-votes-to-repeal-chicago-sweetened-beverage-tax>, accessed on 24 April 2018.

⁴⁶ Ibid.

view of the citizens. In Denmark, there is scarce backing publicly for taxes that intentionally seek to make food and drink highly costly,⁴⁷ which is similar with Cook County, however in Cook County it is limited to drinks only.

In concluding this dissertation, the question of, is the application of an excise on SSBs been enacted to control obesity in South Africa or does it remain that such tax is implemented to increase revenue for the Government of South Africa. The excise on SSBs will severely affect the poor, who use their salary on food and drink, other than the richer in society.⁴⁸ The main justification is not to grow the government's revenue, but relatively to aid in reducing obesity. The study,⁴⁹ investigates the reduction of obesity to the supposed rationale together with the growing and multifaceted obesity challenge. It further assesses that the introduction of tax on goods high in sugar is one of the actual interferences that can be made, as there is not much proof that the tax confirms a variation in weight. The study further analyses the international experience regarding sugar taxation on beverages. To conclude, the study discusses better solutions in place as opposed to introducing the sugar tax, as there are other methods against obesity most likely to do well is further described. The relevance of this research is to show the adverse effect of sugar tax on the poor and that there is no complete indication that such tax will curb obesity and that there are other possible solutions instead of imposing such a tax to control obesity. The overview of the supposed 'health promotion tax – a tax on sugary drinks – was anticipated to make about R2 billion in tax income a year,'⁵⁰ for South Africa, therefore irrespective of whether the rate of obesity decreases or not the government still benefits from tax revenue which affects the poor and the working class.

⁴⁷Taylor P. S, 'Sweet Nothing Real World Evidence of Food and Drink Taxes and their Effect on Obesity, November 2017, available at <https://www.taxpayer.com/media/PeterShawnTaylor-FoodTaxes.pdf>, accessed on 1 May 2018.

⁴⁸Jeffery, A 'A Stealth Tax Not A Health Tax', September 2016 available at <http://irr.org.za/reports-and-publications/occasional-reports/files/irr-policy-paper-a-stealth-tax-not-a-health-tax.pdf>, accessed on 8 December 2017

⁴⁹ Ibid.

⁵⁰Visser, A, 'Sugar tax may be first of several 'health promotion' measures', 5 March 2018, available at <https://www.moneyweb.co.za/mymoney/moneyweb-tax/sugar-tax-may-just-be-the-beginning-to-other-healthier-choices/>, accessed on 24 April 2018.

1.7 Conclusion

Whilst there is a broad amount of material on the taxation of SSBs internationally and which are specifically relative to Mexico, Denmark and Cook County. South Africa's implementation of the tax is new and still needs to take shape in respect of its application practically before potential effects of the tax become known.

In the next chapter, the meaning of Sugar Tax on SSBs and how the tax will be incorporated into South African legislation will be discussed. This discussion will cover the definition contained in the Customs and Excise Act⁵¹ and further discuss how such tax is incorporated into South African Legislation as well as practically how SARS deals with the implementation of the legislation.

⁵¹ Ibid at 28.

2. CHAPTER 2 – SOUTH AFRICA

2.1 Introduction

In this chapter a discussion on the meaning of sugar tax on SSBs⁵² and how such legislation is incorporated into South African law will be undertaken. The discussion on the legislation will specifically relate to the provisions which is relative to tax on SSBs, and further who is taxed, the percentage of taxation and when does liability occur for a manufacturer in respect of such taxation.

A further discussion will investigate how SARS would practically implement the tax.

2.2 The meaning of Sugar Tax

The Strategy Plan issued by the Treasury Department of the South African Government stipulated that before one can examine the meaning of Sugar Tax it is significant to note the scope of the tax on SSBs,⁵³ in that consideration must be given to a range of drinks encompassed in such tax and the administration of the tax.⁵⁴ Sugar (i.e. intrinsic sugar) is naturally built into the structure of most foods such as fruits, vegetables and even dairy products. Furthermore, sugar is also added to drinks during processing and preparation which can increase the total sugar content.⁵⁵

Further SSBs are ‘beverages that contain added caloric sweeteners such as sucrose, high-fructose corn syrup (HFCS), or fruit-juice concentrates, which include but are not limited to soft drinks, fruit drinks, sports drinks, energy and vitamin water drinks, sweetened iced tea, and lemonade, among others.’⁵⁶ Free sugars excludes sugar which is naturally included into foods or sugar that

⁵² Ibid at 48.

⁵³ Ibid at 52.

⁵⁴ ‘The Economic Impact of Taxation of Sugar Sweetened Beverages in South Africa’ (September 2016 available at <https://cdn.24.co.za/files/Cms/General/d/4776/ff6621de17b04762b7b504afe9134a0f.pdf>, accessed on 27 October 2018.

⁵⁵ Ibid at 54.

⁵⁶ Ibid at 24.

naturally exists in food or drinks. Therefore, drinks that only contain natural sugar which is included in the contents will not be bound by the tax.⁵⁷

Consequently, one of the main influences on weight increase and associated health issues is extreme sugar intake from SSBs.⁵⁸ The tax base relating to the sugar content of an SSB must be considered,⁵⁹ in that damage caused by SSBs is the additional sugar contained in a product. The benefit of this method depicts an improvement, in that the tax is proportional to the level of additional sugar in SSBs.⁶⁰ The excessive intake of sugar within SSBs, in contrast to the quantity of an SSB, is that which leads to substantial adverse long term health issues.⁶¹ Therefore the benefit of ‘an SSB levy percentage structure is built on sugar content which is better targeted and encourages government’s public health strategy aims.’⁶²

Sugar Tax is officially called the ‘health promotion levy’ (HPL) or also known as the ‘sugary beverages levy’, the objective of SSBs tax is to lower South Africans’ sugar intake to regulate high obesity percentages. ‘It amounts to a tax of 2.1c per gram of sugar per 100ml, above 4 grams per 100ml, and the first 4 grams per 100ml are levy free.’⁶³ The sugar tax, however, has been increased from ‘2,1 cents to 2,21 cents per gram of sugar per 100ml.’ This increase was implemented on the first anniversary of the tax being the 1st of April 2019.⁶⁴ The marginal increase in the tax was declared by the Finance Minister in his 2019 budget speech and such increase was primarily to sidestep a loss in the rate of the tax due to price increases.⁶⁵

Further, the WHO’s recommendation on sugar consumption endorses that adults and children limit their sugar consumption to ‘less than 10 per cent of total energy intake per day (i.e. 50

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ ‘Nutritional Composition of Takeaway food in the UK’, (September 2014, available at https://www.researchgate.net/publication/272575381_Nutritional_composition_of_takeaway_food_in_the_UK), accessed on 27 October 2018.

⁶⁰ GoLegal, ‘Commodities bulletin: The Sugar Industry in Africa’, (June 2018, available at <https://www.golegal.co.za/sugar-industry-africa/>) accessed on 27 October 2018.

⁶¹ Ibid at 24.

⁶² Ibid.

⁶³ Cronje, J ‘Sugary drinks tax a go, plastic bag levy up’, 21 February 2018, available at <https://www.fin24.com/Budget/sugary-drinks-tax-a-go-plastic-bag-levy-up-20180221>, accessed on 11 July 2018.

⁶⁴ Cullinan, K ‘Budget 2019: Tiny increase in sugary drinks tax, (2019), available at <https://www.health-e.org.za/2019/02/20/budget-tiny-increase-in-sugary-drinks-tax/>, accessed on 22 February 2019.

⁶⁵ Ibid.

grams of sugar equivalent to around 12.5 teaspoons), and suggests a further reduction to below 5 per cent of total energy intake per day for additional health benefits (i.e. 25 grams of sugar equivalent to around 6 teaspoons).'⁶⁶

Therefore, the WHO's meaning covers fundamental and additional sugars in SSBs.⁶⁷ But according to Treasury representatives of the South African government, the meaning is suggestive in that it states, 'any sugars, including naturally occurring sugars such as those derived from fruit or fruit juice concentrates added to sweeten drinks, will also be taxed, and that milk and 100% fruit juices have been exempted from the tax for the time being, in line with other countries that have applied a similar levy.'⁶⁸ However the Treasury of South Africa has stated that the addition of one hundred percent 'fruit juices will be considered in future' as health professionals have maintained that these juices have related health effects which are in line with sugar added to sodas.⁶⁹

2.3 Legislation

An important analysis of the application of consumption-based taxes (excise taxes) is the layout which is the detailed attention particularly, in the definition of the base, and the charge,⁷⁰ in respect of the law. Taxes on goods are on certain products in relation to coverage, category and some are measured which is consequently connected to the tax obligation. Tax charges can be charged on specifics (e.g. cents per gram) or ad valorem (% of value) terms, and is generally steered by means of manufacture and categorization which is intended for implementation reasons.⁷¹ In devising a particular health-related tax, it was significant to contemplate whether to place 'the tax to an exact product (e.g. measure or value of a SSB) or to nutrients contained in products (e.g. quantity of sugar).'⁷² Therefore for the tax to have the anticipated performance, the

⁶⁶ Ibid at 24.

⁶⁷ Donnelly, L ' Sugar Tax Only for the Sweetest', 24 February 2017 available at <https://mg.co.za/article/2017-02-24-00-sugar-tax-only-for-the-sweetest>, accessed on 11 July 2018.

⁶⁸ Ibid at 64.

⁶⁹ Ibid.

⁷⁰ Ibid at 24.

⁷¹ Ibid.

⁷² Ibid at 24.

effect on intake of SSBs must be considered in relation to the functionality of the tax, otherwise it decreases profits if it is soaked up by industries.⁷³

South Africa's sugar tax on SSBs is instigated by economic actions, in that excise taxes are to encourage health, avoid disease and increase income which is designed to be used for this purpose.⁷⁴ Internationally, these economic actions are growing and is being viewed as a real balancing instrument in helping to confront the obesity outbreak at a population level.⁷⁵ The taxes can help in altering financial situations in respect of 'market failure and further act as a price signal that could affect buying choices of customers.'⁷⁶ Therefore increasing the price of beverages through taxes is a possible policy measure to prevent over-consumption.⁷⁷

Further other excise taxes, goods specific levies and tax on SSBs are applied in terms of the Customs and Excise Act.⁷⁸ An additional category for SSBs is created 'under the Schedules to the Act as a levy on particular SSBs.'⁷⁹ The legislative framework of the levy on sugar tax is described in Section 54I with rules in Chapter VB thereto as well as in terms of Schedule No. 1, Part 7, Section A of the HPL on SSBs in respect of the Customs and Excise Act,⁸⁰ which took effect on 1 April 2018.

2.4 South African Revenue Service (SARS) and Customs and Excise Act

In relation to SARS and the Customs and Excise Act, the financial effect of taxation of SSBs in South Africa is highlighted in the following quote:

⁷³ Ibid.

⁷⁴ Ibid at 24.

⁷⁵ Ibid.

⁷⁶ SARS, "SBL information pack for Customs" available at <http://www.sars.gov.za/AllDocs/Documents/Sugary%20Beverages%20Levy/SBL%20Roadshow%20presentation%20for%20Customs%20-%20March%202018.pdf>, accessed on 23 July 2018.

⁷⁷ Cornelsen, L and Carreido, A, "Health – related taxes on food and beverages" (2015) available at <http://foodresearch.org.uk/wp-content/uploads/2015/06/Food-and-beverages-taxes-final-amended.pdf>, accessed on 23 July 2018.

⁷⁸ Customs and Excise Act 91 of 1964.

⁷⁹ Ibid.

⁸⁰ Van der Merwe, Q, "Not so sweet" (2018) available at <http://www.wylie.co.za/articles/not-so-sweet/>, accessed on 24 July 2018.

‘An important requirement of the tax system is to minimize the costs of administration and compliance for taxpayers.⁸¹The key variable affecting the administrative costs of any tax instrument is the number of agents (taxpayers) liable for payment of the tax to SARS.⁸² A tax of this nature that covers many producers may be associated with high administrative costs.⁸³The duty-at-source (DAS) system eases the administration of excise type taxes.⁸⁴It should be noted that the economic incidence (burden) of the tax and the legal incidence thereof are not necessarily the same.⁸⁵ Producers or importers might be legally required to pay the tax to SARS but they can, and in many instances do, pass the tax on to consumers.’⁸⁶

Therefore, SARS will implement and collect the sugar beverages tax.⁸⁷ Further, in order to effect the HPL implementation, SARS had to deliver a series of strategic objectives, which are listed below:⁸⁸

- To identify a suitable division, within its administration, which must administer the tax.
- Collection and further downstream activities. The Customs and Excise division was decided upon.
- To create the required enabling legislation in the Customs and Excise Act and its Rules.⁸⁹
- To create effective and efficient, but user friendly, administrative processes along with supporting automated systems as tools for the administration of the tax.

The process of implementing the tax on SSBs is the licensing and registering of applicable ‘producers and manufacturers who will be liable to pay it over to SARS.’⁹⁰

⁸¹ Ibid at 24.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Ibid at 77.

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰SARS, “Excise External Policy Health Promotion Levy on Sugary Beverages”, (2018) available at <http://www.sars.gov.za/AllDocs/OpsDocs/Policies/SE-SB-02%20-%20Health%20Promotion%20Levy%20on%20Sugary%20Beverages%20-%20External%20Policy.pdf>, accessed on 25 July 2018.

Section 54I of the Customs and Excise Act regulates the administration of the tax on SSB goods.⁹¹ According to Section 54I the ‘liability for payment of the tax is on imported beverages that will be taxed when they are entered for home consumption and locally manufactured products will be taxed in terms of the Duty at Source principles.’⁹² ‘A licensed manufacturer’s liability for duty will terminate when proof of payment of the levy and proof of entry for home consumption has been provided to SARS.’⁹³ Further where goods are exported they are not liable for a levy, such levy will cease if there is proof that the production of the goods would be exported and such export is received in the export country.⁹⁴

Section 54I further states to guarantee ‘compliance with the Customs and Excise Act, local manufacturers of sugary beverages,’⁹⁵ (including food preparations to be mixed or diluted with e.g. water to prepare a beverage) had to be registered with SARS before 16 March 2018.⁹⁶ Consequently any person who manufactures a sugary beverage is liable for payment of the tax. Therefore, when the rules took effect or when manufacturers intended making sugary beverages they had to ‘apply for a DA 185 form with SARS.’⁹⁷ The aforementioned form is an ‘Application Form for Registration/ Licensing of Customs and Excise clients, one needs to complete in order to register as a client of SARS/Customs and Excise, once registered clients will have a customs client number.’⁹⁸

Consequently, there are two categories in respect of local manufacturers. Firstly, commercial manufacturers (licensees) who are local manufacturers who manufacture or expect to manufacture SSBs with a sugar measurement exceeding five hundred kilograms each year, and secondly, non – commercial (registrants) who are local producers who produce or expect to produce SSBs with a sugar measurement not exceeding five hundred kilograms each year.⁹⁹

⁹¹ Ibid at 78.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ PWC, “SARS Health Promotion Levy” (2018), available at <https://www.pwc.co.za/en/assets/pdf/indirect-taxes-health-promotion-levy.pdf>, accessed on 25 July 2018.

⁹⁶ Ibid.

⁹⁷ Ibid at 90.

⁹⁸ Ibid.

⁹⁹ Ibid at 64.

Further local manufacturers must note that any associated individuals who produces or expects to produce a total amount of SSBs with a sugar content exceeding five hundred kilograms each year would be viewed as producers and individuals who produce or who expects to produce, on the same manufacturing properties, a joint total amount of SSBs with a sugar content exceeding five hundred kilograms each year shall be viewed as a commercial producer.¹⁰⁰ SARS states that ‘non-commercial producers below this threshold will be expected to register but will not be subject to the SSB tax.’¹⁰¹

Furthermore, producers of sugary beverages are to consider and understand the requirements and processes and controls to specifically ensure compliance in relation to the following:¹⁰²

- Compliance requirements in relation to importing and / or producing sugary beverages.

In order to comply with requirements, producers need to submit the DA 179 return form which is an HPL Return for Sugary Beverages. Producers must also be listed with SARS.¹⁰³ Both commercial and noncommercial ‘producers should have registered and obtained licenses using the DA 185 form mentioned above and DA 185 4B2’ form which is an annexure to the initial D185 form, for licensing a client type in respect of a manufacturing warehouse,¹⁰⁴ which is a slightly more complicated form, but only because it requires one to indicate whether one is exporting in terms of an accepted trade agreement. If not, one would simply indicate this on the form.

Therefore, the requirements that need to be complied with for the warehouse licensing is that the manufacturing premises must be licensed with SARS Excise as a Customs and Excise Manufacturing warehouse as prescribed in Schedule 8.¹⁰⁵ The owner of the warehouse must

¹⁰⁰ Ibid at 90.

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Ibid at 95.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid at 90.

ensure that the warehouse complies with warehouse requirements,¹⁰⁶ and further ensure the timely submission and payment of the tax due on all removals from the warehouse during a particular assessment period and always ensure the correct amount of tax is declared and paid on due dates.¹⁰⁷

In addition sugary beverage products produced or to be produced must be registered on the DA185 form and its annexure.¹⁰⁸ If the manufacturer decides to extend the production line with more sugary beverage products, it must be reflected on an amended DA185 form to be submitted to SARS Excise before commencement of dealing with the new products.¹⁰⁹ Further, a sugary beverage or product has to have a legal identity and it has to be registered during the licensing process, and if the legal identity changes or is amended of a sugary beverage, the manufacturer must ensure that SARS Excise is duly informed thereof prior to the change being effected on an amended DA185 form and its annexure.¹¹⁰ The licensee of the warehouse must at all times provide the Excise Auditor access to the warehouse premises to allow them to carry out their official duties.¹¹¹

The documentation needed would be delivery notes, production notes, invoices, DA 179 return form – for the return for sugary beverages, DA179-form continuation sheet, which is a manual document which must be completed by the licensee on a monthly basis from April 2018 and DA 179 (CSV – Comma- Separated Values form)- ‘Schedule of HPL items in respect of manufactured products removed from the licensed premises.’ This is a file that must be completed every month reflecting all sale and removal of transactions performed during the assessment month, (i.e. the month in which the products were sold and removed from the manufacturer, which are liable for the sugary beverages tax).¹¹²

Further, should there be any ambiguity concerning whether the tax is chargeable for specific merchandise, a request must be made to SARS for a firm ruling (referred to as a Tariff

¹⁰⁶ Ibid.

¹⁰⁷ Ibid at 90.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Ibid at 95.

Determination Number).¹¹³ ‘Further a laboratory test report confirming the sugar content volume of each product should be in place from 1 April 2018 or thereafter.’¹¹⁴ Should a manufacturer not be registered and the DA 179 return form is not capable of being submitted, late payment penalties may be imposed.¹¹⁵ In addition, should a tariff ruling not be in place confirming that a product is subject to the sugar tax and such products are not accounted for, SARS will collect the sugar tax from a manufacture, and impose penalties and charge interest on the manufacturer.’¹¹⁶ ‘Further should a laboratory report (confirming sugar content) not be in place, the relevant manufacturer will be required to pay the levy based on a minimum of 16 grams/100 ml per product.’¹¹⁷

- Completion and submission of accounts (locally produced goods).

The sugar beverages tax has to be paid by the relevant manufacturers and producers who are licensed and registered,¹¹⁸ and have complied with SARS’ requirements. These payments are paid through eFiling or accepted at Customs and Excise branches.¹¹⁹

- Calculation of sugar content of sugary beverages (locally produced or imported).

‘Sugar content will be calculated on the sugar content as certified on a recognized test report from a testing facility accredited with the South African National Accreditation System (SANAS) or the International Laboratory Accreditation Cooperation (ILAC).’¹²⁰ ‘In the absence of such a valid test report, a deemed sugar content of 20 grams per 100 ml will be assumed.’¹²¹ ‘For powder and liquid concentrates, sugar content will be calculated on the total

¹¹³ Ibid.

¹¹⁴ Ibid at 95.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Ibid at 76.

¹¹⁹ Cullinan, K ‘Budget 2019: Tiny increase in sugary drinks tax, (2019), available at <https://www.health-e.org.za/2019/02/20/budget-tiny-increase-in-sugary-drinks-tax/>, accessed on 22 February 2019.

¹²⁰ SARS, Sugary Beverages Levy, (2018) available at <http://www.sars.gov.za/ClientSegments/Customs-Excise/Excise/Pages/Sugary-Beverages-Levy.aspx>, accessed on 26 July 2018.

¹²¹ Ibid.

volume of the prepared beverage.’¹²² As a result ‘all goods as specified in the Schedule No. 1 Part 7, Section A manufactured in or imported into South Africa will be subject to the payment of the SSB tax, specifically, identified imported products will be taxed when they are cleared for home consumption and locally manufactured products will be taxed at source.’¹²³ Further the SSB tax ‘is a domestic consumption tax and is therefore not payable on sugary beverages that are exported or processed in the manufacture of other dutiable goods.’¹²⁴

- Duty at Source (DAS) on locally produced sugary beverage tax.

The liability for the HPL in the sugary beverages industry is assessed and the tax is collected on a duty at source (DAS) basis, meaning ‘as close as possible to the point of manufacture,’¹²⁵ immediately upon entry for home consumption.¹²⁶

Further, goods used in further manufacturing (e.g. the canning industry) will be subject to duty once imported, however this can be claimed back as a refund once it has been proved that the goods have been so used in manufacture.¹²⁷

- Specific requirements in relation to Rebates of HPL (locally produced or imported).

If a manufacturer requires a refund in respect of the HPL on goods ‘after entry or deemed entry for home consumption and where payment of duty is found to be off specification or where goods have become contaminated or has undergone post – manufacturing deterioration, the goods can be returned to a licensed manufacturing warehouse for destruction or reprocessing.’¹²⁸

¹²² Ibid.

¹²³ Ibid at 76.

¹²⁴ Ibid.

¹²⁵ ‘The Economic Impact of Taxation of Sugar Sweetened Beverages in South Africa’ (September 2016 available at <https://cdn.24.co.za/files/Cms/General/d/4776/ff6621de17b04762b7b504afe9134a0f.pdf>, accessed on 27 October 2018).

¹²⁶ Ibid.

¹²⁷ Ibid at 120.

¹²⁸ Ibid at 90.

In respect of the aforesaid there is a rebate or a refund in respect of HPL goods,¹²⁹ which is allowed by SARS.

- Specific requirements for Refunds / Drawback of HPL (locally produced or imported).

A refund in respect of HPL of goods to be used in the production of HPL or Excise goods. Upon proof of use in production, a refund can be claimed which is respect of Item 691.05.¹³⁰ Further Item 691.06,¹³¹ states that a refund of HPL goods used in the production of further goods is not subject to the HPL.

- Ongoing completion and retention of prescribed forms.

The importer or manufacturer must keep records in terms of Rule 54F.06(a)(1).¹³² 'Further, production documents, stock records, documents, sales invoices, dispatch / delivery notes (DN), and credit notes issued by the VM (manufacturing warehouse) for tax paid on SSBs removed and returned (applicable to local and BLNS Botswana, Lesotho, Namibia and Swaziland) returns must be kept by the licensee for five (5) years from the date of transaction on the document.¹³³ Credit notes will only be allowed if each consignment is accompanied by a valid delivery note / stock return note from the purchaser.

- Non-Compliance

Neglecting to fulfill the requirements of the Act it is considered a transgression and therefore regarded an illegal act. Illegal acts may render the licensee or consumer accountable to SARS as provided for in the Act:¹³⁴

- (i) 'Criminal prosecution; and/or
- (ii) Suspension or cancellation of registration and/or license
- (iii) Monetary penalties.

¹²⁹ Ibid at 78.

¹³⁰ Ibid at 125.

¹³¹ Ibid at 78.

¹³² Ibid at 125.

¹³³ Ibid at 90.

¹³⁴ Ibid at 95.

A licensee may revert to the appeal process if in dispute over the penalty requested, but only after the said penalty amount has been brought to account.¹³⁵ If the appeal process has been exhausted and the client is still not satisfied with the outcome thereof, he/she may revert to the alternative dispute resolution, (ADR) process.¹³⁶ The committee will add its comments thereto and forward the application to the ADR unit for a solution.¹³⁷ Further, any penalties are subject to either full or partial forfeiture or a full refund thereof. If there is any interest it will be payable on all outstanding amounts in respect of HPL which were due to be paid by the licensee.¹³⁸

- Rate of Levy

SSBs are liable for tax on the listed items in the schedule below. The Schedule also shows the sugar contained in such items, which is both the basic and additional sugar content and further shows other sweetening substances confined in any SSB.¹³⁹ The liability for the payment of the tax is on importers and local manufacturers. The Schedule only shows items or products that are taxed and products that are not taxable are not shown or are excluded from the Schedule.

The percentage of the levy is determined on sugary beverages, and is as follows in relation to the Schedule:¹⁴⁰

- a) ‘Required percentage for the levy to be applicable in determining the calculation for the HPL on sugary beverages is the percentage reflected in Schedule 1 Part 7A.
- b) To calculate the relevant HPL, the sugar content exceeding 4g/100ml removed must be multiplied with the levy percentage as per the HPL items (191.01 to 191.07).

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Ibid at 90.

¹³⁸ Ibid at 95.

¹³⁹ Ibid at 90.

¹⁴⁰SARS, “Health Promotion Levy on Sugary Beverages, External Policy”, available at <http://www.sars.gov.za/AllDocs/OpsDocs/Policies/SE-SB-02%20Health%20Promotion%20Levy%20on%20Sugary%20Beverages%20-%20External%20Policy.pdf>, accessed on 31 July 2018.

- c) The levy is based on the grams ‘of the sugar content that exceed 4 grams per 100ml which is certified in a valid test report or in the absence of a valid test report, the deemed sugar content of the sugary beverage that is assumed to constitute 20 grams per 100ml.
- d) The ‘deemed sugar content’ is a punitive measure, therefore the threshold of 4 grams per 100ml cannot be deducted from the ‘deemed sugar content’ (20g/100ml) for the calculation of the HPL due.
- e) The sugar content for powder and liquid concentrates or preparations for the making of beverages must be calculated based on the total volume of the prepared beverage when mixed or diluted according to the product specifications.’

The Schedule below depicts the HPL rate on SSBs. The schedule shows the tariff heading or subheading under which any goods are classified in Part 1 of the Schedule which is expressly quoted in any HPL item of this Part in which such goods are specified.¹⁴¹

Further, the goods detailed in respect of the HPL items is considered to consist of goods that are classified under each price heading or subheading. The usage ‘by the licensee of a customs and excise warehouse of any goods specified in this Part shall render such goods liable for payment of any HPL in accordance with the provisions of the Customs and Excise Act.’¹⁴²

Therefore, the Levy on SSBs and the Schedule below denotes the following:¹⁴³

1. ‘Any rate of levy on sugary beverages is payable on any goods specified in this Section as either imported into or manufactured in the Republic.

¹⁴¹ Ibid at 78.

¹⁴² Ibid.

¹⁴³ Ibid at 90.

2. Any levy on sugary beverages specified in this Section shall be payable in addition to any Customs and Excise duty payable in terms of any other Part of Schedule No. 1.
3. Imported goods shall not be declared on separate bills of entry for the purposes of this Part of Schedule No. 1.
4. Any reference to sugar content means both the intrinsic and added sugar and other sweetening matter contained in any sugary beverage specified in this Section.
5. The sugar content of sugary beverages liable to the levy must be calculated on –
 - a. the sugar content as certified on a test report obtained and retained from a testing laboratory accredited with and using methodology recognized by the South African National Accreditation System (SANAS), or the sugar content of the sugary beverage must be deemed to constitute 20 grams per 100 milliliters.
6. In the case of powder and liquid concentrates or preparations for the making of beverages, the sugar content must be calculated based on the total volume of the prepared beverage when mixed or diluted according to the manufacturer's product specifications.'

Figure 1: Schedule 1 / Part 7A Customs and Excise Act:¹⁴⁴

¹⁴⁴ Ibid at 78.

Health Promotion Levy Item	Tariff Subheading	Article Description	Rate of Health Promotion Levy
191.00		LEVY ON SUGARY BEVERAGES	
191.01	18.06	Chocolate and other food preparations containing cocoa:	
191.01	1806.10	Cocoa powder, containing added sugar or other sweetening matter:	
191.01.05	1806.10.05	Preparations for making beverages	2,10/gram of the sugar content that exceeds 4g/100ml
191.02	19.01	Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 per cent by mass of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 04.01 to 04.04, not containing cocoa or containing less than 5 per cent by mass of cocoa calculated on a totally defatted basis, not elsewhere specified or included:	
191.02	1901.90	Other:	
191.02.05	1901.90.15	Preparations for making beverages (excluding those of tariff subheading 1901.90.20)	2,10/gram of the sugar content that exceeds 4g/100ml
191.05	21.06	Food preparations not elsewhere specified or included:	
191.05	2106.90	Other:	
191.05.05	2106.90.20	Syrups and other concentrates or preparations for making beverages, not having a basis of fruit juice (excluding those of tariff subheading 2106.90.09)	2,10/gram of the sugar content that exceeds 4g/100ml
191.05.10	2106.90.22	Syrups and other concentrates or preparations for making beverages, with a basis of fruit juice (excluding those of tariff subheading 2106.90.09)	2,10/gram of the sugar content that exceeds 4g/100ml
191.05.15	2106.90.09	Drinking straws, containing flavouring preparations	2,10/gram of the sugar content that exceeds 4g/100ml
191.07	22.02	Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured, and other non-alcoholic beverages (excluding fruit or vegetable juices of heading 20.09):	
191.07	2202.10	Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured:	
191.07.05	2202.10.10	In sealed containers holding 2,5 li or less (excluding those in collapsible plastic tubes)	2,10/gram of the sugar content that exceeds 4g/100ml
191.07.10	2202.10.90	Other	2,10/gram of the sugar content that exceeds 4g/100ml
191.07	2202.9	Other:	
191.07	2202.91	Non-alcoholic beer:	
191.07.15	2202.91.20	In sealed containers holding 2,5 li or less (excluding those in collapsible plastic tubes and those with a basis of milk)	2,10/gram of the sugar content that exceeds 4g/100ml
191.07.20	2202.91.90	Other	2,10/gram of the sugar content that exceeds 4g/100ml
191.07	2202.99	Other:	

2.5 Conclusion

This chapter has explored the various provisions in the dealing with the taxation of the HPL or known as tax on SSBs in South Africa, including how manufacturers are taxed, who is liable for the tax and how SARS regulates the law practically. The tax also illustrates that there is an administrative burden on manufacturers of SSBs and that of SARS who will roll out the legislation on manufactures and will require compliance or manufacturers will be penalized. Therefore, the result is that consumers and manufacturers will be paying the tax on sugar beverages, which will grow government revenue and show little or no effect to the decrease of obesity in the country.

The next chapter will undertake an international comparison between Denmark and Cook County Illinois (USA), regarding their taxation of Sugar Sweetened Beverages, which illustrates how both countries have repealed the tax for different reasons and therefore showed little to no evidence on the decrease on obesity rates

3. CHAPTER 3 – DENMARK & ILLINOIS COOK COUNTY

3.1 Introduction

Taxes on SSBs are designed in a different way. Some taxes remain founded on the sugar content whilst others are differentiated by a weighting. The tax further differs in thresholds to the different types of sugar.¹⁴⁵This dissertation will compare¹⁴⁶the way in which sugar tax is applied in South Africa, in comparison to Denmark and Illinois Cook County, where the tax has been repealed. This dissertation strives to make the comparison from a South African perspective rather than a purely impartial perspective. Therefore, the analysis of the countries such as Denmark and Illinois Cook County will not be as in-depth as that presented for South Africa.

Notwithstanding this limitation, this chapter will seek to provide an overview of Denmark and Illinois Cook County sugar tax law in order to properly answer the key research enquiry of this dissertation. Further, a general approach will consequently be taken in order to analyze the differences in the way sugar tax is dealt with in each country and further to compare this with the South African tax law in order to come to a final conclusion on the desired effect of sugar tax in South Africa, to that of Denmark and Illinois Cook County. Each of the selected jurisdictions will be examined in turn below.

3.2 Denmark

Denmark is a leading example of a country that once had a sugar tax according to the weight or volume of a product, rather than taxing according to the sugar content of the product.¹⁴⁷Sugar tax was one of the oldest taxes in Denmark, ‘such tax was in the form of excise_duties on chocolate, candy, ice-cream and soft drinks, commonly referred to as a sugar tax which was intended to curb obesity.’¹⁴⁸ It was applied with the intention of decreasing sugar consumption.

¹⁴⁵ Ibid at 24.

¹⁴⁶ It must be noted that it would be beyond the scope of this dissertation to make a full comparison of the law between the three countries due to the word limitation.

¹⁴⁷ Ibid at 24.

¹⁴⁸ Ibid at 9.

Sugar tax in Denmark raised tax revenue of DKK 450m (€ 60 million) per annum. However the Denmark authorities stated the country would have recovered about DKK 290m (€38.9 million) which it had lost due to unlawful soda sales and consumers engaging in cross border transactions for lower priced beverages.¹⁴⁹ The Danish had therefore switched to low-priced local products or similar products or travelling to Sweden or to Germany to shop,¹⁵⁰ due to the currency exchange rate being favorable. Therefore, the increased revenue had also had a high impact on customers, manufacturers, stores and civil servants. Data revealed that the Danish were prepared to travel to other countries to buy candy and soft drinks and therefore the actual proceeds did not match the projected revenue.¹⁵¹

Figure 2 below depicts cross border sales, comprising of Danish who were purchasing soft drinks as well as beer in German border shops. One third of the national intake of sodas were retailed from border shops.¹⁵² Further, as the Danish were crossing borders for sodas they were bringing other products back with them, the cross-border trade had therefore lead to over-consumption and stock piling in Denmark.¹⁵³ In addition to this, as shown in Figure 3 below, consumer surveys had shown that Danish who had been buying at the border shops had considered their consumption to be higher than it would have been if they did not purchase at the border shops,¹⁵⁴ South Africa should be watchful of this impact, as citizens could likely be purchasing across borders as well.

This practice of crossing borders to shop had caused an illegal trade which demonstrated the following:¹⁵⁵

¹⁴⁹ C S Thomas – ‘Denmark to Scrap decades old soft drink tax’ (25 April 2013 available at <https://www.foodnavigator.com/Article/2013/04/25/Denmark-to-scrap-decades-old-soft-drink-tax>), accessed on 10 April 2018

¹⁵⁰ Ibid at 40.

¹⁵¹ Heinonline - 2012 Eur. Food & Feed L. Rev. 285 (2012) accessed on 22 March 2018.

¹⁵² N Hald , ‘New Paradigm: Abolishing excise duties as a regulatory instrument – The Danish Case’, 14 March 2017 available at http://toiduliit.ee/files/NielsHald_Estoniaconference-softdrinktax-14march17.pdf accessed on 28 November 2018.

¹⁵³ Ibid.

¹⁵⁴ Ibid, (It should also be noted there was not enough information to add to Figure 3, as the article used had limited details).

¹⁵⁵ Ibid.

- Illegal trade was constantly on the increase as Danish constantly looked for cheaper options to access soft drinks and other goods,
- Tax & Customs Authorities used huge resources to confiscate illegal stocks, so that the law on sugar tax was enforced strictly to ensure that citizens abided by the law,
- Law abiding shops could not compete with illegal sales from small shops as the price differentiated and the items were considered much cheaper, and
- State loss of revenue, which lead the Danish Authorities to acknowledge the rigid effect of the tax and the adverse influence it had on the loss of revenue.

Figure 2: Cross Border Sale Graphs

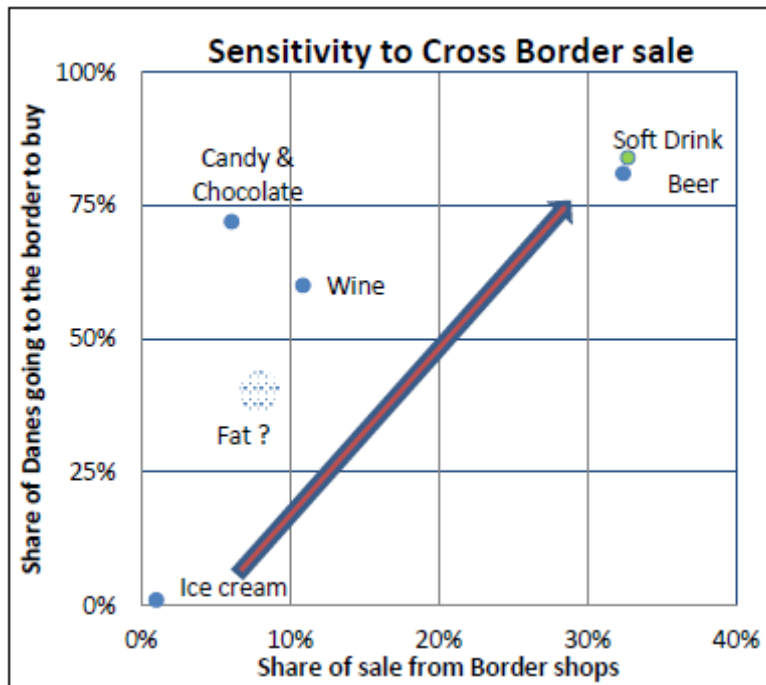
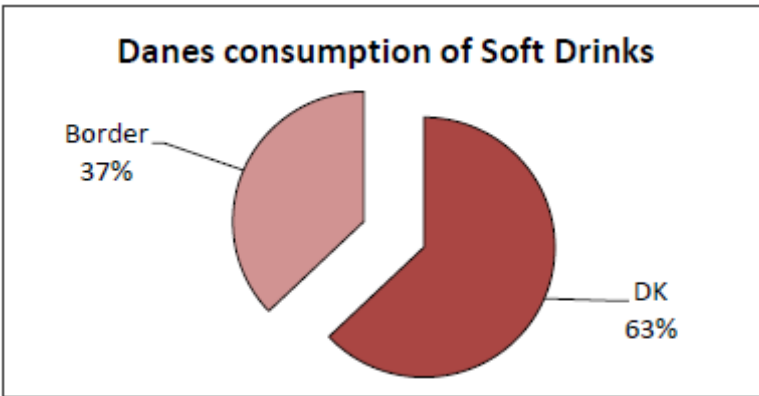


Figure 3: Danish consumption of Soft Drinks



Further, a study 'by the Molinari Economic Institute observed that whilst the level of taxation itself may not have been a problem, the Danish case highlights that collecting and instituting the tax had been especially costly and potentially weakened small and medium sized enterprises in Denmark.'¹⁵⁶

Further, Denmark was an innovator of beverage taxes. It held one of the highest taxes on soft drinks in Europe,¹⁵⁷ but in January 2014, Denmark declared the ending of its soft drink tax after 80 years. However this did not affect other existing excise duties on sugar-containing products, such as confectionary and ice cream.¹⁵⁸ There were several reasons for the abolition, as follows, the Danish Government had agreed on inventiveness which was intended to inspire favorable circumstances for development and employment in Denmark.¹⁵⁹ This choice was the outcome of intensive hard work to note the regressive nature of the tax.¹⁶⁰ Furthermore 'the tax's negative impact was on regional jobs close to borders and it had adverse environmental consequences in respect of border trade.'¹⁶¹

Therefore, the ending of the tax was projected to recover more than five thousand jobs that were lost when the Danish travelled to Germany or Sweden to buy soft drinks.¹⁶² The reason behind the job losses is that sugar taxes were introduced in Denmark but not in neighboring Germany

¹⁵⁶ Ibid at 151.

¹⁵⁷ Ibid at 149.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

¹⁶² Ibid.

and Sweden, which increased price differences between Denmark and its neighbors.¹⁶³ This in turn created an opportunity for trans-border purchases, whereby goods were purchased in the untaxed jurisdiction and imported into the taxed jurisdiction.¹⁶⁴ In this way Danish customers evaded payment of the taxed products they consumed, thus ‘undermining both the government’s ability to achieve either the revenue or health objectives of the tax.’¹⁶⁵ This further impacted the beverage industry and lowered profitability for certain beverage suppliers that resulted in job losses in the industry at large.

Thus, sugar tax in Denmark affected cross border shopping, which in turn adversely affected employment. The tax increased food prices and raised the cost of living.¹⁶⁶ Further, only a minimal decrease in obesity was noted and in the period of abolition, only seven percent of Danish had decreased their sugar consumption.¹⁶⁷

In this regard, Denmark’s sugar tax had a minimal effect on health, because of the following:¹⁶⁸

- Sodas constituted a small portion of the total calorie consumption of the Danish people. Although the intake of sugar free soft drinks was increasing, it did not have that much of an impact on the Danish people.
- Furthermore, other sources of sugar were increasing relatively in other sugary products consumed and,
- Obesity is multi causal with one of the causes being an individual’s lifestyle, because there is less physically demanding work and leisure activities in one’s life.

¹⁶³ “The Impacts of Selective Food and Non-alcoholic Beverages Taxes”, available at http://www.iticnet.org/images/The_Impacts_of_Selective_Food_and_Non_Alcoholic_Beverages_Taxes_English.pdf, accessed on 5 July 2019.

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.

¹⁶⁶ Seedat N, Singh D, ‘Is sugar tax likely to succeed in its objective of curbing obesity in South Africa?’, available at <http://www.saaa.org.za/Downloads/Publications/TAX006%20Is%20sugar%20tax%20likely%20to%20succeed%20in%20its%20objective%20of%20curbing%20obesity%20in%20SA.pdf> accessed on 25 February 2018

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

3.3 Illinois, Cook County

Illinois, Cook County in the United States of America (USA) introduced a tax on both sugary and artificially sweetened beverages. The Cook County Beverage Tax Ordinance was enacted on 10 November 2016, with the primary purpose of raising revenue to alleviate the budget deficit and to decrease obesity rates. However, the tax was repealed on the 11th of October 2017, soon after its implementation.

In relation to the SSB tax, the ‘Cook County Beverage Tax Ordinance indicated that the U.S. Department of Health and Human Services, the U.S. Department of Agriculture, and the World Health Organization, based on a summary of available evidence, that the consumption of added sugar and SSBs adversely effected the health outcomes of obesity and diabetes.’¹⁶⁹ Further, they had suggested that Americans eat/drink no more than 10% of their daily calories in the form of added sugar. Further studies have revealed that SSBs overflow the liver with volumes of sugar in a brief period, which is termed a ‘sugar rush and during such period leads to fat deposits and metabolic instabilities that cause diabetes, cardiovascular disease, and other grave health complications.’¹⁷⁰

More studies¹⁷¹ have indicated that there is rapid intake of SSBs in the USA. Statistically two out of three adults and one out of three children are overweight. In addition, half the population drink SSBs, ‘with one in four consuming at minimum 200 calories from such drinks and 5% drinking at least 567 calories which is equivalent to four cans of soda.’¹⁷²

Considering the aforementioned statements, the Cook County population was projected to drink about 269 million gallons of SSBs per year which included soft drinks, energy drinks and other SSBs which are crammed with calories, which is the major cause of added sugars in the diets of American children and therefore the drinking of one SSB a day can lead to the gaining of weight amongst children.¹⁷³

¹⁶⁹ Sweetened Beverage Tax Ordinance 16-5931.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² Ibid.

¹⁷³ Ibid.

The above studies have depicted why the Cook County Board of Commissioners decided to pass the Cook County Sweetened Beverage Tax Ordinance: in order to alleviate obesity or to lower the rates of this disease.

The WHO had stated that implementing taxes on SSBs can reduce ‘consumption and decrease obesity, type 2 diabetes and tooth decay.’¹⁷⁴ Therefore to help the health system, including reducing obesity percentages, ‘the Board of Commissioners had determined that a County tax which was not created upon the selling or purchase price or gross receipts from the use, sale or purchase thereof should be executed on the sale of SSBs in Cook County.’¹⁷⁵ On November 10, 2016, the Cook County Board of Commissioners had passed the Cook County Sweetened Beverage Tax Ordinance.¹⁷⁶

The broad definition of what is a sweetened beverage must be noted, which is the following:¹⁷⁷

‘A sweetened beverage is any non-alcoholic, carbonated or non-carbonated beverage, that is intended for human consumption and contains any caloric sweetener or non-caloric sweetener and is accessible for sale in a bottle or produced for sale using syrup and/or powder. Sweetened beverages do not include:’

- ‘beverages consisting of 100% natural fruit or vegetable juice,
- beverages in which milk, or soy, rice, or similar milk substitute, makes up more than 50% of the beverage or is the first listed ingredient on the label of the beverage,
- beverages to which a purchaser can add, or can request that a retailer add, caloric sweetener or no caloric sweetener,
- infant formula,
- beverages for medical use,
- any liquid sold as a therapeutic nutritional meal replacement or for use for weight reduction as a meal replacement, and

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

¹⁷⁶“Cook County Government, Sweetened Beverage Tax”, available at <https://www.cookcountyil.gov/service/sweetened-beverage-tax> , accessed on 12 December 2018.

¹⁷⁷ PWC, “Cook County’s Sweetened Beverage Tax effective August 2, 2017; first returns due September 20, 2017”, available at <https://www.pwc.com/us/en/state-local-tax/newsletters/salt-insights/assets/pwc-cook-county-sweetened-beverage-tax-effective-august-2-2017.pdf> , accessed on 18 December 2018.

- any syrup or powder that the purchaser himself or herself combines with other ingredients to create a beverage.’

The effective date of the tax was supposed to be the 1st July 2017. However, an Illinois trial court temporarily halted the tax pursuant to litigation challenging the constitutionality of the tax, as there was uncertainty around the administration and execution of the tax. On 28th July 2017, the court dismissed the challenge and lifted the ban.¹⁷⁸ The constitutionality of the tax will be discussed later in this chapter. The tax eventually took effect on 2nd August 2017, with the first returns due 20th September 2017.¹⁷⁹ The tax was imposed on the purchase of SSBs in the County and was generally collected by distributors when delivered to retailers, with some exceptions.¹⁸⁰ The ultimate liability for the tax was to be accepted by the consumer.

However, on 11th October 2017, the Cook County Board of Commissioners voted 15-2 to repeal the tax.¹⁸¹ The vote echoed the massive disapproval the tax met amongst Cook County residents. Elections had revealed that eighty five percent of the residents were against the tax.¹⁸² The tax had ended on 1st December 2017.¹⁸³ Going forward, this chapter will focus on how the tax was legislated and how the repeal came about.

3.3.1 Application of the Sweetened Beverage Tax

SSBs consisted of bottled sweetened beverages (soda, sports drinks, flavored water, energy drinks, pre-made sweetened coffee and tea with less than 50% milk content, etc.). ‘The tax rate was \$.01 per ounce of sweetened beverage and was calculated on the fluid ounces contained in the bottle or on the retail sale of all SSBs in Cook County.’¹⁸⁴

Apart from the Cook County definition of SSBs, discussed above, which needs to be noted, an example of the application of the SSB tax needs to be considered. ‘For example, a 5-gallon bag

¹⁷⁸ Ibid at 177.

¹⁷⁹ Ibid.

¹⁸⁰ Ibid at 169.

¹⁸¹ CBS Chicago, “Cook County Board Overwhelmingly Votes To Repeal Soda Tax” available at <https://chicago.cbslocal.com/2017/10/11/sweetened-beverage-tax-repealed/>, accessed on 18 December 2018.

¹⁸² Ibid at 169.

¹⁸³ Ibid at 177.

¹⁸⁴ Ibid.

of syrup will make 3,840 ounces of beverage at tax rate of \$.01 per ounce of sweetened beverage, the tax for that bag of syrup is \$38.40.¹⁸⁵

The following further demonstrates the application of the SSB tax:

- A decrease of five percent of the intended tax rate would have been applied to justify leakage and merchandise production.¹⁸⁶
- ‘Per the Uniform Penalties, Interest and Procedures Ordinance, Distributors would have been able to apply for credits or refunds to cover breakage, spoilage, etc.’¹⁸⁷
- ‘If a refund was requested resulting from the return of a product by a Retailer, the Distributor had to refund the tax amount to the Retailer before applying for a refund from the Department.’¹⁸⁸
- ‘Wherever the Ordinance was inconsistent or silent, the provisions of the Cook County Uniform Penalties, Interest and Procedures Ordinance (Chapter 34, Article III) was to be applied to supplement any defects.’¹⁸⁹

3.3.2 Who Pays the Tax?

The obligation for payment of SSB tax was to be paid by the purchaser of the SSB.¹⁹⁰ Any supplier of a bottled SSB and any supplier of syrup and/or powder used to manufacture a SSB would collect the SSB tax from any seller to whom the sale of bottled SSBs or syrup and/or powder used to manufacture a SSB and thereafter would send the tax to the Department of Revenue.¹⁹¹ Should a seller attain the merchandise ‘where the tax was due and was not previously paid to a supplier, that seller was responsible for sending the tax to the Department.’¹⁹²

¹⁸⁵ Ibid.

¹⁸⁶ Ibid at 169.

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.

¹⁹⁰ Ibid.

¹⁹¹ Ibid..

¹⁹² Ibid.

3.3.3 Remitting the Tax

Listed taxpayers would ‘file each month with the Department of Revenue a tax return in such form as prescribed and furnished by the Department of Revenue on or before the 20th day of the month following the month for which the return was due.’¹⁹³

3.3.4 Non-taxable Transactions

Listed distributors would ‘not pay or collect a tax with respect to SSBs, syrup and/or powder which were otherwise subject to the tax when the SSBs, syrup and/or powder was being sold to the following:’¹⁹⁴

- ‘Another registered distributor; or
- An unregistered distributor, a retailer or a purchaser when the selling distributor, or its agent, delivers the sweetened beverages, syrup and/or powder to a location outside of Cook County.’

The tax levied was not applicable to purchases of SSBs ‘by a passenger on an interstate carrier; nor did the tax apply to purchases that were specifically exempt from taxation under Federal law.’¹⁹⁵

3.3.5 Books and Records

Every supplier and seller would keep correct books and records illustrating all dealings that gave rise to any tax obligation, exclusion or protection from liability.¹⁹⁶

¹⁹³ Ibid.

¹⁹⁴ Ibid.

¹⁹⁵ Ibid.

¹⁹⁶ Ibid.

3.3.6 Penalties

Any person who had violated this tax law, or who had failed ‘to file a return and/or failed to remit taxes, would be subject to the penalties listed in the Cook County Uniform Penalties, Interest and Procedures Ordinance, Chapter 34, Article III. ‘Further any person determined to have violated any other provisions of Article III would have been subject to a fine of \$1,000.00 for the first offense, and a fine of \$2,000.00 for the second and each subsequent offense.’¹⁹⁷

Distinct offenses would have been viewed ‘as committed each day upon which the said person would have had to continue any such violation or permit any such violation to exist after notification. ‘It would have been deemed a violation of Article III for any person to knowingly furnish false or inaccurate information to the Department.’¹⁹⁸ ‘Criminal prosecution pursuant to Article III would in no way bar the right of the County to institute civil proceedings to recover delinquent taxes, interest and penalties due and owing as well as costs incurred for such proceedings.’¹⁹⁹

3.3.7 The Constitutionality of Sugar Sweetened Beverage Tax

‘On July 28, 2017, the Cook County Circuit Court (court) dismissed a lawsuit filed by the Illinois Retail Merchants Association challenging the constitutionality of the Cook County, Illinois Sweetened Beverage Tax.’²⁰⁰‘The court also dissolved the order it had issued temporarily enjoining the collection of the tax.’²⁰¹Even though the order was in place, sellers were stopped from collecting the tax until the court delivered its conclusion on the matter. ²⁰²

¹⁹⁷ Ibid.

¹⁹⁸ Ibid.

¹⁹⁹ Ibid.

²⁰⁰ ‘Lawsuit challenging Cook County, Illinois soda tax dismissed, tax collection begins August 2, 2017’, available at <https://taxnews.ey.com/news/2017-1248-lawsuit-challenging-cook-county-illinois-soda-tax-dismissed-tax-collection-begins-august-2-2017> , accessed on 20 December 2018.

²⁰¹ Illinois Retail Merchants Assoc. et al. v. The Cook County Dep’t of Rev. et al., Case No. 17 L 50596 (Circ. Ct. July 28, 2017).

²⁰² Ibid.

- Facts

The Illinois Retail Merchants Association and a group of Cook County retailers (the Merchants) filed for injunctive relief and declaratory judgment arguing that the County’s SSB tax dishonored the uniformity clause of the Illinois Constitution. They argued further that the tax was unconstitutional, vague and impossible to implement and responded by filing a Motion to Dismiss.²⁰³ In their verified Complaint, the Merchants alleged that the Ordinance was in ‘violation of the uniformity clause of the Illinois Constitution because it creates classifications of SSB that are not based on any real or substantial differences.’²⁰⁴

Furthermore, the Merchants claimed that the Ordinance dishonored the uniformity clause since the classifications have no rational association to the purpose of the tax, which was to encourage public health and decrease obesity percentages.²⁰⁵ This was because the health significances of matching beverages are distinct in classifications and are similar. Further the Merchants also alleged that the Ordinance was constitutionally unclear and unlikely that it could be implemented with any precision or intelligible application in the circumstances under which it was intended to operate.²⁰⁶

- Issues

The Circuit Court considered the two primary issues raised by the Merchants, that the Sugar Beverages Tax ordinance:

- (1) ‘Violated the uniformity clause of the Illinois Constitution, and
- (2) Was unconstitutionally vague and impossible to implement and apply.’²⁰⁷

- Rule of Law in respect of Issue (1)

²⁰³ Grant Thornton, ‘Cook County, Illinois Imposing Soda Tax Following Dismissal of Legal Challenge’, available at <https://www.grantthornton.com/-/media/content-page-files/tax/pdfs/SALT-alerts-states-A-L/IL/2017/IL-imposing-soda-tax-08-10.ashx>, accessed on 22 January 2019.

²⁰⁴ Ibid.

²⁰⁵ Ibid.

²⁰⁶ Ibid.

²⁰⁷ Ibid.

Article IX, of section 2 of the Illinois Constitution of 1970, otherwise known as the uniformity clause, provides that,²⁰⁸

'In any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable.'

In *North Sheffield, Inc. v. Chicago*,²⁰⁹ the Appellate Court found the Chicago Alcoholic Beverage Tax Ordinance to be in violation of the uniformity clause. The ordinance imposed a tax upon the purchase of alcoholic beverages that were immediately consumed on the premises where they were purchased, but did not impose a tax upon the purchase of alcoholic beverages consumed off the premises where they were purchased.²¹⁰ The court stated that there was no actual or significant difference between the classifications, and therefore held the ordinance was unconstitutional and unenforceable. In its reasoning, the court noted that the nature of the commodity (i.e. the alcohol contained in the beverages) did not serve as the basis for the classifications, rather, it was where the commodity was to be consumed after the purchase which determined whether the purchase was a taxable event.²¹¹ The court viewed this as an arbitrary distinction.

Further in *Container Corporation of America v Wagner*,²¹² the plaintiff corporation fabricated boxes used to package consumer products. The boxes were 'made, in part, of paperboard, ink and lacquers, the base ingredient for the inks and lacquers were purchased in one of two ways, either in a pre-mixed, ready-to-use liquid, or in an unmixed, concentrated form.'²¹³ 'When using the inks and lacquers that were made from concentrate, the corporation diluted the concentrate with various solvents before applying them to the paperboard.'²¹⁴ 'Following an audit, the

²⁰⁸ Illinois Retail Merchants Association, No. 17 L 50596, July 28, 2017.

²⁰⁹ *North Sheffield, Inc. v. Chicago*, 494 N.E.2d 711,713-714 (Ill.App.Ct.1986).

²¹⁰ *Ibid.*

²¹¹ *Ibid.*

²¹² *Container Corp, of Am. v. Wagner*, 293 Ill. App. 3d (1st Dist. 1997).

²¹³ *Ibid.*

²¹⁴ *Ibid.*

Department of Revenue assessed the past-due use of tax on the solvents purchased in bulk, but not on the pre-mixed inks and lacquers containing solvents.’²¹⁵

‘The Department did so the basis that the corporation was the ultimate user of the solvent for purposes of assessing the use tax.’²¹⁶ ‘The Department took the same position with regard to the solvent which existed as a component of the pre-mixed ink and lacquers, but declined to assess tax on these ingredients, asserting that it was too difficult to calculate what percentage of the pre-mix was composed of evaporates and what percentage was composed of other ingredients.’²¹⁷ The corporation filed a claim against the Department and argued, inter alia, ‘that the Department’s failure to tax the solvents contained in the ready-mix inks and lacquers violated the uniformity clause because the distinction between pre-mixed solvents and bulk solvents resulted in an illegal classification.’²¹⁸ The Appellate Court disagreed, however, and held that the ‘administrative burden of collecting a tax may be a valid justification for assessing a tax in one instance but not in another.’²¹⁹

- Application

As to the rule of law in issue one, the difference between the two clauses is that, firstly the ‘uniformity clause was envisioned to be a broader limitation on legislative power to classify for no property tax purposes, and secondly the limitation of the equal protection clause was meant to ensure that taxpayers would receive added protection in the state constitution based upon a standard of reasonableness rather than a more rigorous approach contained in the federal constitution.’²²⁰

Further analysis in respect of the uniformity clause revealed that a non-property tax arrangement must be founded on two requirements: firstly, on an actual and significant difference between those that are taxed and those not taxed, and secondly, there must be some rational association to

²¹⁵ Ibid.

²¹⁶ Ibid.

²¹⁷ Ibid.

²¹⁸ Ibid.

²¹⁹ Ibid.

²²⁰ *Arangold Corp. v. Zehnder*, 787 N.E.2d 786 (Ill. 2003)

the object of the legislation or to public policy.²²¹ These two requirements were considered by the court and treated separately. Each requirement will be dealt with below.

In respect of the first requirement, drawn from *North Sheffield*,²²² the court found that the nature of the commodity in this case does serve as a basis for the classifications. Ready-to-drink sweetened beverages were taxed because they were more generally obtainable for buying and consumption. Moreover, made-to-order drinks were not taxed because collection of the tax would be administratively burdensome. Thus, the Court found *North Sheffield*,²²³ to be inapplicable to the case at hand.

In a counter argument by the County, the County advanced primarily two justifications to support the Ordinance's classification.²²⁴ First, the County argued the classification was justified because ready-to-drink SSBs were more generally obtainable for buying and consumption than made-to-order drinks. Second, the County argued the classification was justified because collection of the tax for made-to-order drinks would be managerially onerous as the collector or its agent would need to make an 'on the spot' determination of taxability at time of purchase.²²⁵

The Court was persuaded by these arguments. The Ordinance taxes ready-to-drink SSBs that are more generally obtainable and therefore more likely to be bought and consumed.²²⁶ Therefore this, in turn, would mean that the taxed classification was likely to produce more revenue than that of the non-taxed classification.²²⁷ The Illinois courts had found that the variation in revenue between arrangements constitute an actual and significant difference.²²⁸

Further, as mentioned above, the Ordinance did not tax made-to-order drinks as collection of the tax in such purchases would be administratively difficult.²²⁹ It required the collector or its agent to discern at the time of purchase whether the tax applies and at what amount.²³⁰ This is more

²²¹ Ibid at 209.

²²² *North Sheffield, Inc. v. Chicago*, 494 N.E.2d 711,713-714 (Ill.App.Ct.1986).

²²³ Ibid.

²²⁴ Ibid at 208.

²²⁵ Ibid.

²²⁶ Ibid.

²²⁷ Ibid.

²²⁸ Ibid.

²²⁹ Ibid.

²³⁰ Ibid.

labor intensive and would require additional resources.²³¹ The administrative burden of collecting a tax had been recognized as a ‘valid justification for assessing a tax in one instance but not in another for purposes of uniformity.’²³²

However, the administration burden placed on the tax collectors was too onerous, as in the case of *Container Corporation of America*.²³³ The Court had found that the County had satisfied its burden of justifying the Ordinance’s tax classification.²³⁴

The County reasoned that the classification was justified because ready-to-drink SSBs are more generally obtainable for buying and consumption, and the collection of the tax for made-to-order drinks would be administratively troublesome.²³⁵

The Court was persuaded by the County’s reasoning. It found that the County set forth an actual and significant difference between the pre-made drinks taxed under the ordinance and the on-demand drinks not taxed under the ordinance.²³⁶

In relation to the second requirement the Ordinance provided that any amount of sugar or sweetener in a beverage makes the beverage subject to the tax. Further, the Ordinance did not establish a correlation between the volume of the beverage and the amount of sweetener in the beverage, or a causal effect of the sweetener to-ounces ratio of beverage consumed and the corresponding health effects.²³⁷ However, a broad brush stroke application did not defeat the reasonable relationship of the tax to the stated purpose.²³⁸ Based on the findings set forth ‘in the Ordinance and the healthcare function performed by the County, the Court found that there was a reasonable relationship between the tax classification and the object of the legislation.’²³⁹ The tax had applied to purchasers of widely available SSBs.²⁴⁰

²³¹ Ibid.

²³² *Container Corp, of Am. v. Wagner*, 293 Ill. App. 3d (1st Dist. 1997).

²³³ Ibid at 208.

²³⁴ Ibid.

²³⁵ Ibid at 203.

²³⁶ Ibid at 208.

²³⁷ Ibid.

²³⁸ Ibid.

²³⁹ Ibid.

²⁴⁰ Ibid.

It was within reason for the Court to conclude that the Ordinance had set forth enough grounds to find that the tax would deter some level of intake of such SSBs and would encourage public health and increase income for the County.²⁴¹

However, the Merchants argued that the express purpose of the Ordinance was inconsistent with the classification drawn by the County because it generally excluded sweetened beverages that are not ready-to-drink.²⁴² The Merchants pointed out that there was no difference in health consequences from a ready-to-drink sweetened beverage versus a sweetened beverage made on-demand, as the beverages were substantially similar, if not identical. Based on this, the Merchants claimed that the tax dishonored the uniformity clause.²⁴³

The County, therefore, relied on the ordinance itself which provides that the tax was imposed to “promote public health, including lowering obesity rates.”²⁴⁴

- Conclusion

The Court agreed that the findings set forth ‘in the ordinance and the healthcare function performed by the County were enough to establish a reasonable relationship between the tax classification and the object of the legislation.’²⁴⁵ The Court found that the tax arrangement did not violate the uniformity clause of the Illinois constitution.

- Rule of Law in respect of Issue (2)

The ‘view that an ordinance was void for vagueness is a concept derived from the notice requirement of the due process clause.’²⁴⁶ The Illinois Supreme Court recognizes,²⁴⁷

²⁴¹ Ibid.

²⁴² Ibid.

²⁴³ Ibid.

²⁴⁴ Ibid.

²⁴⁵ Ibid..

²⁴⁶ *Wilson v. Cnty. of Cook*, 2012 IL 112026. (It must be noted the meaning of the due process clause stems from the Constitution of the State of Illinois 1970 (as amended) Article 1 of the Bill of Rights, Section 2 Due Process and Equal Protection, which states, “No Person shall be deprived of life, liberty or property without due process of the law not be denied the equal protection of the laws.”)

²⁴⁷ *City of Chi. v. Pooh Bah Enters., Inc.*, 224 Ill. 2d 390, 441 (2006).

‘[a] statute can be impermissibly vague for either of two independent reasons: (1) if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits, or (2) if it authorizes or even encourages arbitrary and discriminatory enforcement.’

- Application

The court considered that acts with civil consequences that control financial matters were subject to a less stringent vagueness test because they usually include narrower subject matter.²⁴⁸

Further a act is ‘considered unconstitutionally vague only if its terms are so ill-defined that the ultimate decision as to its meaning rests on the opinions and whims of the trier of fact rather than any objective criteria or facts.’²⁴⁹ ‘An act will not be rendered unconstitutionally vague merely because one could imagine a hypothetical question or the meaning of certain terms.’²⁵⁰

The Merchants, however, argued that the Ordinance was unconstitutionally vague and ‘impossible to implement and apply in the circumstances it was intended to operate.’²⁵¹ They contended that the Ordinance was constitutionally unclear because it was unpredictable with how SSBs in non-pre-determined size bottles (such as fountain drinks) are served. The Merchants expressed concern over the imprecise collection of tax on fountain drinks which may have contained varying levels of ice or refills and may have ‘run afoul of the federal Supplemental Nutrition Assistance Program (“SNAP”), the Illinois Retailers’ Occupation Tax, and the City of Chicago’s Alternative Pricing System Rules,’ because the ordinance required the tax to be a component of the selling price of a SSB. According to the Merchants, this requirement was inconsistent with these programs and taxes which did not allow tax to be included in the price or base amount.²⁵² The Court, however, relied on the County’s regulations which allowed for the tax to be separately stated from the base price.

²⁴⁸ *Vill. of Hoffman Estates v. The Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498-99 (1982).

²⁴⁹ *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 291 (2003).

²⁵⁰ *Supra*.

²⁵¹ *Ibid* at 208.

²⁵² *Ibid*.

The Court further noted that collection of the tax on fountain drinks was an imperfect science. However, mathematical certainty is not required of statutes that are challenged as unconstitutionally vague.²⁵³ The Court found that the County's regulations were consistent with the ordinance and provided clarification on the issues raised by the Merchants.²⁵⁴

- Conclusion

The Court approved the County's Motion to discharge the Plaintiffs' verified complaint for Injunctive Relief and for Declaratory Judgment. The Court found that the Ordinance did not violate the uniformity clause of the Illinois Constitution as the tax classification was based on a real and substantial difference between the people taxed and those not taxed, and the tax classification bore a reasonable relationship to the object of the legislation.²⁵⁵ Additionally, the Ordinance was not constitutionally unclear as it provided a person of normal intellect with a realistic opportunity to comprehend what was required and further it was sufficiently detailed and specific to preclude arbitrary enforcement.²⁵⁶ The Cook County SSB Tax took effect on August 2, 2017,²⁵⁷ and on 1 December 2017 the tax was repealed.

3.3.7 Overall Conclusion

The SSB Tax had faced political opposition from the beginning therefore it is one of the shortest-lived taxes of Illinois. However, the delay of the tax in taking effect was as a result of *Illinois Retail Merchants Association*.²⁵⁸ From the time the tax was implemented it was massively unpopular.²⁵⁹ Further, policymakers had claimed that the tax was announced to guard public health. However, its key purpose objective was to raise 1.8 billion dollars for the budget of the

²⁵³ Ibid.

²⁵⁴ Ibid.

²⁵⁵ Ibid.

²⁵⁶ Ibid.

²⁵⁷ Ibid.

²⁵⁸ C Lentino, 'Preckwinkle Admits Soda Tax was 'First and Foremost' about Revenue', available at <https://www.illinoispolicy.org/preckwinkle-admits-soda-tax-was-first-and-foremost-about-revenue/>, accessed on 22 January 2019.

²⁵⁹ The Economist, 'Chicago's Soda Tax is Repealed', available at <https://www.economist.com/democracy-in-america/2017/10/13/chicagos-soda-tax-is-repealed>, accessed on 22 January 2019.

County, therefore increasing tax revenue.²⁶⁰The Cook County Board President Toni Preckwinkle had initially indicated the tax stood to prevent cuts to public health and justice system programs, but thereafter acknowledged that the County's SSB tax was at all times about growing income and to help close the County's deficit in budget.²⁶¹The adverse effect was that the County had also claimed that 1100 government workers would be retrenched and six thousand vacant positions would be terminated should the tax not be implemented.²⁶²

The repeal of SSB Taxes in Denmark and Cook County is representative of the growing opposition to these types of taxes.²⁶³Furthermore, critics of soda taxes maintain that the tax is rigid and unfairly overtaxes low income individuals. However, supporters believe that it is a necessary step in helping to reduce obesity and balance budgets.²⁶⁴Even though other jurisdictions worldwide have passed beverage taxes they have seen short-term reductions in soda consumption, studies have shown that the tax must be very high or must continue to increase to have a long-term effect on sales.²⁶⁵

3.3.8 South Africa's Position

In relation to Illinois, Cook County, South Africa's position in respect of the SSB tax legislation has faced criticism to the extent that the question which had been asked was whether such tax will curb obesity and reduce sugar intake for a healthier society. The National Treasury had addressed the criticism of the tax as being rigid in nature, affecting the underprivileged as opposed to wealthy individuals in society as the benefits of a decrease in intake of SSBs would curtail this negative effect.²⁶⁶ Further, poor 'communities are more dependent on the public health care system and it is hoped that the tax will reduce health care costs in future.'²⁶⁷

²⁶⁰ Ibid.

²⁶¹ C Lentino, 'Preckwinkle Admits Soda Tax was 'First and Foremost' about Revenue', available at <https://www.illinoispolicy.org/preckwinkle-admits-soda-tax-was-first-and-foremost-about-revenue/>, accessed on 22 January 2019.

²⁶² Ibid.

²⁶³ Grant Thornton, "Cook County, Illinois Board of Commissioners Repeals Soda Tax", available at <https://www.grantthornton.com/-/media/content-page-files/tax/pdfs/SALT-alerts-states-A-L/IL/2017/IL-board-of-commissioners-repeals-soda-tax-10-18.ashx>, accessed on 22 January 2019.

²⁶⁴ Ibid.

²⁶⁵ Ibid at 24.

²⁶⁶ Ibid at 166.

²⁶⁷ Ibid.

However South Africa even now spends a lot of money on health care, more than what is suggested by WHO. WHO recommends that ‘5% of GDP be spent on health care whilst South Africa spends 8.9%.’²⁶⁸ The aforementioned percentage is guaranteed to rise if South African citizens do not control their sugar intake.²⁶⁹

Furthermore across the world, food and beverage taxes are amongst the least effective way of defeating obesity.²⁷⁰ Because obesity has such varied and multifaceted causes, it can be refuted only through extensive action or processes.²⁷¹ The National Treasury indirectly recognizes ‘this when it claims that the SSB tax will be part of a comprehensive package of measures aimed at stimulating healthy food choices, promoting physical activity, educating and mobilizing communities, and establishing a surveillance system to strengthen, monitor and evaluate.’²⁷²

The South African Department of Health’s plan is to decrease obesity by ten percent by 2020, which is part of a public health plan to decrease non – communicable diseases.²⁷³ In December 2018, sugar tax raised R2.3 billion rand which government plans to use on public health campaigns.²⁷⁴

In addition, interest as to SSB tax collections could have probably been instigated by its growth rate on 1 April 2019. This could indicate an intention on the part of government to regard the SSB tax as an income maker, therefore such a ‘tax system may not be the ideal instrument to influence sugar intake and that of the citizens of South Africa.’²⁷⁵

Further, a growth in the price of SSBs has only led to a 12.1% decrease in intake, which is not sufficient to alter behavior.²⁷⁶ However, SARS and the South African government maintain that a decrease in consumption of SSBs are resultant from high prices and would contribute to the

²⁶⁸ Ibid.

²⁶⁹ Ibid.

²⁷⁰ Ibid at 48.

²⁷¹ Ibid.

²⁷² Ibid.

²⁷³ Chutel, L , “South Africa’s sugar tax is pitting job losses against national health, 15 March 2019 available at <https://qz.com/africa/1573448/sugar-tax-pits-jobs-versus-health-diabetes-in-south-africa/>, accessed on 7 August 2019.

²⁷⁴ Ibid.

²⁷⁵ Ibid at 48.

²⁷⁶ Ibid at 273.

health of lower income groups.²⁷⁷ This in turn would relieve the burden on Government resources, for instance public hospitals.²⁷⁸

Therefore, if the South African government sincerely seeks to change the diet of South Africans, it will need to implement procedures mainly which consider statistics and communication operations which are likely to be effective in changing customers actions and buying trends.²⁷⁹ There is at present no indication that the tax on SSBs has any substantial influence on obesity in South Africa. Consequently to illustrate that the SSB tax has a considerable effect on public health, an analysis of obesity before and after the implementation of sugar tax needs to be done.²⁸⁰ The outcome of any study by the National Treasury and academics is presently being researched, being the effect of the sugar tax on manufacturing and the intake of sugar drinks, in order to determine the decrease of obesity, and diseases of diabetes, strokes and heart attacks.²⁸¹

Further, from the above analysis it must be considered that in Denmark and Illinois Cook County there has been negative findings on the effectiveness of SSB tax, which was based on experiences of these countries. South Africa is new to the SSB tax and should be aware of the following experiences by these two jurisdictions: that the tax is regressive in nature, there is no substantial indication that the tax would lower obesity and further the tax was implemented to increase revenue in order to curb the budget deficit. However, the two jurisdictions mentioned are counterbalanced with Mexico which has shown that the tax works to a certain extent.

The next chapter will discuss Mexico in which SSB tax has been legislated and where such law continues to work within the country. Some studies have indicated that the tax has been effective in lowering rates of obesity and other illnesses in Mexico. The next chapter will explore this statement.

²⁷⁷ Ibid at 48.

²⁷⁸ Ibid.

²⁷⁹ Ibid.

²⁸⁰ Ibid.

²⁸¹ Schneider, F, "Health Levy or Sugar Tax: Is the Pain Worth the Gain? 8 May 2019 available at <https://www.thesait.org.za/news/450529/Sugar-Tax.htm>, accessed on 8 August 2019.

4. CHAPTER 4 - MEXICO

4.1 Introduction

Mexico is a country that implements sugar tax on SSBs to limit the growing obesity percentages that the country faces.²⁸² The country has the most consumed soft drinks per capita internationally.²⁸³ In relation to this dissertation, Mexico will serve as an example of a country that implements such tax. It will demonstrate how such tax has marginally reduced obesity rates in the country. Further, the tax is an example of how such tax plays a part in revenue collection of the country, which has increased. Finally, Mexico will provide a contrasting comparison for South Africa, which is new to the sugar tax legislation, and when compared to other jurisdictions where the sugar tax was repealed.

In Mexico, over two thirds of adult residents and over one third of kids and teenagers are obese.²⁸⁴ Mexico is challenged with an obesity out-break that is potentially undermining the country's financial system and public health, since obesity is one of the key reasons for diabetes.²⁸⁵ Even though obesity is a chronic medical disease, it is indicated that the intake of SSBs is linked with weight increase, diabetes and other long-lasting diseases.²⁸⁶ SSB intake in the country is high, it constitutes a 9.8% of total energy consumption, which is more than the recommended 3% in respect of energy consumption.²⁸⁷

In October 2013, Mexico's government approved laws forcing taxes on SSBs which was implemented in respect of a wide-ranging financial system restructuring, that is intended at growing tax income and lowering obesity rates together with other chronic diseases.²⁸⁸ The SSB tax started on 1 January 2014, and comprised a 'one-peso-per-litre in excise duty,' which is equal

²⁸²Ibid at 166.

²⁸³ Ibid.

²⁸⁴ Colchero MA, Guerrero-Lopez CM, MolinaM, Rivera JA (2016), 'Beverages Sales in Mexico before and after Implementation of a Sugar Sweetened Beverage Tax', available at https://www.researchgate.net/publication/309578667_Beverages_Sales_in_Mexico_before_and_after_Implementati_on_of_a_Sugar_Sweetened_Beverage_Tax, accessed on 30 January 2019.

²⁸⁵ WHO.2002, available at <http://www.who.int/dietphysicalactivity/publications/trs916/summary/en/>, accessed on 20 April 2018.

²⁸⁶ Ibid at 284.

²⁸⁷ Ibid.

²⁸⁸ Bonilla-Chacín, M E & Iglesias, R & Agustina, S & Trezza, C & Macías, C "Learning from the Mexican Experience with Taxes on Sugar-Sweetened Beverages and Energy-Dense Foods of Low Nutrition," June 2016 available at <http://documents.worldbank.org/curated/en/185621467088129330/pdf/106654-BRI-ADD-SERIES-PUBLIC.pdf> accessed on 20 April 2018.

to an estimated 10% price surcharge on beverages with added sugar, Milk and various dairy goods are omitted from the law.²⁸⁹

This chapter will discuss Mexico's sugar tax, the government's fiscal and tax policy and how by increasing the charges of SSBs, the amount of SSBs consumed should decrease. Therefore, there ought to be a decline from those goods or drinks to healthier untaxed substitutes, adding to decreased obesity percentages.²⁹⁰

4.2 Fiscal Policy & Tax Policy

4.2.1 Fiscal Policy

The fiscal policy was a decision by the Mexican government to help reduce obesity percentages. Some of the grounds for introducing the tax are the following. These will be elaborated on, but the scope of this discussion will be limited to that required for the purposes of this dissertation:²⁹¹

- (i) the products and drinks in relation to the taxes are high in calories and do not offer much nourishment;

High calorie consumption is not restricted to food and drink. One of the main causes of calories remain drinks comprising of high levels of sugar such as carbonated beverages and flavored liquid beverages which commonly offer little nourishment.²⁹² The calories gained from these are regularly stated to be 'empty calories,' the term 'empty' referring to their absence of nourishment.²⁹³

- (ii) there is indication connecting the intake of sugar with a growing movement in obesity and other long-lasting diseases;

²⁸⁹ Ibid.

²⁹⁰ 'Mexican Sugar Tax – Evidence of Impact', available at <https://www.health.govt.nz/system/files/documents/pages/hr20151086.pdf>, accessed on 29 January 2019.

²⁹¹ Ibid at 288.

²⁹² Gaskin, P. S., Lai, P., Guy, D., Knight, J., Jackson, M., & Nielsen, A. L., 'Diet, physical activity, weight status, and culture in a sample of children from the developing world. *Journal of nutrition and metabolism*', 2012, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3502027/>, accessed on 31 January 2019.

²⁹³ Ibid at 288.

The generality of publications shows a relation between SSB consumption and non-communicable diseases, especially obesity, and diabetes and long-lasting diseases is mostly connected with obesity.²⁹⁴SSBs have a high glycemic count meaning that the consumption of beverages can increase initial blood glucose levels after drinking the beverage, which causes ‘insulin resistance, therefore increasing the risk for diabetes.’²⁹⁵Furthermore most ‘meta-analyses’ of random managed trials and potential group study was directed to both adults and children, which proposed a connection amongst the consumption of SSBs and the risk of becoming obese.²⁹⁶

(iii) there is indication that these taxes can have an adverse effect on consumption;

Some academics propose the likely effect of such taxes will be a decline in weight in the targeted population. The immediate effect and the projected weight loss would vary from most studies.²⁹⁷But most accept that substantial effects on weight can be attained with tax increases. According to Fletcher and Frisvold, ‘a one percentage point increase in soft drinks could affect Body Mass Index (BMI) but only by 0.03 points, and that a significant population BMI change would only be made possible with a higher tax increase.’²⁹⁸And although most research agrees that taxes under a fixed level do little to alter general population intake and weight, some studies propose that taxes as low as the charges on soft drinks presently applied in the United States of America can impact children who are at risk particularly when soft drinks are accessible in schools.²⁹⁹

(iv) other nations have recently passed similar rules with positive introductory results;

²⁹⁴ Ibid at 288.

²⁹⁵ Malik V. S et al. 2010. “Sugar-sweetened Beverages and Risk of Metabolic Syndrome and Type 2 Diabetes: A Meta-analysis”, available at <https://www.ncbi.nlm.nih.gov/pubmed/20693348>, accessed on 01 February 2019.

²⁹⁶ Ibid at 288.

²⁹⁷ Ibid.

²⁹⁸ Fletcher J. M., D. Frisvold, N. Tefft. 2010. “Can Soft Drink Taxes Reduce Population Weight?”, available at <https://www.questia.com/library/journal/1G1-219076610/can-soft-drink-taxes-reduce-population-weight>, accessed on 1 February 2019.

²⁹⁹ Ibid at 288.

Mexico is not the only nation to have executed a soft drink tax or a tax on high-calorie products. Furthermore, whether the goal of the taxes is driven mainly by health motives or by the requirement to make further revenue it does not affect the result of the tax, or if the public is committed and mindful of the health advantages of the taxes.³⁰⁰ In respect of Hungary, the general public was agreeable to the tax. The government had executed taxes on ‘SSBs, energy drinks and high-calorie foods.’³⁰¹ Hungary further undertook an official assessment of the results of the tax and its results was positive. The tax made around EURO 61.5 million in 2013 and the residents decreased their intake of SSBs and selected other foods and drinks which had more nutrients.³⁰²

(v) Mexico is one of the nation’s internationally with the highest intake of SSBs.

The levels of soft drinks and SSB intake in Mexico far surpass the average in other nations, specifically nations at similar stages of fiscal growth. Grounded on a methodical analysis and investigation of dietary surveys, in 2010, the international mean of adult everyday SSB intake was projected at 137 ml.³⁰³ SSB intake differs significantly by ‘geographic location, gender, age and socioeconomic status and in general SSB consumption is higher in upper-middle income countries and lower-middle income countries, where the mean adult day-to-day consumption is respectively 189 ml and 140 ml, than in high income and low-income countries, where the mean adult daily consumption is respectively 121 and 83 ml.’³⁰⁴

These are the explanations supporting the Mexican government’s enactment of the legislation relating to SSBs. The application of SSB taxes is part of broader attempts to tackle obesity and chronic diseases in Mexico and other nations or countries in the world. Further the references to

³⁰⁰ Ibid.

³⁰¹ Ibid.

³⁰² Ibid.

³⁰³ Ibid.

³⁰⁴ Ibid.

other countries above illustrates how the Mexican Government arrived at their conclusions when creating the sugar tax legislation.

4.2.2 Tax Policy

An effective tax is the key to public health, as the use of such taxes on health-related products as the potential to alter consumers' intake patterns in respect to SSBs.³⁰⁵ Nevertheless, in order to alter a pattern in variation of SSBs, a tax on health merchandise would grow prices of selected food and drinks which would lead to an actual intake decrease, or else there would not be a change for the better in health results.

The design and application of the SSB tax is therefore to avoid substitution towards unhealthy sugary drinks in Mexico, which depicts the significant link between regular and low-calorie beverages.³⁰⁶

Subsequently if certain sodas have a high charge which is different owing to the tax restructuring, customers would either increase their intake for low-calorie drinks or replace such drinks or decrease their consumption of low-calories drinks.³⁰⁷ According to Sassi,³⁰⁸ 'the empirical evidence is not conclusive about the nature of this association, although the few existing empirical studies display that they can be matching goods.'³⁰⁹

Further, Mexico's tax restructuring covered an entire variety of SSBs together with viable alternatives to soft drinks. This is a significant part of the tax since other soft drink tax observations have revealed customer trends which replace soft drinks with other beverages which includes added sugars, therefore leaving calorie intake percentages amongst the population unaffected.³¹⁰

³⁰⁵ Ibid at 288.

³⁰⁶ Ibid.

³⁰⁷ Ibid.

³⁰⁸ Sassi, F., A. Belloni and C. Capobianco. 2013. "The Role of Fiscal Policies in Health Promotion", available at <http://dx.doi.org/10.1787/5k3twr94kvzx-en>, accessed on 08 February 2019.

³⁰⁹ Ibid at 308.

³¹⁰ Ibid.

The ‘excise tax law in Mexico (Impuesto Especial Sobre Producción y Servicios) (IEPS) levies SSB tax at the rate of 1 peso per litre.’³¹¹ The excise tax on SSBs is required to be paid by the manufacturer or distributor. In general, some products are not liable for IEPS when exported. Further ‘the input on IEPS paid by exporters on their acquisitions is not creditable, and the tax becomes an additional cost.’³¹²

‘IEPS is payable (output tax) and creditable (input tax) on a cash basis,’ which is chargeable on the day that the customer is billed and which is collected from the customer and can be credited when the corresponding charge is made to the provider.³¹³ ‘On imports, IEPS is creditable when payment is made at the customs offices.’³¹⁴

In some situations, ‘the IEPS regulations permits taxpayers that are not subject to this tax to credit IEPS the amount on the purchase and/or the import of certain products.’³¹⁵ ‘There is a detailed process to analyze the tax for beer producers, bottlers, and importers, but the tax can on no occasion be less than 26.5%.’³¹⁶ Amongst other requirements, IEPS taxpayers are required to file particulars of their income with the Mexican Tax Administration periodically.³¹⁷

The IEPS legislation seeks to charge tax on the complete range of SSBs to circumvent the danger of the growing intake of replacement SSBs not contained within the tax. ‘The text of the law listed the different types of beverages covered by the tax.’³¹⁸

The common factor in the index of goods listed below is the occurrence of added sugar:³¹⁹

- i. ‘Any flavored non-alcoholic beverages, concentrates, powders, syrups, essences or flavored extracts, which can be diluted to obtain flavored non-alcoholic beverages and syrups or concentrates for flavored non-alcoholic beverages as long as those goods contain added sugars.

³¹¹ PWC, ‘Mexico Corporate – Other Taxes’, available at <http://taxsummaries.pwc.com/ID/Mexico-Corporate-Other-taxes>, accessed on 08 February 2019.

³¹² Ibid.

³¹³ Ibid at 311.

³¹⁴ Ibid.

³¹⁵ Ibid.

³¹⁶ Ibid.

³¹⁷ Ibid.

³¹⁸ IEPS Act of Mexico, Article 3, Section 57.

³¹⁹ Ibid.

- ii. In the case of concentrates, powders, syrups, essences or flavored extracts, the tax rate is calculated considering the number of liters of flavored non-alcoholic beverages that is possible to produce with those elements, according to producer technical specifications.
- iii. The energy drinks with added sugars are taxed with the IEPS of sugar-sweetened drinks on top of the 25 percent IEPS rate for energy drinks.’

The following SSBs are exempt from the tax.³²⁰

- i. ‘Those registered as medicines (for example, cough syrups);
- ii. Oral rehydration solutions;
- iii. Milk in any presentation;
- iv. Beverages prepared in restaurants and other places such as bars and cinemas (as these cases are considered as a service provision and not a sale and thus are not regulated by the IEPS).’

Therefore, the tax is relevant to soft drinks, ‘flavored waters, teas, sweetened dairies, energy drinks with added sugar and excludes beverages with artificial sweeteners and 100% juices.’³²¹

The application of the tax has resulted in an 11% price growth in taxed carbonated SSBs. Taxed non - carbonated SSBs (flavored water, juices, energy drinks) grew slightly smaller in percentage.³²²Further price increases were changed since non-carbonated drinks are costly, when compared to carbonated drinks.³²³

4.3 The Impact of the Tax

SSB taxes have been positive in growing both the economy and generating tax income by the price of the goods taxed.³²⁴There has similarly been indications that the tax has caused a

³²⁰ Ibid.

³²¹ Ibid at 284.

³²² Ibid (Please note the source does not give the actual figure).

³²³ Ibid at 7.

³²⁴ Ibid at 288.

reduction in consumption.³²⁵ Nevertheless, there is still an argument about the actual impact of the tax and its effects on health.³²⁶

The price plan of SSBs in Mexico prior to and after the tax showed that the price changes amongst opposing brands of beverages and types of soft drinks were high before the economic rule was passed, and the tax growth was not sufficient to move the whole price plan up.³²⁷ It was realistic to assume that customers could buy inexpensive types of the taxed goods at almost pre-tax levels.³²⁸

The impact of the tax, for example, on drinks being bought from stores in Mexico in respect of the excise tax on SSBs, was an observational investigation, illustrated the following, which had several methodological and other limitations.³²⁹

For example:

- 1) it was an observational study so causation could not be established;
- 2) rural populations were ignored, and traditional stores were likely underrepresented (as were the working poor or very poor) since the study was based on Nielsen panel data covering 53 cities each with 50,000 or more residents;
- 3) the data was based on purchases and not consumption; and
- 4) the study was not controlled for other environmental factors (e.g., information campaigns that could have had a bigger impact than the actual tax).

The above study was to assess the post-tax trends in buying and whether it was suggestively dissimilar from the pretax trend.³³⁰ The results to which the study answers and limits are relative to the buying of taxed drinks that was reduced ‘by an average of 6% (–12 mL/capita/day) and further reduced at a growing rate up to a 12% which resulted in a decline by December

³²⁵ Ibid.

³²⁶ Ibid.

³²⁷ Ibid.

³²⁸ Ibid.

³²⁹ Colchero, M. A., B. Popkin, J. A. Rivera-Dommarco, S. Wen Ng. 2016. “Beverage Purchases from Stores in Mexico under the Excise Tax on Sugar Sweetened Beverages: Observational Study.” Available at <http://dx.doi.org/10.1136/bmj.h6704>, accessed on 20 April 2018.

³³⁰ Ibid.

2014.’³³¹‘All three socioeconomic groups reduced purchases of taxed beverages, but reductions were higher among the households of low socioeconomic status, averaging a 9% decline during 2014, and up to a 17% decrease by December 2014 compared with pretax trends.’³³²Buying of untaxed drinks was 4% (36 mL/capita/day) higher which was mostly motivated by a growth in buying of bottled water.³³³

Therefore, it could be shown that tax on sugar SSBs related to decreases in buying of taxed drinks and the growth in buying of untaxed drinks. However, constant observation is required to identify customers’ long-term possible replacements and further, the health consequences in Mexico.

More recently, Colchero estimated that there were minor effects for the tax on SSBs, the study had considered that the per-capita intake of sodas would decrease 5.5% through the first year and 9.7% through the second year once the tax was implemented.³³⁴

Further another study on the consequences of SSB tax in Mexico illustrated a time sequence method and further manufacturing figures was used to evaluate the effect on consumption of beverages in relation to the tax imposed in Mexico. ‘The tax caused a price increase of 12.8% and reduced per-capita consumption about 3.8%.’³³⁵

Figure 1 below depicts once-a-month averages of day-to-day per-capita soda beverages intake in Mexico through the past 10 years. It must be noted that during this time, day-to-day per-capita intake of soda beverages in Mexico was ‘above 0.35 liters (about a 12 ounce can of a soda beverage).’³³⁶Additionally, the intake displayed huge variations within the year which was dependent on weather circumstances. It naturally pushes up during the hotter months and reduces during the colder months.³³⁷For most years, January was the month in which intake was the least.

³³¹ Ibid.

³³² Ibid.

³³³ Ibid.

³³⁴ Colchero, M. A., Rivera-Dommarco, J., Popkin, B. M., & Ng, S. W. (2017). ‘In Mexico, Evidence of Sustained Consumer Response Two Years After Implementing A Sugar-Sweetened Beverage Tax.’ available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5442881/> accessed on 12 February 2019.

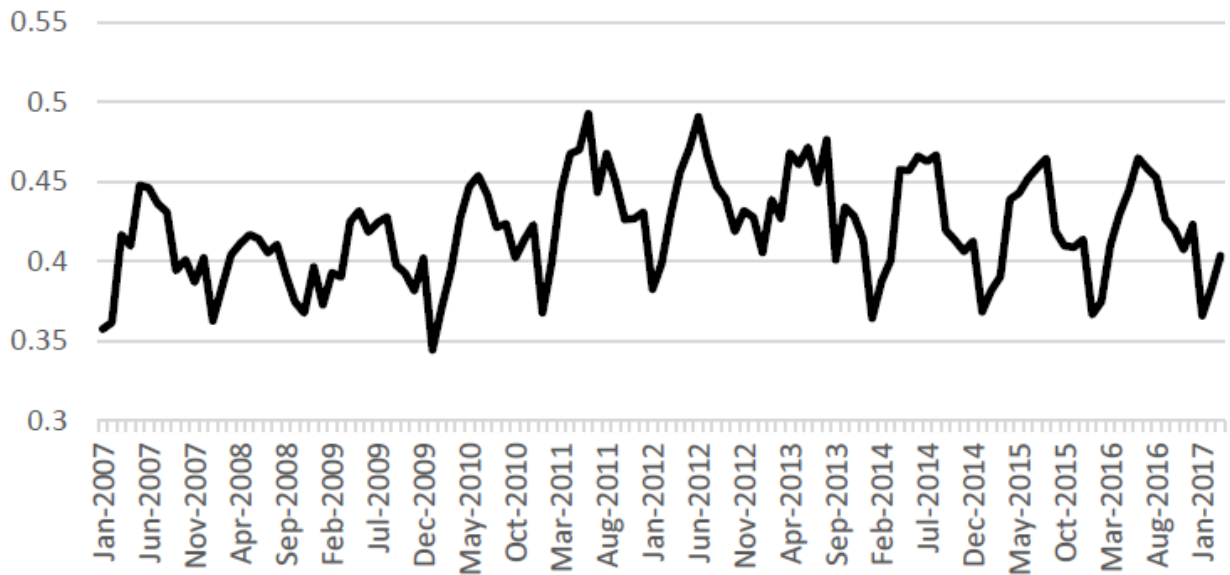
³³⁵ Arteaga, J.C, Flores D, & Luna E. (2017). ‘The effect of a soft drink tax in Mexico: a time series approach, available at <https://mpra.ub.uni-muenchen.de/80831/>, accessed on 12 February 2019.

³³⁶ Ibid.

³³⁷ Ibid.

In contrast, the month in which intake was at its peak was between May and August which was conditional on the year.³³⁸

Figure 1. Average day-to-day intake of soda beverages per capita in Mexico in liters.³³⁹



Given that intake displays large variations within the year along with some variations throughout the years, it was very hard to notice the result of the tax by merely viewing the information.³⁴⁰ ‘For example, the highest per-capita intake of soda beverages in the sequence took place in the summer of year 2011.’ The hotter months there was an increase of the intake of soda beverages which had fallen year after year.³⁴¹ The decrease in intake was ongoing, a few years before the tax was established which is displayed in Figure 1.

Therefore from the above analysis it must be noted from the observational study, the use of a time sequence and manufacturing data in relation to the tax it has shown a reduction in the purchase of SSBs and further shows that the intake of beverages was on the decline before the tax actually was enacted, therefore depicting a twofold approach to the tax.

4.4 Conclusion

³³⁸ Ibid.

³³⁹ Ibid.

³⁴⁰ Ibid.

³⁴¹ Ibid.

From the above analysis, it appears that there is no constant and unquestionable indication on the effectiveness of tax to decrease obesity. In January 2014, the government of Mexico levied a tax on SSBs. While the Mexican government indicated the tax was implemented to decrease obesity, it does not appear to have made a meaningful change in the caloric intake of the Mexican population.³⁴²

Although the study above indicates that the buying of taxed drinks lowered by an average of 6% in 2014, it is significant to note that the calorie intake from beverages had declined only slightly, between two and six fewer calories per day, in a diet of more than 3000 calories per day in Mexico. This is a daily caloric decrease of less than one half of one percent.³⁴³

Thus, Mexico appears to be facing a key health and fiscal problem owing to the growing number of adults and children suffering from obesity.³⁴⁴ The nation still has the second largest adult obesity percentage amongst OECD countries and the tax on SSBs is yet to be successful.³⁴⁵

In relation to the above, South Africa recently implemented sugar tax on SSBs, and it remains to be seen if there is any evidence that the tax works to decrease obesity percentages and helps to lower other diseases connected to sugar intake. Obesity data in South Africa is worsening by the year, together with alarming sugar intake trends amongst children. ‘The National Health and Nutrition Examination Survey found that 66% of learners buy sugary drinks at least twice a week, consuming 40g more sugar than the recommended maximum daily limit for children.’³⁴⁶

Further, South African ‘government hospitals are stated to be receiving around 25 000 patients for high blood pressure and about 10 000 diabetic patients every month.’³⁴⁷ Therefore, we can hope South Africa can improve the health and the life span of its citizens, and in particular the most poor citizens in the country, in order to counter obesity and other health related diseases.³⁴⁸

³⁴² Ibid at 305.

³⁴³ Ibid at 329.

³⁴⁴ Ibid.

³⁴⁵ Ibid.

³⁴⁶ Skenjana, S, “ SA should be sweeter on the sugar tax”, 4 March 2019, available at <https://www.fin24.com/Opinion/sifiso-skenjana-sa-should-be-sweeter-on-the-sugar-tax-20190304>, accessed on 12 August 2019.

³⁴⁷ Ibid.

³⁴⁸ Ibid.

The next chapter will discuss the essential comparisons between the three countries and conclude the main research question.

5. CHAPTER 5 - CONCLUSION

5.1 Conclusion

It remains evident from the above analysis of the taxation on SSBs that there is yet to be any conclusive evidence to illustrate the curb of obesity or decrease of any non-communicable diseases related to sugar. In each jurisdiction discussed above, the studies have revealed that the consequences of a tax on sugar products has had little or no effect on reducing obesity. Therefore, there will be a need for different processes or approaches for the tax to be effective.³⁴⁹ The application of the tax has added to many adverse effects, such as growing unemployment, increasing inflation, cross-border spending, protests, and court cases, or does it remain that such tax is implemented to increase revenue for Government spending.³⁵⁰

Firstly, in Denmark the fat tax was unsuccessful in reducing obesity with only a slight percentage decrease. Further there was no sign that the SSB tax, which was in place since the 1930s successfully kept obesity controlled.³⁵¹

Secondly, in Illinois, Cook County studies revealed that sugar tax on SSBs was enacted to decrease obesity and grow revenue but despite this the public was not pleased and instituted a court action based on the constitutionality of the law and the effects on small to medium sized businesses and the working class.³⁵²

Thirdly, in Mexico it was apparent that only a slight percentage of day-to-day caloric consumption was credited to SSBs, therefore the application of the tax had been unsuccessful in

³⁴⁹ Ibid at 166.

³⁵⁰ Ibid.

³⁵¹ Ibid.

³⁵² Ibid.

reducing sugar consumption and obesity, as only a low percentage of day-to-day caloric consumption is attributed to SSBs.³⁵³

It is submitted that the application of sugar tax in South Africa as a new legislation may have a different outcome to the other countries discussed above. Challengers of the HPL state that the tax is ‘regressive in nature (heavier impact on the poor) and that negative health externalities are not caused by excessive sugar usage but factors such as malnutrition and unhealthy diets.’³⁵⁴ Further, lower income citizens would not be able to purchase healthy food.³⁵⁵ In December 2018, ‘the tax had raised 2.3 billion rand (nearly \$160 million), which the government planned to use on public health campaigns.’³⁵⁶ This shows that there is a rise in tax revenue and campaigns are yet to be seen to be initiated by government. ‘There is also a risk that cheaper sugar-sweetened soft drink alternatives would be manufactured, meaning that soft drink consumption would not decrease and obesity rates would continue to increase.’³⁵⁷

Recommendations in assisting the tax in attaining its aim of reducing obesity are the following:³⁵⁸

- Teaching societies the harmful consequences of obesity and how a healthier life can be attained with a change in diet and physical exercise.
- The publicizing of inspiring advertisements representing the harmful consequences of obesity and high sugar intake.
- Stickers on sodas that specify that beverages are costly due to sugar tax. Producers of such beverages should be obligated to print stickers to indicate the negative effects of the sugar contained in a beverage.
- Controlling SSBs advertising as is done with alcoholic drinks.

³⁵³ Ibid.

³⁵⁴ Ibid.

³⁵⁵ Dr Schneider, F, “Health Levy or Sugar Tax: Is the Pain Worth the Gain?”, available at <https://www.thesait.org.za/news/450529/Sugar-Tax.htm>, accessed 10 January 2020.

³⁵⁶ Ibid at 273.

³⁵⁷ Ibid at 349.

³⁵⁸ Ibid.

- Consumption of water as a better and healthy substitute must be endorsed through schooling further Government should guarantee that all South Africans can obtain drinkable water.
- Healthy food choices which is fruit and vegetables must be funded by Government in order to inspire healthy consumption.

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