

National Treasury
Republic of South Africa
Tax Consultation - Vaping Products
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[Africa Harm Reduction Alliance \(AHRA\)](#) Response to the "Taxation of electronic nicotine and non-nicotine delivery systems, A Discussion Paper", December 2021 By the National Treasury, Republic of South Africa

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1. Introduction

The undersigned experts of the Africa Harm Reduction Alliance (AHRA) wish to express their appreciation to the National Treasury for the opportunity to comment on the "Taxation of

We are regularly concerned in our professional lives with combatting the tremendous burden of disease and mortality borne by South African citizens due to combustible tobacco products. We fully support the World Health Organization, the African Union, and the South African government and public and private organizations engaged in smoking cessation and reducing the great harm to individual and public health caused by combustible tobacco products.

From this perspective, and based on the strong evidence coming from the biological, medical, and behavioral sciences, we wish to state unequivocally that any risk-undifferentiated tax (including an excise tax) on Electronic Nicotine Delivery Systems (ENDS) will (1) seriously harm South African public health, (2) create far more expenses for the government and SA citizens than any possible tax could offset, and (3) be wholly unethical.

As outlined below, we argue that ENDS are not tobacco products, do not rely on combustion, and do not contain the level of toxicants contained in combustible cigarettes. Furthermore, this nascent product category contains great public health potential as a quitting or harm reduction tool in combustible tobacco-related chronic disease and premature mortality. It would be wise to study the impact of ENDS on individual and population health and the economics of the category before any considerations on taxation are made. If anything, it could be argued that ENDS should be subsidized rather than be subject to additional duty.

2. Recommendation to the National Treasury

We strongly argue that:

- ENDS should be clearly separated from cigarettes, as they are not tobacco products.
- No tax, or at the most clearly risk-differentiated taxes should be levied on ENDS.
- More studies are needed on the impact of ENDS on individual and population health, and on the SA economy
- May we please request for an online or in person opportunity to present relevant evidence for you, to substantiate risk-based taxation of reduced risk products.

3. Rationale for the recommendation

3.1 Harm to South African public health

All of the scientific evidence today, across a wide range of sciences and carried out by leading government or university-funded researchers, indicates that ENDS are far less harmful than combustible tobacco products. Placing any tax on ENDS will make them relatively less attractive to smokers, discouraging switching to these lower risk alternatives. This would maintain the smoking rate, and thus directly contribute to a greater incidence of serious diseases (including cancer) among SA citizens than would otherwise be the case, resulting in a far lower quality of life and premature death. Despite all the warnings,

campaigns, and valiant efforts of researchers and the medical community over the past 20 years, a large proportion of the SA population continues to use combustible tobacco products, primarily cigarettes. Nearly all want to quit and have wanted to quit for a long time. Many have repeatedly failed smoking cessation programmes, including those that use pharmaceutical products. Alternative nicotine delivery systems, including ENDS, are essential alternatives to combustible tobacco products, with the potential to replace them entirely, hence dramatically improving public health. This will be an improvement, not just for those SA citizens who have continued to use combustible tobacco products, but for all European citizens.

3.2 Economics

The economic cost of the use of combustible tobacco products by SA citizens is staggering. No possible taxation levied on ENDS can possibly offset these costs. Any hindrance to switching from combustible to far less harmful nicotine products will continue to bring enormous costs to the SA government and every SA citizen. Taxing ENDS would be fiscal folly.

3.3 Ethics

It is profoundly unethical and against the fundamental South African values of health and equity to levy taxes on ENDS. By far, the largest percentage of SA citizens that now continue to smoke belong to the lower economic and poorer classes. Their voices are not heard in Pretoria and Cape Town as easily as those of the wealthier classes, who will largely be excluded from this taxation. By taxing these products, the SA government is expressly targeting the poorest SA citizens and condemning them, not only to an increased economic burden, but also to lives rampaged by further serious disease, lower quality of life, and premature death. Additionally, the most important reason for using ENDS, as reported by the users, is to quit smoking or reduce smoking consumption. Millions of SA citizens have reported that ENDS have helped them quit smoking. It is not only paradoxical but also counterproductive from a public health perspective to tax a product used as a substitute for smoking.

The National Treasury and Department of Health should send a clear message that it fully supports the World Health Organization's campaign against tobacco and that it fully stands on the side of public and citizen health, rather than supporting myopic attempts to add to government treasury chests largely at the expense of the poor.

4. Supporting Arguments

4.1 Fundamental differences between cigarettes and ENDS

ENDS create aerosol by using electrical current to evaporate 'e-liquid', a mixture of nicotine and flavourings dissolved in an inert solvent. ENDS come in a huge variety of designs, and the liquids in thousands of flavour and nicotine strength combinations. While the nicotine in e-liquids is usually derived from tobacco, as is nicotine in pharmaceutical nicotine products, this is where any similarity to traditional tobacco products ends. Nicotine-free e-liquids are also available.

The tobacco and nicotine product market is varied and complex, and may be categorized in a

number of ways, including in terms of product composition and potential for harm. What is clear is that ENDS are a new product category and do not resemble conventional combustible tobacco products.

Products may be categorized as containing tobacco or not. Nicotine patches (regulated as a medicinal product), nicotine inhalers (prescribed or purchased over the counter), and ENDS (consumer goods/ medicinal product) DO NOT contain tobacco. Combustible cigarettes, loose tobacco and tobacco heating products (reconstituted tobacco in pod or stick format) contain tobacco and thus constitute a distinct category.

An alternative, and from a health perspective, more interesting way to categorize these products is to consider them in terms of risk. The greatest harms from smoking come from the products of combustion; when the potential harms of tobacco and nicotine products are compared on a continuum, there is a clear distinction between combustible tobacco products (cigarettes, cigars etc.) and products not involving combustion.¹ The difference between products is so great, that ENDS are considered to be at least 95% safer than combustible cigarettes, a position held by Public Health England² and the UK's Royal College of Physicians.³

The health hazards associated with combustible cigarettes are well known, and for the sake of public health, governments world-wide have implemented measures to discourage smoking. The Framework Convention on Tobacco Control⁴ promotes, amongst other things, the use of fiscal measures to discourage smoking of combustible tobacco and, consistent with this approach, the European Union levies excise duty on tobacco products.

Smokers continue to smoke because of their dependence on nicotine, but they die from the tar⁵. ENDS, therefore, have the potential to play an important public health role in harm reduction, as they are able to deliver nicotine to users without the other risks associated with smoking.

4.2 Externalities

A common justification for targeting certain products or services with a tax over and above general sales taxes is that they impose costs on society that are not borne wholly by the consumer (i.e. are not 'internalized') but are borne by society more widely (known as 'negative externalities'). Examples of negative externalities include the congestion to which rush hour commuters contribute on the roads, pollution generated from the burning of fossil fuels and the health costs caused by excessive alcohol drinking.

However, externalities can be positive too. For example, if bicycle travel gets people fit and encourages them to travel less by car, individuals will become healthier (imposing less health costs on society) and pollution will be reduced. It is for these reasons that certain goods and services are not taxed or even subsidized by some governments; from books to sporting equipment. It also explains why a number of Member States have spent vast

¹ Nutt DJ, Phillips LD, Balfour D, Curran HV, Dockrell M, Foulds J, Fagerstrom K, Letlape K, Milton A, Polosa R, Ramsey J, Sweanor D. Estimating the harms of nicotine-containing products using the MCDA approach. *European Addiction Research* 2014; 20(5): 218-225

² Public Health England (2015) E-cigarettes: an evidence update https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/457102/E-cigarettes_an_evidence_update_A_report_commissioned_by_Public_Health_England_FINAL.pdf accessed 25th January 2017

³ Royal College of Physicians (2016) Nicotine without smoke: Tobacco harm reduction <https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction-0> accessed 25th January 2017

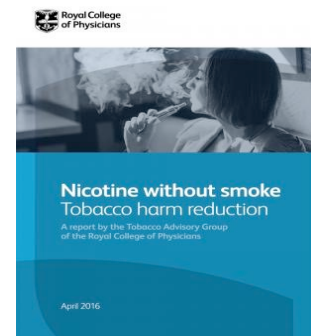
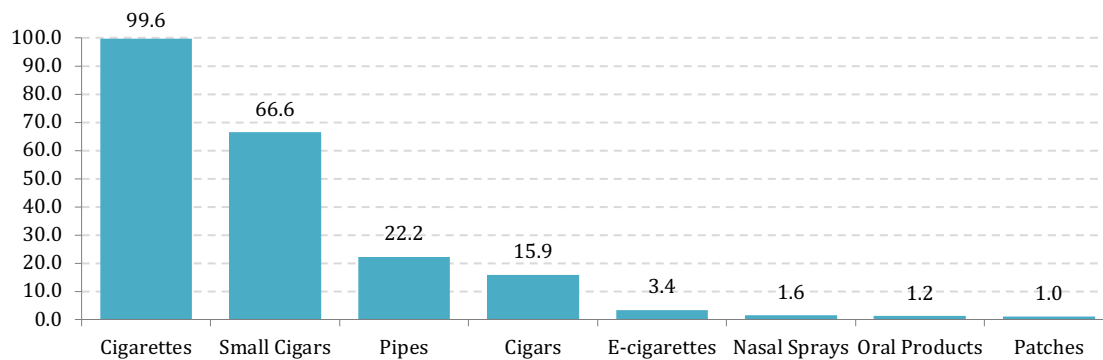
⁴ World Health Organization (2003) WHO Framework Convention On Tobacco Control. <http://apps.who.int/iris/bitstream/10665/42811/1/9241591013.pdf?ua=1> accessed 25th January 2017

⁵ Russell MJ. Low-tar medium nicotine cigarettes: a new approach to safer smoking. *BMJ* 1976;1:1430-3.

amounts of money on staging the Olympic Games; because the costs of doing so are more than compensated for the positive effects on society.

Third party research indicates that ENDS are significantly less hazardous to consumers than combustible tobacco. In a recent study, Nutt *et al.* modelled a risk continuum of different nicotine delivery products and located different products a scale of 0 to 100, with 100 being the most harmful and 0 the least (no harm). The study found that e-cigarettes (ENDS) earn a relative harm score of less than 5, whereas cigarettes have a score of 99.6.⁶

Figure 1 - the relative risk of different nicotine delivery products



A number of other studies on the relative harm of ENDS compared to smoking tobacco have found that ENDS are significantly less hazardous than traditional tobacco products. For example, a Royal College of Physicians' 2016 report concluded that: "... ENDS are likely to be beneficial to UK public health. Smokers can therefore be reassured and encouraged to use them, and the public can be reassured that ENDSs are much safer than smoking".⁷

A study by Public Health England found that ENDS were around "95% safer" compared to combustible tobacco. The authors commented: "... ENDS are not completely risk free but when compared to smoking, evidence shows they carry just a fraction of the harm."⁸

⁶ Nutt DJ, Phillips LD, Balfour D, Curran HV, Dockrell M, Foulds J, Fagerstrom K, Letlape K, Milton A, Polosa R, Ramsey J, Sweanor D. Estimating the harms of nicotine-containing products using the MCDA approach. *European Addiction Research* 2014; 20(5): 218-225

⁷ Royal College of Physicians (2016) Nicotine without smoke: Tobacco harm reduction <https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction-0> accessed 25th January

⁸ Public Health England (2015) E-cigarettes: an evidence update https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/457102/E-cigarettes_an_evidence_update_A_report_commissioned_by_Public_Health_England_FINAL.pdf accessed 25th January 2017



“There are concerns that e-cigarettes will increase tobacco smoking by renormalising the act of smoking, acting as a gateway to smoking in young people, and being used for temporary, not permanent, abstinence from smoking. To date, there is no evidence that any of these processes is occurring to any significant degree in the UK. Rather, the available evidence to date indicates that e-cigarettes are being used almost exclusively as safer alternatives to smoked tobacco ...”

A study by Goniewicz *et al.*, found that ENDS vapour might contain traces of toxic metals such as cadmium, nickel and lead, which were similar to environmental levels, as well as potentially toxic aldehydes⁹. However, the level of these substances were between 9 to 450 times lower than those in combustible cigarettes and, in many cases, the levels were comparable to trace amounts present in medicinal nicotine inhalers. They said that their findings were “...consistent with the idea that substituting tobacco cigarettes with e-cigarettes may substantially reduce exposure to selected tobacco-specific toxicants.”

“... the hazard to health arising from long-term vapour inhalation from the e-cigarettes available today is unlikely to exceed 5% of the harm from smoking tobacco.”

The authors also commented “We believe that e-cigarettes will prove to be much less harmful than

smoking – so for a smoker to switch from tobacco to e-cigarettes will bring significant health benefits...”

Cancer Research UK have stated that: “...while nicotine is addictive and not entirely harmless, e-cigarettes do not contain the extensive cocktail of cancer-causing drugs found in tobacco.” They consider that while the long term health consequences are uncertain, they are almost certainly safer than tobacco cigarettes.¹⁰ Cancer Research UK also comments that: “...the doses of nicotine delivered by ENDS are extremely unlikely to cause significant short or long-term adverse effects.” They suggest that it is important that regulation “... does not stifle the development of e-cigarettes nor make accessing them more difficult to smokers ...”

⁹ Goniewicz ML, Knysak J, Gawron M, *et al.* Levels of selected carcinogens and toxicants in vapour from electronic cigarettes *Tobacco Control* 2013. doi: 10.1136/tobaccocontrol-2012-050859

¹⁰ Cancer Research UK (2016) Policy Briefing Electronic Cigarettes http://www.cancerresearchuk.org/sites/default/files/e-cigarette_briefing_nov_2016_final.pdf accessed 15th February 2017

The World Health Organization (WHO) has acknowledged the lower risk of ENDS compared to smoking tobacco, but has expressed reservations about the benefits of ENDS out of a concern that their use sometimes reduces smoking rather than encouraging quitting. In 2014, the European Commission conducted a study of European ENDS users; current ENDS use in the European Union appears to be largely confined to current (63.0%) or former (29.7%) smokers, while for people who have never smoked use is much lower (7.3%).¹¹ Thus while it is true that there are many dual users of tobacco products and ENDS, there are a substantial number of ENDS users who are ex-smokers.

The health benefits from this are potentially huge. In its recent FCTC paper, the WHO conceded: “If the great majority of tobacco smokers who are unable or unwilling to quit would switch without delay to using an alternative source of nicotine with lower health risks, and eventually stop using it, this would represent a significant contemporary public health achievement.”¹²

Although not all ENDS users wholly quit their use of combustible tobacco, those that became dual users of smoking tobacco and ENDS significantly reduced the number of cigarettes consumed per day. In a survey of 19,414 ENDS users from 2014, 81.0% had completely substituted ENDS for cigarettes (former smokers) while current smokers had reduced consumption from 20 to 4 cigarettes per day.¹³ There is little doubt that reducing the use of combustible tobacco will deliver health benefits – that is, positive externalities. The vast majority of ENDS users are either ex- or current smokers, indicating that ENDS are not a gateway to people smoking combustible tobacco, but rather the reverse. That is why the Royal College of Physicians commented in their 2016 report: “There are concerns that e-cigarettes will increase tobacco smoking by renormalizing the act of smoking, acting as a gateway to smoking in young people, and being used for temporary, not permanent, abstinence from smoking. To date, there is no evidence that any of these processes is occurring to any significant degree in the UK. Rather, the available evidence to date indicates that e-cigarettes are being used almost exclusively as safer alternatives to smoked tobacco ...”

The evidence is overwhelming that: ENDS encourage people to switch from combustible tobacco to vaping, vaping is significantly less harmful than smoking, and that ENDS are not a gateway to smoking tobacco, but a path away from it for an increasing number of people. Returning to the seminal Nutt study, the harm score for cigarettes was 99.6, compared to 3.4 for ENDS. That means that every time someone chooses to consume an ENDS rather than a cigarette, there is a reduction in harm equivalent to 96.2 on the Nutt scale. Since the vast majority of people who vape have made the decision to do so instead of smoking a cigarette, the benefits of ENDS consumption have already been substantial. The harm associated with ENDS consumption is negligible, and based on this evidence, it would be hard to justify an excise duty on ENDS purely on the grounds of compensating for externalities.

¹¹ Farsalinos, K. E., Poulas, K., Voudris, V., and Le Houezec, J. (2016) Electronic cigarette use in the European Union: analysis of a representative sample of 27 460 Europeans from 28 countries. *Addiction*, 111: 2032–2040. doi: 10.1111/add.13506.

¹² World Health Organization (2016) Report : Electronic Nicotine Delivery Systems and Electronic Non-Nicotine Delivery Systems (ENDS/ENNDs) http://www.who.int/fctc/cop/cop7/FCTC_COP_7_11_EN.pdf

¹³ Farsalinos, K. E., Romagna, G., Tsiapras, D., Kyrzopoulos, S., & Voudris, V. (2014). Characteristics, Perceived Side Effects and Benefits of Electronic Cigarette Use: A Worldwide Survey of More than 19,000 Consumers. *International Journal of Environmental Research and Public Health*, 11(4), 4356–4373. <http://doi.org/10.3390/ijerph110404356>

4.3 Evidence on Paternalism – no strong support for taxing ENDS

Because of the strong evidence on externalities, a number of organizations, including some opposed to the consumption of combustible cigarettes, have come out in support of ENDS. They include Cancer Research UK, ASH and Public Health England. Indeed, Nutt *et al.* in their study recommended that: "...attempts to switch to non-combusted sources of nicotine should be encouraged as the harms from these products are much lower." In a landmark policy move, the UK Government announced in December 2015 that it intended to prescribe e-cigarettes on the NHS. Doctors are now able to hand out licensed varieties on prescription to smokers who want to quit in 2016.

Because virtually all people who consume e-cigarettes have chosen to do so instead of consuming combustible tobacco, there are, in fact, substantial positive externalities associated with almost every single e-cigarette that is used. It could be argued, given this, that e-cigarettes should be subsidised, not subject to an additional duty, as a consequence. There are instances – for example, in certain markets for alcohol and fuel – in which governments have taxed newer, perceived lower risk, products at a low rate in the early years of their lifecycle to encourage consumer adoption (and switching to them from products perceived as being more hazardous). In some cases, this preceded a policy of increasing tax rates gradually over time when the product category has become established. A similar tax strategy could be employed for e-cigarettes. In doing so, this would enable consumer switching from combustible tobacco to e-cigarettes and leave open the possibility of raising tax revenues in the future when the category has matured.

4.4 ENDS as smoking cessation tool

In public health and tobacco control, great emphasis is placed on smoking cessation. When evaluating the merits of ENDS, public health key opinion leaders will most often consider the products' potential role in cessation. There is now growing evidence that ENDS use is associated with this. A report funded by the Canadian Institutes of Health Research summarizes a literature review on the effectiveness of ENDSs for smoking cessation.¹⁴ In particular, two recent empirical studies show the effects of restrictions on access to ENDS on the use of traditional tobacco. Furthermore it demonstrates increased rates of smoking:

- The researchers conducted regression analysis comparing the smoking rates of adolescents in US states with and without bans on vapour device sales to youth. Friedman (2015) calculated the rates of decline in tobacco use of 12-17 year olds (and other age groups) from 2003 to 2013, and states with bans had a significant (adjusted R-square = 0.922) 0.9% smaller decline in 12 – 17 year olds smoking rates compared to states without a ban. The youth age sale bans counteracted 70% of the downward trend in youth smoking rates in the prior two years
- A 2016 regression analysis by Pesko, Hughes, and Faisal (2016) of the 2017- Clearing the Air: A systematic review 23 2013 US Youth Risk Behavior Survey also found similar figures, with a 0.8% increase in regular cigarette use by youth in states with vapour device age sales restrictions compared to states without them.¹⁵

¹⁵ Renée O'Leary, Marjorie MacDonald, Tim Stockwell, and Dan Reist, Clearing the Air: A Systematic Review on the Harms and Benefits of E-cigarettes and Vapour Devices (Victoria, BC: Centre for Addictions Research of BC), January 2017, p.

O’Leary *et al.* conclude that “there is encouraging evidence that vapour devices can be at least as effective as other nicotine replacements as aids to help tobacco smokers quit.”

Recent survey results reported by the European Commission showed that almost half (48 percent) of smokers and former smokers who are currently using ENDSs reported either quitting (35.1%), temporarily quitting (11.6%), or reducing smoking (32.2%percent).¹⁶ These results varied considerably by country. The report also notes, “The most common reason to start using e-cigarettes is to reduce tobacco use or stop smoking. - Europeans who have used e-cigarettes are likely to have done so to try to stop or reduce their tobacco use. Two-thirds said stopping or reducing their use of tobacco was an important factor (67%).”¹⁷ In addition, the European Commission report observes that older Europeans cited the possibility of stopping or reducing smoking as an important or very important factor more often than younger survey respondents: “57% of 15-24 year-olds say that this was an important factor, compared with 67% of 25-39 year-olds, 74% of 40-54 year-olds, and 73% of those aged 55+.”¹⁸

These studies confirm the growing evidence-base for the view that e-cigarettes are less harmful than traditional combustible tobacco products and are often used in attempts to quit smoking cigarettes

5. Conclusions

We acknowledge that it is a challenge for the National Treasury to find a good balance in the regulation and possible taxation of E-cigarettes, best summarized by The Royal College of Physicians’ report:

“A risk-averse, precautionary approach to e-cigarette regulation can be proposed as a means of minimising the risk of avoidable harm, e.g. exposure to toxins in e-cigarette vapour, renormalisation, gateway progression to smoking, or other real or potential risks. However, if this approach also makes e-cigarettes less easily accessible, less palatable or acceptable, more expensive, less consumer friendly or pharmacologically less effective, or inhibits innovation and development of new and improved products, then it causes harm by perpetuating smoking. Getting this balance right is difficult.”¹⁹

However, as public health and medical leaders we strongly encourage the National Treasury to refrain from taxing vaping products, or at the most, clearly differentiate tax categories, based on risk to individual and population health. The evidence is already compelling that ENDS can reduce harm in individual and population health, in South Africa and elsewhere.

available at www.uvic.ca/research/centres/carbc/assets/docs/report-clearing-the-air-review-exec-summary.pdf (accessed February 1, 2017).

¹⁶ European Commission, Directorate-General for Health and Food Safety, Attitudes of Europeans towards Tobacco and Electronic Cigarettes, Special Eurobarometer 429 (May 2015).

¹⁷ *Ibid.*, 94.

¹⁸ *Ibid.*, 100.

¹⁹ Royal College of Physicians (2016) Nicotine without smoke: Tobacco harm reduction <https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction-0> accessed 25th January 2017 (Section 12.10 page 187)

6. Background of authors

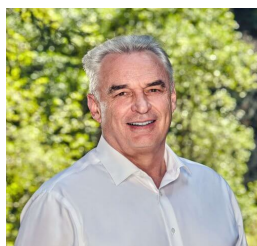


BIOGRAPHY: DR KGOSI LETLAPE

Physician and President: Africa Harm Reduction Alliance (AHRA)

Dr Kgosi Letlape MD FCS (Ophth) SA, MBBS is an ophthalmologist by training, and a past President of the World Medical Association (WMA).

He is the current President of the Africa Medical Association (AMA). Dr Letlape is the current President and co-founder of the Africa Harm Reduction Alliance (AHRA), which aims to create awareness and educate people about the need to reduce harm and promote well-being. Other positions Dr Letlape has held include serving as past President of the Health Professions Council of South Africa (HPCSA) and former Chairman of the Board of the South African Medical Association (SAMA). In 1988, he was admitted as a fellow of the College of Surgeons of South Africa in 1988, and as a fellow of ophthalmology of the Royal College of Surgeons of Edinburgh. From 2002 to 2013, he served as the Executive Director of the Tshepang Trust. This not-for-profit organisation was established at the behest of the late South African president Nelson Mandela. It received funding from the US Presidential Emergency Program for AIDS relief – via the Centers for Disease Control and Prevention (CDC). The Trust collaborated with state hospitals, pioneering the provision of treatment for HIV and AIDS patients. Dr Letlape is an outspoken advocate of universal access to health care and harm reduction.



BIOGRAPHY: DR DELON HUMAN

Physician and CEO: Africa Harm Reduction Alliance (AHRA)

Dr Delon Human MBChB, MPraxMed, MFGP, DCH, MBA is a respected international business leader, published author, health care consultant and lecturer. Previously, Dr Human served as secretary-general and CEO of the World Medical Association, secretary-general of the International Food and Beverage Alliance and adviser to three WHO Directors-General and to UN Secretary-General Ban Ki Moon on global public health strategies.

For many years, he has been advocating for a change in public health thinking, – from the abstinence-only approach, to a more pragmatic and expanded use of nicotine-delivery systems – as a substitute or cessation tool for smoking. Dr Human authored the book *Wise Nicotine* and holds qualifications in medicine, paediatric health and business studies.

7. Terminology

- **ENDS:** Electronic Nicotine Delivery Systems, of which electronic cigarettes are the most common prototype, are devices that do not burn or use tobacco, but instead vaporize a solution the user then inhales. The main constituents of this “e-liquid”, in addition to nicotine when nicotine is present, are propylene glycol, with or without glycerol and flavouring agents. E-liquids and emissions from ENDS may contain other chemicals, some of them considered to be toxicants.

- Combustible tobacco products: Mainly combustible cigarettes, but also other products such as roll-your-own tobacco, cigars and pipe tobacco
- Excise duty: Any tax levied per unit sold or as a proportion of the retail price for a specific group of products

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