Fair and Appropriate Tobacco Taxation

National Smokeless Tobacco Company Pre-Budget Submission to the Government of Alberta

Executive Summary

National Smokeless Tobacco Company (NSTC) is filing a pre-budget submission proposing that the Government of Alberta reform and modernize its tobacco tax categories. The province’s current tobacco tax category system lacks precision and fairness. NSTC supports fair and appropriate taxation of tobacco products; however, under Alberta’s current tobacco tax categorization system, smokeless tobacco products are faced with the burden of being taxed in the same manner as cigarette tobacco, a completely unrelated and incongruent product.

With significant tax rate disparities existing between different tobacco products, the Government of Alberta risks the unintended consequence of encouraging the use of cigarettes over non-combustible tobacco products. The provincial tax collected on a standard 34 gram can of smokeless tobacco is $12.75, compared to just $6.25 on a pack of premium 25-count cigarettes. NSTC’s standard format – a 34 gram can – sells for approximately $28.99 in Alberta, or more than twice the price of a package of premium cigarettes. The tax differential between smokeless tobacco and cigarettes, in addition to not representing tax parity, means that it is much cheaper for individuals to purchase cigarettes than to purchase non-combustible tobacco products.

From a policy standpoint, this outcome should be of concern to the Government of Alberta. There is an overwhelming scientific, medical and public health consensus that the consumption of non-combustible forms of tobacco is substantially less hazardous to health than smoking cigarettes. This consensus is based on extensive scientific research and evidence and is shared by many global public health organizations including the World Health Organization, the European Commission’s Scientific Committee on Emerging and Newly Identified Health Risks and the United Kingdom’s Royal College of Physicians.

In this submission, NSTC is proposing that the Government of Alberta reform its tobacco tax categories to more accurately reflect the current tobacco retail market in the province. The result would be a modern tobacco tax system that would provide the government with the ability to more accurately categorize tobacco products currently available for sale in Alberta, as well as any new products that may enter the marketplace in the future. In addition, by refining tobacco tax categories based on unique products’ qualities, and by applying distinct tax rates to each, the government would have the flexibility to adopt a risk-based approach to tobacco taxation.

About NSTC

NSTC is the Canadian distributor of smokeless tobacco products manufactured under the brand names Copenhagen and Skoal. NSTC’s products are used orally and are not smoked. In

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1 Sources: NSTC SRP of $28.99, January 2017; NSTC Alberta cigarette pricing survey (December 2016); Premium 25-pack average price $13.41, plus GST
Alberta, these products are available in 15, 23, and 34 gram formats; the majority of NSTC’s sales volume is in the 34 gram format. Smokeless tobacco has been sold in Canada since at least 1913.

NSTC’s products are for adults only. Children should not use any tobacco products, and we take our responsibility seriously in supporting and participating in programs to reduce the underage use of tobacco products. This is why we actively lobbied the previous Alberta government to institute tougher measures to further prevent underage access to tobacco products. This included establishing a provincial minimum age of purchase for tobacco products, and fines for individuals and retailers found selling or furnishing tobacco products to minors. NSTC’s recommendations were legislated in *Bill 33 Tobacco Reduction Amendment Act (2013)*.

NSTC supports reasonable product regulation and complies with all existing federal and provincial laws. The restrictions on tobacco products and the level of accountability required of tobacco companies in Canada are significant, and include the following:

- **Federal restrictions prohibit**: sampling, price promotion, sponsorships, and advertising to the general public; and impose strict labeling requirements, high taxes, flavour restrictions, and minimum age-of-purchase requirements for tobacco products. Federal law also requires the submission of quarterly sales reports by product, quarterly marketing reports on permitted adult-only promotional activities, and routine reporting of all manufacturing processes and ingredients.
- **Provincial restrictions in Alberta prohibit**: branded point-of-sale signage, visibility at retail, and sales at select venues such as post-secondary campuses, health care facilities, and pharmacies.

As of January 2017, NSTC distributes 12 individual smokeless tobacco products in Alberta across different sizes (15, 23, and 34 gram cans), forms (long cut, fine cut, and pouches), and tobacco varieties. Our products are available at more than 2200 retail locations in the province.

NSTC’s products represent a small component of total tobacco sales in Alberta. For the year ended December 31, 2015, smokeless tobacco sales accounted for approximately 1.5% of all tobacco sold in the province. This represents approximately 3.4 million 34 gram cans of smokeless tobacco across all of our product offerings as compared to more than 168 million packs of 25-count cigarettes. Our products are premium smokeless tobacco products and currently retail in Alberta for approximately $28.99 plus sales taxes, or more than twice the price of a package of premium cigarettes.

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3 Source: Health Canada Wholesale Sales Data, 2015

4 Source: NSTC Alberta cigarette pricing survey (December 2016); Premium 25-pack average price $13.41, plus GST
Background
The Government of Alberta currently has three categories for tobacco products subject to provincial tax under the Tobacco Tax Act. These categories are:

1. Cigarettes and tobacco sticks (25 cents per stick);
2. Tobacco: fine cut, pipe, chewing tobacco, snuff (37.5 cents per gram); and
3. Cigars (129% of retail selling price, minimum 25 cents-maximum $7.83/cigar).

The “tobacco” tax category includes smokeless tobacco, a non-combustible oral tobacco product, and also includes fine-cut tobacco that is used by individuals who roll their own cigarettes for smoking. Loose tobacco for rolling cigarettes is not the same as oral smokeless tobacco, yet the two products are taxed in the same category.

The “tobacco” category essentially serves as a catch-all for any tobacco product that is not otherwise defined by Alberta’s Tobacco Control Act. Consequently, the category does not accurately capture the variety of tobacco products currently available for sale in the province.

It is important to note that the “tobacco” category is in overall decline in Alberta. Category volume has shrunk by more than 60% over the past decade from more than 500,000 kilograms in 2004 to less than 185,000 kilograms in 2015. Within Alberta’s “tobacco” tax category, smokeless tobacco makes up a larger component of a shrinking category, yet it is still subject to a provincial tax policy that is focused on tobacco for smoking and that is not reflective of the different nature of smokeless tobacco products.

There are unintended and serious consequences which could result from the government’s current tobacco tax category system. Under the existing structure that treats all products the same within the “tobacco” category, the government is unable to make deliberate, focused tax rate changes to particular products without also making the same change to all products in the category.

The problem associated with Alberta’s tobacco tax categories dates back to the 2009 budget, when the government sought to bring the tax for roll-your-own tobacco for smoking in line with the tax on cigarettes on a per stick basis. The government increased the tax on cigarettes by 8%, but increased the tax on other tobacco, including cigarette tobacco and smokeless tobacco, by 62%.

In the March 2015 budget and in the October 2015 budget the government again increased the tax on cigarette tobacco and smokeless tobacco by more than it increased the tax on cigarettes. The government has provided a policy rationale for raising the tax on tobacco for smoking at disproportionately higher rates than cigarettes: “It takes less than one gram (on average about 0.67 of a gram) of loose tobacco to make one cigarette. To provide tax parity amongst tobacco

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5 Source: Health Canada Wholesale Sales Data, 2015
6 Source: Health Canada Wholesale Sales Data, 2015, based on reported fine-cut tobacco sales compared to smokeless tobacco sales
products, loose tobacco is taxed higher than cigarettes.”7 It has not provided a rationale for the accompanying disproportionate rate increases on smokeless tobacco.

The Government of Alberta has also stated that its tobacco tax rates are intended to “maintain parity between tobacco products and prevent users from shifting their consumption to lower-taxed products...”8 The provincial tax collected on a standard 34 gram can of smokeless tobacco is $12.75, compared to just $6.25 on a pack of premium 25-count cigarettes. This does not represent tax parity, and could encourage users to shift their consumption from smokeless tobacco to cigarettes, a lower-taxed product.

**Recommendation**

The Government of Alberta should modernize and update its tax categories for tobacco products. Distinguishing between different tobacco products through unique tobacco tax categories would add precision and fairness to the government’s tobacco taxation efforts, better reflecting current product manufacturing and the variety of tobacco products available for sale in Alberta, and would allow tax authorities appropriate flexibility and clarity in tobacco tax policy.

NSTC supports tax categories for tobacco products that more accurately reflect the differences between tobacco products in the marketplace today. Smokeless tobacco products are faced with the burden of being taxed in the same manner as completely unrelated and incongruent products. It is NSTC’s position that similar products should be taxed similarly, but different products should be taxed differently.

The United States, the world’s largest market for smokeless tobacco9 uses 10 distinct federal tax classifications for tobacco products, including classifications specifically for “chewing tobacco” and “snuff” that are separate and distinct from loose tobacco for smoking.10 Sweden, which is the world’s second-largest market for smokeless tobacco,11 also distinguishes “chewing tobacco” and “snuff” from other tobacco products like cigarettes, cigars, and smoking tobacco (roll-your-own and pipe tobaccos).12

The emergence of innovative products, like e-cigarettes, for adult smokers as an alternative to traditional cigarettes further demonstrates the multiplicity of tobacco and tobacco-related products on the market today and speaks to the need for category modernization. The United States has recently brought regulation of these products under the Food and Drug Administration (Centre for Tobacco Products) and federal legislation in Canada is currently before the Senate to regulate electronic cigarettes under a new *Tobacco and Vaping Act*. Currently, seven U.S. states, the District of Columbia, and a handful of localities have enacted an excise tax on e-vapour products.

There is precedent within Canada for a wider range of tobacco tax categories. In Nova Scotia and Nunavut, there is a tax policy distinction made between smokeless tobacco and other

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8 Source: Alberta Government Budget 2015 pg. 84
9 Source: Euromonitor International, 2013
12 Source: Swedish Tobacco Tax Act
tobacco products. Since at least 1994, Nova Scotia has taxed cigarettes, cigarette tobacco, tobacco sticks and cigars at a different rate than chewing tobacco, snuff, pipe tobacco and unprocessed tobacco leaf. In 2015, Nunavut modernized its tobacco tax categories, distinguishing between smoked tobacco and non-smoked tobacco by establishing a “cigarette tobacco” category and a “loose tobacco” category.

NSTC proposes that the Government of Alberta redefine its tobacco tax categories to recognize that smokeless tobacco is a different product than loose tobacco that is used for roll-your-own cigarettes, and that distinct tax rates be applied to each category. Given the significant price differential between cigarettes and smokeless tobacco products, it is NSTC’s position that any future tobacco tax rate increases in Alberta should not impact smokeless tobacco products.

By establishing these distinct tax categories, Alberta’s tobacco tax policy would more accurately reflect the current tobacco product marketplace, and the government would be able to more effectively categorize new tobacco products that may be introduced in the future.

NSTC recommends that Alberta’s Tobacco Tax Act be amended as follows:

**TOBACCO TAX ACT**

Section 1

Definitions

1 In this Act…

(p) “tax collector” means a tax collector appointed pursuant to section 5;

(q) “tobacco” means tobacco in any form in which it is used or consumed, and includes **snuff smokeless tobacco**;

(r) “smokeless tobacco” means any finely cut, ground, or powdered tobacco that is not intended to be smoked or any leaf tobacco that is not intended to be smoked”; and

i. that displays the required health warnings, and toxic constituents information mandated by the federal Tobacco Products Information Regulations (SOR/2000-272) on its packaging; and

ii. that is sold in a package size of less than 50 grams.

(s) “tobacco products” means cigarettes, tobacco sticks, and fine cut tobacco, and smokeless tobacco;

(t) “vehicle” means a device in or by which a person or thing may be transported, and includes a watercraft and an aircraft;...

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13 Source: Nova Scotia Ministry of Finance
Section 3
Computation of tax payable

(1) Every consumer who purchases tobacco in Alberta shall at the time of purchase of the tobacco pay to the Crown a tax computed at the following rates:

(a) on every cigarette or tobacco stick purchased by that consumer, $0.25;

(b) on every cigar purchased by that consumer, 129% of the taxable price of the cigar, with the tax payable on each cigar being not less than $0.25 per cigar nor more than $7.83 per cigar;

(c) on every gram or part of a gram of any tobacco, other than cigarettes, tobacco sticks, er-cigars, or smokeless tobacco, purchased by that consumer, $0.375;

(d) on every gram or part of a gram of smokeless tobacco, purchased by that consumer, $0.375.

Fiscal and Administrative Impacts

Making the changes to Alberta’s tobacco tax categories proposed in this submission would not have a net fiscal impact on the Government of Alberta. Taxes would still be collected and remitted in the same manner as they are currently if the proposed changes were implemented. No administrative changes would be required.

By establishing a specific definition of smokeless tobacco that includes references to federally mandated packaging requirements it will be clear to Alberta tax enforcement officials which tobacco products fall under the new tobacco tax category.

By not further increasing the tax rate applied to smokeless tobacco products, the Government of Alberta would also mitigate additional contraband concerns. Large excise tax increases create significant financial incentives for criminals to engage in illicit activity – activity that undermines tax revenues and hurts law-abiding businesses. It is the government’s responsibility to make policy decisions that deter, not encourage, illicit activity. The current price gap between smokeless tobacco products sold in Alberta and those sold in Montana can be a difference of more than four-fold.\(^{14}\)

Health Policy Impacts

The Government of Alberta should also consider the potential health policy impacts of the proposed changes to the province’s tobacco tax categories. There is an overwhelming scientific, medical, and public health consensus that smokeless tobacco products, including those widely available in North America and Sweden (snuff and snus), are substantially less hazardous than

\(^{14}\) Source: NSTC, Altria internal sales data. Based on 2017 NSTC suggested RSP of $25.89 +GST of smokeless tobacco products in Alberta vs. US$6.00 average price of premium smokeless tobacco products in Montana.
cigarettes. Transitioning adult smokers from cigarettes to demonstrably less hazardous smokeless tobacco products could impact smoking cessation (number of years smoked), thereby reducing risk and harm.

Summary

The Government of Alberta has the opportunity to modernize its current tobacco tax categories to better reflect the variety of tobacco products on the market today. There are precedents for this modernization. This modernization would entail a change to the existing “tobacco” category, breaking it into new and distinct categories that recognize the unique nature of different tobacco products. These changes would also give the government the flexibility to adopt a risk-based approach to tobacco taxation, recognizing the different health risks associated with different tobacco products.

Making the tax category changes outlined above would be relatively simple, and would result in a modern tobacco tax system that would give the government increased flexibility to accurately categorize existing and new products. These changes would bring Alberta in line with other jurisdictions that have acted to ensure precision in their tobacco tax systems and provide greater clarity to provincial tobacco tax policy.