

SWEET SURRENDER^{*}

Introduction and background

This role-play focuses on the different and conflicting interests underlying consumption taxes on sugar sweetened beverages (SSBs). SSBs are known to cause severe health damage. They are recognized by international organizations such as the WHO as sources of global concern. Nevertheless, conflicting interests sometimes prevent the development of effective policies to regulate them. The exercise refers, among other things, to the following aspects:

- The effectiveness of the “polluter pays” policy, and Pigouvian taxes.¹
- The effectiveness of consumption taxes to decrease consumption of SSBs, in comparison to other means.
- The conflicting interests involved in this dilemma.

The exercise’s schedule and outline:

- 1) Set a date for submitting the written arguments to the instructors.
- 2) Set a date for classroom negotiations.
- 3) Classroom negotiations between the groups should last at least 45 minutes. Negotiators should attempt to reach an agreed-upon solution by that time.
- 4) Give the groups at least 30 minutes to present the agreements reached and/or points of disagreement between the participants.
- 5) Leave at least 20 minutes for exercise debrief and summary.
- 6) For further instructions and/or ideas regarding the exercise’s setting, please consult part 2 of this book.

^{*} This role-play was developed by Nellie Munin and Yael Efron (2023) and exercised successfully in the tax law course at Zefat Academic College.

¹ A Pigouvian tax, named after 1920 British economist Arthur C. Pigou, is a tax on a market transaction that creates an additional cost, borne by individuals not directly involved in the transaction. The tax aims to compensate the society for this cost.

The case background story

Like many countries around the world, the state of “Gluttonia” is currently experiencing a growing economic crisis. It is still burdened by a large debt that it has not been able to pay back due to the costs associated with managing the Coronavirus crisis. The global price increases caused by the Russia-Ukraine war are deepening the crisis and increasing government spending on products that the country needs to import for public use. The state is in a desperate search for sources of income that will help it overcome the crisis. The possibility of raising taxes on income has been ruled out. Such an increase would reduce work profitability and it could deepen the already-existing recession and increase unemployment, something that politicians are not interested in. They fear that the situation could lead to the fall of the government and to early elections in the near future.

The Minister of Finance proposed a brilliant idea, in his opinion: due to the fact that the people of Gluttonia have a sweet tooth, the minister offers to impose a consumption tax on SSBs. To stay on the frustrated residents’ good side, he proposes that the government justify the tax imposition with unassailable reasoning - the tax on sweets will be justified because it aims to protect the health of the citizens from the dangers of obesity. Obesity is a global epidemic that causes diseases such as diabetes, heart problems, and cancer. Complications of these diseases are among the leading causes of death in Gluttonia.

The government of Gluttonia warmly welcomes the proposal; it presents a bill to amend tax laws to the parliament and notes in the law’s memorandum that such taxes have already been successfully imposed in Israel and the United States. The World Health Organization (WHO) warmly supports its position, maintaining that the more countries that enact such laws, the more the world will move towards the goals promoted by the WHO.

Large segments of the public are unwilling to accept the new tax, and will fight in court to ensure that this law will not be enacted. Among other things, all those involved plan to participate in the discussion on the proposed law in the parliament’s legislative committee to voice their position.

For the purposes of this exercise, assume that the legal system structure and tax laws in this country (Gluttonia) are identical to those in your country.

The chairman of the legislative committee in Gluttonia’s parliament defined the questions that will be discussed in the committee, including the following:

- A. Is there an economic rationale for imposing a tax to collect revenues for the state, when its success will lead to a significant reduction in the use of the taxed goods, along with the subsequent reduction of the tax collected?
- B. Is it appropriate to apply the “polluter pays” principle through the tax system?
- C. Is the tax system the most effective tool for directing desirable behavior in this case?
- D. Is it a proportional tool compared to alternative tools?
- E. What are the implications of the use of tax for the various stakeholders?
- F. What are the relevant fundamental rights of the residents in this matter, and what is the proper balance between them and the right to collect taxes in this case?

G. To what extent should the state demonstrate paternalism towards its residents and which circumstances justify it?

Instructions for performing the exercise

The class is divided into 5 groups (the number of groups may depend on the size of the class).

You belong to one of the following groups:

Group 1: The lawyers representing the government of the state of Gluttonia.

Group 2: The lawyers for the non-profit organization “HelpUs,” representing the weaker segments of the population in Gluttonia.

Group 3: The lawyers representing the association of SSB manufacturers/importers and marketers in Gluttonia.

Group 4: The lawyers representing the Ministry of Health of Gluttonia.

Group 5: Representatives of the World Health Organization.

The tasks to be performed for each of the interest groups:

You must establish a legal argument supporting the position of the group you represent, based on the basic bibliography for the exercise detailed below, as well as additional sources that you will identify yourselves.

You must develop a strategy for presenting your group’s argument within a policy debate to be held in the Legislation Committee of Gluttonia’s Parliament prior to the laws being put to a vote in Parliament.

When the discussions held in the committee end, you will be required to present the agreements reached between the groups regarding the proposed legislation, to the extent that you successfully achieved such agreements.

Basic bibliography for the exercise:

It is desirable and recommended to search for additional sources and rely on them to establish the argument.

Rifaat, Azam. “*The Interpretation of Tax Law: True Tax and Human Rights in the Supreme Court Ruling.*” MISHPAT VE’ASAKIM 18 (2014): 401-465. [Hebrew]. <https://www.runi.ac.il/media/2ajbaqcl/azam.pdf>

EUROPEAN JOURNAL OF POLITICAL ECONOMY – *References to a collection of articles on the topic “The Polluter Pays”* <https://www.sciencedirect.com/science/article/abs/pii/017626809500007K>

Taxation of Sugary Drinks

WHO (2022). *WHO calls on countries to tax sugar-sweetened beverages to save lives* <https://tinyurl.com/bdefv6as>

Israeli Government Decision No. 263 regarding the promotion of a healthy lifestyle [Hebrew]. https://www.gov.il/he/departments/policies/dec263_2021

Israeli Customs Tariff Order, Purchase Tax on Soft Drinks (Amendment No. 4), 2021 [Hebrew] - <https://tinyurl.com/2fkbd6sn>

Merav Peleg-Gabay (2021). *Taxation of Soft Drinks for Health Reasons*. KNESSET RESEARCH AND INFORMATION CENTER [Hebrew]. <https://tinyurl.com/48pr3sj5f>

Bank of Israel (2022). *Preliminary analysis of trends in the purchase of sugary drinks following the imposition of a tax on them*. [Hebrew] <https://tinyurl.com/2x7sxua3>.

Nellie Munin (2023). *Revocation of Israel's tax on sugar-sweetened beverages: A blessing or a curse?* THE IUP JOURNAL OF INTERNATIONAL RELATIONS, vol. 17(3), 19-42.

Research on Sugary Drink Taxation in the United States:

American Public Health Association (2016) *Impact of the Berkeley Excise Tax on Sugar-Sweetened Beverage Consumption* (abstract).

Berkeley Soda Tax Campaign website: <https://ecologycenter.org/berkeley-soda-tax-campaign/>

AMERICAN JOURNAL OF PREVENTIVE MEDICINE (2015). *Cost effectiveness of Sugar-Sweetened Beverages Excise Tax in the U.S.* <https://tinyurl.com/mw5p8u9b>

Private instructions - Group 1: The lawyers representing the government of the state of Gluttonia

You see great importance in the enactment of the laws, and you intend to stand firmly behind their enactment. Four main reasons motivate you:

The country's "budget hole" and the ease of collection of the consumption tax, which would fill the public coffers relatively quickly.

Gluttonia's positioning as a developed nation in the international community. The state of Gluttonia suffers repeatedly from criticism in international forums, such as the World Health Organization, for the way it handles issues of public health

If the World Health Organization's claim is correct – that taxation will reduce obesity, which leads to diabetes, heart problems and cancer – then, in the long run, the state will be able to save on the expenses associated with treating these problems.

Another reason, which you will not openly admit, is that the proposed law provides a golden opportunity to bring into the tax-paying circle populations that rely on the state and regularly avoid paying other taxes, some for ideological reasons and some due to financial hardship.

You are aware that the opposition will attack the government, claiming that it has chosen an easy and fast solution without seeking more justifiable alternatives and without thoroughly examining the proposed legislation's implications. You must prepare good responses to these claims.

You know that you should try to sway stakeholders who may have an interest in the legislation, such as the importers, manufacturers, and marketers of the regulated products, to see things the way you do because they have strong political power that can influence the legislature.

Private instructions - Group 2: The lawyers for the non-profit organization “HelpUs,” representing the weaker segments of the population in Gluttonia

You are leaving no stone unturned in your opposition to the proposed laws and intend to fight to the bitter end against their enactment. You have several arguments to support your position:

Consumption taxes mainly hurt the weaker segments of society. You believe that sources of revenue should be sought to collect the missing funds from the stronger sectors, such as the high-tech industry, which has earned millions in recent years and was not even affected during the COVID-19 pandemic.

You suspect that the government is “leeching” off the weaker segments of society due to the assumption that they have no lobby and will struggle to become organized and united and fund lawyers to represent them and their interests. The government found it convenient to choose an alternative that harms them, rather than alternatives that harm well-organized sectors with political power.

You suspect that, due to political instability, the government is seeking easy solutions to fill the budget gap without fully examining the implications of its proposal. You are confident that there are better alternatives to solving the problem that will reflect more social and distributive justice.

You know that, among other things, you will be confronted with the claim that preventing obesity, which leads to diseases (such as diabetes, heart problems, and cancer) that are common in the population you represent, is in your client’s interest. You are preparing to respond to this claim.

You acknowledge that “the weaker segments” is a generic term for various groups in the population, with different behavior patterns and different morals regarding tax payment. You recognize that part of this population avoids paying taxes at all costs and may not really be a part of the “weaker segments” of society. It is considered to be so only because it avoids reporting its full income to the tax authorities, causing it to be perceived as part of the population that has no or very low income. With that being said, you are aware of the fact that this segment of the population that you represent may have the political power to influence decision-makers behind the scenes. Therefore, you do not believe that your role is to distinguish between the different groups that have decided to join under this umbrella term of “weaker segments.” However, you are aware that you may be attacked on this basis, and your preparation must include good answers for such an attack.

Private instructions - Group 3: The lawyers representing the association of SSB manufacturers/importers and marketers in Gluttonia

The entities you represent are ambivalent:

On the one hand, your clients are concerned that the law will increase the price of products in a way that will reduce their consumption (which is its stated goal). This will reduce their income, so they are not interested in this outcome.

On the other hand, you have wanted to raise the prices of your products for a long time, as their production and import costs have risen significantly because of the Coronavirus pandemic and the Russia-Ukraine war. However, you were afraid to do so because of the increasing public criticism of the rising costs of living, especially since you are aware that your products are a significant part of the basic products consumed by weaker segments of society. You estimate that the confusion that will occur with the implementation of the new laws will allow you to raise the prices of your products beyond the tax increase, without being recognized by the consumers and without having to face public protest. In this regard, you see the proposed laws as a business opportunity. You estimate that the profit you will make from this will cover the loss from the reduced consumption and may even be greater.

You know that the desire and tendency to tax these products according to the “polluter pays” principle is increasing around the world, and it is clear to you that, in the long run, the state of Gluttonia will not be able to avoid it anyway. Therefore, you understand that the significance of supporting the non-enactment of the law is, at best, only buying a window of time whose size is unknown, and that in the long run this move will be made in any case. So, it may be better for you to start preparing for it now.

With that being said, from a reputational perspective, you want to appear as supporters of your loyal customers: the weaker segments of society.

Finally, it's hard to ignore the global trend of “green-washing,” in which corporations that produce or import harmful products strive to present a public image of health awareness to cover up the actual harm caused by their products.

Private instructions - Group 4: The lawyers representing the Ministry of Health of Gluttonia

You are less interested in the method - in this case, taxation - and more interested in the health goal. Deep down, you are not sure that taxation will achieve the desired result. For example, in Gluttonia, the experience with taxing cigarettes and alcohol showed that it did not succeed in reducing usage. However, the World Health Organization claims that such taxes have been proven effective at achieving their goals on a global level.

The very move raises awareness of the issues that are important to you, and therefore you are co-operating with Gluttonia's ministry of finance. You believe that if taxation does not solve the problem, you may be able to demand the use of more severe measures, in the future, such as administrative or criminal sanctions for behavior that does not align with the public interest.

It is also important for you to convey to the international community, especially to the relevant international organizations that constantly pressure you, that the state of Gluttonia is part of the community of nations and that it is not indifferent to global criticism but rather tries to take health promotion steps, as other countries have done.

Precisely because the state of Gluttonia is not a large or significantly influential country in the areas with which you entrusted, and because it is generally ignored in the global decision-making process, you believe that there is an opportunity here for pioneering action that will put Gluttonia at the forefront of international behavior designers. If it conveys power to countries that have already enacted laws on the subject, including important countries in world politics such as the United States and India, such countries will no longer be able to ignore Gluttonia in relevant international organizations.

Another incentive, which you do not want to disclose to the other groups, is that the Minister of Finance has promised to increase your office's budget from the "tax pie" that will be collected if these taxes are successfully imposed and collected.

Private instructions - Group 5: Representatives of the World Health Organization

You are less interested in method - in this case, taxation - and more interested in the health goal. World Health Organization data shows that taxing according to the “polluter pays” principle is effective and achieves its goal.

The very move raises awareness of the issues that matter to you, and therefore you are working in collaboration with the government of Gluttonia. You believe that if taxation does not solve the problem in practice, you can demand the use of more severe measures in the future, such as administrative or criminal sanctions for behavior that does not align with the public interest (as was done, for example, in Israel under the Container Deposit Law, 1999).

You represent international community organizations that are trying to find solutions to health problems (obesity leading to diabetes, heart problems, and cancer) caused by sugar-rich products. You see the big global picture, the growing rates of damage, and understand that it must come to an end. Economically, you are aware of the enormous costs involved in dealing with these problems and know that if they were solved the money could be directed towards more worthy goals.

Another motivation, which you do not want to reveal to other groups, is that your organization has not been very successful in the past few years in advancing its goals and the chances of achieving the goals set in international agreements are diminishing. There are significant disputes and conflicting interests among the member countries. Multinational corporations that harm public health through their products are using economic advantages to gain political power and pressure countries to turn a blind eye to low standards of corporate behavior.

At the forefront of your mind is the echo of U.S. President Trump’s ominous threat that he will withdraw the U.S. from international organizations (and, of course, stop its huge contribution to their funding). Therefore, it is important for you to “turn over every stone” and take advantage of every opportunity to try to maintain relevance and to focus the public and media attention on your positive actions and your desired image.

You understand that an argument against the position of the weaker segments of the population could harm your image and play into the hands of those who represent opposing interests. So, you must frame your arguments in such a way that it is clear that you are actually protecting the weaker classes in the long run.

