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An examination of tampon tax and how it effects the social, health and economical aspects of countries including a comparative analysis of how some countries have dealt with tampon tax

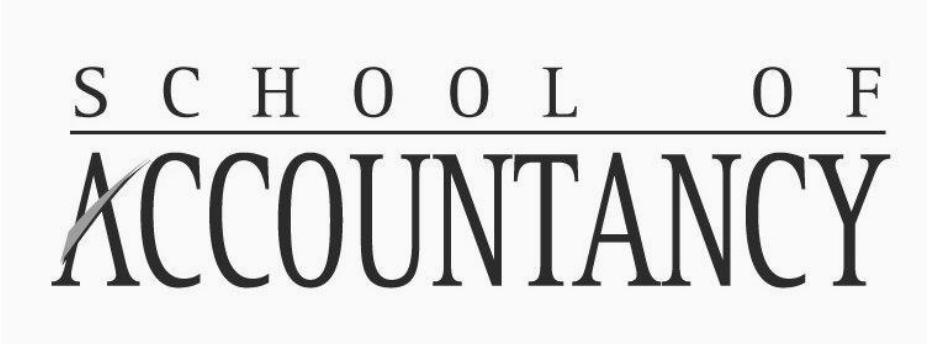
Asmaljee, Sumaiyah Safi

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University of the Witwatersrand, Johannesburg

A research report submitted to the Faculty of Commerce, Law and Management in partial fulfilment of the requirements for the degree of Master of Commerce specialising in Taxation

An examination of tampon tax and how it affects the social, health and economical aspects of countries including a comparative analysis of how some countries have dealt with tampon tax.

Applicant: Sumaiyah Safi Asmaljee
Student number: 0403947 T
Supervisor: Roy Blumenthal
Degree: Master of Commerce (specialising in Taxation)
Date: 31 March 2019

DECLARATION

I declare that this research report is my own unaided work. It is submitted in partial fulfilment of the requirements for the degree of Master of Commerce (Taxation) at the University of the Witwatersrand, Johannesburg. It has not been submitted before for any other degree or examination in any other university.



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Sumaiyah Safi Asmaljee

31 March 2019

ABSTRACT

Tampon tax is a colloquial term in common usage describing taxes levied on female menstrual hygiene products that are taxed as luxury goods in spite of the fact these items are considered necessities such as food and medicine, which are either exempted or taxed at 0% in some countries. Tampon tax in South Africa is the levying of value-added tax (VAT), to female menstrual hygiene products. Internationally, activists have initiated various campaigns and protests for the removal of tampon tax as it is not regarded as a luxury but rather a necessity, and South Africa has followed suit. There have been various campaigns and initiatives towards making female menstrual hygiene products more affordable and/ or accessible to the females from low-income households in South Africa.

Reduction in sales tax rates, removal of goods and services tax on female menstrual hygiene products and the utilisation of the income earned from sales tax on female menstrual hygiene products are options available to negate the economic effects of tampon tax on females in their reproductive years. This paper discusses tampon tax and its effect on social, health and the economic well-being of South Africa. The paper will include comparative analyses to what is being done in some countries to alleviate the negative effects of the tampon tax. This paper will also examine the value-added tax in South Africa. Arguments in favour of and against tampon tax are also discussed.

Below is a list of key words that represent the terms used for major concepts of the research report:

Key Words: tampon tax, sanitary tax, value-added tax, VAT, menstrual hygiene, menstrual hygiene products, sanitation, pink tax, poverty, marginalised, women, low-income, taxes on feminine hygiene products, sales tax, and medicalisation.

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CHAPTER ONE: INTRODUCTION

Introduction

Tampon tax encompasses tampons, pads, menstrual cups and other female menstrual hygiene products utilised in the management of menstrual flow. These necessary items are subject to sales tax such as value-added tax in South Africa. It is not a special tax levied directly on female menstrual hygiene products, is part of a general sales tax or VAT.

A Sanitary Pads is defined as: 'A sanitary napkin, sanitary towel, sanitary pad, menstrual pad, maxi pad, or pad is an absorbent item worn by a woman while she is menstruating, recovering from vaginal surgery, for lochia (post birth bleeding), abortion, or any other situation where it is necessary to absorb a flow of blood. Example Stayfree Secure (J&J), Carefree (J&J), SCA's Libresse, Bodyform, Libra.' (Canadean GlobalData, 2016)

A Tampon is defined as: 'A tampon is a mass of absorbent material (typically cotton, rayon, or a mixture of the two) inserted into a body cavity or wound to absorb bodily fluid. The most common type in daily use is designed to be inserted into the vagina during menstruation to absorb the flow of menstrual fluid. It is usually disposable. Example: P&G's Tampax, J&J's Ob, and Playtex Products Playtex. Includes mooncups.' (Canadean GlobalData, 2016)

In many developing countries women and girls have no access to water, soap or toilets nor can they afford to purchase basic menstrual hygiene products such as tampons or pads. They manage their monthly menstrual cycle by utilising cloths, paper, clay or leaves. This results in non-attendance at schools and loss of employment. Engaging in education and economic productivity is prejudiced by the discomfort and discharge. These factors impede the educational and economic advancement of female populations already disadvantaged by discrimination in the work and educational space.

A recent study of three high schools in South Africa found that a third of all students had missed school due to menstruation, while in Bangladesh, most employed women miss about six days of work each month. (SCA and WSSCC, 2014)

It is reported that approximately ten percent of girls in sub-Saharan Africa miss school during their menstrual cycle, with many dropping out altogether once they begin menstruating. A solution to the above possibly lies in menstrual hygiene management. (Dolan, 2018)

There is currently a heightened global trend to end tampon tax. Campaigns agitating the abolishment of tampon tax have been widespread and conducted over the past couple years and has been highlighted recently in the United Kingdom (UK) and the United States of America (USA), and gaining momentum internationally. Tampon tax has been scrapped in countries such as Kenya, Canada and Mauritius. The United Kingdom has introduced a reduction in the usual VAT percentage rate. (Tennant, 2018)

Male privilege is often cited as the basis of introducing and maintaining a tampon tax. Systems of taxation promulgated by male politicians disregarded the female population and has been described as a punitive tax on women who menstruate.
The patriarchal dominance of taxation and laws appears to discriminate against women and girls impeding their educational and economic progress. Some people are of the view that tampon taxes reduce disposal income available for groceries and other bills. Protests have been held across the globe to amend legislations to repeal the taxes on menstrual hygiene products. These protests have already succeeded in Canada and France. (Rampell, 2016)

This research paper also aims to examine tampon tax and provide a comparative analysis into how tampon tax has been dealt with in some countries across the globe.

Research Problem

The statement of the problem

An examination of tampon tax and how it affects the social, health and economical aspects of countries including a comparative analysis of how some countries have dealt with tampon tax.

Sub Problems

In order to answer the main research question, the following sub-questions will be addressed:

The first sub-problem investigated is whether tampon tax constitutes gender discrimination. The report will investigate pink tax and its effect on the female population. Arguments in favour and against tampon tax will also be considered. The social and health effects related to menstruation are discussed.

The second sub-problem examines indirect taxes such as VAT and other taxes that apply to menstrual hygiene products. Zero-rating of VAT is examined in detail.

The third sub-problem investigates the impact menstrual hygiene products and related taxes have on the economy. An analysis of the prices of menstrual hygiene products is performed to determine if menstrual hygiene products are affordable with or without tax being levied. The removal of tampon tax and whether it will lead to affordability, social upliftment and the effect of the removal of tampon tax on the economy will be considered.

The fourth sub-problem analyses what some countries have put in place to alleviate the effects of tampon tax is also performed.

Research Methodology

A qualitative approach is used in this report and this is achieved by reviewing and analysing available literature. Sources to be analysed will include journal articles, online resources, discussion papers and Governmental reports. Internet sites have also been reviewed to ensure current information is included.

The other source material will include the Value-added Tax legislation of South Africa and other countries included in the comparative analysis.

Scope and Limitations

This paper does not focus on all the provisions of the VAT Act of South Africa. It only focuses on those provisions that apply to menstrual hygiene products.

To obtain the most current literature and information, the internet was utilised. There are some disadvantages for using internet sources as a source for a research report such as reliability as the articles may not be vetted but the concepts may still be valid.

The research report includes a comparative analysis on what the following countries, have done to negate the social, health and economic aspects of tampon tax:

- United Kingdom
- United States of America
- India
- Canada
- Australia
- Kenya
- Nigeria
- South Africa

Chapter Outline

Chapter 1: Introduction

A general introduction of tampon tax is provided. The research problem and sub-problems will be stated to establish the reason for the report. The research methodology is also stated.

Chapter 2: Tampon tax origination and gender discrimination

Gender bias in tax systems reflects prevailing social norms. Many countries are reforming their tax system to reflect the change in gender roles and attitude over the past decades. Here it will be evaluated if tax gender discrimination exists and if tampon tax is considered gender discrimination. Pink tax will be introduced and discussed. The origination of tampon tax will be considered.

Chapter 3: The health and social risks of poor menstrual hygiene

Lack of access to female menstrual hygiene products such as tampons, pads, menstrual cups expose females to the risk of developing health complications such as vaginal infections, disease, and infertility. This will be discussed in further detail.

Chapter 4: VAT and other applicable taxes

This chapter will consider what constitutes medical supplies in terms of the Value - added Tax Act of South Africa. It will analyse if feminine hygiene products can constitute basic necessities and/or medical supplies. It will analyse if sanitary pads should be exempt or zero-rated in terms of the VAT Act. It will also include a discussion on categorising VAT into a standard and luxury VAT and if South Africa should have VAT tiers.

Chapter 5: The affordability of menstrual hygiene products and poverty levels in South Africa.

This chapter will analyse the prices of menstrual hygiene products and its affordability. It will also look at how the increase in the VAT rate has impacted on its affordability and if the removal of VAT will actually lead to affordability or not. Data and statistics will be used to compare the prices of sanitary products to the average household income and determine if these sanitary products are considered affordable for the financially disadvantaged females.

Chapter 6: Comparison to what some countries around the world are doing to alleviate the effects of tampon tax.

This chapter will provide a comparative analysis into what other countries are doing to alleviate the effects of tampon tax and how revenue created from tampon tax is utilised. It will also detail the current initiatives in South Africa and generally around the world, that supports female menstrual hygiene for the underprivileged females.

Chapter 7: Removal of tampon tax in South Africa and the impact on the South African economy.

This chapter will analyse the current sales of sanitary products and the contribution this tax makes towards the total VAT income of South Africa. It will look at the deficit that the removal of tampon tax may create and how this can be managed. It will consider if tampon tax is kept in some countries, are the proceeds used to distribute female menstrual hygiene products to the underprivileged. It will also consider if the removal of tampon tax will lead to suppliers increasing the prices of female menstrual products.

Chapter 8: Conclusion

In this concluding chapter, the analysis made in the above chapters will be utilised to answer the research question. The South African government's decisions to zero-rate sanitary pads will be included in this chapter.

CHAPTER TWO: TAMPON TAX ORIGINATION AND GENDER DISCRIMINATION

Tax systems were impacted by social attitudes towards males and females and their role in society. Gender bias in tax systems is both explicit and implicit. It is easier to identify gender bias in income tax and more difficult to identify it in indirect taxes. (Stotsky, 1997)

Tampon tax shows how deeply gender is entrenched in legal systems such as tax systems which were believed to be neutral. Tax reform is an important tool to remove gender bias from tax systems. Access to menstrual hygiene products is also a human rights issue and it has been noted that indirect taxes such as VAT is a barrier between gender equality and human rights. (Crawford and Spivack, 2017)

It has been suggested that tampon tax is as a result of there being more males at tax committees setting tax policies. Tampon tax was not as a result of clear, malicious sexism, but rather a product of male dominated legislatures. When President Barack Obama was asked about tampon tax, he answered that it exist largely due to the fact that it was males making tax proposals and decisions. Similarly, Jennifer Weiss-Wolf, the founder of the United States of America, End to Tampon Tax movement, also indicated that tampon tax exist as there were too few women involved in making tax policies. (Ooi, 2018)

The reason for tampon tax has not been repealed could largely be because of the stigmatisms and cultural taboos around menstruation. Menstrual blood has been seen as impure for many centuries. The recent movements to repeal tampon tax have been successful when the stigmatisms and taboos have been openly discussed and broken down. It has been noted that countries or states that have not repealed the tampon tax to date is largely due to their fiscal concerns. These countries and states ignore the sexism and discriminatory elements of tampon tax. (Tiwary, 2018)

One of the 17 social development goals and the third millennium Development Goal of the United Nations is to achieve gender equality and women empowerment.

Gender equality in taxation has seldom been considered and discussed. Considering gender equality in general tax policies will assist in achieving sustainable economic growth and reduce poverty. Explicit gender bias in tax systems occurs when specific provisions in the tax laws deliberately differentiate between males and females. Implicit bias gender bias in tax systems occurs when tax policies affect the welfare of either sex. VAT contributes to gender bias, as it is a consumption tax and women and men have different consumptions trends. Women especially those in developing countries spend most of their income on food, health and education as compared to men, hence if these item are not exempted or zero-rated, women pay more VAT.

Pink Tax

Pink tax refers to additional amounts women are charged for goods and services. It is considered gender-based price discrimination. Tampon tax is considered to be as a result of pink tax.

It has been noted that women pay higher prices for female hygiene products such as razors, shampoo, soap, deodorant, and shaving cream. Those who oppose pink tax argue that the ingredients used in female hygiene products are more expensive than those used in male personal hygiene products hence they are more expensive, however, it can be argued that the only noticeable difference is in the scent. It was noted that women pay forty three percent more than men for personal hygiene products. (Robinson, 2018)

South Africa's population is predominately female with one third of the work force being women in senior roles thus having higher purchasing power. (Tennant, 2018)

Although the phenomenon of charging females higher prices for commodities specific to them is referred to as pink tax, it is not a tax imposed specifically on female commodities, females tend to pay higher taxes as the commodities are priced at a higher price, thus females are taken advantage of and are faced with price discrimination.

Arguments against tampon tax

The reasons for removing tampon tax are:

Equality

- Menstrual hygiene products are necessities for menstruating women as access to menstrual hygiene products are important to a woman's health. As discussed earlier, the lack of access to female menstrual hygiene products can result in infections.
- Tampon tax only affects menstruating women and thus is discriminatory and inequitable. In the United States of America many jurisdictions exempt products related to chosen medical concerns, from tax.

Affordability

- People in favour of removing tampon tax are of the view that women from low-income households cannot afford menstrual hygiene products. The taxes add to the prices of menstrual hygiene products.

Arguments in favour of tampon tax

Miranda Stewart, a professor at the Melbourne University Law School and a fellow of the Australian National University's Tax and Transfer Policy Institute is of the view that women will benefit largely from an adequate and efficient tax and transfer system. Instead of reducing the tax base further by exempting more items rather tax sanitary pads and tampons and use other alternatives to make menstrual hygiene products easily accessible to females from low-income households. She is of the view that the rich will benefit mostly from the tax break from menstrual hygiene products rather than the poor. She recommends that the revenue raised from taxing menstrual hygiene products should be utilised to fund cheaper childcare so that more women can go out and work. She also noted that sanitary pad sand tampons should be made freely available at schools. (Irvine, 2018)

Tampon tax is not a special or discriminatory tax imposed specifically on menstrual hygiene products. It is merely a sales tax that is imposed in menstrual hygiene products. The argument that tampon tax is unfair and unjust is not factually correct as no country imposes a special tax on menstrual hygiene products. In exempting menstrual hygiene products from sales tax does not comply with good tax policies,

all consumer purchases should have a sales tax whether they are necessities or luxuries, as exempting necessities results in lost revenue for the fiscus and will lead to increased tax rates. In the United States of America, repealing tampon tax has predominantly been demanded by Democrats as opposed to Republican and this is as a result of a political ploy to demonstrate that Democrats as pro-tax relief and Republicans as anti-feminist. (Gleeson, 2017)

Priyanka Jain of Hygiene and You, a start-up for eco-friendly menstrual products in India is of the view that repealing the tax on menstrual hygiene products maybe be ineffective. Multinationals have been promoting the idea that reusable menstrual hygiene products made from cloth is unhygienic, however pads made from plastic is not bio degradable. (D'Souza, 2017)

The following has been noted for reasons why Tampon tax should not be removed (Cotropia and Rozema, 2018):

Government budgets and revenue

- Revenue raised from the taxes of menstrual hygiene products are used to fund critical public policies.
- Removing taxed on menstrual hygiene products will reduce government revenue and the effect results in an increase in other taxes to mitigate the shortfall.
- Removing tampon tax will result in people wanting taxes removed on other items that may be deemed necessary thus reducing tax bases further.
- Removing tampon taxes will increase administrative costs for tax systems.

Economically Efficient Taxes

Taxing items that does not change the behaviour of consumers are considered to be the most efficient taxes, as governments and economist will aim to tax products where demands do not change with price changes resulting in more static revenue. As discussed, menstrual hygiene products are deemed necessities and thus the demand for it will be extremely inelastic resulting in it being a product that results in economically efficient taxes.

Superior alternatives

It is argued that taxes only form a small part of the actual price of menstrual hygiene products and as a result, removing tampon tax may not result in it being more affordable. Initiatives that would be considered to be more effective than removing tampon tax are direct subsidies, food stamps, medical aids funding menstrual hygiene products and tax credits for purchasing menstrual hygiene products.

Distributional consequences

Removing tampon tax will have the effect of reducing consumer prices for women from affluent households, thus resulting in disproportional consequences. Thus using alternative policies as noted above should rather be used to address the affordability of menstrual hygiene products for women from low-income households.

Types of Menstrual Hygiene Products

The following products, seen from an environmental point of view, are commonly used as menstrual hygiene products (Kaur, Kaur and Kaur, 2018):

- Reusable and Washable Cloth Pads-Cloth Pads are reusable so they are cheap, easy available and environmentally friendly. These will need to be properly washed and dried out in the sun to be sterile.
- Commercial sanitary pads-These are expensive and easily available at convenience stores. They are neither reusable nor environmentally friendly.
- Tampons-This is inserted into the female body and acts as an absorbent plug. These are expensive and easily available at convenience stores. They are neither reusable nor environmentally friendly.
- Menstrual Cups-These are medical grade silicone rubber which makes the cup easy to fold and get inserted into the female body to collect the menstrual blood. They need to be removed and emptied about 3-4 times a day. These are reusable and environmentally friendly.
- Bamboo Fibre Pads-These are sanitary pads made from bamboo wood pulp. These are considered to be economical and environmentally friendly.
- Banana Fibre Pads-These are sanitary pads made from banana tree waste. These are considered to be economical and environmentally friendly.
- Water Hyacinth Pads-These are sanitary pads made from water hyacinth. These are considered to be economical and environmentally friendly.

As discussed in chapter four, the above menstrual hygiene products that are not environmentally friendly and may attract an environmental tax sometime in the future.

CHAPTER THREE: THE HEALTH AND SOCIAL RISKS OF POOR MENSTRUAL HYGIENE

Menstruation is the natural and biological process in every female's life. It is heavily stigmatized and the taboos associated with it, make matters worse for women. In many cultures menstruation is considered a pollutant and is impure. Believes include that menstruating women should not cook, do dishes, bake bread, wash clothes, go near rice fields or go near cows for fear of contaminating the things they touch. In East Africa, women are thought not to dispose their menstrual products in the open as it may be used for witchcraft and can lead to death and infertility. Women are also forced to live in secluded areas in isolation, away from the family. In low-income households menstruation is managed by unhygienic practices. These include using material like rags, cotton, sponges and animal skin. The clothes are not washed and dried out properly in many instances. These unhygienic practices lead to many health issues such as Reproductive Tract Infection (RTI), Bacterial Vaginosis (BV), Urinary Tract Infection (UTIs), Leucorrhoea, itching or burning, swelling of the ovaries, microbial growth and insect larvae due to dampness. (Tiwary, 2018)

These health issues are a drain on a countries health system and leads to loss of work and schooling.

The onset of menstruation makes girls vulnerable to early marriage, unwanted pregnancies and maternal death. As a result poor menstrual hygiene is a social and economic barrier to fulfil the right to health for females. South Africa became a charter member of the United Nations (UN) on 7 November 1945. South Africa was one of the original 51 founding members of the UN from its inception in 1945. In 2015 the United Nations adopted 17 social development goals to address health and sustainability issues. (Tiwary, 2018)

The fourth social development goal adopted by the United Nations is to ensure inclusive and equitable quality education and promote lifelong learning. Lack of access to sanitary hygiene products such as water and social and cultural taboos, many girls miss classes and drop out of school. In Nepal and Afghanistan 30% of menstruating girls miss school, in Kenya menstruating girls miss an average of 4.9

school days per month, one in 10 African menstruating girls miss school or drop out of school. (Tiwary, 2018)

A recent study of three high schools in South Africa found that a third of girls had missed school due to menstruation, while in Bangladesh; most employed women miss about six days of work each month (SCA and WSSCC, 2014).

It is estimated that 10 percent of girls in Africa miss school during their menstrual cycle, with many dropping out altogether once they begin menstruating. It must be noted that high girl's dropouts from the school due to menstruation is a cost to the economy. With every 1% increase in the proportion of women with secondary education, a country's annual per capita income grows by 0.3% and this would result in an up to 1.2% increase in GDP in a year.(Tiwary, 2018)

The fifth social development goal is to achieve gender equality and empower all girls and women. This goal focuses on addressing key challenges such as poverty, violence and inequality against women. Due to social and cultural taboos, women are excluded from social and cultural life during their menses. They suffer from shame and embarrassment and are often harassed by male students in school. The onset of menstruation makes girls vulnerable to early marriage, unwanted pregnancies and maternal death. Lack of access to menstrual hygiene products, water and toilets, require many rural girls to travel distances to obtain water and toilets and this increases the risk of harassment, sexual violence and even rape. (Tiwary, 2018)

The sixth social development goal is to ensure availability and sustainable management of water and sanitation for all. Menstruation is being managed by many women using unhygienic and inconvenient ways due to the lack of access and unavailability of clean water and sanitation facilities. Furthermore, if water and menstrual hygiene products that allow for menstrual sanitation are available at schools, girls will attend school. Disposing of menstrual waste also require adequate facilities, because if this is not provided than women dispose menstrual waste in land pits, rivers, lakes forests and bushes thus harming the environment. Flushing pads and tampons creates blockages in the sewer systems and therefore does not

promote sanitation. It is said that improving sanitation would make 1.25 billion women's lives both safer and healthier. (Tiwary, 2018)

Commercially manufactured sanitary pads contain chemicals and plastic. If pads are made from bamboo fibre, banana fibre, water hyacinth, and sea sponges they would be environmentally friendly and biodegradable. (Kaur, Kaur and Kaur, 2018)

The eighth social development goal is to achieve decent work and economic growth and promote sustained inclusive and sustainable economic growth, full and productive employment and decent work for all. If access to adequate menstrual hygiene products and sanitation is available at all workplaces, then women would be able to attend work and be productive as oppose to staying at home during their menses. In Bangladesh 60% of women factory workers used cloths that were chemically enhance and dyed to manage their menstruation which led to infections and non-attendance to work which could have resulted in losses to the economy and reduced tax income.(Tiwary, 2018)

The above creates a strain on health systems and will require taxes to fund the health system. In Bangladesh, most employed women miss about six days of work each month (SCA and WSSCC, 2014).

Menstrual hygiene impacts health, education and the environment. Poor menstrual hygiene is associated with several risk infections such as urogenital infections, yeast infection, urinary tract infection and cervical cancer. (Desk, 2018)

Toxic shock syndrome is another risk that comes with the use of tampons. (Johns Creek, 2018)

CHAPTER FOUR: VAT and other Applicable Taxes

Introduction to VAT

Value-added tax (VAT) is an indirect tax placed on the consumption of goods and services. It is imposed at different stages of the production of goods and services. In many developing countries VAT plays a vital role in being the primary source of governments' revenue. The use of VAT has been exponential in over 150 countries due to the ease it creates in collection for taxpayers and tax administrators.

The idea of VAT was first proposed in Germany in 1918. VAT was then only first introduced in France in 1948 and it accounts for more than one quarter of tax revenue in most countries. In 1958, in order to achieve tax harmonisation across Europe, the European Economic Community (EEC) recommended that VAT be adopted by its member states. It is not a tax on value-added services or products but rather a consumption tax. (LexisNexis, 2019) (Davis Tax Committee, 2018)

Comparison between VAT, Goods and Sales Tax (GST) and sales tax

VAT traces the progress of a product from initial concept to final transaction, taxing all of the individuals or companies who have a hand in the transaction based on the value that they have added to the product. It is imposed on goods and services at each stage of the supply chain which includes production and distribution (Smith, 2014). It is a consumption tax (Smith, 2014). Examples of countries that use VAT are South Africa, Albania and China (EY, 2018).

Sales tax is a single tax at the final transaction point of sale, for a sale or lease of goods and services. Sales tax only applies to products and services specified by law. Generally, if the seller is a reseller than he is exempt from paying sales tax to the government authorities. Compared to VAT and GST, sales tax is considered to have a high level of avoidance. (Smith, 2014). An example of a country that uses sales tax is Pakistan (EY, 2018).

GST is a sales tax that applies not only to finished products but also to services as well (Emeigh, 2013). GST applies to all services and goods except to the products

and services exempted by law (Emeigh, 2013). The difference between VAT and GST is that GST eliminates the cascading effects of taxes unlike VAT. Examples of countries that use GST are Australia, New Zealand, Canada and India (EY, 2018).

All of the above taxes apply to tampon tax, as it is a tax on the final transaction, where consumers ultimately pay the price of the tax.

Difference between repealing and exempting a tax

When an item is exempt from tax it means that no tax will be levied on that item. The item may be included on an individual's or business's tax return for informational purposes, but there is no tax obligation on that item.

To repeal a law means to remove or reverse a law. It means that a law or rule no longer has legal force.

VAT Tiers

A country is considered to have VAT tiers when they have more than one VAT rate. The use of multiple VAT rates in developing countries is used to try and achieve redistribution of wealth, however at the same time they do not have the means to effectively administer multiple rates or prevent fraud that may arise as a result.

The Copenhagen Economics study (2007) on the functioning of the VAT system in European states has shown the use of VAT tiers results in large fiscal and economic losses. The study is of the view that a single VAT rate is easier to comply with and is the best policy option. (Antic, 2014)

Empirical studies revealed that the use of VAT tiers is not an efficient means to redistribute income as the wealthy purchase more items that are taxed at the lower rates as compared to the poor. (Antic, 2014)

A study in Great Britain revealed that a single VAT rate is easier to administer than VAT tiers. It further recommended the removal of zero-rates, reduced rates and exemptions. (Antic, 2014)

Reduced Rates

Reasons for utilising a VAT tier structure are that it is believed to promote equity. Countries would like to reduce VAT on goods and services that constitute necessities (for example, basic foods, water and medicines,), merit goods (for example education, healthcare, and housing) and goods with positive externalities for example (utilisation of solar power, energy saving appliances), in order to alleviate the tax burden on the poor. It may be difficult to define necessities and distinguishing items may lead to higher administrative and compliance costs.

An OECD study (OECD/KIPF, 2014) revealed that implementing reduce rates is not the answer to achieving distributional objectives thus supporting the poor. Although reduced rates have a progressive effect, the rich received the same benefit if not more, as the rich can afford to consume more. As a result even though the poor may benefit from reduced rates the rich do so too. (OECD, 2016)

VAT in South Africa

VAT was introduced in South Africa on the 30th September 1991 at a rate of 10%. The South African VAT system is based on the New Zealand Goods and Services Tax (GST), which is New Zealand's VAT system, although it has transformed over the years (LexisNexis, 2019). It increased to 14% in 1994 and thereafter to 15% in 2018. Prior to VAT, South Africa had a General Sales Tax (GST) system. VAT is currently administered by the Commissioner for the South African Revenue Service.

VAT in South Africa generated ZAR 281 billion in 2015/2016 and ZAR 289 billion in 2016/2017 and it was estimated to generate ZAR 299 billion for 2018/2019 in government revenue. Its accounts for almost 25% of the total revenue income and the second largest contributor to revenue for the South African Government. (Davis Tax Committee 2018)

A single rate system still allows for zero-rating (Jansen and Calitz 2015). South Africa currently has taxed goods and services at a standard rate of 15%, zero-rate at 0% and certain goods and services which are exempted. South Africa has chosen a simplistic VAT system with two rates rather than a multi-tiered rate.

When a country considers using a standard rate or reduced rate, this justification is normally made on distributional grounds. A VAT on tampons is paid for by women rather than men, so if we apply a reduce rate or zero-rate, it would be progressive if it would be redistributed towards women. (The Economist Newspaper, 2016)

The Davis Tax Committee considered whether South Africa should have a VAT tiered rate structure including the view that goods and services consumed by the rich should have a higher VAT burden. No studies reveal that higher VAT rates on luxury items address the equity issues, however studies reveal that multiple rates actually results in more complex compliance and administrative requirements. There is a view that the goods and services consumed by the more affluent households should bear a higher VAT burden. There is no empirical evidence that suggests that higher rates on so-called luxury goods addresses in any meaningful way equity in the VAT system. There is instead clear evidence that multiple rates add significantly to the complexity and administrative burden of the tax. (Davis Tax Committee, 2018)

Multiple VAT rates on products also stem from various other types of taxes imposed on goods. For example excise duties, discussed later in this report, is a tax imposed on consumables that are high volume, non-essential or luxury. So-called luxury goods such as passenger motor vehicles, cell phones, perfume, and photographic equipment presently bear an ad valorem excise charge, upon which VAT is once again levied. The Davis Tax Committee is of the view that this tax to some degree addresses equity concerns. (Davis Tax Committee, 2018)

South Africa has a high fiscal deficit and introducing more items for zero-rating, narrows the government revenue.

As per section 1 of the VAT Act a '"supply" includes performance in terms of a sale, rental agreement, instalment credit agreement and all other forms of supply, whether voluntary, compulsory or by operation of law, irrespective of where the supply is effected, and any derivative of "supply" shall be construed accordingly; …'

As per section 1 of the VAT Act,

'Input tax, in relation to a vendor, means—

(a) tax charged under section 7 and payable in terms of that section by—
(i) a supplier on the supply of goods or services made by that supplier to the vendor; or
(ii) the vendor on the importation of goods by that vendor; or
(iii) the vendor under the provisions of section 7(3);

(b) an amount equal to the tax fraction (being the tax fraction applicable at the time the supply is deemed to have taken place) of the lesser of any consideration in money given by the vendor for or the open market value of the supply (not being a taxable supply) to him by way of a sale on or after the commencement date by a resident of the Republic (other than a person or diplomatic or consular mission of a foreign country established in the Republic that was granted relief, by way of a refund of tax as contemplated in section 68) of any second-hand goods situated in the Republic; and

(c) an amount equal to the tax fraction of the consideration in money deemed by section 10 (16) to be for the supply (not being a taxable supply) by a debtor to the vendor of goods repossessed under an instalment credit agreement or a surrender of goods: Provided that the tax fraction applicable under this paragraph shall be the tax fraction applicable at the time of supply of the goods to the debtor under such agreement as contemplated in section 9(3)(c),

where the goods or services concerned are acquired by the vendor wholly for the purpose of consumption, use or supply in the course of making taxable supplies or, where the goods or services are acquired by the vendor partly for such purpose, to the extent (as determined in accordance with the provisions of section 17) that the goods or services concerned are acquired by the vendor for such purpose…'

In summary, value-added tax is added to the price when you purchase goods or services that are liable for VAT. A VAT vendor can claim back the amount of VAT paid out (input tax) from his/her/its settlement with the tax authorities.

As per section 1 of the VAT Act, 'output tax, in relation to any vendor, means the tax charged under section 7(1)(a) in respect of the supply of goods and services by that vendor; ...'

In summary, output VAT is the value-added tax that is charged on taxable supplies. The tax is charged and collected from the recipient of the goods or service and paid over to the revenue authorities.

As per section 1 of the VAT Act, an exempt supply means a supply that is exempt from tax under section 12', of the VAT Act.

In summary a VAT exempt supply is not a taxable supply, a supplier may not charge VAT and the supplier is unable to claim and recover the input VAT as there is none.

As per section 1 of the VAT Act, a vendor 'means any person who is or is required to be registered under this Act: Provided that where the Commissioner has under section 23 or 50A determined the date from which a person is a vendor that person shall be deemed to be a vendor from that date; …'

A zero-rated supply is a taxable supply but the VAT rate that is levied is at zero percent. No output tax is payable on zero-rated items, but input tax, if any, can be claimed by a vendor.

The Taxation Laws Amendment Act and the Rates and Monetary Amounts and Amendment of Revenue Laws Act contain various amendments that should be given due consideration when those sections are applicable. (PwC, 2017)

The Rates and Monetary Amounts and Amendment of Revenue Laws (Administration) Act 21 of 2018 aims to:

- 'To fix the rates of normal tax; to amend the Estate Duty Act, 1955, so as:
- to amend the rate of estate duty;
- to amend the Income Tax Act, 1962, so as:
- to amend rates of tax and monetary amounts;
- to amend the Customs and Excise Act, 1964, so as:
- to amend rates of duty in Schedule 1 to that Act;
- to amend the Value-added Tax Act, 1991, so as:
- to amend the rate of the Value-added Tax;
- to amend a provision so as to provide for more efficient taxation of electronic commerce;
- to amend a schedule so as to provide for the zero-rating of the supply of certain goods; and
- to provide for matters connected therewith.' (Rates and Monetary Amounts and Amendment of Revenue Laws Act 21 of 2018).

Effects of VAT increase

According to the Living Conditions Survey (LCS) the increase in the VAT rate across South Africa did not result in VAT being regressive but rather proportional. Due to the high levels of inequality, low-income households will feel the effects of the VAT increase on their expenditures more than the rich. (Independent Panel of Experts for the review of zero-rating in South Africa, 2018)

The Davis Tax Committee has noted that the increase in the VAT rate in South Africa would be regressive and increase inequality compared to an increase in personal or corporate taxes. If the government increases the VAT rate than they should ensure that social welfare programmes will be introduced to mitigate the effects of the increase on the low-level income house. (Davis Tax Committee, 2018)

Zero-rating versus VAT exemption

South Africa introduced zero-rating of items to reduce the regressive nature of VAT. (Mputa and Momoniat, 2016)

The advantage to zero-rating items particularly menstrual hygiene products is that it can result in progressivity and make VAT in South Africa 'broadly neural'. (Davis Tax Committee, 2015:15).

The Davis Tax Committee strongly advised against increasing the list of zero-rated items in South Africa. The Davis Tax Committee is in favour of collecting income taxes and redistributing the net income to low-income households. The Committee recommended that only items that clearly benefit the low-income households such as maize meal, brown bread, rice and vegetables should be zero-rated. (Davis Tax Committee, 2018)

The Davis Tax Committee is not in favour that zero-rating is the best tool to benefit the poor, as many of the current zero-rated items are largely consumed by the rich hence largely benefitting them. (Schneider 2017)

Items included in the exempt listing should be kept to a minimal and items should be exempted only if they are' difficult to tax' or for economic reasons, as exemptions increase compliance and administrative costs. (Schneider 2017)

VAT exemptions can result in VAT cascading, as input VAT is denied on the inputs used to manufacture the product. VAT cascading takes place when a supplier of VAT exempt goods seeks to minimise the non-recoverable VAT by avoiding outsourcing and only pursuing insourcing. (Davis Tax Committee, 2015)

Zero-rating compared to social transfer programmes

South Africa has a number of cash transfer programmes that register low-income persons and pay cash over to them. The largest systems are for social grants and the Unemployment Insurance Fund (UIF). Almost half of South Africa's households receive some type of grant. (Independent Panel of Experts for the review of zero-rating in South Africa, 2018)

Many of the national programmes aimed at alleviating poverty are funded via the expenditure side of the government rather than the revenue side. Goods that are zero-rated are consumed by both the low-income households as well as the more affluent households, thus benefitting the more affluent households as they spend more. Thus zero-rating is not an effective tool of improving the plight of the poor.

The table below compares the benefits and cost of zero-rating to social assistance programmes, specifically pension and child support, (Jansen and Calitz, 2015):

Table 2: Comparing the costs and benefits of VAT zero rating with key social assistance programmes (R million, 2012 prices)

	2005/6	2010/11
Social assistance programmes		
Total benefit* (old-age pension and child support grant)	49 990	72 115
Total cost** (administration of all social assistance)	4 948	5 824
Ratio: benefit to cost	10	12
VAT zero rating		
Total benefit (benefit of zero rating to the poorest forty per cent of households)	2 723	3 396
Total cost (benefit of zero rating to the richest sixty per cent of households)	4 011	5 265
Ratio: benefit to cost	0.68	0.65

Source: Own calculations from IES 2005/06, IES 2010/11 and National Treasury, 2009, 2014.
Notes:
** The sum of the value of the expenditure on old-age and child support grants per year.*
*** Total administrative cost of programme 5 of the National Department of Social Development for the South African Social Security Agency*

The results from the table indicate a higher benefit to-cost ratio for social assistance than for VAT zero rating. This indicates that utilising zero-rating is not as an effective tool to benefit the poor compare to social transfer programmes. (Jansen and Calitz, 2015)

Revenue loss due to zero-rating was ZAR 2.6 billion and the benefit to the poorest fifty percent of households was ZAR 866 million (33%), at the time the Katz Commission stated in its Interim Report (Davis Tax Committee 2018). This once again indicates that utilising zero-rating is not an effective tool to benefit the poor.

The Davis Tax Committee also notes that zero-rating benefits the more affluent households much more than it benefits the poor in absolute rand terms. (Davis Tax Committee, 2018)

The Davis Tax Committee has noted that the Katz commission is of the view that it is more beneficial to collect taxes and redistribute through transfer programmes for the poor. It must be analysed if the South African government can achieve their redistributive goals. (Davis Tax Committee, 2018)

The South African Government has expanded social transfer programmes. In respect of cash transfers benefit 17 million South Africans, however some poor people do not benefit from social transfer programmes as their households do not include children, elderly or disabled. Thus if South African opt not to zero-rate any

items that these people will need to be compensated for the amounts they will pay in VAT. Even though zero-rating has a small impact in benefitting the low-income households, in absence of adequate and effective social transfer programmes it is optimal at the moment. Due to the above reasons, the Davis Tax Committee recommended in March 2018 that South Africa should not zero-rate any further items as there is minimal benefit to the poor. (Davis Tax Committee, 2018).

Zero-rating incurs two costs namely, a reduction in tax revenue from high-income households and it increases administrative costs. (Independent Panel of Experts for the review of zero-rating in South Africa, 2018)

Furthermore, a benefit-to-cost ratio was utilised to compare social grant and zero-rating and it was revealed that social assistance programmes are more beneficial than zero-rating items. The removal of zero-rating can result in more focus being spent on social transfer programmes where equity gains are higher. (Jansen and Calitz, 2015)

Import duties and excise duties

Excise duties, as explained previously are levies imposed on high volume consumable products, for example, alcohol and tobacco and certain luxurious items. It is a tax payable by manufacturers and is levied throughout the Southern African Customs Union. Menstrual hygiene products do not fall under the scope of products that would currently attract excise duties.

Three kinds of duties are imposed on imported goods namely, customs duties including ad valorem duties on luxury item, anti -dumping and countervailing duties and VAT.

All import and export commercial transactions require commodities on customs declarations to be classified according to an appropriate tariff heading. The tariff classification code is directly linked to the rate of duty payable on that commodity.

The table below indicates what the customs and excise tariffs are for pads and tampons as dated 15 February 2019 (Schedule 1, which contain ordinary customs and excise duties, ad valorem customs and excise duties, sales duties and surcharge) as per the SARS website as per the schedules to the Customs and Excise Act, 1964 (tariff book).

				Rate of duty				
Heading	CD	Article description	Statistical unit	General	EU	EFTA	SADC	MERCOSUR
9619.00.20	5	Sanitary towels (pads), tampons and napkin liners for babies	Kg	20%	10%	10%	free	20%
9619.00.35	3	Sanitary towels (pads), made up from woven textile materials	kg	15%	free	free	free	15%

Table 4.1: Tariff on pads and tampons.

As at February 2019, the European Union (EU) EU is made up of twenty eight member states, namely; Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

EFTA refers to the European Free Trade Association. As at February 2019, the member states are: Iceland, Liechtenstein, Norway and Switzerland.

SADC refers to the Southern African Development Community. As at February 2019, it is made up of 16 member countries, namely Angola, Botswana, Comoros, Democratic Republic of Congo, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Tanzania, Zambia and Zimbabwe.

MERCOSUR is an economic and political bloc comprising, as at February 2019, Argentina, Brazil, Paraguay, Uruguay, and Venezuela.

Sanitary pads and tampons are not included in schedule 4, which list goods that rebates maybe claimed for if custom duty was specified in schedule 1 and schedule 2.

Thus, in addition to VAT, currently South Africa generally imposes custom and excise duty when purchasing pads and tampons from other countries that are not indicated as free as per the Table 4.1 above.

Table 4.2 below indicates the country of manufacture for some of the brands of pads and tampons that are easily accessible and available from the majority of the convenience stores around South Africa.

Sanitary Pad /Tampon Brand	**Country Manufactured**
Always	Hungary and Venezuela
Lil-lets	Tampons-South Africa Pads-China, India
Kortex	Tampons-Czech Republic Pads-South Africa
Stayfree	Pads-South Africa, Brazil Tampons-Germany
Tampax	Hungary

Table 4.2: Pads and tampons and country of origin

The manufacturing countries were confirmed by phone calls made by the author to the customer care lines of Procter & Gamble, Lil-lets, Kimberly Clark, and Johnson & Johnson.

Importing sanitary pads and tampons from these countries are not free of customs duty. Hence in addition to VAT, the price of sanitary pads and tampons are inflated by custom duties.

South African Tax Treatment of female menstrual hygiene products prior to 01 April 2019

Prior to 01 April 2019, the VAT Act did not define what menstrual hygiene products are. Section 1 of the VAT Act defined goods to mean:

> 'corporeal movable things, fixed property, any real right in any such thing or fixed property, and electricity, but excluding—
>
> (*a*) money;
>
> (*b*) any right under a mortgage bond or pledge of any such thing or fixed property; and
>
> (*c*) any stamp, form or card which has a money value and has been sold or issued by the State for the payment of any tax or duty levied under any Act of Parliament, except when subsequent to its original sale or issue it is disposed of or imported as a collector's piece or investment article;…'

As per above, menstrual hygiene products could be defined as corporeal moveable things and falls within the ambit of goods as defined.

Section 11 subsection (1) of the VAT Act states:

> 'a supply of goods would be charged with tax at the rate referred to in section 7(1), such supply of goods shall, subject to compliance with subsection (3) of this section, be charged with tax at the rate of zero per cent where…'

Section 11 subsection 1(j) of the VAT Act states:

> ' the goods consist of such foodstuffs as are set forth in Part B of Schedule 2, but subject to such conditions as may be prescribed in the said Part…'

As per Part B of Schedule 2, the zero-rating of the supply of goods consists of certain foods listing 19 items, namely: brown bread, maize meal, samp, mealie rice, dried mealies, dried beans, lentils, tinned pilchards or sardinella, milk powder, dairy powder blend, rice, vegetables, fruit, vegetable oil, milk, cultured milk, brown wheaten meal, eggs and edible legumes. These are all staple items in the shopping list of low-income consumers.

As per above, menstrual hygiene products are not zero-rated supplies.

Section 12 of the VAT Act listed supply of any of goods or services that would be exempt from the tax imposed under section 7(1)(a) of the VAT Act, and menstrual hygiene products were not part of the listed exempt supplies. Examples of exempt

supplies are financial services, including Sharia finance premiums, fare-paying passenger transport by road or rail, educational services, child care, donated goods supplied by certain non-profit (charitable) bodies, rental of residential accommodation, immovable property located outside South Africa, the supply of goods by a non-established business before the goods are entered for home consumption, unless the non-established business applies in writing to the SARS to have the supplies zero-rated and certain supplies made by bargaining councils to their members are exempt from VAT (EY, 2018).

Section 7 of the VAT Act imposes value-added tax, subject to the exemptions, exceptions, deductions and adjustments provided for in the VAT Act.

In terms of section 7(1)(c) of the VAT Act, VAT is levied at a standard rate of 15% on the supply of goods and services by a vendor.

As a result of the discussions above and application of the VAT Act, female menstrual hygiene products attracted VAT at the standard current rate of 15%.

In terms of section 7(1)(b) of the VAT Act, imported female menstrual hygiene products were also subjected to VAT.

South African Tax Treatment of female menstrual hygiene products post 01 April 2019

Section 89 of the Tax Administration Act defines what Binding general rulings are, as per below:

As per section 89 subsection (1):

' a senior SARS official may issue a 'binding general ruling' that is effective for either—
(*a*) a particular tax period or other definite period; or
(*b*) an indefinite period.
As per section 89 subsection (2) a 'binding general ruling' must state—
(a) that it is a 'binding general ruling' made under this section;
(b) the provisions of a tax Act which are the subject of the 'binding general ruling'; and
(c) either—
(i) the tax period or other definite period for which it applies; or

(ii) in the case of a ‘binding general ruling’ for an indefinite period, that it is for an indefinite period and the date or tax period from which it applies.'

As per section 89 subsection (3) ‘binding general ruling’ may be issued as an interpretation note or in another form and may be issued in the manner that the Commissioner prescribes.

As per section 89 subsection (4) A publication or other written statement does not constitute and may not be considered or treated as a ‘binding general ruling’ unless it contains the information prescribed by subsection (2).

The South African Revenue Service (SARS) issued a binding general rule (VAT) 49, Supply and Importation of Sanitary Towels (Pads), on the 15 March 2019.This binding rule is effective from 1 April 2019 until it is withdrawn or amended.

As per the Rates and Monetary Amounts and Amendment of Revenue Laws Act 21 of 2018, section 14, Schedule 2 to the VAT Act is amended to include item 22 which is sanitary towels (pads). The effect is that sanitary towels (pads) will be zero-rated in terms of section 11(1)(j) of the VAT Act.

The binding general ruling defines the products within scope for Item 22 as:

- Menstrual pads (all types – for example, light, medium and heavy flow, mini, super, sports, overnight, wings and no wings)
- Maternity pads designed for use in pre and post birth bleeding
- Panty liners which are similar to menstrual pads and are lighter and thinner

The binding general ruling further defines the products out of scope for Item 22 as:

- Tampons (all types, with or without an applicator)
- Menstrual cups
- Feminine sanitary wipes
- Period or leak-proof underwear
- Any incontinence towels or pads

As per the binding general rule, for the importation of the menstrual hygiene products in scope for Item 22, these items would be exempt from VAT levied in terms of section 7(1)(b).

As per the binding general rule, for the importation of the menstrual hygiene products out of scope for Item 22, these items would be subject to VAT at the standard rate of 15%, as per section 7(1)(b).

As per the above ruling, South Africa will only zero-rate items define in Item 22 and this narrows down the type of menstrual hygiene products that will be zero-rated. As discussed in chapter one, menstrual hygiene products covers more than just sanitary towels (pads) and also includes tampons which as discussed in the report also has part of the market share. Furthermore the South African Institute of Tax (SAIT) notes that: 'There appears to be no policy rationale for distinguishing between the various forms of menstrual pads (no proof exists that lower-income households choose one over the other)', in its submission to National Treasury. SAIT also noted that the Panel for zero-rating did define sanitary products to means pads and tampons in its submission to National Treasury, and perhaps the narrow definition noted in the Rates and Monetary Amounts and Amendment of Revenue Laws Act 2018 and the SARS Binding General Ruling is only a technical error .SAIT has requested for an announcement to be made that all forms of menstrual sanitary protection be zero-rated, and that the wording in the pending legislation should reflect this. (Visser, 2019)

Medicalisation of menstruation versus sanitisation of menstruation

Medicalisation is a process by which a condition or non-medical problem become defined in medical terms, a medical study, includes a diagnosis and contains a prevention and/or treatment. Many pharmaceuticals define menstruation using medical terms in their direct to consumer advertising (DTCA) for contraceptives. (Deane, 2010)

In New York State Rogaine® (product for hair regrowth), birth control pills, condoms, bandages, dandruff shampoo, and lip balm had been exempted from sales tax due

to their use as a medical supply to aid health. In the United States of America, the U.S Food and Drug Administration (FDA) classifies female menstrual hygiene products such as tampons and pads as medical devices. (Hartman, 2017)

There are certain medical conditions that relate exclusively to menstruation. These include the following (Parker, n.d):

- Abnormal uterine bleeding (AUB), which include heavy menstrual bleeding. No menstrual bleeding or irregular menstrual bleeding.
  Heavy menstrual bleeding is when menstrual bleeding affects women's normal activities. She loses more blood than the normal average of 5 tablespoon per period. She may be required to change her pad or tampon almost every hour. Amenorrhea is the absence of menstruation, where a woman experiences no menstrual bleeding at all.
- Dysmenorrhea is a condition that exists when women experience severe menstrual cramps.
- Premenstrual syndrome (PMS)-This syndrome usually takes place prior to menstruation in some women. It is usually used to describe many physical and psychological symptoms relating to menstruation which include emotional instability, irritability, insomnia, fatigue, anxiety, depression, headache, and abdominal pain.
- Premenstrual dysphonic disorder (PMDD) is similar but much worse than PMS.

Some of the medical conditions associated with menstruation require pain control and thus they require the taking of pain medication. As discussed in chapters below, some countries like South Africa currently impose VAT on medications. As a result, women who incur menstrual related medical conditions will also have to bear the cost of the pain killers and the VAT thereon.

There have been many court cases that relate to women undergoing various medical conditions relating to menstruation. Listed below are some.

- 1845, in the case of *Regina v. Brixey*, Martha Brixey was charged with the wilful murder of an infant in her care. Martha had the condition of amenorrhea and was undergoing treatment for it, she was found not guilty due to insanity.

- In 1981, in the case of *Regina v. Craddock*, Sandra Craddock stabbed a colleague to death. Dr Dalton argued that at the time of the offense she was suffering from PMS and was undergoing progesterone treatment. She was put on probation for three years provided she underwent hormonal therapy.
- In 1987, in the case of in *Regina v. Reynolds*, Anna Reynolds was charged and convicted with murder for beating her mother to death with a hammer. Dr Dalton, an endocrinologist provided medical evidence on the effect of PMS and post-natal depression. The court then overturned the murder conviction to manslaughter on grounds of diminished responsibility, and issued a probation order with a condition of psychiatric treatment.

The above cases indicate that female biological makeup have been blamed for violent acts performed by women and hormonal treatments were utilised as a means for controlling women who were experiencing uncontrollable symptoms and were no held responsible for their actions. Consideration must be given as to whether menstrual related symptoms can have a negative effect on women and distort her ability to make rational decisions. At the same time, a males' bad mood is not considered in respect of their biological make up. Sanitisation of menstrual cycles and being able to name menstruation-related problems provide a medical validation for menstruation. (Mazaj, M. 1995)

In 1980 in the *Geary v. Dominick's Finer Foods, Inc.* case the plaintiffs alleged that local sales taxes had been "illegally collected on the sale of tampons and sanitary napkins". The State Supreme Court noted that Tampons and pads are necessities and are considered "medical appliances", just as band aid and cotton are used for absorption purposes, and are thus exempted from sales tax. The above case highlights the following: that menstrual hygiene products are a necessity for women to perform their daily activities normally and secondly begs the question whether menstruation is a normally bodily function or an illness that needs to be effectively managed. In the case above the defendants argued that if menstruation is not an illness then menstrual hygiene products cannot be considered medical appliances. As such a different exemption should be considered for menstrual hygiene products. (Ooi, 2018)

Use of Eco Taxes and incentives on menstrual hygiene products

The imposition of ecological (eco) taxes is a tool used by many countries to promote eco-friendly decisions by consumers.

Many OECD countries are utilising their tax systems as a mechanism to promote the protection of the environment and health of their citizens, thus promoting sustainable development. (Naud, 1995)

The menstrual hygiene products available at convenience stores are largely made from plastics and are bleached and hence are not eco-friendly and hazardous to a women's health and end up in landfill sites which pollute the environment.

Menstrual hygiene pads available in the market are largely made of plastics and contain SAPs, polymers, chemicals, bleaches and perfumes, all of which are highly carcinogenic, thus allowing chemicals to absorbed directly into the bloodstream. This contributes to increased risks of cervical cancer, UTIs, yeast infections, rashes, allergies and painful periods. The pads made from cotton contain pesticides which have been linked as causes for hormonal imbalances and infertility. (Aranha, 2018)

Taxing businesses for the usage of non-biodegradable materials would result in the following:

- It would increase the costs of a product; manufactures will have to pass through the increase costs to consumers, which would possible result in a decrease in demand for such products.
- It would lead to innovation, forcing manufacturing to create alternative products using biodegradable material.
- The above would then lead to a decrease in environmental pollution, reducing the amount of waste going to landfills.

Increasing access to biodegradable, eco-friendly menstrual hygiene products is definitely a solution to promoting the safety of women's health and the environment.

South Africa should also consider promoting the use of eco-friendly pads and tampons that would promote the sustainability of the environment and health of the women in the country, by possible implementing eco taxes on the manufacturing of pads and tampons made from using toxic and non-eco-friendly materials and they also could provide for tax incentives on the manufacturing of pads and tampons made from using eco-friendly materials.

VAT on medicines

Medicine prices in South Africa are regulated and governed by the Single Exit Price (SEP).The SEP mechanism lists the maximum price medication can be charged at. The SEP consists of the manufacturer's price, this being the largest segment, a logistics fee of 10%-15%, this often being higher for essential medicines, and the standard 15% value-added tax (VAT). Dispensers are remunerated for their services through the additional charge of a dispensing fee, which is calculated on a legislated tiered framework contingent on the SEP of the medicine, and which also includes an additional VAT component. (Bangalee and Suleman, 2017)

In South Africa 84% of the population utilises the public health care facilities and it is thus argued that VAT for healthcare is only really applicable in the private sector.
This argument fails to recognise the deteriorating level of services provided by public health which include medicinal shortages and ease of access due to long ques at state hospitals and staff inefficiencies. As a result citizens who are utilising public health services also go to the private sector and purchase the necessary medications required on which VAT is imposed. One of the key success factors of implementing the National Drug Policy (NDP) in South Africa was to achieve equity in healthcare for all South Africans. The NDP implemented an Essential Medicines List (EML) for the public sector. This was to aid in achieving the above objective of equity, the EML should be applicable for both public and private sectors. Removing VAT on medicine would result in huge governmental revenue losses, however, the benefits to quality of life and life expectancy as a result of ease of access to medication must be considered. Consideration should at least be given to removing the VAT and therefore zero-rating only the essential medicines to limit the revenue loss rather than implementing a single umbrella rate. Studies have confirmed that

zero-rating merit food items reduce the tax burden on the lower-income levels and thus zero-rating essential medicines may have the same effect. An alternative solution would be to reduce VAT rates on all medicines. Greece, Austria, Italy, Finland, Switzerland and Turkey apply reduced rates to medicines. (Bangalee and Suleman, 2017)

Income Redistribution through indirect taxes

Indirect taxes imposed at a single rate have no redistributive effect since the real income of the rich households and poor households are reduced by the same amount. Indirect taxes are considered progressive and it reduces inequality if indirect taxes are places on goods and services that are consumed at a higher proportion in the rich households. (Creedy, 2001)

The median voter theorem dictates that countries with high income inequality have more progressive tax and transfer systems. It has been noted that countries with a high market income inequality redistribute minimal income earned by the fiscus. Government corruption is one of the contributing factors to this contradiction, especially in developing countries. Between 2003 and 2015 countries that where above Transparency International's average corruption score (4.05) had a relative redistribution level of 28%, whereas the relative redistribution level for countries below the mean was 13%.The Transparency International's Corruption Perceptions Index ranges from 0 to 10, with 10 indicating no corruption. That is to say, on average, countries with low levels of corruption redistributed more than twice as much income as countries with high corruption levels. A study was performed on the effects corruption has on the demand and supply of redistributive income. It has been noted social trust in institutions reduced the demand for taxes and thus redistribution, as the public do not trust the government to use tax income in a socially beneficially way. Studies reflected that South Africa has a relative redistributive percentage of 11.98% and a Corruption Perceptions Index (CPI) of 4.82. Thus giving rise to the negative relation between government corruption and redistribution. (Sánchez and Goda, 2018)

There has been some improvement on the Corruption Perceptions Index for South Africa as per Tradingeconomics.com for the year 2018. South Africa scored 43 points out of 100 in the 2018 report by Transparency International. Corruption Index in South Africa averaged 46.62 points from 1996 until 2018.

In South Africa the success of redistribution is evaluated by the level to which tax and government expenses are progressive.

One of the recommendations made by Miranda Stuart, who is in favour of tampon tax was that the revenue raised from taxing menstrual hygiene products should be utilised to fund cheaper childcare so that more women can go out and work. This recommendation refers to redistribution of income. As noted above South Africa has a very low relative redistributive percentage and as a result this recommendation would probably not result in favour of South Africa.

The results of a numerical analysis performed to assess the impact of utilising the different VAT treatments available in the VAT Act that could alleviate the negative effects of tampons tax, for a consumer, manufacturer and National Treasury reflected the following (Ndlovu, 2017):

- A VAT exemption would be in the interest of National Treasury as it would generate a lower loss, as the revenue loss from not receiving an output VAT would be countered by the input VAT that would not be able to be claimed by manufacturers. A VAT exemption would not be favourable for a manufacturer, as additional output VAT will need to be paid as input VAT cannot be claimed thus increasing the price of the inputs. The consumers can also be negatively impacted as the input VAT cost can be passed on to the consumer and increase the price of the menstrual hygiene products even though no VAT will be charged at the final sale.
- For zero-rating, the manufacturer would be indifferent except for administrative compliance to ensure that they are charging VAT at zero percent. The manufacturer will still be able to claim the input VAT on the inputs. The consumer will be in a favourable position as the VAT would be charged at zero percent at the final sale. National Treasury would be in an unfavourable position and would

experience a higher loss than VAT exempting menstrual products. The revenue loss is as a result from not receiving the output VAT and allowing a claim from input VAT.

CHAPTER FIVE: THE AFFORDABILITY OF MENSTRUAL HYGIENE PRODUCTS AND POVERTY LEVELS IN SOUTH AFRICA.

Once girls and women have the resources and knowledge to manage their menstrual health and hygiene, they are better placed to invest in themselves, families and communities. With the increase in the cost of commercial menstrual health supplies young girls and women are unable to afford sanitary pads resorting to shocking alternatives like non-sanitized cloth, ashes and husk san. The affordability issue of sanitary also leads to many health issues and forces young girls and women in “Transactional Sex” to obtain money to buy sanitary pads. (Tiwary, 2018)

The National Poverty Line (NPL) is measured by calculating a food poverty line (FPL), lower bound poverty line (LBPL) and an upper bound poverty line (UBPL). The NPLs can be utilised as input into some processes that can help the poor.

The food poverty line refers to the amount of money that a person will need to afford the minimum required daily energy intake. This is also commonly referred to as the “extreme” poverty line. The lower-bound poverty refers to the food poverty line plus the average amount derived from non-food items of households whose total expenditure is equal to the food poverty line. The upper-bound poverty line refers to the food poverty line plus the average amount derived from non-food items of households whose food expenditure is equal to the food poverty line. The FPL for 2018 is ZAR 547 per a person per month, for LBPL is ZAR 785 per a person per a month and for UBPL is ZAR 1183 per a person per month .These line values were based on the Income and Expenditure Survey (IES) 2010/2011, which was the latest household expenditure data available. (SA Stats, 2018a)

Close to fifty percent of the population of South Africa is considered poor at the 2015 UBPL of ZAR 992 per person per month. Twenty seven percent of the population is at risk of slipping into poverty. Approximately twenty percent are middle income and four percent are in the elite high-income bracket. In 2015, in the rural areas, sixty five percent of the population lived below the poverty line and in urban areas twenty five percent of the population were poor, that is that their profiles are presented at the

LBPL.Towards the late 2000s poverty has reduced in South Africa largely due to social grants. Due to the slow growth in tax revenue and low economic growth, it is not sustainable to expand social grants and further reduce poverty. (SA Stats, 2018a)

The table below reflects the prices (inclusive of VAT) of sanitary pads as quoted on 18 January 2019 from the Dischem (a large retailer of pharmaceutical supplies) website.

No.	Product	Price (ZAR)	Price per unit (ZAR)
1	Libresse Maxi Cotton Feel 18's Super Duo Pack	36.95	2.05
2	Lil-lets Maxi Cotton Pads Super 16's Unscented	31.95	2.00
3	Always Maxi Extra Long Duo 16's	43.95	2.75
4	Always Maxi Sanitary Pads Soft Normal 20's	43.95	2.20
5	Stayfree Ultra Body Fit Sanitary Pads 20's Regular Unscented	44.95	2.25
6	Kotex Maxi Core Pads 10's Normal Wings	19.95	2.00
7	Lil-lets Ultra Pads 10's Regular	26.95	2.70
8	Lil-lets Essential Pads 8's Scented	9.95	1.24
9	Stayfree Maxi Thick Pads Wings Scented 20's	31.95	1.60
10	Comfitex Teenz Maxi Winged 10's Cotton Scented Pads	12.95	1.30
11	My Time Pads Ultra Dry + Wings 10's	16.95	1.70
	Average Price of Sanitary Pad (including VAT)	**1.98**	
	VAT @ 15%	**0.26**	

Table 5.1: Price of Sanitary Pads

The table below reflects the prices (inclusive of VAT) of tampons as quoted on the 18 January 2019 from the Dischem (a large retailer of pharmaceutical supplies) website.

No.	Product	Price (ZAR)	Price per unit (ZAR)
1	Lil-lets Tampons 32's Super Plus	64.95	2.03
2	Kotex Tampons 32's Super	54.95	1.72
3	Stayfree Procomfort Tampons 32's Normal	44.95	1.40
4	Lil-lets Tampons 32's Regular	49.95	1.56
5	Kotex Tampons 16's Regular	28.95	1.81
6	Tampax Tampons Compak 16's Regular	41.95	2.62
7	Lillets Tampons Nano 10`s Regular	20.00	2.00
	Average Price of Sanitary Pad (including VAT)	**1.88**	
	VAT @ 15%	**0.24**	

Table 5.2: Price of Tampons

> 'Thirty percent of Africa's population (357 million people) are girls and women aged 10 to 50 years. The average woman has her period for 2,535 days of her life, that is nearly seven years out of 39 years (5 days per 28-day cycle) of buying sanitary pads. In the average woman's lifetime, she uses 11,000 tampons or 11,154 (22 sanitary pads per period). The average tampon in South Africa cost about R1.50 each ($0.10), R33 ($2.27) per period and R16500 ($1,135) for a lifetime. Meanwhile, a pack of ten sanitary pads cost R18 ($1.24), translating to about R36 ($2.5) a period or R19800 ($1,362) a lifetime (October 2018 figures excluding inflation). This means that having a period is a luxury more than half of the population cannot afford.' (Ihekwoaba, 2018)

Based on the Dischem prices quoted in the table above and the usage of pads noted in the preceding paragraph, a menstruating female requires ZAR 43.56 (22 X 1.98) for sanitary pads a month and ZAR 41.36 (22 X 1.88) for tampons per month. Considering the LBPL of ZAR 785 per a person per a month and the UBPL of ZAR 1183, this is approximately five percent of LBPL and three and half percent of UBPL of income.

The Living Conditions Survey (LCS) findings suggest that in poor households, women cannot afford to buy all the sanitary products they require. In terms of its reported expenditure, women in the poorest 70% of households meet only 8% of their needs for sanitary products. (Independent Panel of Experts for the review of zero-rating in South Africa, 2018)

Pricing of menstrual hygiene products

Pricing Options

Free market versus regulated markets

In a free market, prices for commodities are determined by a supply and demand relationship.

A free market has the following pros:

- It creates political and civil freedom.
- It allows for economic growth and transparency.
- It ensures competitive markets, which can result in good quality products at reasonable prices
- Consumers decide what producers should produce or services are in demand.

A free market has the following cons:

- It creates a competitive environment that results in winners and losers. Hence entrepreneurs would jeopardize safety of consumers for increased profits.
- Since there are winners and losers, wealth is not distributed evenly.
- It may result in economic instability resulting in economic growth spurts and recession.
- In isolated/remote areas, prices can be very high.

A regulated market is market where the government of a country controls the prices and demand and supply of a commodity.

A regulated economy has the following pros:

- It protects the safety of consumers.
- It protects the safety and health of citizens as well as the environment.
- It looks after the stability of the economy.

A regulated economy has the following cons:

- It creates complex and multi layered government administrations.
- It can create monopolies that cause consumers to pay more.
- It diminishes innovation by over-regulating.

Free market and regulated markets both have pros and cons and thus it is recommended that a balance between the two should be achieved to protect people and the environment. (Newstex, 2018)

Cost Transparency

Consumers do not have the necessary information to judge the fairness in prices of commodities. Cost transparency is required to assist consumers in making effective decisions to optimise their choice behaviour by analysing the quality and value of products. Cost transparency will also improve market efficiency thereby benefiting the economy. (Simintiras, Dwivedi, Kaushik, and Rana, 2015)

There is little to no research that reveals cost of manufacturing tampons and pads in today's times, as a result there is no cost transparency on these essential goods and women are paying exorbitant prices. If these products are seen as a necessity, some unscrupulous sellers may take advantage of this. Most women continue to buy the same menstrual hygiene products from brands that have dominated the market for many years, because there is no customer awareness and requirement for change even though these products are not eco-friendly and could be toxic to a women's health. (Kaptein, Levitin and Aita, 2016)

CHAPTER SIX: COMPARISON TO WHAT SOME COUNTRIES AROUND THE WORLD ARE DOING TO ALLEVIATE THE EFFECTS OF TAMPON TAX.

The British government currently levies a 5% VAT on sanitary products. The government was unable to reduce the rate to zero due to European Union Rules, which limit the minimum VAT rate to 5%. In October 2018, new EU VAT rules were approved by the European Parliament and these rules will allow the UK to stop taxing sanitary products. (Mobarik, 2018)

In September 2018, in South Africa Shoprite stores, absorbed the VAT and did not pass it onto the consumer, on their Ultrex brand sanitary pads. Shoprite has committed to provide its customers with affordable necessities.

In the United States of America taxes are imposed by states or by municipalities. New York City, Illinois, Connecticut, Florida, Chicago, Washington DC have passed legislation to exempt sales taxes on menstrual hygiene products. Maryland, Massachusetts, Pennsylvania, Minnesota, and New Jersey have repealed the sales tax on female hygiene products. New York City have also provided funding for the provision of menstrual hygiene products in homeless shelters and public schools. In 2017, New York Congresswomen, Grace Meng introduced the Menstrual Equity For All Act of 2017, which would provide a refundable tax credit to low-income women and require prisons and large employers to provide feminine hygiene products. In August 2018, the bill was in several committees, awaiting enactment. (Ooi, 2018)

The Menstrual Equity For All Act of 2017 bill provides for a tax credit, a tax exclusion, and requirements that apply to the purchase or distribution of menstrual hygiene products. The bill amends the following Acts in respect of menstrual hygiene products (Congressional Research Service, 2017):

- Internal Revenue Code to: (1) expand the tax exclusion for reimbursements from a health flexible spending arrangement to include amounts paid or incurred for menstrual hygiene products, and (2) allow a refundable tax credit of $120 for certain individuals who use menstrual hygiene products, subject to adjustments for inflation and a limitation based on adjusted gross income.

- McKinney-Vento Homeless Assistance Act to require the Emergency Food and Shelter Program National Board to establish written guidelines for the Emergency Food and Shelter Program to ensure that funds provided under the program to private non-profit organizations and local governments may be used to provide menstrual hygiene products.
- Occupational Safety and Health Act of 1970 to require the Department of Labor to issue a rule requiring private employers with not less than 100 employees to provide free menstrual hygiene products for their employees.

Each state that receives a grant under the Edward Byrne Memorial Justice Assistance Grant Program must annually certify to the Department of Justice (DOJ) that all female inmates and detainees in that state have access to menstrual hygiene products on demand and at no cost to the inmates and detainees. If a state does not submit the required certification, DOJ must reduce the state's grant funding under the program by 20% and reallocate the funding to states that submitted certifications.' (Congressional Research Service, 2017)

In 2018, India removed the imposition of a 12 per cent GST (goods and services tax) on sanitary pads (Kazmin, 2018). It is estimated that only about 7% to 12% of Indian women can afford sanitary pads, and that almost 90% of the female population use cloth rags which are washed and reused (Kazmin, 2018). The Union Health and Family Welfare Ministry, Government of India approved a scheme on June 15, 2010 for the provision of highly subsidized sanitary napkins to adolescent girls in the rural areas to promote menstrual hygiene. The new scheme will cover approximately 15 million girls in the age group of 10–19 years every month. (Garg, Goyal and Gupta, 2012)

India has noteworthy initiatives to improve menstrual hygiene maternity hospitals, railway stations and airports and some schools will be or have already installed pad vending machines. Women inmates will be making sanitary napkins to supply to vending machines in schools. In some rural areas school girls will be provided a year supply of sanitary pads through local self-help groups. After three years of research, two brothers have designed a low-cost sanitary pad making machine that can

produce 1,200 pads a day, each costing to 90 paise (ZAR 0.18), and the lowest rate in India. (Kukreja, 2018)

In July 2015, Canada exempted sales tax on menstrual hygiene products. (Ooi, 2018)

After many protests and initial rejections to repeal tampon tax in France, in 2015, members of parliament voted to reduce the VAT on pads from 20 percent to 5.5 percent. (Gleeson, 2015)

Australia currently considers female menstrual hygiene products as non-essential items and they are taxed at 10 percent being the goods and services tax. Due to protests in the country, in August 2015, the removal of tampon tax was considered among the Australian state treasurers; however it was decided to retain the tax (Hartman V, 2017). On 3 October 2018, CNN published that Australia is about to repeal tax on female menstrual hygiene products, although the details have not yet been finalised. Lawmakers from each state and territories unanimously agreed to adopt federal proposals which included the exemption of female menstrual hygiene products. This was supported by the major political parties. (George, 2018)

Kenya was the first country in the world to repeal tampon tax in 2014. In 2011, Kenya also removed the imposition of import duty on sanitary pads to make it more affordable for the low-income households. In Kenya for the 2017/2018 national budget, $5 million was allocated to underprivileged girls for female menstrual hygiene products. Furthermore, Kenya's Education Act legislates that menstrual hygiene products should be made freely available to all school girls. (Apolitical, 2017)

There have been campaigns in Nigeria to repeal tampon tax as well. (Ihekwoaba, 2018)

After the tax cut in Kenya, it has been noted that 65% of the female menstruating population still cannot afford to purchase menstrual hygiene products. This indicates

that removing taxes on the menstrual hygiene products still does not make it affordable. (WDB Investment Holdings, n.d)

In Utah, a state in the United States of America, Susan Duckworth was the sponsor of HB202-The Hygiene Tax Act, a bill that aims to exempts sales tax on hygiene products such as diapers, liners, pads, tampons and sanitary napkins. Current tax legislations imply that the hygiene products are luxuries and not necessities. She is of the view that hygiene products should be put into the category of "medical necessities". The bill was not aimed to alleviate tampon tax and pink tax but rather a bill that aims at all hygiene products for both genders. (White, 2016b)

Susan Duckworth was of the view that the savings from exempting these items will be pumped back into the economy by increasing consumer spending power (DeMille, 2016). The Hygiene Tax Act was not approved by legislative committees as the committee did not want to add to exemptions (DeMille, 2016). Utah law still prohibits taxation on medical prescriptions and continues to tax feminine hygiene products. (White, K.B. 2016b)

Kathy Walking started Eco Femme in India which produces eco-friendly pads. She started the business largely due to the amount of waste plastic pads and tampons cause to the environment and also because conservancy workers having to clear blocked drains caused by women flushing disposal pads and tampons. (D'Souza, 2017)

Menstruation is not optional for women, women cannot elect to menstruate or not. For women to avoid paying tax on menstrual hygiene products, they would need to stop menstruating or not purchase menstrual products at all. In New Jersey, studies showed that the consumer price reduced by 7.3 percent after tampon tax was repealed at 6.9 percent. This indicates that consumers have benefited from the tax repeal. Further studies on the income distributional consequences of the repeal of tampon tax were conducted. The study revealed that the consumer price of menstrual hygiene products reduced by 3.9 percent for high income earners, and 12.4 percent for low-income earners. This reveals that repealing the tampon tax

does promote affordability for the low-income households. (Cotropia and Rozema, 2018)

The South African Finance Minister, Tito Mboweni, also announced in 2018, funds will be allocated to provinces to provide free sanitary pads to poor learners who menstruate.

South African initiatives include the following:

Kgoshigadi, a social enterprise, was launched in 2012 to address the issue of school absenteeism caused by menstruation. Initially the enterprise obtained sanitary pads from sponsorships to distribute to the low-income level households. Now they have franchise opportunities to establish mini-factories to produce low-cost biodegradable sanitary pads. These factories create job opportunities for the people of South Africa. (Kgoshigadi, 2019)

In the 2011 State of the Nation Address President Zuma had announced the provision of free sanitary products and in September 2017, the Department of Women noted that there was no national policy on the provision of sanitary pads. (Independent Panel of Experts for the review of zero-rating in South Africa, 2018). Members of parliament of South Africa decided in October 2017 to launch the sanitary dignity programme. It was to be piloted in KwaZulu-Natal, Eastern Cape and Mpumalanga provinces and that would inform and guide the national rollout process. The Sanitary Dignity Programme encompasses the entire value chain, from procurement and production, to storage, distribution, and disposal of sanitary products. (Lindeque, 2019)

CHAPTER SEVEN: REMOVAL OF TAMPON TAX IN SOUTH AFRICA AND THE IMPACT ON THE SOUTH AFRICAN ECONOMY.

Most females of child bearing age have to purchase menstrual hygiene products for their menstruation which is a part of the biological nature of a female and not optional; this makes menstrual hygiene products an economic necessity. A study was performed to estimate the economic burden of a sales tax for low-income households by the American Society of Health economists. The study compared the price elasticity of menstrual hygiene products between low-income households and more affluent households. This study confirmed that low-income households are own-price inelastic for menstrual hygiene products compared to the affluent households, when facing the same supply curve and tax rate, this indicates that taxes on menstrual hygiene products is regressive. The study also revealed that the tax burden on low-income households is approximately three times more than that of the more affluent households. (Smith and Chudnow, 2018)

The VAT rate in South Africa increased from 14% to 15% on the 1 April 2018.The Finance Minister appointed a panel of experts to review the list of zero-rated food items. Currently 19 basic foods are taxed at a zero-rate in terms of section 11(1)(j) of the VAT Act, 1991. Sixty-six items were considered by the Independent Panel of Experts based on public submissions.

One of the biggest concerns with zero-rating goods and services relates to defining the goods and service. The definitions of the zero-rated goods and supplies should be clear and concise. A long list of zero-rated items results in complex administration and compliance inefficiencies and costs. If definitions are not clearly defined and are ambiguous this can increase disputes and lead to VAT fraud. In summary goods and services should only be zero-rated if they are considered merit goods, where they benefit the social and economic welfare of the country. If merit goods are largely consumed by the rich and not the poor then the impact to the economy and society would be regressive. (Independent Panel of Experts for the review of zero-rating in South Africa, 2018)

The following criteria were used to identify items that should ideally be considered for zero-rating (Independent Panel of Experts for the review of zero-rating in South Africa, 2018):

- 'The overall tax system must remain as progressive as possible,
- The extent to which VAT could become more progressive.
- Zero-rating should incentivise merit goods and address special needs for women, older people, those living with disabilities and children if possible.
- The cost of zero-rating to the fiscus should not be excessively high.
- The benefits of zero-rating should not be absorbed by producers or retailers.'

Furthermore the panel considered the three main areas of concern of tax policies which are equity, efficiency and ease of administration. There are two types of equity, vertical and horizontal equity. Vertical equity is when the rich pay a larger proportion of their income in taxes, and horizontal equity is when the rich and poor pay the same amount of VAT because they consume the same amount of the good. (Independent Panel of Experts for the review of zero-rating in South Africa, 2018)

Out of the sixty-six items requested to be zero-rated, the following items were recommended to be taxed at zero percent:

- White bread,
- White flour,
- Cake flour,
- Disposable nappies,
- Sanitary products,
- School uniforms, and
- Nappies.

The basis of recommending sanitary products will be further analysed based on the above five criteria. Sanitary products have been defined for VAT purposes as sanitary pads and tampons. (Independent Panel of Experts for the review of zero-rating In South Africa, 2018)

VAT increases the prices of sanitary pads and tampons. It is possible that zero-rating these items may increase the demand from the low-income households, thus making

the impact of zero-rating progressive. (Independent Panel of Experts for the review of zero-rating In South Africa, 2018)

Non pregnant women between the ages thirteen and fifty-five require menstrual hygiene products on a monthly basis. As discussed in previous chapters, if they cannot afford it, they utilise non hygienic and non-sanitised alternatives, which possibly has a negative impact on their health. Furthermore menstrual hygiene products are used due to the biological make up of females. By imposing VAT on these products females will be paying more taxes than males. Thus there is definitely merit in zero-rating menstrual hygiene products. (Independent Panel of Experts for the review of zero-rating In South Africa, 2018)

Menstrual hygiene products provide the lowest relative benefits to the poor compared to the other six items noted above. The poorest 80% of households spend approximately 0.005% of their total household expenditure on sanitary products while the richest spend approximately 0.002% of their total household expenditure on sanitary products. Thus the poor do spend more of their expenses than the rich do on sanitary products. (Independent Panel of Experts for the review of zero-rating In South Africa, 2018)

Statistics South Africa estimated sales of sanitary pads and tampons, including VAT, at R907 million in 2016, which would approximate R1 billion in 2017. The foregone revenue from zero-rating would come to around R120 million in 2017. (Independent Panel of Experts for the review of zero-rating In South Africa, 2018)

The Panel concluded that zero-rating sanitary products will not have a large impact in the low-income level households, however they still recommend zero-rating the sanitary products. In addition they advise that provision should be made for free access to sanitary products for the low-income households. (Independent Panel of Experts for the review of zero-rating In South Africa, 2018)

In the year 2014, sanitary pads was the largest category in the South African Feminine Hygiene market, accounting for 75.9% of the total market with a value of ZAR 1631.0 million (actual sales) with a compound annual growth rate (CAGR) of

13.44% . At the same time tampons had a market value of ZAR 156.5 million with a compound annual growth rate of 10.94%. Sanitary pads are expected to have ZAR 3064.6 million total market value and tampons ZAR 263 million by the year 2019. (Canadean Global Data plc, 2016)

Using the statistical information in the preceding paragraph, assuming these prices include VAT, it can be concluded that the VAT revenue from sanitary pads is estimated at (3064.6 x 15/115) ZAR 400 million for 2019. The VAT revenue from tampons is expected to be (263 x15/115) ZAR 34 million for 2019.

It must be noted that there are huge discrepancies in the statistical data from the two reports, namely the Canadean Global Data report and Statistics South Africa report. So there probably is no proper statistical information on the use and purchase of sanitary pads and tampons in South Africa. So, it will be difficult to determine the actual loss in tax revenue resonating from the zero-rating of sanitary products. That said, looking at the Statistics South Africa report the loss is probably at minimum R120 million. In addition, the cost of providing free menstrual sanitation products for the low-income levels has not been valued, however Finance Minister Tito Mboweni had announced in 2018 mid-term budget speech that funds will be allocated to provinces to provide free sanitary pads to poor learners who menstruate.

The cheaper price of pads and tampons is approximately ZAR 13 for a pack of 12 pads, thus post the zero-rating of pads you will pay now ZAR 11, which is a saving of R2, which makes a big difference over the lifetime of a women. Pads and tampons should be free as zero-rating does not make it affordable for the low-income households. (Marie Claire, 2018)

Stats SA estimates for 2018, that 29.5 million of South African population are females; 19.6 million are aged between 10 and 54 which is the age range of menstruating women. If women saved R23 a month for 37 years and it earned interest at 6% per annum, then they would have saved ZAR 36000. The injection of this capital into the South African economy would create wealth. (Marie Claire, 2018)

Using the Statistics South Africa data noted above, zero-rating menstrual hygiene products in South Africa will cost South Africa a decrease of at minimum 0.04 percent (120 million /299 billion) percent loss in governmental tax revenue per annum.

In December 2016 the Treasury Chief Director, Yanga Maputa, noted that repealing the tampon tax will not be beneficial to the poor menstruating women. Reducing the VAT on menstrual hygiene products to a zero-rate will only affect one to six percent of the lowest income households, and this would result in a revenue loss from the more affluent households. This would result in a benefit for only the affluent households and will be regressive. (Pilane, 2016)

In concluding this chapter the South African economy will be impacted by about ZAR 120 million at minimum in its governmental revenue as a result of zero-rating menstrual hygiene products. This decrease in government tax revenue will need to be mitigated by an increase in another tax or an increase in personal tax rates.

CHAPTER EIGHT: CONCLUSION

Tax policy can be an important form of economic regulation with a material impact on many women and families, therefore many scholars recommend a change in tax laws that can be used to improve women's lives. Tax reform is an important tool to achieve gender equality and human rights (Crawford and Spivack, 2017).

As discussed in preceding chapters, the production of low-cost menstrual hygiene products and reducing or waiving tax on menstrual absorbent material are impactful means of alleviating the financial burden of a physiological process affecting women in the reproductive years of their existence.

Based on this research report the South African government had the following options to negate the economic aspects of tampon tax:

- To exempt menstrual hygiene products from any and all taxes;
- To include menstrual hygiene products to the list of zero-rated items;
- To distribute free menstrual hygiene products to the South African female population; and
- To utilise redistribution of income taxes benefiting specifically females in their reproductive years.

The South African government has decided to include sanitary towels (pads) to the list of zero-rated items. As discussed zero-rating menstrual hygiene products will have a minimal impact on affordability, due to the high cost relative to the majority of females in their reproductive years. Menstrual hygiene products are still not affordable even if they do not include the 15% VAT. Gender equality is achieved to some measure in the reduction of tax on female hygiene products but the overall economic burden is unaffected. Merely zero rating the VAT on this essential item is considered a regressive action.

Furthermore, SARS General binding ruling 49 states that only sanitary pads are zero-rated and alternative menstrual hygiene products such as tampons and menstrual cups are excluded from being zero-rated . It is imperative that legislation be updated to include zero-rating of all menstrual hygiene products. The tax laws

cannot dictate the selection of menstrual hygiene products but should afford the consumer a choice. That choice should be the preserve of an individual who will select her product on the basis of comfort and convenience. Tampons, although discouraged by healthcare practitioners due to a potential lethal condition called “Toxic Shock Syndrome” should be included and prominently displaying signs discouraging their use, should also be zero-rated. Zero-rating female menstrual hygiene products is merely touching the surface and not effecting real relief from the economic burden of being female and poor. Real relief could possibly be achieved with price regulations as it achieved on essential food products and basic services.

To achieve an even greater impact on female poverty alleviation and gender equality further actions including a comprehensive solution such as the provision of free menstrual hygiene products by governments should be implemented.

To achieve a more impactful socio-economic outcome, it is recommended that South Africa ensure the success of the Sanitary Dignity Programme to ensure that the dignity of South African women is protected. Perhaps if the zero-rating was not removed, the funds from imposing VAT on the menstrual hygiene products could have been used to partly fund the Sanitary Dignity Programme, as the impact on zero-rating has a minimal effect on the poor.

The Sanitary Dignitary Programme should also create awareness about medical conditions that relate to menstruation. A suggestion is that perhaps the packaging of the free menstrual products should include leaflets educating females on any symptoms that could possibly relate to medical conditions relevant to menstruations.

Policy makers should follow the example of Kenya where significant and impactful progress in providing solutions to this human rights issue has been made.

The South African Tax Authorities should also consider promoting the use of eco-friendly pads and tampons that would promote the sustainability of the environment and health of women in the country. This could be, by implementing eco-taxes on the manufacturing of pads and tampons made from using toxic and non-eco-friendly materials. Tax incentives for the manufacturing of pads and tampons made from

using eco-friendly materials should be implemented in the tax system to promote a healthy and clean environment for South Africans.

I would also recommend that South Africa draft and implement a policy or legislation that would include a possible tax credit for menstrual hygiene products, and requirements that apply to the purchase or distribution of menstrual hygiene products similar to that of the Menstrual Equity for All Act of 2017 as discussed in chapter six of this report.

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