

Policy Brief

Author: Azrul Mohd Khalib

Issue	What are the implications of the recent policy decision to exempt and tax liquid and gel nicotine used in e-cigarettes and vape?
Previous status quo	<ul style="list-style-type: none"> • Tobacco products (including cigarettes, cigars) regulated under Food Act 983. The Control of Tobacco Product Regulations 2004 issued under this act - regulates smoke free environments; tobacco advertising, promotion and sponsorship (forbidden); and tobacco packaging and labelling. The sale of tobacco products is prohibited to persons under the age of 18. Subject to excise duties: for Cigarettes, cigars, cheroots, and cigarillos - RM200/kg; Other tobacco products, mostly 5% or RM40/kg. • E-cigarettes and vape have no defined legal status, is generally unregulated, and unrestricted in terms of manufacturing, distribution, sales and promotion. Content of nicotine vape restricted under Poisons Act 1952 (illegal to be dispensed without pharmacist approval). Non-nicotine vape has no restrictions. Not subjected to excise duties (As of March 2023). • Abovementioned are supposed to be governed by common framework under the proposed Tobacco and Smoking Control Bill 2022. Most countries have legislation specific for tobacco products, which are then amended to include vape. Malaysia continues to not have such laws.
Real world situation	<ul style="list-style-type: none"> • Both closed and open vape systems (non-nicotine and nicotine) widely available in Malaysia. <i>Closed</i>: manufactured and sealed at factory such as vape pods, disposables; <i>Open</i>: refillable and customised vape liquids (e.g. teh tarik, air bandung flavours) • Nicotine concentration: 3-5% nicotine disposables/ vape pods available. No limit or control of nic concentration. 5% nicotine devices cannot be found in countries which regulate vape such as UK, Australia, Indonesia, US, NZ (max:2-3%). Toxic at 6%. • Price ranges from RM15 to hundreds of RM. Disposables with nicotine are mostly imported from China. Illicit market exists. No restrictions or effective enforcement against nicotine related vape. • Local production of vape and e-cigarettes, mostly non-nicotine due to Poisons Act restrictions. Manufactures both open and closed systems. Malaysia is currently the world's largest exporter of vape liquids. The vape industry is estimated to be worth RM2.7 billion ringgit (2022), with 330 manufacturers and importers and 3,000 retail shops, employing around 15,000 people. International tobacco companies now entering vape market. • Market size: Estimated that 90% of Malaysian market is nicotine based vape (mostly illicit and imported), while 10% is non-nicotine. • Consumer profile: National Health and Morbidity Survey 2019, 1.12 million people using vape/ e-cigarettes (smokers: 7 million). Industry survey: 68% male respondents vaped (male smokers: 45%), 32% women (female smokers: 1%). <i>At least 600,000 children between 11 and 18 years of age have taken up vaping.</i> Many vape users are also dual users (also smoke cigarettes). • Promotion and sponsorship: Vape companies are sponsoring sports events, openly advertising and claiming medical benefits of using vape (strictly verboten for tobacco) • Nicotine addiction: Quit smoking clinics are seeing more patients who are dual users, vape users, younger and female. Indication: nicotine addiction is on the rise.
Recent policy action	<ul style="list-style-type: none"> • Exempting liquid and gel nicotine (Poisons (Amendment of Poisons List) Order 2023): Involves chemicals used in the preparation of e-cigarettes and vape. Exempts them from the controlled substances schedule under the Poisons Act 1952 (previously under Group C). Enables for taxation of e-cig and vape without conflict. • Imposing excise duties (Excise Duties (Amendment) Order 2023): imposes duties on liquid and gel nicotine used in e-cigarettes and vape (RM 0.40 per millilitre. Effective 1 April 2023)
Policy implications	
Positive	<ul style="list-style-type: none"> • Vape and e-cigarettes have now been imposed with excise duties, allowing revenue to be collected from the importation and sale of these products. • Allows unrestricted economic growth of the domestic nicotine vape manufacturing capacity, replacing imported products.

Negative	<ul style="list-style-type: none"> Allows proponents of vaping and e-cigarettes as harm reduction or smoking cessation strategies to obtain their devices easily and without legal obstacles
	<ul style="list-style-type: none"> Vape and e-cigarettes continue to not have any specific regulations in place, allowing for uncontrolled promotion, marketing and sales to minors; unregulated nicotine content; no standards for devices
	<ul style="list-style-type: none"> The non-nicotine market will likely be totally consumed by the nicotine portion as manufacturers concentrate on market share. Number of nicotine vapers are likely to grow exponentially, especially among adolescents and female populations. There are now no safeguards which prevent the online sale of e-cigarettes and vape products of high nicotine concentration to anyone, including minors.
	<ul style="list-style-type: none"> Likelihood of experimentation of vape and e-cigarettes will increase as liquid nicotine will likely be easily available online and in retail shops. Adulteration with other substances such as THC, alcohol instead of propylene glycol, Vitamin E acetate. Likelihood of increases in cases related to nicotine poisoning and E-cigarette or Vaping Use-Associated Lung Injury (EVALI)
	<ul style="list-style-type: none"> The numbers and diversity of people newly diagnosed with nicotine addiction are likely to explode, due to unregulated and unrestricted availability of nicotine vape (similar to what has been seen in the United States)
	<ul style="list-style-type: none"> The lack of relevant and necessary regulation in place prior to these recent policy directives coming into effect will have significant and serious financial implications to the treatment of related non-communicable diseases such as diabetes (vaping increases risk of diabetes), lung cancer (e-cig contain 15x the amount of formaldehyde, a carcinogen, found in traditional cigarettes) and other disease. Direct treatment of diabetes in Malaysia costs RM 4.4 billion annually.
	<ul style="list-style-type: none"> Long-term effects, benefits, and risks of vape and e-cigarettes still being understood (Vape: 20 years old; Cigarettes: at least 80 years of research and studies)
Remedies	
Remedy 1	<p>Action: Enact regulatory framework covering all areas similar to tobacco and cigarettes</p> <p>Benefits: Can be implemented quickly using existing tobacco and cigarettes regulations as template which is extended and adjusted to vape and e-cigarettes to deal with issues such as % nicotine content</p> <p>Negative: May need extensive consultation to ensure relevance and effective compliance by industry which will delay implementation and enforcement. Will be based on Food Act.</p>
	<p>Action: Rescind or issue a new Order retracting the exemption of gel and liquid nicotine</p> <p>Benefits: Still early and unlikely that industry players have made any significant or substantial changes to their operations. Can be implemented quickly (though need to convene Poisons Board meeting to ensure that they have been consulted prior to decision). Implementation of excise duty order placed on hold, pending development of regulations/ legislation.</p> <p>Negative: Will be perceived as an about-face on this issue and disruptive to vape and tobacco industry</p>
Remedy 3	<p>Action: Table and pass the revised/updated version of the Tobacco and Smoking Control Bill (as of March 2023)</p> <p>Benefits: A legal framework for the use, distribution, marketing, promotion, packaging and labelling, sponsorship, and sale of vape for both vape and tobacco. Rapidly brings Malaysia up to standard with many countries around the world which have standalone tobacco and vape frameworks. These regulations should not be parked under Food Act. This represents the ideal measure.</p> <p>Negative: May not have sufficient political support for passage of the Bill</p>
Complications	
<p>Closed and Open systems: Vape and e-cigarettes present a significant challenge to regulate. If only closed systems are permitted such as disposables, then it would be easy to regulate, tax etc. But with open systems, it is a massive problem. Using teh tarik or bubble milk tea as an example. The tea, milk, sugar and water that goes into it can be taxed but the brewer decides how much of the components go into a glass of teh tarik which could be big, medium or small. How do you control the % nicotine in open systems? Hence closed systems are preferred. Malaysia's market is mainly open.</p>	