

Missing Millions

A cross-examination of British American
Tobacco Kenya's tax bill

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Authors:
Tim Luimes
Mirjam van der Puijl

Editor-in-chief:
Dr. Marcel Metze

Contents

Summary and key findings	4
Introduction	5
Report structure	7
Chapter 1: The cost of British American Tobacco in Kenya	8
1.1 Tobacco farming in Kenya	8
1.2 Tobacco consumption and health	10
Chapter 2: A complex web of subsidiaries	11
2.1 Company profile	11
2.2 Corporate structure	12
Kenya	13
The Netherlands	14
United Kingdom	15
2.3 BATK's revenue and profit	15
2.4 BATK's tax bill	15
2.5 BAT's international tax avoidance and evasion	16
Chapter 3: Millions of missing cigarettes	18
3.1 'Perfect storm'	18
3.2 Contradictions	19
3.3 EGMS: The Kenyan track and trace system	20
3.4 Step-by-step analysis	20
3.5 Expert review	34
3.6 Response from BATK	36
Conclusion	37
Acknowledgements	39
Appendix A	41
Appendix B	42
Sensitivity analysis - retail price estimations	42

Summary and key findings

This analysis shows a discrepancy of up to 9.6 billion KES (93 million USD) in the 2017 and 2018 revenue statements of British American Tobacco Kenya (BATK). The company did not provide a plausible explanation, which could indicate tax avoidance or evasion of up to 28 million USD in profit tax.

The Investigative Desk analysed six years of annual reports by BATK and compared this to production data the company supplied to the Kenya Revenue Authority (KRA), internal government documents, and data on cigarette consumption and prices.

The analysis shows numerous contradictions and discrepancies in the company's statements. There is a massive discrepancy of millions of cigarettes between what the company produced and said it sold. This results in the revenue of BATK being substantially lower than what it could have earned based on what it produced. But what exactly happened to these millions of cigarette packs, remains a mystery.

Experts who reviewed the findings in this report called on BATK to explain and the Kenya Revenue Authority to investigate. "In the absence of a convincing explanation, this looks like tax avoidance, and potentially evasion," said Leopoldo Parada, Reader in Tax Law at King's College London. Kennedy Waituika, an expert on fraud and internal audits said: "The challenge is now on BAT to explain."

The corporation refused to answer questions by The Investigative Desk. "BAT Kenya firmly rejects all the allegations made regarding the discrepancy between its published financial disclosures and data," a spokesman said. "The company pays all taxes in line with applicable laws." BATK did not provide a credible explanation for the discrepancy and refused to share more financial information, which it said is "commercially confidential".

Lacking an explanation by the corporation, experts called on the Kenya Revenue Authority (KRA) to investigate. The KRA did not respond to multiple inquiries regarding the findings of this report. "This report should at least trigger a tax review of BAT, " said fraud and audit expert Kennedy Waituika. "It should be a wake up call for the KRA."

Introduction

In this world, it is said that nothing is certain, except death and taxes. Or so goes the saying. In the case of British American Tobacco (BAT), one is more certain than the other. Twelve thousand Kenyans die each year because of tobacco related illnesses.¹ But as Dr. Khama Rogo, former chairman of the Kenyan Tobacco Control Board, an advisory body of the Kenyan government, described the situation: “In this country, it is not for the government to decide how much tax BAT has to pay. It’s BAT that decides how much it pays.”

British American Tobacco Kenya plc. (BATK) prides itself on being a large contributor to Kenya’s treasury.² It promotes a narrative in which it portrays itself as a responsible company that does its best to reduce harm, contributes to the economy and pays its fair share of tax. This narrative was seemingly copied by Moses Kuria, the Kenyan Trade Minister, in a tweet in August 2023, promoting the tobacco industry as a large tax contributor and employer.³

This investigation aims to explore if BATK actually paid its fair share of tax in Kenya, by cross-examining data from various sources such as annual reports by BATK itself, publicly available data of the Kenyan government, information gathered by the World Health Organization and World Bank, and internal documents of the Kenya Revenue Authority.

The precursor to this report was Big Tobacco, Big Avoidance – a 2020 investigation authored by Stefan Vermeulen, Manon Dillen (The Investigative Desk) and Dr. Robert Branston (University of Bath). It shed light on the various methods big tobacco firms use to avoid paying taxes. While the report was the first to detail these methods for the entire industry, many questions remained, particularly in African countries, where detailed financial information is often harder to retrieve than in Europe. After the publication of Big Tobacco, Big Avoidance, The Investigative Desk, the University of Bath and the Tax Justice Network Africa decided to collaborate by investigating the tax avoidance by one multinational in an African country: British American Tobacco in Kenya.

BAT has the biggest market share of all tobacco companies in Africa, ranging between 50% and 80% in many countries on the continent. It controls somewhere between 70% and 80% of the market in South-Africa, Nigeria and Kenya.^{4,5,6} The Nairobi production facility exports to 20 different markets in East and Southern Africa, making it a natural candidate for an in-depth case study.⁷

1 Tobacco Atlas (n.d.) Kenya. Retrieved from <https://tobaccoatlas.org/factsheets/kenya/>.

Archived through <https://web.archive.org/web/20240117134451/https://tobaccoatlas.org/factsheets/kenya>

2 British American Tobacco Kenya. (n.d.). Pricing and Tax. Retrieved from: <https://www.batkenya.com/DO9VNKWA.html>.

Archived through: <https://web.archive.org/web/20240516151843/https://www.batkenya.com/DO9VNKWA.html>

3 Kuria, M. (2023, August 10). X (Formerly Twitter). Retrieved from: https://twitter.com/HonMoses_Kuria/status/1689583255715004416.

4 Gomis, B., & Rowell, A. (2021, October). Turning a Blind Eye: BAT’s Potential Complicity in Illicit Trade in Southern Africa. Retrieved from: <https://bat-uncovered.exposetobacco.org/wp-content/uploads/2021/10/Smuggling-Brief.pdf>.

Archived through: <https://web.archive.org/web/20211008084108/https://bat-uncovered.exposetobacco.org/wp-content/uploads/2021/10/Smuggling-Brief.pdf>

5 Tobacco Control Data Initiative (n.d.). Nigeria. Retrieved from: <https://nigeria.tobaccocontroldata.org/en/home/industry-interference/tobacco-market-structure/>.

Archived through: <https://web.archive.org/web/20240624084340/https://nigeria.tobaccocontroldata.org/en/home/industry-interference/tobacco-market-structure/>

6 Euromonitor (2023, July) Tobacco in Kenya. Retrieved from: <https://www.euromonitor.com/tobacco-in-kenya/report>.

7 Munda, C. (2023, May). BAT Group elevates Nairobi in Africa reorganisation. Business Daily. Retrieved from: <https://www.businessdailyafrica.com/bd/corporate/companies/bat-group-elevates-nairobi-in-africa-reorganisation--4237232>. Archived through: <https://web.archive.org/web/20230520140248/https://www.businessdailyafrica.com/bd/corporate/companies/bat-group-elevates-nairobi-in-africa-reorganisation--4237232>

The tax strategies of British American Tobacco detailed in this report should not be viewed in isolation. Aggressive tax avoidance accounts for a worldwide government revenue loss of around 100 to 240 billion USD, according to an estimation by the Organisation for Economic Co-operation and Development (OECD) – around 4% to 10% of total corporate profit tax revenue.⁸ According to the intergovernmental institution, developing economies are hit 'disproportionally' by these practices due to their higher reliance on corporate profit tax.

Kenya is classified as a lower middle-income economy and struggles with budget deficits.⁹ It has large debts and is currently under reform by the International Monetary Fund (IMF).¹⁰ Aggressive tax avoidance further reduces government income and worsens the budget deficit.¹¹ However, while the government announced that it would raise taxes on ordinary people, sparking civil unrest in 2023 and 2024, a yearly excise increase for cigarettes was put on hold.¹²

8 Organisation for Economic Cooperation and Development (n.d.). Base erosion and profit shifting (BEPS). Retrieved from <https://www.oecd.org/tax/beps/>.

Archived through: <https://web.archive.org/web/20240105165404/https://www.oecd.org/tax/beps/>

9 Reuters (2023, October). Kenya raises 2023/24 deficit forecast to 5.3% from 4.4% - revised budget. Retrieved from: <https://www.reuters.com/world/africa/kenya-raises-202324-deficit-forecast-53-44-revised-budget-2023-10-27/>. Archived through: <https://archive.is/xwGFR>

10 International Monetary Fund (n.d.). Frequently asked questions on Kenya. Retrieved from <https://www.imf.org/en/Countries/KEN/kenya-qandas>.

Archived through <https://web.archive.org/web/20240710111240/https://www.imf.org/en/Countries/KEN/kenya-qandas>

11 Cowx, M., Silva, F. B. G., & Yeung, K. (2022, May). Government deficits and corporate tax avoidance. S&P Global Market Intelligence.

Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4060416

12 Muiruri, K. (2023, April). Kenya to halt yearly inflation adjustment on excise taxes. Business Daily. Retrieved from: <https://www.businessdailyafrica.com/bd/economy/kenya-to-halt-yearly-inflation-adjustment-on-excise-taxes--4215500>. Archived through: <https://web.archive.org/web/20230509074510/https://www.businessdailyafrica.com/bd/economy/kenya-to-halt-yearly-inflation-adjustment-on-excise-taxes--4215500>

Report structure

This report details different aspects of BATK's tax bill in Kenya. The report has three chapters, each diving into the details of a particular aspect. It's structured as follows:

- Chapter 1** details the cost of BATK to society, exploitation of farmers, healthcare costs, and loss of productivity due to the destructive effects of tobacco smoking.
- Chapter 2** profiles BAT in Kenya, its international corporate structure and examples of tax avoidance and evasion elsewhere.
- Chapter 3** contains a detailed cross-examination of the company's publicly stated financial records, internal data of the Kenya Revenue Authority (KRA) and information from the World Health Organisation (WHO). This reveals numerous discrepancies in BATK's statements.

Chapter 1: The cost of British American Tobacco in Kenya

1.1 Tobacco farming in Kenya

Jonathan prays every year it will not happen again. For six months he had nurtured his tobacco plants with care. The field of crops was small, about an acre, but it was the most valuable thing he owned on his farm in the impoverished southwestern Kenyan region of Migori, a hilly area where most of the country's tobacco is grown. It was November 2012, and most of the year's work had been finished.

When Jonathan and his family heard the hailstones on the roof of their home, they all sprung up and ran to the field. Right in front of their eyes, the hail ripped through the tobacco leaves. Jonathan burst into tears. For three days, the family did not speak and did not leave the house. More than ten years later, he still chokes up when he speaks about it.

The destroyed harvest took away the family's income for the year. Money for school, for food, for everything – it was gone.

Even worse, Jonathan still had to pay off his loan to BATK for the seeds, pesticides and fertiliser he received. The corporation would not waive the loan, so he had to pay the company around 550 USD, about four times his yearly income. He borrowed money from friends and family. It took years to pay them back.

He still grows tobacco, although he wishes he could stop. And every year, after he planted the seeds, he prays his crops may be spared. "We do not have insurance here," he says. "We only have God."

BATK says its activities are good for the economy because it provides work for farmers, a narrative that is repeated by the Kenyan government.¹³ The company prides itself on being one of the top employers in Kenya and Africa.¹⁴ The truth for tobacco farmers is "unequivocally the opposite", according to a 2020 study by economist Peter Magati for the Institute for Legislative Affairs and the University of Chicago.¹⁵ Tobacco farmers are in constant economic struggle and those who have stepped away from the crop earn twice as much.

The growers, who wish to remain anonymous, got together to tell their harrowing stories about 30 years of exploitation by BAT.

¹³ Kuria, M. (2023, August 10). X (Formerly Twitter). Retrieved from: https://twitter.com/HonMoses_Kuria/status/1689583255715004416.

¹⁴ British American Tobacco Kenya. (n.d.). People and Culture. Retrieved from <https://www.batkenya.com/DO9T5K5C.html>.
Archived through: <https://web.archive.org/web/20240516151856/https://www.batkenya.com/DO9T5K5C.html>.

¹⁵ Magati P., Hecock R.D., Li Q., Drope J. (2020). The Economics of Tobacco Farming in Kenya: A Longitudinal Study. International Institute of Legislative Affairs, Tobacconomics, University of Illinois at Chicago. Retrieved from: <https://tobacconomics.org/research/the-economics-of-tobacco-farming-in-kenya-a-longitudinal-study/>. Archived through: <https://web.archive.org/web/20230515205356/https://tobacconomics.org/files/research/756/the-economics-of-tobacco-farming-in-kenya-a-longitudinal-survey-jd.pdf>

Before the farmers sow their seeds, they take out a loan with the company. They receive tobacco seeds, fertiliser and pesticides from the company, the costs of which get subtracted from their earnings. The farmers know the company raises the prices of the products – it would be cheaper in the store, if they were able to afford buying it themselves.

For six months the farmers care for their crops intensively, most of the time on a small field of around one acre. After the harvest, the leaf is smoked on wood in small mud huts. Many of the farmers responsible for the curing develop deep, raspy voices from the smoke; they sound like they smoke a pack a day for decades, although they say they never touch a cigarette.

An inspector, paid by the company, grades the leaf for quality by an opaque and complex system. The outcome is always uncertain and the inspector frequently has to be bribed to grade the leaf correctly, the farmers say. BATK tells them it buys the leaf as high grade quality, but when the payslip comes, it can show a lower grade than what they were told. "It feels very bad to be deceived like that," one of the farmers says.

After the loan for seeds, fertilizer and pesticides is subtracted, around 40% of the earnings remain for the farmers. Half of that is used to pay seasonal workers during the harvest and fuel for the smoking of the leaf. After a year of hard work, around 20,000 KES remains, or around 140 USD. At about 0.38 USD a day for a full family, that's well below the red line for extreme poverty at 2.15 USD a day.¹⁷ In 2023, while achieving record profits, the company cut the farmers' pay by 20%, leaving it at the lowest in five years.^{18,19}

Even in Migori, one of Kenya's poorest regions, that income is low for a household. And the nature of tobacco farming creates another fundamental problem: you cannot eat tobacco. Most farmers can eat their produce even if their income is low, but tobacco farmers cannot.

It does provide them with cash. But the small profits do not take into account the extensive labour that is involved. If the cost of labour would be included, economist Magati calculated, they operate at "a substantial economic loss". In other words: tobacco farmers would be better off if they would sell their labour elsewhere. According to Magati's research, farmers who switched away from tobacco to different crops were much better off economically.

The WHO has recently set up a program to help Kenyan tobacco farmers switch away from tobacco.²⁰ It seems like a small success: over 2000 farmers have made the switch and now produce beans for the World Food Program (WFP)²¹. According to the WHO, around 36,000 farmers still grow tobacco. The ones in Migori want to quit, but struggle to find a way out, since the WHO programme cannot reach everyone. "We are stuck," one of the farmers said. "We only know how to grow tobacco." Another grower regards the process as nothing less than theft.

16 Oanda (2023). Exchange rate KES to USD 1st of July 2023. Retrieved from: <https://www.oanda.com/currency-converter/en/?from=KES&to=USD&amount=20000>

17 World Bank Group. (2022, September 16). Fact sheet: An adjustment to global poverty lines. World Bank Group. Retrieved from: <https://www.worldbank.org/en/news/factsheet/2022/05/02/fact-sheet-an-adjustment-to-global-poverty-lines>

18 Alushula, P. (2023, February 16). BAT posts record Sh6.9 billion profit, raises dividend. Business Daily. Retrieved from: <https://www.businessdailyafrica.com/bd/corporate/companies/bat-posts-record-sh6-9-billion-profit-raises-dividend-4126496>

19 Munda, C. (2023, May 16). BAT Group elevates Nairobi in Africa reorganisation. Business Daily. Retrieved from: <https://www.businessdailyafrica.com/bd/corporate/companies/bat-group-elevates-nairobi-in-africa-reorganisation--4237232>

20 World Health Organization (2023, May). Switch away from tobacco an economic, health boon for Kenyan farmers. Retrieved from: <https://www.afro.who.int/countries/kenya/news/switch-away-tobacco-economic-health-boon-kenyan-farmers>

21 World Health Organisation (n.d.) WHO is supporting tobacco farmers to shift to alternative livelihoods. Retrieved from: <https://www.who.int/initiatives/tobacco-free-farms/who-is-supporting-tobacco-farmers-to-shift-to-alternative-livelihoods>

1.2 Tobacco consumption and health

A red cage in the centre of Nairobi is filled with smoke. It's dark and silent, but it provides a small refuge for a group of men – those addicted to tobacco. Smoking cigarettes on the streets of the Kenyan capital is illegal, but office workers and street hustlers smoke together in this “gazebo”, where it's allowed.

The silence in the gazebo is odd compared to the permanent noise in the rest of the city: people exclaiming the qualities of their wares for sale, motorcycles or boda bodas and cars honking and chaotically traversing the gridlocked roads of the city. Kevin (28), an office worker at a company nearby, sits and smokes a cigarette while staring in front of him. “We are all strangers here,” he explains. “This is the first time I talk to someone. I don't come here to talk, I come here to smoke.”

The habit kills around 12,000 Kenyans each year, according to the Tobacco Atlas.²² The damage caused to the Kenyan economy by smoking totals 47 billion KES (333 million USD) per year, eight times more than BATK's profit in 2023.^{23,24,25} That includes costs for healthcare and the lost productivity due to illness and premature death caused by tobacco.

Smoking rates in Kenya have declined from approximately 19% of adult men in 2014 to 12% in 2022, according to the Kenyan government.^{26,27} Fewer than 2% of adult women consume cigarettes. The WHO estimates a decline among both sexes above the age of 15 from 16% to 10% between 2000 and 2020.²⁸ But WHO and UN figures show that since the country's population has grown so rapidly the total number of smokers actually increased by more than a quarter (28%).^{29,30}

BATK's activities do not seem to be all that good for the Kenyan economy. Despite claiming to be a top employer, the farmers growing for the company are stuck in desperate poverty and a parasitic relationship. And while tobacco consumers pay the company and the state for their cigarettes, the effect on their health is so large that the economy suffers a loss.

22 Tobacco Atlas (n.d.) Kenya. Retrieved from <https://tobaccoatlas.org/factsheets/kenya/>. Archived through <https://web.archive.org/web/20240117134451/https://tobaccoatlas.org/factsheets/kenya/>

23 Tobacco Atlas (n.d.) Kenya. Retrieved from <https://tobaccoatlas.org/factsheets/kenya/>.

24 Oanda (2023). Exchange rate KES to USD 1 July 2024. Retrieved from: <https://www.oanda.com/currency-converter/en/?from=KES&to=USD&amount=47083569152>

25 British American Tobacco Kenya (2023). Annual report 2023. Retrieved from: <https://prod.batkenya.com/content/dam/endmarkets/ke/en/download/investors-and-reporting/Annual-Report-2023.pdf>

26 Kenyan Ministry of Health and Kenya National Bureau of Statistics (2014). Global Adult Tobacco Survey (GATS), Kenya report 2014. Page 9. Retrieved from: <https://web.archive.org/web/20190320120819/https://www.who.int/tobacco/surveillance/survey/gats/kenya-report-2014.pdf?ua=1>

27 Kenya National Bureau of Statistics, Kenyan Ministry of Health and The DHS Program (2022). Kenya Demographic and Health Survey 2022. Page 110. Retrieved from: <https://dhsprogram.com/pubs/pdf/FR380/FR380bis.pdf>. Archived through <https://web.archive.org/web/20231127213330/https://www.dhsprogram.com/pubs/pdf/FR380/FR380bis.pdf>

28 World Health Organization (2019, December 18). WHO global report on trends in prevalence of tobacco use 2000-2025, third edition. World Health Organization. Page 76. Retrieved from: <https://www.who.int/publications/i/item/who-global-report-on-trends-in-prevalence-of-tobacco-use-2000-2025-third-edition>. Archived through: <https://web.archive.org/web/20231110095229/https://iris.who.int/bitstream/handle/10665/330221/9789240000032-eng.pdf?sequence=1>

29 World Health Organisation (2019, December). WHO global report on trends in prevalence of tobacco use 2000-2025, third edition. Page 76. Retrieved from: <https://www.who.int/publications/i/item/who-global-report-on-trends-in-prevalence-of-tobacco-use-2000-2025-third-edition>

30 United Nations, Department of Economic and Social Affairs, Population Division (2024). World Population, Population by age and sex - broad age groups. Retrieved from: <https://population.un.org/dataportal/data/indicators/50.70/locations/404/start/2000/end/2020/table/pivotbyage?df=82c7559d-e285-4131-b49a-abdff5059936>

Chapter 2: A complex web of subsidiaries

2.1 Company profile

BATK operates from a large grey concrete office, next to its white production halls, in the industrial area of Nairobi. A fence with barbed wire and a gate with guards separates the building from the dusty Likoni Road from which countless trucks come and go. On the wall next to the gated entrance, signs tell passers-by this is one of the 'top employers' of Kenya and Africa for its 400 employees.³¹

BAT is the world's third-largest tobacco firm, behind China Tobacco and Philip Morris International.³² It's known internationally for its biggest brands Lucky Strike, Dunhill, Kent, Pall Mall, Rothmans and Camel.

The production halls on Likoni Road are one of the largest cigarette production hubs in Africa. After the leaf from farmers in Kenya, Malawi, Zambia, Zimbabwe and other countries is imported, the cigarettes roll off the assembly line here, to be sold on the Kenyan domestic market and twenty other markets in East and Southern Africa.³³ The Nairobi plant has been a centrepiece in the African operations of BAT, getting a larger role and recently expanding into the Southern African markets including Angola and Zimbabwe.

BAT specifically targets African markets.³⁴ Many Western countries tightened tobacco control, leading to less smokers. The population boom in Africa however, along with a lack of strict tobacco regulation, provides a business opportunity. "BAT is strongly placed to take advantage of the growth in these markets," chairman Barry Bramley said in a speech in 1991.³⁵

The company has a large presence on the African continent, with near-monopolies in some countries. It controls somewhere between 70% and 80% of the market share in the major African economies of South Africa, Nigeria and Kenya.^{36,37,38} In Kenya, the company is most well-known for its brands Sportsman by Rothmans, Rooster and Safari. Competitor Mastermind, a local company which produces the brand Supermatch, controls around 16% of the market, while tobacco giant Philip Morris International has less than 2%.

31 British American Tobacco Kenya. (n.d.). About Us. Retrieved from https://www.batkenya.com/group/sites/BAT_B4ALXZ.nsf/vwPagesWebLive/DO9T5K3S.

Archived through: https://web.archive.org/save/https://www.batkenya.com/group/sites/BAT_B4ALXZ.nsf/vwPagesWebLive/DO9T5K3S

32 Tobacco Tactics (2021, January 25). British American Tobacco. Retrieved from: <https://tobaccotactics.org/article/british-american-tobacco/>.

33 Munda, C. (2023b, May 16). BAT Group elevates Nairobi in Africa reorganisation. Business Daily. Retrieved from: <https://www.businessdailyafrica.com/bd/corporate/companies/bat-group-elevates-nairobi-in-africa-reorganisation--4237232>

34 Tobacco Tactics (2020, February 5). British American Tobacco in Africa: A history of double standards.

Retrieved from: <https://tobaccotactics.org/article/bat-africa-history-double-standards/>

35 British American Tobacco (1991). BATCo Operating Group Five Year Plan 1992-1996, Bates no. 300019658-300019747. Retrieved from: <http://www.legacy.library.ucsf.edu/tid/wld08a99>

36 Gomis, B., & Rowell, A. (2021, October). Turning a Blind Eye: BAT's Potential Complicity in Illicit Trade in Southern Africa. Retrieved from: <https://bat-uncovered.exposetobacco.org/wp-content/uploads/2021/10/Smuggling-Brief.pdf>

Archived through: <https://web.archive.org/web/20211008084108/https://bat-uncovered.exposetobacco.org/wp-content/uploads/2021/10/Smuggling-Brief.pdf>

37 Tobacco Control Data Initiative (N.d.). Nigeria. Retrieved from: <https://nigeria.tobaccocontroldata.org/en/home/industry-interference/tobacco-market-structure/>.

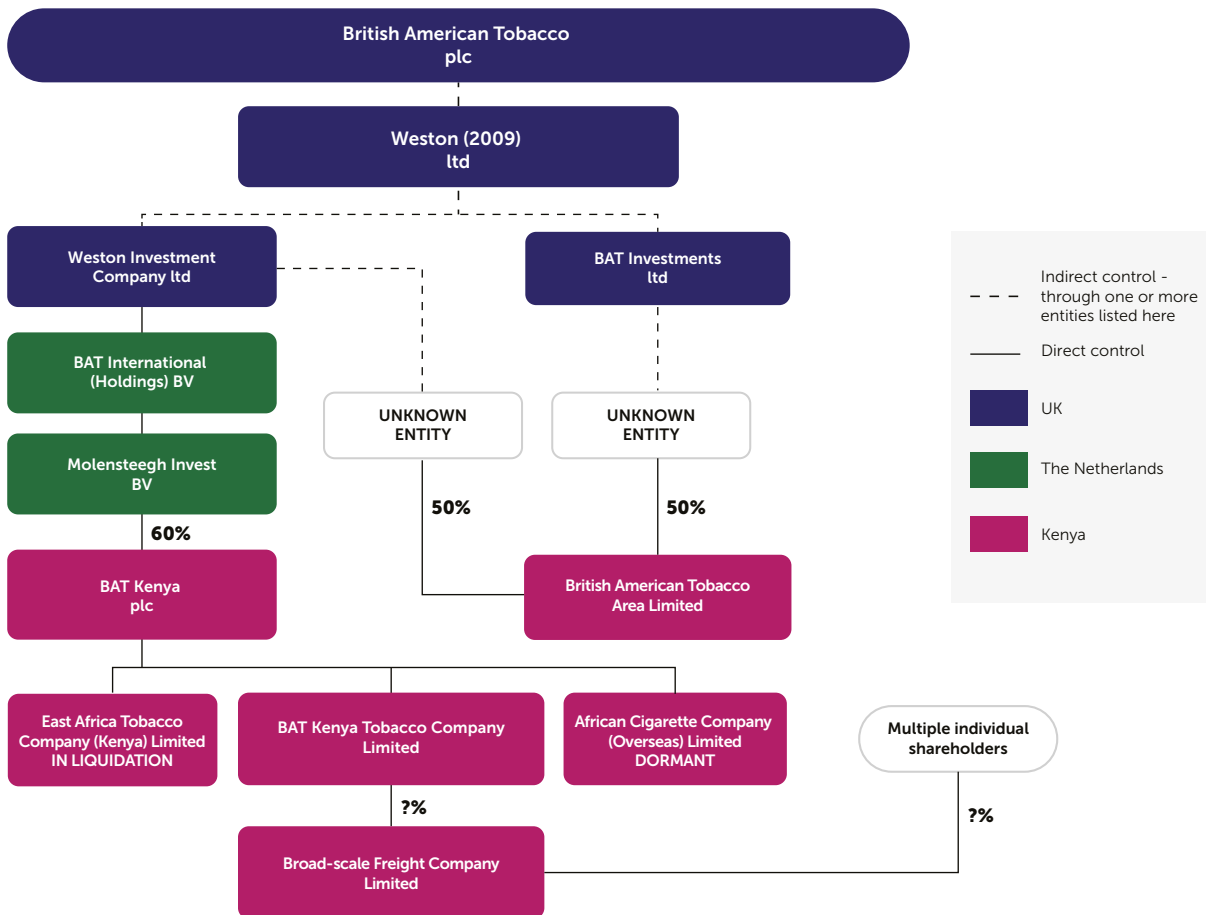
Archived through: <https://web.archive.org/web/20240624084340/https://nigeria.tobaccocontroldata.org/en/home/industry-interference/tobacco-market-structure/>

38 Euromonitor (2023, July) Tobacco in Kenya. Retrieved from: <https://www.euromonitor.com/tobacco-in-kenya/report>

2.2 Corporate structure

BAT operates in Kenya through a complex web of subsidiaries. The chart below shows a simplified version of the corporate structure of BAT’s entities connected to Kenya, as it was in 2021. Several levels of subsidiaries in the United Kingdom have been condensed for clarity.

Figure 2.1. British American Tobacco in Kenya in 2021 (simplified structure)



Sources: Companies Registry Kenya,³⁹ Companies House UK⁴⁰, CompanyInfo The Netherlands⁴¹

39 Official registration documents BATK plc and affiliates. Retrieved from Companies Registry Kenya

40 British American Tobacco (2010-2021) Annual reports. Retrieved from Companies House UK, <https://find-and-update.company-information.service.gov.uk/>

41 British American Tobacco International (Holdings) BV and subsidiaries. Annual reports (2015-2023). Retrieved from www.company.info

This section lists the most important entities in this structure, in Kenya, the Netherlands and the United Kingdom. This report will unfortunately not be able to give a comprehensive overview, since information from publicly available documents on the entities in this structure are opaque, scarce and limited in the UK, as well as in the Netherlands and Kenya.

The Dutch financial holding companies are not obligated to publish a full account of their activities and finances. BAT limits its reports to one 'consolidated' report of the various entities together, which contains very little information on the activities of each individual company.

The annual reports in the UK tend to provide a little more information on subsidiaries, share value and dividends, but are not comprehensive either.

In Kenya, there is no financial information available on BAT's entities, except for the publicly listed company BATK. It is possible that entities exist in the country in which BAT is a minority partner or where its ownership is unregistered.

Kenya

British American Tobacco Kenya Plc. (BATK) is a public company, listed on the Nairobi stock exchange since 1969. It is obliged to publish detailed annual accounts for its shareholders, which can be found on the company website. BATK produces and sells tobacco products in the Kenyan and East and Southern African markets through its main subsidiary.

60% of BATK's shares are owned by the ultimate parent British American Tobacco Plc., through the Dutch subsidiary Molensteegh Invest BV. When going public in 1969, 20% of the company was owned by the Kenyan state. Currently, the Kenyan government is not listed as a shareholder in BATK's accounts. The 40% shares that are not in BAT's own hands, are now freely traded and owned by around five thousand shareholders. Currently, the vast majority (83%) of all BATK shares are held by foreign parties.⁴²

BAT Kenya Ltd. (sometimes called BAT Kenya Tobacco Company Ltd.), is 100% owned by BAT Kenya plc. The consolidated financial statements show that this entity conducts most of BATK's domestic activities: importing tobacco, producing and selling tobacco products, marketing and distribution.

East Africa Tobacco Company (Kenya) Ltd. and **African Cigarette Company (Overseas) Ltd.** are, according to BATK's annual accounts, dormant or in liquidation.⁴³ The East African Tobacco Company (EATC) was historically the name of an East-African cigarette company that BAT acquired in 1949. BAT later traded under that name in Uganda and Tanzania.⁴⁴

BAT Area Ltd. is a somewhat mysterious entity in Nairobi. While it's located on Likoni Road, like BATK, it's not its subsidiary. Instead it's fully controlled by BAT in London.⁴⁵ BAT Area's exact activities or its financials are unclear. Because BATK is a publicly listed company, its annual accounts and the accounts of its subsidiaries are public. BAT Area, on the other hand, does not publish any information, financial or otherwise.

⁴² BATK (2021) Annual Report.

⁴³ BATK (2022) Annual Report.

⁴⁴ Ndallilah, J.W., Makana, N.E., Tanui, P., (2018, July) The Tobacco Monopoly in Sirisia: Bureaucratic Enterprise and Economic Change 1975-2005. International Journal of Arts and Humanities. Retrieved from: <https://ijah.cgrd.org/images/Vol4No3/1.pdf>

⁴⁵ Weston Investment Company (2021) Annual report. Retrieved from Companies House. <https://find-and-update.company-information.service.gov.uk/>
BAT Investments (2009) Annual Report. Retrieved from Company House.

Until 2019, BAT Area's shares were fully held by the Dutch entity Molensteegh Invest BV⁴⁶, though their exact value remains unclear. As a mere holding company without employees, Molensteegh was not obliged to publish the value of each subsidiary, its activities, or how much it earned from them.

BAT Area's shares are directly owned by one or two unknown companies in an unknown jurisdiction, according to records of 2022.⁴⁷ Through those unknown entities, they are owned in a fifty-fifty split between Weston Investment Company Ltd., the UK company that also owns most of the Dutch entities, and BAT (Investments) Ltd., the UK parent to various subsidiaries all over the world.

Broad-Scale Freight Company Ltd. is a company registered in 2018 on BATK Kenya's premises at Likoni Road in Nairobi.⁴⁸ In 2023, it listed BAT Kenya Ltd. as shareholder for an unnamed amount of shares, as well as a former BATK's chairperson. It shares directorship with BATK. Not much is known about the activities of this company. It is not mentioned in BATK's financial reports.

The Netherlands

Molensteegh Invest BV is a financial holding company located in Amstelveen, The Netherlands, which owns 60% of the shares of BATK Plc. Even though it has no employees, it's the conduit through which millions of shillings in dividends flow from Kenya via the Netherlands directly to the United Kingdom. Its very limited annual report shows around 13.8 million GBP in financial assets in 2022, indicating the book value of shares it holds in other companies.⁴⁹

The role of Molensteegh in BAT's corporate structure changed around 2019. Until that year, the Dutch holding owned about a dozen subsidiaries around the globe: in Germany, Israel and Cyprus. It also owned BAT Area in Nairobi. Financial assets (shares in other companies) were ten times as large in 2019 as in 2022, and amounted to 140 million GBP in 2016. Molensteegh in 2016 made a net profit of 566 million GBP from dividends that were immediately shifted to its parent company in the UK.

After 2019, the information in Molensteegh's annual accounts became even more sparse than it was before and no subsidiaries were specified. Presumably, BAT Area's shares were transferred to another BAT subsidiary in a different, unknown jurisdiction.

BAT International (Holdings) BV (BATIH) is Molensteegh's direct parent, located in the same office in Amstelveen. BATIH is the head of BAT's Dutch presence. As share- and trademark holder it is also the conduit of a fairly large portion of BAT's global operation, including in Malawi, Nigeria, Canada and South Africa. In 2021 it reported 904 million GBP in profit after tax, nearly all of it in dividends from shares in the other companies⁵⁰. These profits flow immediately to its parent in London.

46 Molensteegh Invest B.V. (2018) Annual report. Retrieved from Company.info <https://company.info/id/341092650000>

47 Companies Registry Kenya (2022)

48 Companies Registry Kenya (2023)

49 Molensteegh Invest B.V. (2022) Annual report. Retrieved from Company.info <https://company.info/id/341092650000>

50 British American Tobacco International (Holdings) BV (2021) Annual report. Retrieved from www.company.info

United Kingdom

Weston Investment Company, BAT Investments and Weston (2009) are all holding companies for BAT entities spread out all over the world, that receive and redirect profits, licence payments and royalties. Some of these subsidiaries have subsidiaries of their own. Dividends in the UK are untaxed.

British American Tobacco Plc. is the parent corporation listed on the London Stock Exchange and the ultimate beneficial owner of all the entities listed before, headquartered in London.

Conclusion

The corporate structure of BAT is highly convoluted with legal entities of which the necessity or ownership is not immediately clear. Of additional interest is BAT Area in Kenya, owned fully by BAT Plc. (UK) and thus not part of BATK. The reason for these entities are unclear, since there is a lack of public financial information.

2.3 BATK's revenue and profit

British American Tobacco Kenya Plc (BATK) is a highly profitable company. It made almost 37 billion KES in profits before tax in the years between 2016 and 2021, a margin of around 29% on its revenue of 126 billion KES (corrected for inflation).

BATK's yearly revenues between 2016 and 2022 (corrected for inflation) have steadily grown. There was a notable dip in 2017, when sales volume went down, according to its executives. In 2020, at the start of the Covid-19 pandemic, domestic revenues dipped but exports grew significantly. Overall, BATK increased its sales, its growth coming mainly from exports.

Even though local sales were up and exports grew, 2019 was BATK's lowest point, with 3.9 billion KES in profit and a 16% profit margin. Since then, profit grew remarkably to 6.5 billion KES in 2021.

2.4 BATK's tax bill

Most of the tax collected on BATK's cigarettes comes from VAT (16%) and excises. Together, those add up to around 87 billion KES between 2016 and 2021 (corrected for inflation).

Corporate income tax in Kenya is set at 30% of profit and the effective income tax levied on BATK is approximately the same.⁵¹ Between 2016 and 2021, BATK paid around 11 billion KES in corporate income tax.

⁵¹ British American Tobacco Kenya (2016-2021). Annual reports.

Table 2.1: BATK's net revenue, excise duty & VAT and income tax (in 1000 KES)

YEAR	net revenue	excise & VAT	income tax
2016	19,849,901	16,826,348	1,676,976
2017	18,673,297	15,794,407	1,530,937
2018	20,750,135	15,745,622	1,796,223
2019	24,039,618	15,787,863	1,647,861
2020	25,339,237	13,505,816	1,898,238
2021	25,427,369	14,621,153	2,804,638

Sources: British American Tobacco Kenya⁵²

Those profits flow to the shareholders in dividends which are in turn subject to tax. BATK's shareholders are liable for a withholding tax (WHT) on the dividend payments. Kenyan residents pay 5%, but the majority of stock is held by foreign shareholders (including BAT itself), who paid 10% to the Kenyan government as of 2020 (later raised to 15%).^{53,54} A Bilateral Investment Treaty between Kenya and The Netherlands – negotiated in 2015 – would have changed this to zero. However, this was never ratified by the Kenyan parliament, and the treaty was terminated.⁵⁵

2.5 BAT's international tax avoidance and evasion

British American Tobacco states it "must not" evade taxes or facilitate tax evasion.⁵⁶ The company defines tax evasion as "deliberately or dishonestly cheating the public revenue or fraudulently evading tax in any jurisdiction", which is a criminal offence.

In spite of the company statements about not evading taxes, it has. In 2022, a court in The Netherlands found BAT guilty of tax evasion. The court concluded that BAT deliberately excluded over 1.8 billion EUR in profits from the tax authorities between 2014 and 2016.⁵⁷ The company's transactions within the firm had no obvious business purpose except as a strategy to evade taxes. Together with a structure change that was designed to evade taxes, the judge ruled that the company would still have to pay profit tax of around 450 million euro and an additional fine of 106 million EUR. "Tax evasion seriously infringes on community interests and the individual interests of honest taxpayers," the judge said. BAT appealed the case, a judgment is expected in 2025.

The company distinguishes between illegal tax evasion and 'legitimate tax planning' to reduce the amount of tax it pays. Although the company writes that the difference between illegitimate and legitimate tax planning is sometimes difficult to distinguish, it does not mention 'aggressive tax planning': avoiding taxes by using legal loopholes and gaps in the international tax system. These tactics might be legally allowed, but they could be considered morally questionable.

52 British American Tobacco Kenya (2016-2021). Annual reports.

53 PWC (2024, August). Kenya - Corporate - Withholding taxes. Retrieved from: <https://taxsummaries.pwc.com/kenya/corporate/withholding-taxes>

54 Kenya Revenue Authority (2020, November) Taxation of dividends. Retrieved from: <https://www.kra.go.ke/news-center/blog/1016-taxation-of-dividends>. Archived through: <https://web.archive.org/web/20240615050608/https://www.kra.go.ke/news-center/blog/1016-taxation-of-dividends>

55 Veerbeek, J. (2024, November). Kenya terminates Bilateral Investment Treaty with the Netherlands. <https://www.somo.nl/kenya-terminates-bilateral-investment-treaty-with-the-netherlands/>

56 British American Tobacco (2022). Annual report.

57 Rechtbank Noord-Holland (2023, December). ECLI:NL:RBNHO:2023:12635. Retrieved from: <https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:RBNHO:2023:12635>

The Organisation for Economic Cooperation and Development (OECD) has pointed out tax planning strategies "that exploit gaps in the architecture of the international tax system to artificially shift profits to places where there is little or no economic activity or taxation", and calls those tactics "base erosion and profit shifting" (BEPS).⁵⁸

The Big Avoidance, Small Tax Bill (2020) investigation found BAT uses various methods of aggressive tax planning.⁵⁹ It used a system of internal loans, royalty payments, transfer pricing and group relief to avoid paying taxes. As a result, BAT paid close to zero corporation tax. A report by the Tax Justice Network alleged a 700 million USD loss for Bangladesh, Indonesia, Brazil, Guyana, Trinidad and Tobago, Kenya, Uganda and Zambia if BAT would continue its 'business as usual' until 2030. The company responded to the reports by saying it "fully complies with all applicable tax legislation where it does business".⁶⁰

In 2011, BAT was charged by the South African Revenue Service (SARS) for an amount that went up to 2.1 billion ZAR by 2018, or 152 million USD at the time.^{61,62} SARS challenged the debt financing of BAT, which was "resolved" in 2019 according to BAT. "We will never know the details," wrote former SARS investigator Johann van Loggerenberg. "But it is safe to assume some sort of settlement or compromise was made."

Tax authorities in Bangladesh claimed 220 million USD in evaded value added tax by BAT, but the company appealed the claim and won the court case in 2022.⁶³ In 2023, The Business Standard reported on an additional claim of 184 million USD in evaded value added tax.^{64,65} BAT's challenge to that claim was still pending according to the 2023 annual report.⁶⁶ The company has been in a tax dispute with Egyptian authorities for 150 million USD and was partly acquitted.^{67,68} After the company announced its exit from the country, it settled with the Egyptian tax authority for an amount of 68 million USD.^{69,70}

These endeavours of aggressive planning, avoidance and evasion are not incidents that should be seen in isolation. BATK's practices outlined in the next chapter, are part of a pattern of corporate behaviour by the company around the globe.

58 OECD (n.d.). Aggressive tax planning. <https://www.oecd.org/tax/aggressive/>.

Archived through: <https://web.archive.org/web/20230613115600/https://www.oecd.org/tax/aggressive/>

59 Vermeulen, S., Dillen, M. (2020, November). Big Tobacco, Big Avoidance. Retrieved from: https://www.bath.ac.uk/publications/big-tobacco-big-avoidance/attachments/Big_Tobacco_Big_Avoidance.pdf

60 Tax Justice Network (2019, April). BAT shifts nearly \$1bn out of developing countries into one UK office. Tax Justice Network. Retrieved from: <https://taxjustice.net/press/bat-shifts-nearly-1bn-out-of-developing-countries-into-one-uk-office/>

61 British American Tobacco (2018). Annual report.

62 Oanda (2023). Exchange rate South African Rand to USD 1st of July 2018. Retrieved from: <https://www.oanda.com/currency-converter/en/?from=ZAR&to=USD&amount=2100000000>

63 Hoke, W. (2022, February). British American Tobacco Wins \$220 Million Bangladesh Tax Case

64 Hossain, R. (2023, October). British American Tobacco asked to pay Tk2,054cr in 'evaded tax'. The Business Standard.

Retrieved from: <https://www.tbsnews.net/nbr/top-tobacco-company-asked-pay-tk2054cr-evaded-tax-710414>

65 Oanda (2023). Exchange rate Bangladeshi Taka to USD 1 October 2023. Retrieved from: <https://www.oanda.com/currency-converter/en/?from=BDT&to=USD&amount=2054000000>

66 British American Tobacco (2023). Annual report.

67 British American Tobacco (2020). Annual report.

68 British American Tobacco (2021). Annual report.

69 British American Tobacco (2022). Annual report.

70 Oanda (2023). Exchange rate Great British Pound to USD 1 January 2022. Retrieved from: <https://www.oanda.com/currency-converter/en/?from=GBP&to=USD&amount=50000000>

Chapter 3: Millions of missing cigarettes

3.1 'Perfect storm'

The financial statements of BATK are riddled with contradictions and discrepancies. The company claims it sells fewer and fewer cigarettes every year. Data obtained by The Investigative Desk on BATK's production shows that it produced much more than it claims to have sold. The analysis in this chapter shows a discrepancy of up to 94 million USD worth of cigarettes. What exactly happened to these millions of cigarette packs, remains a mystery. Experts have called on BATK to explain the discrepancy and on authorities to investigate. The company has denied any wrongdoing. The Kenya Revenue Authority did not respond to an inquiry for comment.

Porous borders, a growing black market, a tough economy and an "unreasonable" increase in excise duty.⁷¹ According to BATK this "perfect storm" led to a 10% decline in cigarette sales in Kenya in 2019.⁷² This was followed by the COVID-19 pandemic which caused a rapid decline of almost a quarter in sales volume in 2020.⁷³ The past years were a disaster, according to BATK's executives. Between 2017 and 2021, domestic sales declined by almost 40%.⁷⁴

However, internal documents from the Kenya Revenue Authority (KRA), obtained by The Investigative Desk, raise fundamental doubts about this supposed dramatic decline in cigarette sales.⁷⁵ The company produced a far higher amount of cigarettes for the domestic market than its reports of declining sales volume would indicate. Additionally, there is a discrepancy between the estimated value of the cigarettes the company produces, and the revenue it reported to have made on those cigarettes in its annual accounts.

The Investigative Desk analysed six years of annual reports by the company and cross-examined this with production data BATK supplied to the Kenya Revenue Authority (KRA), data on cigarette consumption, market data and cigarette prices reported by the World Health Organisation, the Kenyan government, the World Bank and the company itself. The analysis suggests the company may have earned millions of dollars more in domestic revenue than it reported.

In 2017, BATK said in its annual report that it sold 7% less cigarettes. Production data shows that it actually manufactured 2.3% more cigarettes. Their estimated retail value amounts to 13 billion KES (around 126 million USD at the then current exchange rate⁷⁶), which is 37% more than the 9,5 billion KES in revenue the company reported in its annual reports.

In the following year, BATK reported around 11 billion KES (around 108 million USD⁷⁷) in revenue from domestic sales.⁷⁸ However, the amount of cigarettes it produced and the revenue it could have made on a pack of cigarettes in those years, would add up to a significantly higher revenue of up to 16.8 billion KES (166 million USD at the time).⁷⁹

71 British American Tobacco Kenya (2019). Annual report 2019.

72 British American Tobacco Kenya (2019). Annual report 2019.

73 British American Tobacco Kenya (2020). Annual report 2020.

74 British American Tobacco Kenya (2016-2021). Annual reports.

75 Kenya Revenue Authority (2016-2021) Excisable goods management system data (2016-2021).

76 Oanda (2023). Exchange rate KES to USD 1 July 2017. Retrieved from: <https://www.oanda.com/currency-converter/en/?from=KES&to=USD&amount=13000000000>

77 Oanda (2023). Exchange rate KES to USD 1 July 2018. Retrieved from: <https://www.oanda.com/currency-converter/en/?from=KES&to=USD&amount=11000000000>

78 British American Tobacco Kenya (2017). Annual report 2019.

79 Oanda (2023). Exchange rate KES to USD 1 July 2018. Retrieved from: <https://www.oanda.com/currency-converter/en/?from=KES&to=USD&amount=16800000000>

There is no clear explanation for what happened to those cigarettes. The excise duties for domestic sale were paid by the company and match the amounts in the annual accounts. Excise rules state they could not have been lawfully exported. Doing so anyway would not make much sense, since excise duties in neighbouring countries are lower than in Kenya. Records show they were not kept in inventories either. It seems unlikely that the highly profitable cigarette giant produced billions of cigarettes without selling them.

3.2 Contradictions

The claims BATK makes in its annual reports contradict each other. The company claimed higher excises caused the consumer to 'flock' to the illicit market, which increased to almost a quarter of the overall market for tobacco products in 2020.⁸⁰ But such an increase in illicit trade would not fully explain the claimed decline of almost 40% in sales in 2021 compared to five years earlier. The decline is also not explained by a competitor taking over market share. Mastermind, Kenya's second-largest tobacco manufacturer, has not increased its market share in years.⁸¹

Such a large decline in cigarette consumption by Kenyans is also not seen by market data firm Euromonitor,⁸² the World Health Organisation⁸³ and the Kenyan government.^{84,85} The WHO notes a decline in the percentage of smokers from 11% to 10% between 2015 and 2020, and another expected one percent point between 2020 and 2025.⁸⁶ Tobacco sales typically do not decline as fast as BATK said its sales volumes declined. They are what economists call an 'inelastic product', since consumers are addicted.

Even though sales reportedly declined rapidly, BATK's domestic revenues stayed relatively stable and increased between 2016 and 2021 (corrected for inflation). BATK claims to have avoided a looming disaster caused by high excises, by increasing the price more every time the government raised excise duties on cigarettes.

These price increases more than offset the dramatic decline in sales (corrected for inflation). In 2019, the company was proud to announce it was able to push its domestic revenue up by 22%, despite losing a significant chunk of cigarette sales.⁸⁷ Combined with a rising income from exports, shareholders should have been happy: dividends grew by 65% while BATK claimed its domestic sales dropped by 40% between 2017 and 2020. But they could have been even happier, because if BATK sold as many cigarettes as it said it did, and it increased prices as much as was observed by independent sources, revenue would have been millions of dollars higher than it reported.^{88,89,90,91,92}

80 British American Tobacco Kenya (2021). Annual report 2019.

81 Euromonitor (2023, July) Tobacco in Kenya. Retrieved from: <https://www.euromonitor.com/tobacco-in-kenya/report>

82 Euromonitor (2023, July) Tobacco in Kenya. Retrieved from: <https://www.euromonitor.com/tobacco-in-kenya/report>

83 World Health Organisation (2019, December). WHO global report on trends in prevalence of tobacco use 2000-2025, third edition. Retrieved from: <https://www.who.int/publications/i/item/who-global-report-on-trends-in-prevalence-of-tobacco-use-2000-2025-third-edition>. Archived through: <https://web.archive.org/web/20231110095229/https://iris.who.int/bitstream/handle/10665/330221/9789240000032-eng.pdf?sequence=1>

84 Kenyan Ministry of Health and Kenya National Bureau of Statistics (2014). Global Adult Tobacco Survey (GATS), Kenya report 2014. Retrieved from: <https://web.archive.org/web/20190320120819/https://www.who.int/tobacco/surveillance/survey/gats/kenya-report-2014.pdf?ua=1>

85 Kenya National Bureau of Statistics, Kenyan Ministry of Health and The DHS Program (2022). Kenya Demographic and Health Survey 2022. Retrieved from: <https://dhsprogram.com/pubs/pdf/FR380/FR380bis.pdf>. Archived through <https://web.archive.org/web/20231127213330/https://www.dhsprogram.com/pubs/pdf/FR380/FR380bis.pdf>

86 World Health Organisation (2019, December). WHO global report on trends in prevalence of tobacco use 2000-2025, third edition. Page 76. Retrieved from: <https://web.archive.org/web/20231110095229/https://iris.who.int/bitstream/handle/10665/330221/9789240000032-eng.pdf?sequence=1>

87 British American Tobacco Kenya (2019). Annual report 2019.

88 World Health Organisation (2022, February), Global Health Observatory data repository, Retail price for a pack of 20 cigarettes Data by country. Retrieved from: <https://apps.who.int/gho/data/view.main.TOBRETAILv>

89 Euromonitor (2023, July) Tobacco in Kenya. Retrieved from: <https://www.euromonitor.com/tobacco-in-kenya/report>

90 Research Unit on the Economics of Excisable Products (2023). African Cigarette Prices 2016-2022. Datafirst, University of Cape Town. Retrieved from: <https://doi.org/10.25828/nvz2-ah77>

91 Tobacco Reporter (2020, January). Prices up. Retrieved from: <https://tobaccoreporter.com/2020/01/16/prices-up/>

92 Kilonzo, E. (2017, May). Rising cigarette prices fail to reduce smoking. The Nation.

Retrieved from: <https://nation.africa/kenya/healthy-nation/rising-cigarette-prices-fail-to-reduce-smoking-403506>

3.3 EGMS: The Kenyan track and trace system

The Kenya Revenue Authority (KRA) has a consistent record of BATK's production in its Nairobi factory since the introduction of the track and trace system in late 2013.⁹³ This 'excisable goods management system' (EGMS) was implemented to combat illegal sales of cigarettes, by allowing the KRA to trace back every pack of cigarettes on the Kenyan market from the point of sale to the origin.

Central to the system are 'duty paid' stamps, a square paper seal on a cigarette pack which indicates excise and VAT have been paid. These stamps had been obligatory for years, but the new system made them scannable and provided a digital record. This way the stamp can tell anyone who wants to know about the origin of the pack of cigarettes in their hands.

Cigarette manufacturers like BATK are obliged to seal packages in the factory with the KRA stamp and 'activate' the stamp by scanning. The activation creates a record of brand, amount, and production information. The manufacturer pays excise duty based on every activated stamp immediately after it's activated. In the case of BATK, stamp activation is largely automated.

Though a few neighbouring countries use the same system, the KRA's EGMS is only for the Kenyan domestic market. Exported cigarettes are traced by a different system, that has been in place since 2010. Cigarettes with the Kenyan stamp are not supposed to be exported – neighbouring countries like Uganda and Tanzania have their own digital tax stamps. Since excise duties in neighbouring countries are lower, exporting cigarettes with a Kenyan tax stamp would be more expensive, even if it was allowed.

3.4 Step-by-step analysis

This analysis explains each of the research steps undertaken with additional details, reflections and considerations.

Step 1: Identifying the production volume of cigarettes by BATK

The goal of this step is to establish how many cigarettes BATK produced in the years 2016-2021, and how this relates to the claims BATK made publicly about its sales and revenue on the Kenyan market.

Every year between 2017 and 2020, BATK wrote in its annual reports that the domestic sales volume, the packs of cigarettes the company sold in Kenya was declining. Cumulatively, the yearly declines amounted to a 39% decrease in sales volume between 2016 and 2020. The company never specified how many packs it sold exactly, only that there was a decline in the volume.

As explained in Chapter 3.3, BATK has to report its exact production of cigarettes for the Kenyan market to the Kenya Revenue Authority (KRA). These reports are made daily, via the automated activation of digital stamps in BATK's factory in Nairobi. Excise duty for the domestic market is calculated based on these KRA reports.

These daily production reports also show a decline in volume, but a far less steep one.

⁹³ Ross, H. (2017, December). Tracking and tracing tobacco products in Kenya. *Preventive Medicine*. Retrieved from: <https://www.sciencedirect.com/science/article/pii/S0091743517301457>

Table 1 compares the two reports. The table shows the yearly production of packs of cigarettes for the Kenyan domestic market as reported to the KRA, and the decline in production volume in percentages. Next to it, it shows the decline in sales volume BATK claimed publicly in its annual reports, in yearly percentages.

Table 3.1: Production volume BATK as reported to the KRA, compared to change in sales volume in BATK's yearly financial reports

YEAR	Yearly domestic production in packs - KRA reports (in packs)	Year on year production change - KRA reports (%)	Index production change - KRA reports (index year: 2016)	Yearly domestic sales change in volume - BATK annual reports (%)	Index domestic sales change - BATK annual reports (index year: 2016)
2016	219,741,432		100		100
2017	224,776,629	2.29	102	-7.0	93
2018	219,244,591	-2.46	100	-3.5	90
2019	192,618,345	-12.14	88	-10.0	81
2020	158,780,175	-17.57	72	-24.0	61
2021	159,513,885	0.46	73		

Sources: Kenya Revenue Authority,⁹⁴ British American Tobacco Kenya⁹⁵

The KRA reports show that BATK, from 2016 to 2020, scaled down its cigarette production for the Kenyan domestic market. BATK produced 28% fewer cigarettes in 2020 than in 2016.

In other words, if BATK produced and sold 100 packs of cigarettes in 2016, it produced 72 packs four years later. However, according to its annual reports, the company sold only 61.

Identifying the production per brand

The daily reports to the KRA are very detailed, showing the exact daily production of each BATK brand on the Kenyan market.

BATK's cigarette brands roughly fall into three price tiers: economy, mid-price, and premium. Some of the brands are international, such as Dunhill, Pall Mall and Rothmans. Sportsman, a mid-priced filter cigarette, is BATK's 'local hero brand', while the unfiltered Rooster is popular because of its low price. Each brand comes in several variations. Most of them are filtered.

Table 2 shows the exact volume of brand production per price tier between 2016 and 2020. During these years, BATK consolidated various brands under fewer, common international brand names, for example, combining Rothmans and Sportsman (Rothmans by Sportsman) and Pall Mall and Safari. These brands have been normalised in the same way in this table (see Appendix B).

⁹⁴ Kenya Revenue Authority (2016-2021). Yearly domestic production in Nairobi factory per brand, as BATK reported to the KRA.

⁹⁵ British American Tobacco Kenya (2016-2021). Annual reports.

Table 3.2: Production volume BATK as reported to the KRA, per brand price tier (in packs of 20 cigarettes)

YEAR	Economy price, unfiltered (Rooster)	Economy price filter (Safari, Pall Mall)	Mid price, filter (Sportsman, Rothmans)	Premium, filter (Dunhill, Embassy)	Total production
2016	21,557,297	69,590,713.00	112,272,398	16,321,024.0	219,741,432
2017	18,828,915	96,823,505.00	95,466,148	13,658,061.0	224,776,629
2018	17,865,639	100,975,708.00	85,274,751	15,128,493.0	219,244,591
2019	11,358,168	75,754,992.00	92,830,515	12,674,670.0	192,618,345
2020	12,232,827	83,649,404.00	51,657,649	11,240,295.0	158,780,175
2021	12,689,639	92,046,155.00	43,238,156	11,539,935.0	159,513,885

Source: Kenya Revenue Authority⁹⁶

While generally the trend is indeed firmly downwards, the figure shows a significant fluctuation in yearly production for each price tier and brand.

Production of the economy brand Rooster has almost halved. Even more marked is the popular 'local hero' Sportsman's drop, from 112 million to slightly over 43 million.

The only exception is the economy price cigarette Safari (or Pall Mall by Safari), which has seen its production numbers go up, from around 70 million packs in 2019 to more than 90 million in 2021. In 2021, BATK produced twice as many packs of Safari as it produced Sportsman.

The table shows that while Sportsman was the most-produced brand in 2016, five years later, this baton was taken over by Safari. This is contrary to reports by market research firm Euromonitor, which says that Sportsman was still by far the leading brand in 2022 with 43%.⁹⁷

Step 2: Establish total revenue generated by domestic production

This research step aims to estimate how much revenue BATK should have made by putting its total domestic cigarette production on the market in Kenya. First, retail prices are estimated based on different sources. Then, VAT and excises are calculated and subtracted. Through the revenue per pack the total possible net revenue on the production is determined.

Step 2a: Retail prices, wholesale prices and revenues

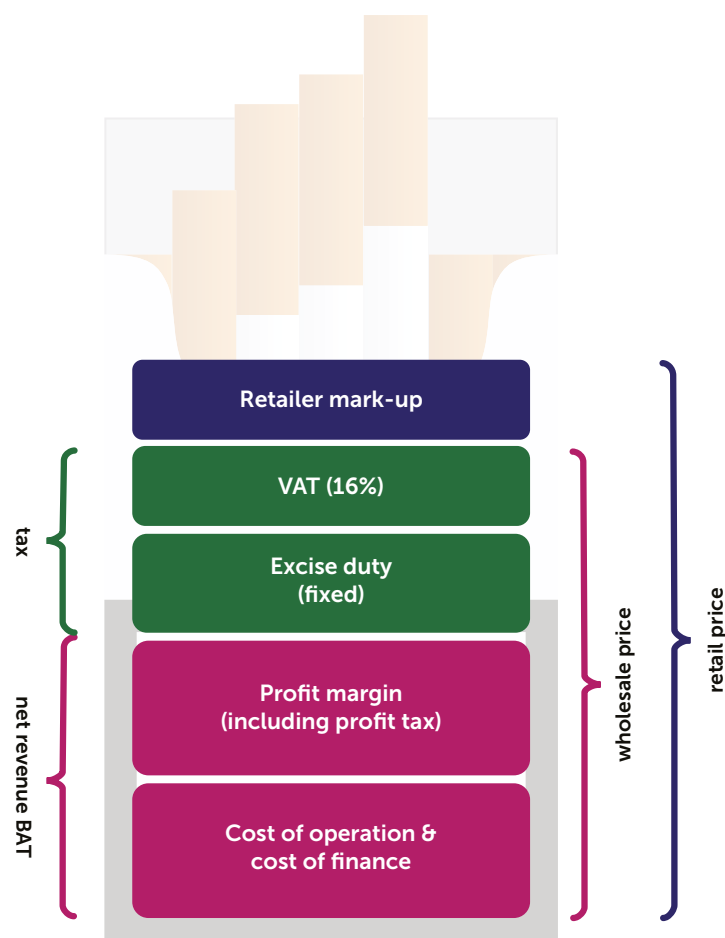
BATK sells cigarettes to retailers, not customers. The retailers pay BATK a wholesale price, which is (presumably) lower than the retail price minus taxes, leaving a markup for the retailer's business.

Any revenue calculation needs to make this distinction, as this is the revenue BATK actually makes. However, wholesale prices are unknown, and BATK refused to give information on this. To calculate net revenue from production, the retail price is a good starting point. An estimated margin for the retailer will be subtracted later.

⁹⁶ Kenya Revenue Authority (2016-2021). Yearly domestic production in Nairobi factory per brand, as BATK reported to the KRA.

⁹⁷ Euromonitor (2023, July) Tobacco in Kenya. Retrieved through: <https://www.euromonitor.com/tobacco-in-kenya/report>

Figure 3.1: Price, tax and revenue breakdown pack of cigarettes



Prices for Kenyan cigarettes are free and not legally fixed. BATK does set a recommended retail price for its packs. Retailers are, however, free to determine their own cigarette prices and markup.⁹⁸ Some retailers sell cigarettes per stick.

An average retail price for each price tier (and corresponding brand) has been established using data collected in the field by the World Health Organisation and the World Bank, and recommended retail price announcements made by BATK itself.

Average prices for each tier (recommended or actually established in the field) are listed in Table 3. Where no reliable data was available, a conservative estimation was made.

98 Otieno, B. (2020, September). BAT raises cigarette prices on higher taxes. Business Daily. Retrieved from: <https://www.businessdailyafrica.com/bd/corporate/companies/bat-raises-cigarette-prices-on-higher-taxes-2276404>. Archived through: <http://web.archive.org/save/https://www.businessdailyafrica.com/bd/corporate/companies/bat-raises-cigarette-prices-on-higher-taxes-2276404>

Table 3.3: Retail prices (recommended or actual) per pack for economy price, mid price and premium price cigarettes (in KES)

YEAR	economy price pack, filtered and unfiltered	mid price pack	premium price pack
2016	100	130	180
2017	120	130	180
2018	125	170	220
2019	125	175	250
2020	130	190	260
2021	140	200	275

Sources: Research Unit on the Economics of Excisable Products,⁹⁹ World Health Organization,¹⁰⁰ Tobacco Reporter¹⁰¹, Euromonitor¹⁰², Nation Africa¹⁰³, Business Daily Africa¹⁰⁴.

For fields marked grey, no reliable research data existed. These are (conservative) estimations based on REEP data, WHO data, recommended retail prices, and market research models by Euromonitor¹⁰⁵.

Step 2b: Excise rates and VAT

Table 4 shows the going excise rate per the date enacted. During the Excise Duty Act of 2015 and 2017, Kenya had one fixed excise rate of 50 KES per pack, or 2500 KES per thousand sticks.¹⁰⁶ In 2017 a second (lower) tier rate was added for unfiltered cigarettes, like Rooster. This lower tier rate was originally fixed at 36 KES per pack (1800 per thousand sticks). Kenyan government adjusted the excise rates for inflation yearly, from 2017 until 2022.

In addition to the excise duty, cigarette manufacturers also pay an excise stamp fee of 2,8 KES per pack.

VAT rates on cigarettes in Kenya, during this period, were 16%, with the exception of the year 2020. Because of the pandemic, VAT was lowered to 14%.

99 Research Unit on the Economics of Excisable Products (2023). African Cigarette Prices 2016-2022. Datafirst, University of Cape Town. Retrieved from: <https://doi.org/10.25828/rvz2-ah77>

100 World Health Organisation (2022). Global Health Observatory data repository, Retail price for a pack of 20 cigarettes. Retrieved from: <https://apps.who.int/gho/data/view.main.TOBRETAILv>

101 Tobacco Reporter (January 6, 2020). 'Prices up'. Retrieved from: <https://tobaccoreporter.com/2020/01/16/prices-up/>

102 Euromonitor (2023, July) Tobacco in Kenya. Retrieved from: <https://www.euromonitor.com/tobacco-in-kenya/report>

103 Nation Africa (2017). 'Rising cigarette prices fail to reduce smoking'.

Retrieved from: <https://nation.africa/kenya/healthy-nation/rising-cigarette-prices-fail-to-reduce-smoking-403506>

104 Business Daily Africa (January 2020) 'BAT raises cigarette prices on higher taxes'.

Retrieved from: <https://www.businessdailyafrica.com/bd/corporate/companies/bat-raises-cigarette-prices-on-higher-taxes-2276404>

105 Euromonitor (2023, July) Tobacco in Kenya. Retrieved from: <https://www.euromonitor.com/tobacco-in-kenya/report>

106 Tobacco Control Initiative (n.d.) Tobacco Taxation in Kenya. Retrieved from: <https://kenya.tobaccocontroldata.org/en/home/tobacco-taxes/>. Archived through: <https://web.archive.org/web/20240710092107/https://kenya.tobaccocontroldata.org/en/home/tobacco-taxes/>

Table 3.4: Excise rates in Kenya per pack of 20 cigarettes (in KES)

YEAR	Date excise rate enacted	Enacted by	Excise - fixed, filtered (Ksh)	Excise - fixed, unfiltered (Ksh)
2016	1/12/2015	LN 245	50.00	50.00
2017	1/7/2017	Budget statement	50.00	36.00
2018	11/12/2018	LN 239	52.60	37.86
2019	1/7/2019	LN 109	63.14	45.44
2020	1/10/2020	LN 194	66.26	47.68
2021	1/11/2021	LN 217	69.55	50.05
2022	1/7/2022	Finance Act	76.52	55.06

Sources: Kenya Revenue Authority,¹⁰⁷ International Institute for Legislative Affairs,¹⁰⁸ EY,^{109,110}

Step 2c Revenue per pack

To calculate the revenues per pack, excise, stamp price, and value-added tax (VAT) were subtracted from the retail prices in Table 3. To account for the later enactment of new excise rates, a weighted average was taken.

For example in 2019, the average excise rate for filtered cigarettes was 57,87 KES and the VAT was 16%. The price of one pack of Sportsman was 175 KES, so: $175 - (57.87 + 2.8) - (175/116) * 16 = 90.19$ KES in revenue.

107 Kenya Revenue Authority (2021, November). Inflation Adjustment on Specific Rates of Excise Duty. Retrieved from: <https://kra.go.ke/news-center/public-notice/1491-inflation-adjustment-on-specific-rates-of-excise-duty-november-2021>. Archived through: <https://web.archive.org/web/20240613164228/https://www.kra.go.ke/news-center/public-notice/1491-inflation-adjustment-on-specific-rates-of-excise-duty-november-2021>

108 International Institute for Legislative Affairs (2019). Making tobacco taxes work for Kenya: proposals for the national budget 2019/2020. Retrieved from: <https://www.ilakenya.org/resources/policybriefs/makingtobaccotaxesworkforkenya2019>

109 EY (2019, February). Kenya adjusts excise duty rates. Retrieved from: https://www.ey.com/en_gl/tax-alerts/kenya-adjusts-excise-duty-rates. Archived through: https://web.archive.org/web/20240814100147/https://www.ey.com/en_gl/tax-alerts/kenya-adjusts-excise-duty-rates

110 EY (2020, October). Kenya adjusts excise duty rates. Retrieved from: https://www.ey.com/en_gl/tax-alerts/kenya-adjusts-specific-excise-duty-rates-for-inflation. Archived through: https://web.archive.org/web/20230523181731/https://www.ey.com/en_gl/tax-alerts/kenya-adjusts-specific-excise-duty-rates-for-inflation

Table 3.5: Retail prices and revenues per pack for low, mid and high priced cigarettes (in KES)

Net revenue=price-excise-VAT.

Wherein: $VAT=(price/(100+VAT\%)*VAT\%)$; $excise=(excise\ rate+stamp)$; $stamp=2,8\ KES$.

YEAR	average net revenue economy price pack, filtered	average net revenue economy price pack, unfiltered	average net revenue mid price pack	average net revenue premium price pack
2016	33.41	33.41	59.27	102.37
2017	50.65	57.65	59.27	102.37
2018	54.96	68.96	93.75	136.86
2019	47.09	63.31	90.19	154.85
2020	47.32	65.23	99.95	161.35
2021	51.08	69.81	102.81	167.46

Sources: Research Unit on the Economics of Excisable Products,¹¹¹ World Health Organization,¹¹² Tobacco Reporter¹¹³, Euromonitor¹¹⁴, Nation Africa¹¹⁵, Business Daily Africa¹¹⁶, Kenya Revenue Authority,¹¹⁷ International Institute for Legislative Affairs,¹¹⁸ EY^{119,120}

*revenue on unfiltered cigarettes differs from 2017 because of new excise tiers enacted in 2017

BATK has raised prices every time the government raised excises, a practice it calls "excise-led pricing".

Because of excise-led pricing, the margins on BATK's cigarettes increased sharply over the years, with the price jumps outpacing the excise rates. After the introduction of the lower tier excise for unfiltered cigarettes, the margins of the unfiltered Rooster cigarettes especially jumped. What this means will become clear in the next steps.

Step 2d: Total net revenue on reported production

Multiplying the reported domestic production from Table 2 for each brand with the calculated net revenue per brand in Table 5, results in the total retail revenue this production represents, as shown in Table 6. This calculation was made with the assumption that the cigarettes are sold quickly after production ('high turnover') for the then-current retail price and excise rate.

111 Research Unit on the Economics of Excisable Products (2023). African Cigarette Prices 2016-2022. Datafirst, University of Cape Town. Retrieved from: <https://doi.org/10.25828/nvz2-ah77>

112 World Health Organisation (2022). Global Health Observatory data repository, Retail price for a pack of 20 cigarettes. Retrieved from: <https://apps.who.int/gho/data/view.main.TOBRETAILv>

113 Tobacco Reporter (January 6, 2020). 'Prices up'. Retrieved from: <https://tobaccoreporter.com/2020/01/16/prices-up/>

114 Euromonitor (2023, July) Tobacco in Kenya. Retrieved from: <https://www.euromonitor.com/tobacco-in-kenya/report>

115 Nation Africa (2017), 'Rising cigarette prices fail to reduce smoking'. Retrieved from: <https://nation.africa/kenya/healthy-nation/rising-cigarette-prices-fail-to-reduce-smoking-403506>

116 Business Daily Africa (January 2020) 'BAT raises cigarette prices on higher taxes'. Retrieved from: <https://www.businessdailyafrica.com/bd/corporate/companies/bat-raises-cigarette-prices-on-higher-taxes-2276404>

117 Kenya Revenue Authority (2021, November). Inflation Adjustment on Specific Rates of Excise Duty. Retrieved from: <https://kra.go.ke/news-center/public-notice/1491-inflation-adjustment-on-specific-rates-of-excise-duty-november-2021>. Archived through: <https://web.archive.org/web/20240613164228/https://www.kra.go.ke/news-center/public-notice/1491-inflation-adjustment-on-specific-rates-of-excise-duty-november-2021>

118 International Institute for Legislative Affairs (2019). Making tobacco taxes work for Kenya: proposals for the national budget 2019/2020.

Retrieved from: <https://www.ilakenya.org/resources/policybriefs/makingtobaccotaxesworkforkenya2019>

119 EY (2019, February). Kenya adjusts excise duty rates. Retrieved from: https://www.ey.com/en_gl/tax-alerts/kenya-adjusts-excise-duty-rates. Archived through: https://web.archive.org/web/20240814100147/https://www.ey.com/en_gl/tax-alerts/kenya-adjusts-excise-duty-rates

120 EY (2020, October). Kenya adjusts excise duty rates. Retrieved from: https://www.ey.com/en_gl/tax-alerts/kenya-adjusts-specific-excise-duty-rates-for-inflation. Archived through: https://web.archive.org/web/20230523181731/https://www.ey.com/en_gl/tax-alerts/kenya-adjusts-specific-excise-duty-rates-for-inflation

Table 3.6: Estimated total net retail revenue of the production BATK reported to the KRA (in thousand KES, rounded)

YEAR	Economy price, unfiltered (Rooster)	Economy price, filtered (Safari, Pall Mall)	Mid price (Sportsman, Rothmans)	Premium price (Dunhill, Embassy)	Total
2016	720,163	2,324,810	6,654,269	1,670,823	11,370,065
2017	1,085,455	4,903,944	5,658,180	1,398,209	13,045,788
2018	1,231,990	5,549,486	7,994,655	2,070,413	16,846,544
2019	719,070	3,567,198	8,372,576	1,962,638	14,621,482
2020	797,995	3,957,896	5,163,020	1,813,626	11,732,537
2021	885,862	4,701,867	4,445,131	1,932,488	11,965,348

Source: Kenya Revenue Authority¹²¹

The revenue of unfiltered cigarettes increased sharply after 2017, because of a lowered excise rate. And while production volume decreased in 2017 and 2018, the estimated revenue actually went up by 15% and 29% respectively.

This is due to 'excise-led' pricing. BATK's price increases made the total estimated retail value of the packs it produced in 2018 significantly higher. After 2018, when BATK's cigarette production declined sharply, the value dropped, though not as much. In 2019, the value is still higher than in 2016 while production shrank.

The revenue estimate is based on price data from multiple sources. When data was not available, a conservative estimation was made. A sensitivity analysis was conducted to see how the estimated revenue changes with different price estimations, which can be found in Appendix C.

Step 3: Verification of data: excise duty and VAT paid

To verify the previous steps, this step analyses whether the excise and VAT calculated, based on production data, match the amounts that BATK paid according to its public financial reports.

In BATK's public financial reports, the company lists the total excise duty and VAT paid to the KRA. Comparing these figures to the estimations of how much excise and VAT the company should have paid based on the KRA production reports, serves to verify the corresponding estimations of retail value and net revenue.

121. Kenya Revenue Authority (2016-2021). Yearly domestic production in Nairobi factory per brand, as BATK reported to the KRA.

As seen in Table 7, these amounts closely correspond, with the exception of 2016.

Table 3.7: Comparison of calculated VAT and excise duty, and VAT and excise duty in BATK's annual statements (in 1000 KES)

YEAR	Excise & VAT paid - annual report	Estimated excise paid - KRA reports	Estimated VAT paid - KRA reports	Difference	Difference in %
2016	16,826,348	11,602,348	3,675,586	1,548,415	9.20%
2017	15,794,407	11,736,404	3,965,150	92,853	0.59%
2018	15,745,622	11,325,995	4,507,606	-87,980	-0.56%
2019	15,787,863	11,501,926	4,179,745	106,192	0.67%
2020	13,505,816	10,374,586	3,139,197	-7,967	-0.06%
2021	14,621,153	10,865,793	3,652,983	102,377	0.70%

Sources: Kenya Revenue Authority,¹²² British American Tobacco Kenya¹²³

This shows our estimations based on the production data from the KRA, and the production data itself, match BATK's public financial statements.

It also indicates that BATK has indeed paid excise duty and VAT on the cigarettes it produced, which suggests that BATK has sold or would have a strong incentive to sell on the Kenyan market.

Step 4: Compare estimated net domestic revenue based on KRA production data, to net domestic revenue in BATK public financial reports

This step compares the net domestic revenue BATK reports in its annual financial statements, with the net domestic revenue the cigarettes produced should have generated on the Kenyan market.

After verifying the amounts of VAT and excises, the question remains whether the net domestic revenue statements also correspond.

Table 8 shows there is a significant discrepancy. In the years 2017-2019, the domestic revenue in BATK's annual financial reports deviated strongly from the estimated revenue based on the domestic production the company reported to the KRA.

¹²² Kenya Revenue Authority (2016-2021). Yearly domestic production in Nairobi factory per brand, as BATK reported to the KRA.

¹²³ British American Tobacco Kenya (2016-2021). Annual reports.

Table 3.8: Comparison of estimated net domestic revenue based on KRA data on domestic production, and net domestic revenue in BATK's annual financial statements (in 1000 KES)

YEAR	Net domestic revenue - BATK annual reports	Estimated net domestic revenue - KRA reports on production	Difference	Difference in %
2016	11,046,135	11,370,065	323,930	2.93%
2017	9,518,057	13,045,788	3,527,731	37.06%
2018	10,790,608	16,846,544	6,055,936	56.12%
2019	13,177,096	14,621,482	1,444,386	10.96%
2020	11,607,683	11,732,537	124,854	1.08%
2021	12,491,301	11,965,348	-525,953	-4.21%

Sources: Kenya Revenue Authority,¹²⁴ British American Tobacco Kenya¹²⁵

The estimated net retail value of the cigarettes BATK produced for the Kenyan market, according to the KRA data, was much higher than the net revenue BATK claimed to have made in its annual reports. The biggest difference can be seen in 2018, where the estimated net revenue based on the reported production is 56% more than BATK reports in its annual financial statement.

Retail margin

The net retail value of cigarettes on the market is different from the net revenue for BATK, which is based on the wholesale price, not the recommended retail price (see Figure 2). The difference is the retailer's margin: the money shopkeepers and other sellers make on a pack of cigarettes.

Such a margin would likely be fairly stable year to year. There is no data on the size of this margin in Kenya. Research from the UK has shown the margin to be around 4% to 6% of the retail price in England, and 7% to over 10% for non-price marked cigarettes.¹²⁶

As such, this difference cannot explain the discrepancies in 2017, 2018 and 2019.

Step 5: Revenue differences and inventories

This step establishes whether the discrepancy can be explained by BATK stockpiling produced and unsold cigarettes in its inventory.

BATK could have been overproducing cigarettes in 2017 and 2018, ahead of an excise increase, a practice that is called 'forestalling'. This way, the company can sell off the stock against a previous price and excise rate. Stockpiled cigarettes should be visible in the inventory.

BATK's annual reports list two inventories: 'raw materials and consumables', and 'finished goods'. A stock of 'duty paid' cigarettes, being ready for market, should be in the statement as 'finished goods'.

¹²⁴ Kenya Revenue Authority (2016-2021). Yearly domestic production in Nairobi factory per brand, as BATK reported to the KRA.

¹²⁵ British American Tobacco Kenya (2016-2021). Annual reports.

¹²⁶ Hitchman, S.C., Calder, R., Rooke, C., McNeill, A. (2016)

Small Retailers' Tobacco Sales and Profit Margins in Two Disadvantaged Areas of England <https://www.aimspress.com/fileOther/PDF/aimsph/publichealth-03-00110.pdf>

As can be seen in Table 9, the inventory's value was 510 million in 2017, 757 million in 2018 and 575 million in 2019. The finished goods, if completely intended for the domestic market, would only explain 14% and 13% of the difference in revenue in 2017 and 2018 respectively. Forestalling is thus not a credible explanation for the discrepancy.

Table 3.9: Year-on-year inventory value in BATK annual financial statements, compared to the difference as in Table 8 (in 1000 KES)

YEAR	Inventory: Finished goods	Difference
2016	569,789	323,930
2017	509,663	3,527,731
2018	757,373	6,055,936
2019	574,962	1,444,386
2020	701,585	124,854
2021	1,028,610	-525,953

Source: British American Tobacco Kenya¹²⁷

As per international accounting standards, the value of the inventory is a conservative, low estimation of the revenue the inventory will generate ('net realisable value') – not the full retail value. This means that the actual retail value of the inventory on the domestic market could be higher and would influence the revenue as such.

The inventory also likely contains finished goods meant for export, not just the domestic market. While the inventory does not state how much is meant for export, it's safe to assume the stockpile is not completely meant for domestic production, which would mean it explains less than 13% of the discrepancy.

Step 6: Different estimations of BATK's actual revenue from domestic production of cigarettes

This step explores different possible estimations of the actual net revenue the domestic production represents, by subtracting retail margins and inventory from the retail value.

As was noted in step 3, BATK sells cigarettes to retailers, not customers. The retailers pay BATK a wholesale price, which is (presumably) lower than the retail price minus taxes, leaving a markup for the retailer's business.

This retail margin may explain a difference between the revenue estimations based on the domestic production reported to the KRA, and the statements in BATK's annual reports.

This analysis will verify this by looking at two different retail margins and the inventory. A more conservative estimation sets the retail margin at 10% of the net revenue in Table 3 and subtracts the full value of the inventory of finished goods. A more liberal estimation sets the retail margin at 6% and subtracts half of the inventory, based on the fact that about half of BATK's revenue comes from exports.

¹²⁷ British American Tobacco Kenya (2016-2021). Annual reports.

Since retailers set their own prices, it is not certain the estimated margins reflect real margins. BATK does not communicate wholesale prices. It is also unknown what part of the inventory of finished goods is intended for the domestic market. Since there is a lack of data on this, this analysis serves to estimate the size of the discrepancy. The actual size of the discrepancy can only be established by an auditor with full access to the accounting of BATK.

After subtracting the estimated retail margin and inventory, the discrepancy remains as shown in Table 10. In the years 2017 and 2018, the difference varies from a very conservatively estimated 2.2 billion KES, to 9.6 billion KES (93 million USD).^{128,129}

Table 3.10 Realistic, modest and conservative estimations of net revenue based on domestic production reported to KRA (in 1000 KES)

	2017	2018	Total
realistic estimated domestic net revenue	13,045,788	16,846,544	
difference	3,527,731	6,055,936	9,583,667
modest estimated domestic revenue	10,693,892	13,510,876	
difference	1,175,835	2,720,268	3,896,103
conservative estimated domestic revenue	9,973,157	12,541,144	
difference	455,100	1,750,536	2,205,636

Source: Kenya Revenue Authority¹³⁰

To verify how these estimations compare to BATK's stated domestic net revenue, it is useful to check what the relative differences are.

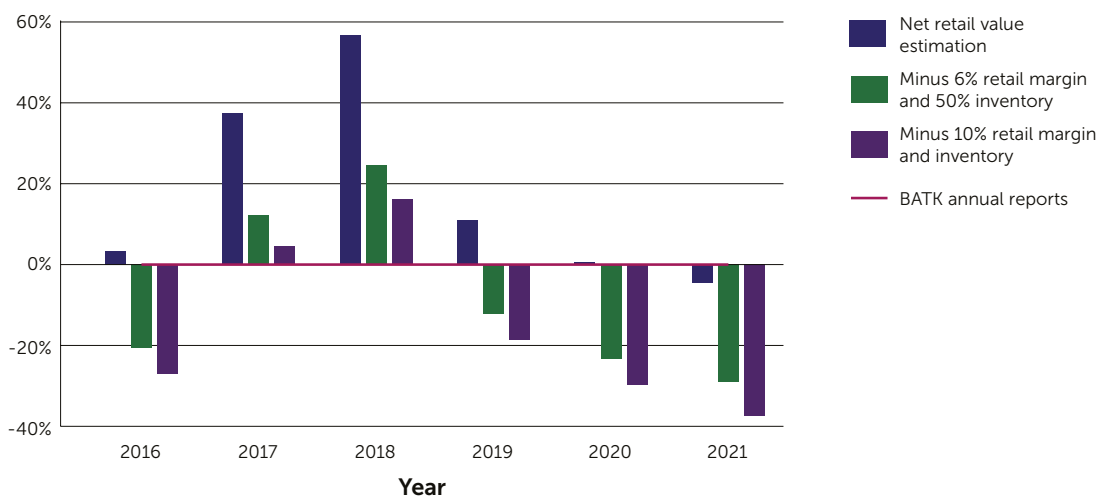
Figure 3 shows that the most conservative estimations of net revenue from the produced cigarettes are generally much lower than BATK's stated revenues, except for 2017 and 2018. This could mean that the conservative estimations are less likely to reflect the net revenue from the produced cigarettes. Additionally, the net retail value estimation closely trails the net revenue BATK reported in its annual financial statements, except between 2017 and 2019. The conservative estimation is thus not very likely to be correct.

128 Oanda (2023). Exchange rate KES to USD 1st of July 2017. Retrieved from: <https://www.oanda.com/currency-converter/en/?from=KES&to=USD&amount=3527731000>

129 Oanda (2023). Exchange rate KES to USD 1st of July 2018. Retrieved from: <https://www.oanda.com/currency-converter/en/?from=KES&to=USD&amount=6055936000>

130 Kenya Revenue Authority (2016-2021). Yearly domestic production in Nairobi factory per brand, as BATK reported to the KRA.

Figure 3: Difference between estimations of net revenue domestic production of cigarettes reported to the KRA, and domestic revenue in BATK’s annual reports (in %)



This graph shows that any estimation still differs greatly from BATK’s statements, which means that the retail margin, nor the inventory, provide credible explanations for the discrepancy.

Step 7: Total difference in profit and income/profit taxes

In this step, the goal is to calculate how much profit (or income) tax should have been paid over the estimated revenue.

The rate for a corporation’s income (or profit) tax in Kenya is 30%. Except for the first year of the COVID-19 pandemic, BATK effectively pays between 28% and 32% income tax during these years.

Taking an average tax rate of 30% and with the costs being the same as in BATK’s annual reports, an estimation can be made about the effective profit tax that this difference represents.

Table 11 *Difference between net domestic revenue in BATK's annual reports, and net revenue estimations for domestic production reported to the KRA, and concurrent profit tax (in 1000 KES and USD)*

YEAR	general estimation	modest estimation	conservative estimation
2017	3,527,731	1,175,835	455,100
2018	6,055,936	2,720,268	1,750,536
difference	9,583,667	3,896,103	2,205,636
30% profit tax	2,875,100	1,168,831	661,691
difference in USD	93,838	38,193	21,658
30% profit tax in USD	28,151	11,458	6,497

Source: Kenya Revenue Authority¹³¹

As shown in Table 11, the profit tax that could have been levied during 2017-2018 over the difference in retail runs up to 2,9 billion KES, which is an equivalent of 28 million USD (in 2017-2018 exchange rates).

131 Kenya Revenue Authority (2016-2021). Yearly domestic production in Nairobi factory per brand, as BATK reported to the KRA.

3.5 Expert review

The authors of this report have asked a consortium of experts, specialised in tobacco, tax and fraud from Kenya, the United Kingdom and South Africa to review the findings and calculations in this chapter. They all noted the methodology, calculations and results were sound. The experts called on BATK to provide an explanation for the discrepancies and for the KRA to start an audit.

Leopoldo Parada

Reader in Tax Law, King's College London, United Kingdom.

"The results of this report show that there is a discrepancy in the profit BATK reported and what it earned. Any auditor should have seen this. The Kenya Revenue Authority should ask the company for an explanation about this. If the company does not clearly explain this discrepancy, this looks like tax avoidance, and potentially evasion.

"An explanation could be that BATK sells cigarettes and pays tax through an entity which is not consolidated in the annual statements of the Kenyan publicly listed company. Or there could be a ruling between the KRA and the company. While not necessarily unlawful, those explanations would be morally criticizable.

"But if it turns out BATK has misrepresented its profit, that would mean it has omitted information, which amounts to an illegal action, namely tax evasion."

Johann van Loggerenberg

Tax avoidance and evasion expert, author of *Rogue and Tobacco Wars*, former South African Revenue Service investigator, South Africa.

"This report certainly demonstrates indicators of possible base erosion and profit shifting activities by BAT in Kenya. Taking into account the track record of the company over decades in many countries, it can be safe to say that these red-flags beg for a proper audit of the business. Whether these prove true, their extent and permissibility, can only be determined by a thorough tax audit.

"This report calls for a thorough investigation by, at the very least, the Kenya Revenue Authority and the British HM Revenue and Customs, and preferably in cooperation with each other. This should not be just directed at Kenya, but on a worldwide level.

"There is a fine line between base erosion and profit shifting and fraud. It's impossible to say what's exactly going on here, since the findings of the report are limited by a lack of publicly available information. This report has raised an important question, which only BAT and the authorities can answer."

Kennedy Waituika

Expert on fraud and internal audits.

"This report should be a wake up call for the KRA and should at least trigger a tax review of BAT. The challenge is now on BAT to explain.

"The KRA should have been able to catch the discrepancies this work has highlighted through basic data analysis. There is a lot of work to be done for them on analysing large taxpayer's data and triangulating information. Overall, for multinationals, the KRA has to wonder how to dissuade firms from these practices, like going hard on sanctions."

Hana Ross

Principal Research Officer (Professor Level) at the Research Unit on the Economics of Excisable Products at the University of Cape Town, South Africa.

"This report shows again that revenue authorities need to keep cross-checking figures submitted by tobacco companies. This industry cannot be trusted. What this report has done for Kenya needs to be done regularly, everywhere."

3.6 Response from BATK

A BATK spokesperson has not answered a list of questions which arise from this report sent by The Investigative Desk, but instead replied with a general statement:

“BAT Kenya firmly rejects all the allegations made regarding the discrepancy between its published financial disclosures and data referred to by the Investigative Desk.

“As a public company listed on the Nairobi Securities Exchange, BAT Kenya publishes financial disclosures in its Annual Reports and audited Financial Statements in line with the applicable local regulations and international reporting standards.

“BAT Kenya reports its total production volumes and sales (domestic & exports) to the Kenya Revenue Authority. The company pays all taxes in line with applicable laws, including excise duty, VAT and corporate income tax.

“We have not been given visibility of the Investigative Desk’s analysis, and therefore are not in a position to provide a detailed response to the allegation. However, retail prices available in the market include other costs not paid to BAT Kenya and as such, are not included in our revenue data. A calculation of BAT Kenya’s revenue based on retail prices and declared volumes would necessarily result in a figure grossly in excess of BAT Kenya’s reported revenues.

“BAT does not condone or tolerate illicit trade, or any involvement in illicit trade in its products. We maintain controls to prevent and deter the illegal sale of our products and further, welcome enforcement action on any illegal product in the market, by the relevant government authorities.”

Asked for more details on retail prices and BATK’s revenue and profit margins to explain the “other costs” cited in the response, the company again refused to answer, saying it’s unable to supply such “commercially confidential information”.

Conclusion

BATK is a highly profitable firm that portrays itself as a responsible company contributing to the economy and paying its fair share of tax. The firm specifically targets African markets, such as Kenya, where regulation is less strict than Western markets and a booming population makes for a bigger market.

Chapter 1 of this report shows the damage BATK does to the Kenyan society and economy, such as how it behaves with farmers and the deadly toll its product has on consumers. Research has shown that the damage of tobacco consumption to the Kenyan economy is 8 times higher than what BATK reports in profit.^{132,133} The majority of that impact is the result of BATK which has more than 80% of the market share in Kenya.

In chapter 3, a detailed cross-examination of publicly available data and internal data from the Kenya Revenue Authority (KRA) shows a discrepancy of up to 9.6 billion KES (93 million USD) in 2017-2018 between the revenue the company reported to have made and the value of the products it sold. There is no proof of tax avoidance or tax evasion. But BATK has not been able to provide an explanation for this discrepancy, which makes the findings of chapter 3 of this report look like "tax avoidance at the very least and possibly evasion" according to Leopoldo Parada, Reader in Tax Law at King's College London.

BATK appears to have produced more than it sold, its claimed sales have gone down faster than market or consumption data would support, and there is a massive discrepancy between the value of its production and the revenue it reported. While there are no clear explanations for these discrepancies, the authors think it's worthwhile to pose a number of hypotheses.

First of all, there's the explanation by BATK itself in its reply to questions asked by The Investigative Desk. The company says the discrepancies could be explained by other costs in the market which are not paid to BATK. The firm seems to imply that margins made by retailers or distributors could explain the discrepancy. However, such margins would likely be consistent on a year-to-year basis, while the discrepancy is especially noteworthy in 2017 and 2018.

The company refused to give further information, due to its claimed commercial sensitivity. "It's impossible to determine how much such costs would impact the revenue if they do not disclose the nature of them," said Leopoldo Parada, Reader in Tax Law, King's College London. "What is the reason to exclude them from the revenue data? If they explain the gap, would it not be reasonable to expose them rather than hide them? Certainly not a convincing answer."

In the absence of a credible explanation by BATK itself, another hypothesis is that the company sold the cigarettes on the Kenyan market, but underreported the revenue it made in its financial statements. There is no evidence that definitively establishes this hypothetical explanation is correct, nor is there proof of the contrary. Such a misrepresentation or omission of financial information could constitute tax evasion. If that would be the case, it could indicate up to around 28 million USD of evaded profit tax. The company rejects the hypothesis and says it "pays all taxes in line with applicable laws".

¹³² Tobacco Atlas (n.d.) Kenya. Retrieved from <https://tobaccoatlas.org/factsheets/kenya/>.

¹³³ British American Tobacco Kenya (2023). Annual report 2023.

Retrieved from: <https://prod.batkenya.com/content/dam/endmarkets/ke/en/download/investors-and-reporting/Annual-Report-2023.pdf>

To compare: 28 million USD distributed in lump sums of 500 USD could help 56,000 of Kenyans out of extreme poverty, as an experiment by GiveDirectly and MIT has shown.¹³⁴

A third possible explanation is that BATK sold cigarettes through a third party, which is not in the consolidated accounts of BATK and was able to hide these revenues by artificial adjustments of prices (a practice known as transfer mispricing). No evidence that supports or contradicts this hypothesis was found. However, such constructions are a common way among multinationals to erode the tax base and shift profits abroad (BEPS) to avoid profit tax. The OECD has established guidelines to prevent such transactions. While they are not necessarily illegal, the morality of such transfers could be debated.

BATK could trade with an entity which could be Kenyan or foreign, a transparent part of BAT's corporate hierarchy or hidden. For example: the Kenyan entity BAT Area is not a subsidiary of BATK, but has BAT UK as its ultimate parent (see Chapter 2). If BATK sold cigarettes far below market price to this party, BAT Area could have sold the cigarettes on the market, made the revenue disappear from the consolidated statements of BATK, and could have shifted the profits to its parent in the UK.

A fourth hypothesis would be that the company produced hundreds of millions of cigarettes, paid excise duties over them, which then either disappeared, or were destroyed or handed out without making any money on them. This does not seem like a plausible explanation for an efficiently run multinational which is known for optimising efficiency by minimising costs and maximising profits.

In short, BATK's reply does not explain the discrepancy, which makes the findings of this report look like "tax avoidance at the very least and potentially evasion" according to Parada. But whether any of these hypotheses turn out to be correct, or if there is a different explanation for the findings in this chapter, remains to be seen after an audit by the relevant authorities. This report "should be a wake up call for the KRA and should at least trigger a tax review", according to fraud expert Kennedy Waituika. "It's impossible to say what's exactly going on, since the findings of the report are limited by a lack of publicly available information", according to former South African Revenue Service investigator Johann van Loggerenberg.

Such a lack of publicly available documents is always a limiting factor in journalistic investigations of tax avoidance or evasion. Financial information could be retrieved from BATK since it's a publicly traded firm on the Nairobi stock exchange, but it has proven impossible to find any detailed financial information on smaller subsidiaries noted in Chapter 2.

Only an investigation by auditing firms, or relevant authorities, such as the Kenya Revenue Authority or British HM Revenue and Customs, could definitively explain the discrepancies. Any findings should be open to scrutiny, given the high public interest in matters concerning public health and illicit financial flows. And, as expert Hana Ross said, "revenue authorities need to keep cross-checking figures submitted by tobacco companies. This industry cannot be trusted. What this report has done for Kenya needs to be done regularly, everywhere."

¹³⁴ Banerjee, A., Faye, M., Krueger, A., Niehaus, P., Suri, T. (2023, September). Universal Basic Income: Short-Term Results from a Long-Term Experiment in Kenya. GiveDirectly. https://conference.nber.org/conf_papers/f192616.pdf

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The Investigative Desk is a group of specialised journalists, based in Amsterdam, the Netherlands, with a focus on large multinational corporations in a range of economic sectors. It is structured as an independent foundation and registered as a Public Benefit Organisation. TheID and its predecessor have investigated the tobacco industry since 2017, leading to many breaking news stories on the influence of big tobacco on Dutch and European politics, its tax avoidance and its expansion into the pharmaceutical and medical industries.

The Investigate Desk funds its work with donations, structural subsidies, grants, project-related subsidies and publication fees. For more information on TheID's funding and independence, see www.investigativedesk.com.

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Tax Justice Network Africa (TJNA), founded in 2007, is the leading Pan-African civil society network dedicated to issues of tax justice. It is composed of civil society organisations with the united effort of leading tax justice voices across the continent committed to promoting accountable and progressive taxation systems in Africa where tax justice prevails.

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Appendix

Appendix A

Around 2019, BATK started combining brands. Sportsman and SM became Rothmans by Sportsman or Rothmans by SM. Embassy became Dunhill by Embassy, and Safari became PallMall by Safari.

In all data, data analyses and throughout this report, these 'new' brand names have been normalised to their most commonly known and original brand:

Rothmans by Sportsman is Sportsman;
PallMall by Safari is Safari;
Dunhill by Embassy is Embassy;
Rothmans by SM is SM.

Rooster, PallMall, Dunhill and Rothmans remained separate brands and have been treated as such.

Appendix B

Sensitivity analysis - retail price estimations

The purpose of this analysis is to check whether varying some of the assumptions made would change the conclusion reached and if so, by how much.

Data obtained from the WorldBank, the World Health Organization (WHO) and the various price announcements about retail prices was not exhaustive. Also, retail prices can vary per shop. For that reason, the Step-by-Step Analysis makes - conservative - assumptions about retail prices.

This analysis verifies these assumptions by taking the absolute lowest and highest retail prices there is evidence for, for each tier, and calculating the estimated retail value of the cigarette production based on these prices, as done in Step 2.

Table A1: Net revenue per price tier, assuming the lowest retail price as evidenced in data sources for WHO, World Bank and press releases (in KES per pack)

YEAR	Economy priced pack, filtered and unfiltered (Rooster, Safari)	Midprice pack (Sportsman, Rothmans)	Premium priced pack (Dunhill, Embassy)
2016	100	130	180
2017	120	130	180
2018	120	130	190
2019	125	150	190
2020	130	190	205
2021	140	200	250

Sources: Research Unit on the Economics of Excisable Products,¹³⁵ World Health Organization,¹³⁶ Tobacco Reporter¹³⁷, Euromonitor¹³⁸, Nation Africa¹³⁹, Business Daily Africa¹⁴⁰ and others.
For fields marked grey, no reliable research data existed.

135 Research Unit on the Economics of Excisable Products (2023). African Cigarette Prices 2016-2022. Datafirst, University of Cape Town.

Retrieved from: <https://doi.org/10.25828/nvz2-ah77>

136 World Health Organisation (2022). Global Health Observatory data repository, Retail price for a pack of 20 cigarettes.

Retrieved from: <https://apps.who.int/gho/data/view.main.TOBRETAILv>

137 Tobacco Reporter (January 6, 2020). 'Prices up'. Retrieved from: <https://tobaccoreporter.com/2020/01/16/prices-up/>

138 Euromonitor (2023, July) Tobacco in Kenya. Retrieved from: <https://www.euromonitor.com/tobacco-in-kenya/report>

139 Nation Africa (2017). 'Rising cigarette prices fail to reduce smoking'.

Retrieved from: <https://nation.africa/kenya/healthy-nation/rising-cigarette-prices-fail-to-reduce-smoking-403506>

140 Business Daily Africa (January 2020) 'BAT raises cigarette prices on higher taxes'.

Retrieved from: <https://www.businessdailyafrica.com/bd/corporate/companies/bat-raises-cigarette-prices-on-higher-taxes-2276404>

Table A2: Net revenue per price tier, assuming the highest retail price as evidenced in data sources for WHO, World Bank and press releases (in Ksh per pack)

YEAR	Economy priced pack, filtered and unfiltered (Rooster, Safari)	Midprice pack (Sportsman, Rothmans)	Premium priced pack (Dunhill, Embassy)
2016	100	130	180
2017	120	150	220
2018	135	200	250
2019	135	180	250
2020	130	250	400
2021	140	250	450

Sources: Research Unit on the Economics of Excisable Products,¹⁴¹ World Health Organization,¹⁴² Tobacco Reporter¹⁴³, Euromonitor¹⁴⁴, Nation Africa¹⁴⁵, Business Daily Africa¹⁴⁶ and others.

For fields marked grey, no reliable research data existed.

In Table A3, it becomes clear that taking the lowest possible retail price, the differences in the years 2017 and 2018 are still significant: 37% in 2017 and more than 20% in 2018. When performing the same exercise for the highest possible prices there is evidence for, the differences become vastly more stark over all the years, averaging 40% and rising to almost 90% difference in 2019.

Table A3: Comparison net revenue in BATK's annual financial statement, and estimated net revenue based on KRA data about domestic production, lowest and highest retail prices (in 1000 KES)

YEAR	domestic revenue BATK annual reports	estimated revenue (lowest price points)	difference	estimated revenue (highest price points)	difference
2016	11.046.135	11.370.064	2,93%	11.370.064	2,93%
2017	9.518.057	13.045.787	37,06%	15.162.722	59,30%
2018	10.790.608	13.002.533	20,50%	20.467.673	89,68%
2019	13.177.096	11.965.238	-9,20%	16.503.165	25,24%
2020	11.607.683	11.190.242	-3,60%	16.355.494	40,90%
2021	12.491.301	11.716.643	-6,20%	16.296.749	30,46%
total/average	68.630.880	72.290.506	5,33%	96.155.866	40,11%

This indicates that variation in price assumptions in the analysis cannot be the reason for the difference between the net revenue according to BATK, and the estimated retail value of cigarette production - at least not in the years 2017 and 2018.

141 Research Unit on the Economics of Excisable Products (2023). African Cigarette Prices 2016-2022. Datafirst, University of Cape Town.

Retrieved from: <https://doi.org/10.25828/nvz2-ah77>

142 World Health Organisation (2022). Global Health Observatory data repository, Retail price for a pack of 20 cigarettes.

Retrieved from: <https://apps.who.int/gho/data/view.main.TOBRETAILv>

143 Tobacco Reporter (January 6, 2020). 'Prices up'. Retrieved from: <https://tobaccoreporter.com/2020/01/16/prices-up/>

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Office: The Investigative Desk, Overhoeksplein 2, 1031 KS Amsterdam, the Netherlands
+31 6 54674124 / www.investigativedesk.com / desk@investigativedesk.com