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Why it's so hard to lift the tampon tax

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The "tampon tax" is firmly back on the European agenda. In a single month, French MPs have voted against reducing the rate of value-added tax (VAT) on sanitary products from 20% to 5%, and British MPs have voted against an amendment to chancellor George Osborne's finance bill to remove VAT on sanitary products.

Currently in the UK, a rate of 5% is charged on sanitary productions which equates to £3 of an average £60 yearly spend. In Hungary the rate of tax is 27% but the lowest permissible rate across the EU for sanitary products is 5%.

What is VAT?

VAT was first introduced in the UK as a fundamental condition of joining the EU common market. Goods and services in the UK are taxable under four different VAT categories: the standard rate (20%), the reduced rate (5%), the zero-rate (0%) and VAT exempt. The UK government in 1975 negotiated everyday essential items that were to be classified at the 0% rate. This included food and children's clothing. The negotiation was final and, crucially, did not include sanitary products.

Sanitary products were charged at the standard rate in the UK until the 2000 budget at which point the VAT rate on sanitary products was reduced to 5%.

The essential legal instrument regulating VAT application across the EU contains three provisions relevant to the tampon tax. Article 98 states that member states may apply a discretionary reduced rate to goods and services, including sanitary products. Article 99 provides the reduced rates may not be less than 5%. The UK's zero-rated items status is preserved by Article 110.

A tax on gender

Although there is a cost-saving element, there is also the fact that charging VAT on an everyday essential item for women means the tax becomes a tax on gender. It is a form of discrimination based on a natural biological process authorised by a primarily male government from 40 years ago.

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Campaigners highlight that exotic meats (such as kangaroo steaks) and alcoholic dessert jellies are zero-rated. In terms of VAT classification, these items are deemed to be more essential than sanitary products. Sanitary products as a consequence are classed as non-essential luxury items.

Can the government lift the tax?

A long-term solution is difficult, because the current UK government is bound by the negotiations of a previous administration that took place four decades ago. Although unpopular with campaigners, the action of MPs to vote against the amendment is understandable: the UK is required to apply EU law and are legally correct to continue to apply the 5% rate at the moment.

The long-term solution from a UK perspective is to negotiate with the European Commission to produce an amendment to the directive and the other member states to authorise the change in position.

Following the House of Commons vote, the financial chief secretary to the treasury, David Gauke said he would "raise this issue with the European Commission and other member states setting out our views that it should be possible for member states to apply a zero-rate to sanitary products." It is surprising that a request has not been made to the European Commission sooner given the campaign to reduce and remove VAT on these items dates back to the late 1990s.

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What campaigners can do

There is a way for campaigners to mandate the European Commission to investigate whether it has the ability to draft an amendment irrespective of the outcome of the commission's review. The European Citizens Initiative is a petitioning system whereby at least a million signatories across seven EU member states can participate directly in the development of EU policies.

The UK petition has far in excess of the required number of signatures to fulfil this and the existence of similar campaign groups across the EU with a significant number of signatures shows this process may be successful.

Short-term fixes

There are certain voluntary measures that both retailers and the government can do in spite of the current legal difficulties to make the best of a bad situation.

Retailers could be encouraged to follow the example of the University of East Anglia student's union and sell sanitary products profit free in order to mitigate the financial impact of VAT to consumers. Committing to this approach may benefit in the long run, attracting new customers who may purchase other products for profit. Still, this would be a voluntary agreement and would fail to address the underlying issue of the symbolic existence of VAT and the tax paid would still be collected by the central treasury.

The government should consider waiving the income generated from VAT on sanitary products if possible. If this is the case the chancellor may be able to allocate funds raised by the tax to good causes.

In the spring and summer budgets of 2015, Osborne allocated revenue accrued from Libor fines to specified good causes. The government could negotiate with campaigners to determine a list of appropriate good causes whereby the best is made of a bad situation and the tax, although paid disproportionately by one gender, could be used to support charities that assist women.

This would mean that the tax, although unpopular, could still have a positive social impact.