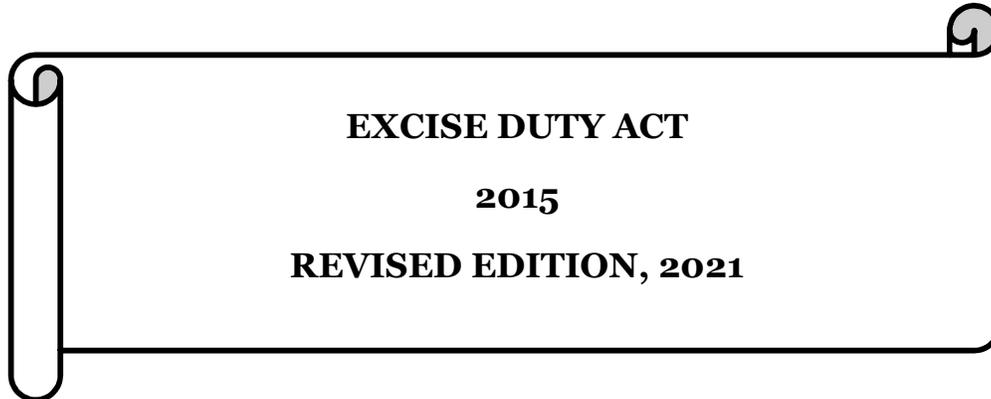




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**Notes:** (1) This edition-

- (a) includes the amendments contained in the Finance Act of 30th June, 2021 and adjustment of rates for inflation, Legal Notice No. 217 of 2021.
  - (b) has been prepared using the Excise Duty Act, Revised Edition 2020
- (2) In all cases references must be made to the actual text of the principal and subsidiary legislation published by the Government Printer and should the terms and text of this book be at variance with the legislation published by the Government Printer, the latter must be followed.

*Prepared for staff by Corporate Policy Division*

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**NO. 23 OF 2015**

**EXCISE DUTY ACT  
ARRANGEMENT OF SECTIONS**

**PART I – PRELIMINARY**

*Section*

1. Short title.
2. Interpretation.
3. Open market value.
4. Time of supply or importation.

**PART II – LIABILITY FOR EXCISE DUTY**

5. Imposition of excise duty.
6. Timing of liability for excise duty.
7. Goods and services not liable to excise duty.
8. Variation of rates of excise duty.
9. Excisable value.
10. Adjustment for inflation.
11. Ex-factory selling price of excisable goods.
12. Quantity of excisable goods.
13. Place of supply of excisable services.
14. Relief for raw materials.

**PART III – LICENSING**

**A – Application for a Licence**

15. Activities requiring a licence.
16. Applications for a licence.

**B – Issue of Licences**

17. Issue of licence.
18. Form of Licence.
19. Obligations of licensed person.

**C – Suspension and Cancellation of Licences**

20. Suspension of licence.
21. Cancellation of licence.
22. Consequences of suspension or cancellation of licence.
23. Commissioner to notify licensee prior to suspension of licence

**PART IV – EXCISE CONTROL**

24. Excisable goods under excise control.
25. Obligations of licensed manufacturer in relation to excisable goods under excise control.
26. Keeping or use of still otherwise than by distiller or rectifier prohibited.
27. Deemed removal of excisable goods.

**PART V – EXCISE STAMPS**

28. Excise stamps and other markings.

**PART VI – REFUNDS**

29. Refunds.
30. Excisable goods subject to a refund liable for excise duty on disposal or inconsistent use.
31. Exempt excisable goods liable for excise duty on re-importation or purchase.

- 32. Exempt excisable goods liable for excise duty on disposal or inconsistent use.

**PART VII — EXCISE DUTY PROCEDURE**

- 33. Application of Tax Procedures Act.
- 34. Record keeping.
- 35. Excise duty returns.
- 36. Payment of excise duty.
- 37. Security.

**PART VIII — OFFENCES AND PENALTIES**

- 38. Penalty.
- 39. Offences relating to licensing and excise control.
- 40. Offences relating to excise stamps.
- 41. Sanctions for offences.

**PART IX— MISCELLANEOUS PROVISIONS**

- 42. Tax avoidance schemes.
- 43. Effect on prices of imposition, abolition, or variation of excise duty.
- 44. Application of East African Community Customs Management Act, 2004.
- 45. Regulations.
- 46. Repeals and transitional provisions.

FIRST SCHEDULE —Rates of Excise Duty

SECOND SCHEDULE —Exempt Excisable Goods and Services

THE EXCISE DUTY (EXCISABLE GOODS MANAGEMENT SYSTEM) REGULATIONS, 2017

THE EXCISE DUTY (REMISSION OF EXCISE DUTY) REGULATIONS, 2017

EXCISE DUTY ACT

[Date of assent: 6th November, 2015.]

[Date of commencement: 1st December, 2015.]

**AN ACT of Parliament to provide for the charge, assessment and collection of excise duty, to make administrative provisions relating thereto, and for connected purposes**

[Act No. 23 of 2015, L.N. 245/2015, Act No. 38 of 2016, Act No. 11 of 2017, Act No. 15 of 2017, Act No. 23 of 2019, Act No. 2 of 2020, Act No. 8 of 2021]

PART I — PRELIMINARY

**1. Short title**

This Act may be cited as the Excise Duty Act, 2015.

**2. Interpretation**

(1) In this Act, unless the context otherwise requires—

“**approved form**” shall have the meaning assigned to it under the Tax Procedures Act, 2015;

“**aircraft**” means every description of conveyance by air of human beings or goods;

“**arm's length transaction**” means a transaction between persons dealing with each other at arm's length;

“**authorised officer**” means an officer authorised by the Commissioner for the purposes of this Act;

“**betting**” shall have the meaning assigned to it under the Betting, Lotteries and Gaming Act;

“**bookmaker**” shall have the meaning assigned to it under section 2 of the Betting, Lotteries and Gaming Act;

[Act No. 23 of 2019, s. 23.]

“**Cabinet Secretary**” means the Cabinet Secretary for the time being responsible for matters relating to finance;

“**Commissioner**” means the Commissioner-General appointed under the Kenya Revenue Authority Act (Cap. 469);

“**compound**” has the meaning assigned to it in section 2 of the Compounding of Potable Spirits Act. [Act No. 8 of 2021, s. 29]

“**concessional loan**” means a loan with at least twenty-five percent grant element;  
[Act No. 23 of 2019, s. 23.]

“**denature**” means to render unfit for human consumption;

“**distillery**” means a licensed distiller's factory;

“**duty of customs**” means import duty, countervailing duty, or surtax charged under the East African Community Customs Management Act, 2004;

“**ex-factory selling price**” has the meaning assigned to it in section 11;

**“excisable goods”** means the goods specified in Part I of the First Schedule;

**“excisable services”** means the services specified in Part II of the First Schedule;

**“excise control”** has the meaning assigned to it in section 23;

**“excise duty”** means the excise duty imposed under this Act;

**“exempt goods”** means goods specified in the Second Schedule;

**“export”** means to take or cause to be taken from Kenya to a foreign country, a special economic zone or to an export processing zone;

**“export processing zone”** has the meaning assigned to it in section 2 of the Export Processing Zones Act (Cap. 517);

**“factory”** means any premises at which a licensed manufacturer is licensed to manufacture and store excisable goods, but does not include any part of the premises through which excisable goods are sold to the public;

**“import”** means to bring or cause goods to be brought into Kenya from a foreign country, a special economic zone or an export processing zone;

**“importer”** in relation to goods, means the person who owns the goods, or any other person who is, for the time being, in possession of or beneficially interested in the goods at the time of importation;

**“international traffic”**, in relation to an aircraft or vessel, means any operation of the aircraft or vessel, except as between two places in Kenya;

**“international organization”** shall have the meaning assigned to it under the Tax Procedures Act, 2015 (No. 29 of 2015);

**“licence”** means

- (a) in the case of excisable services, means the certificate of registration;
- (b) in the case of excisable goods, means the licence issued under section 17; or
- (c) in the case of any activity under section 15 (1) (e), means the licence required thereunder.

[Act No. 8 of 2020, s. 15]

**“licensed distiller”** means a distiller licensed under section 17;

**“licensed manufacturer”** means a person licensed under section 17 to manufacture excisable goods;

**“licensed person”** means a person licensed or registered under section 17;

**“manufacture”** includes—

- (a) the production of excisable goods;
- (b) any intermediate or uncompleted process in the production of excisable goods; or
- (c) the distilling, rectifying, compounding, or denaturing of spirits;

**“official aid funded project”** means a project funded by means of a grant or concessional loan in accordance with an agreement between the Government and any foreign government, agency, institution, foundation, organization or any other aid agency; [Act No. 23 of 2019, s. 23.]

**“open market value”** has the meaning assigned to it in section 3;

**“possession”** means having, owning or controlling any excisable goods including—

- (a) having in one’s possession any excisable goods;

- (b) knowingly having any excisable goods in the actual possession or custody of any other person;
- (c) having any excisable goods in any place, whether belonging to or occupied by oneself or not, for the use or benefit of oneself; or
- (d) having any excisable goods for the use or benefit of another person:

Provided that if there are two or more persons and any of them with the knowledge or consent of the others has any excisable goods in his custody or possession, such goods shall be deemed to be in the custody and possession of all of them.

“**prescribed**” means prescribed in the Regulations;

“**rectify**” means to redistill spirits removed from a spirits receiver for the purpose of purifying or adding flavour;

“**special economic zone**” shall have the meaning assigned to it under the Special Economic Zones Act, 2015 (No. 16 of 2015, s.2);

“**spirits**” means spirits of any description and includes all liquor mixed with spirits and all mixtures and compounds or preparations made with spirits, but does not include denatured spirits;

“**still**” means a distilling apparatus and includes any part of a still;

“**stores**” means goods for use or consumption by passengers or crew on an aircraft or ship while in international traffic, and includes goods for sale on board such aircraft or vessel;

“**supply**”, in relation to services, has the meaning assigned to it under the Value Added Tax Act;

“**tax law**” shall have the meaning assigned to it under the Tax Procedures Act, 2015;

“**the Regulations**” means regulations made under this Act;

“**time of importation**” has the meaning assigned to it meaning in section 4(2);

“**time of supply**”, in relation to excisable services, has the meaning in section 4(1);

“**unexcisable goods**” means goods that are not excisable goods;

“**unexcised goods or services**” means excisable goods or services liable for excise duty but, in respect of which, the full amount of excise duty due has not been paid;

“**value added tax**” means the value added tax imposed under the Value Added Tax Act, 2013 (No. 35 of 2013);

“**vessel**” means every description of conveyance by water of human beings or goods.

- (2) Except when the context otherwise requires, the terms "approved form", "international organisation", "person", "related person", and "tax law" have the meanings assigned to them under the Tax Procedures Act, 2015. [Act No. 38 of 2016, s. 20.]

### 3. Open market value

(1) The open market value of excisable goods or services at a particular time is the price that the goods or services would reasonably be expected to fetch in an arm's length transaction at that time at the wholesale level.

(2) If the open market value of excisable goods or services at a particular time cannot be determined under subsection (1), the open market value shall be the price which is an objective approximation of the price of the goods or services according to the Fourth Schedule of the East African Community Customs Management Act.

**4. Time of supply of importation**

(1) The time of supply of excisable services shall be the earlier of—

- (a) the date on which the services are performed;
- (b) the date on which the invoice for the supply of the services is issued; or
- (c) the date on which payment for the supply of the services is received, in whole or part.

(1A) In relation to a betting transaction, the time of supply shall be the time a person wagers or stakes money on a platform or other medium provided by a bookmaker.

[Act No. 23 of 2019, s. 24.]

(2) The time of importation of excisable goods shall be—

- (a) for excisable goods cleared for home use directly at the port of importation, or goods entered for removal to an inland station and there cleared for home use, at the time of customs clearance;
- (b) for excisable goods removed to a licensed warehouse subsequent to importation, at the time of final clearance from the warehouse for home use;
- (c) for excisable goods removed from an export processing zone or special economic zone for home use, at the time of removal for home use; or
- (d) in any other case, at the time the excisable goods are brought into Kenya.

[Act No. 38 of 2016, s. 21.]

**PART II — LIABILITY FOR EXCISE DUTY****5. Imposition of excise duty**

(1) Subject to this Act, a tax, to be known as excise duty, shall be charged in accordance with the provisions of this Act on—

- (a) excisable goods manufactured in Kenya by a licensed manufacturer;
- (b) excisable services supplied in Kenya by a licensed person; or
- (c) excisable goods imported into Kenya.

(2) Excise duty shall be charged at the rate specified in the First Schedule for the excisable goods or services in force at the time the liability arises for excise duty as determined under section 6.

(3) The excise duty payable—

- (a) under subsection (1)(a), shall be payable by the licensed manufacturer;
- (b) under subsection (1)(b), shall be payable by the licensed person making the supply; or
- (c) under subsection(1)(c), shall be payable by the importer of the excisable goods.

**6. Timing of liability for excise duty**

(1) The liability of a licensed manufacturer for excise duty on excisable goods manufactured in Kenya shall arise at the time of removal of the goods from the manufacturer's factory.

(2) For the purposes of this Act, excisable goods that are consumed in a licensed manufacturer's factory shall be treated as removed from the factory at the time of consumption.

(3) The liability of a licensed person for excise duty on excisable services shall arise at the time of the supply of the services.

(4) The liability of an importer for excise duty on excisable goods imported into Kenya shall arise—

- (a) for petroleum products, at the time of importation or such other time as may be specified by the Cabinet Secretary by notice in the gazette; or
- (b) for any other excisable goods, at the time of importation.

(5) A licensed person shall pay the liability for excise duty arising under subsection (1) or (3), as the case may be, in accordance with section 36.

(6) An importer shall discharge the liability for excise duty referred to in subsection (4) in accordance with section 36.

[Act No. 10 of 2018, s. 23.]

#### **7. Goods and services not liable to excise duty**

(1) Subject to this section, no excise duty shall be charged on the following—

- (a) exempt goods which meet the conditions set out in the Second Schedule;
- (b) excisable goods exported under customs control, including as stores;
- (c) excisable services exported from Kenya;
- (d) excisable goods that the manufacturer has destroyed, with the prior written permission of the Commissioner, under the supervision of an authorised officer prior to their removal from the factory in which they were manufactured;
- (e) denatured spirits for use in the manufacture of gasohol or as a heating fuel;
- (f) excisable goods that have been lost or destroyed by accident or other unavoidable cause—
  - (i) in the course of removal of the goods by the manufacturer from the manufacturer's factory including when loading or unloading the goods;
  - (ii) in the factory of the manufacturer in which the goods were manufactured before removal from the factory; or
  - (iii) on board an aircraft or vessel prior to importation into Kenya.

(2) The Cabinet Secretary may by notice in the Gazette, grant remission of excise duty, wholly or partially, in respect of beer or wine made from sorghum, millet or cassava or any other agricultural products, (excluding barley), grown in Kenya.

(3) The Gazette notice issued under subsection (2), shall specify the products and conditions to be met for the remissions to be granted.

(3A). A notice under subsection (2) of this section shall be laid before the National Assembly without unreasonable delay, and a resolution may be passed by the National Assembly within twenty-one days on which it next sits after the notice is so laid, that the notice—

- (a) be approved; or
- (b) be annulled and it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder, or to the issuing of a new notice.

(4) Excisable services shall be considered to be exported from Kenya if the services are supplied from a place of business in Kenya for use or consumption outside Kenya.

(5) An exemption granted under this section shall apply if the Commissioner is satisfied that –

- (a) the goods referred to in subsection (1)(a) have been received and consumed by the exempt person; and
- (b) excisable goods or services for export under subsections (1)(b) and (c) have not been, and shall not be consumed in Kenya.

[Act No. 10 of 2018, s. 24.]

(6) Subsection (1)(f)(i) and (ii) shall not apply if the licensed manufacturer has been compensated for the loss of the excisable goods and the compensation includes the excise duty payable on the goods, as a consequence of any of the following—

- (a) an insurance policy, indemnity, or other agreement;
- (b) a settlement; or
- (c) a judicial decision.

#### **8. Variation of rates of excise duty**

(1) The Cabinet Secretary may, by order in the Gazette, amend the First Schedule by increasing or decreasing any rate of excise duty on excisable goods or services from the date specified in the order by an amount not exceeding ten per centum of the rate set out in respect of those goods or services in the First Schedule.

(2) Nothing in subsection (1) shall empower the Cabinet Secretary to impose excise duty on any goods or services that are not excisable.

(3) The Cabinet Secretary shall lay an order varying the rate of excise duty made under subsection (1) before the National Assembly within seven days after its publication in the Gazette.

(4) If the National Assembly passes a resolution disapproving of the variation within twenty days from the first day on which the National Assembly next sits after the variation is laid before the National Assembly, the Order shall cease to have effect from the date of the resolution.

#### **9. Excisable value**

(1) This section shall apply where the First Schedule specifies a rate of excise duty payable by reference to the excisable value of excisable goods or services.

(2) The excisable value of excisable goods imported into Kenya shall be the sum total of the following amounts—

- (a) the customs value of the goods as determined under the East African Community Customs Management Act, whether or not any duty of customs is payable on the goods; and
- (b) the amount of duty of customs (if any) payable on the goods under the East African Community Customs Management Act, 2004 (No. 1 of 2005).

(3) The excisable value of excisable goods manufactured in Kenya shall be the ex-factory selling price of the goods, but not including—

- (a) the value added tax payable on the supply of the goods;
- (b) the cost of excise stamps, if any; or
- (c) the cost of returnable containers.

(4) Subject to subsections (5) and (6), the excisable value of excisable services shall be—

- (a) if the excisable services are supplied by a registered person in an arm's length transaction, the fee, commission, or charge payable for the services; or
- (b) in any other case, the open market value of the services.

(5) The excisable value of excisable services shall not include the value added tax, if any, payable on the supply of the services.

(6) The excisable value of excisable services specified in item 4 of Part II of the First Schedule shall not include interest or an insurance premium.

#### 10. Adjustment for inflation

(1) Despite section 8, the Commissioner may, with the approval of the Cabinet Secretary, by notice in the *Gazette*, adjust the specific rate of excise duty once every year to take into account inflation in accordance with the formula specified in Part 1 of the First Schedule.

(2) The notice under subsection (1) shall be laid before the National Assembly within seven days from the date of publication.

(3) The National Assembly shall, within twenty-eight sitting days of the receipt of the notice under subsection (2), consider the notice and make a resolution either to approve or reject the notice.

(4) The notice shall cease to have effect, if a resolution disapproving the notice is passed by the National Assembly.

[Act No. 38 of 2016, s. 22, Act No. 15 of 2017, s. 2, Act No. 8 of 2020, s.16]

#### 11. Ex-factory selling price of excisable goods

The ex-factory selling price of excisable goods shall be—

- (a) if the excisable goods are sold by the manufacturer, other than to a purchaser in an arm's length transaction, the price payable by the purchaser; or
- (b) in any other case, the open market value of the goods at the time of removal from the manufacturer's factory.

#### 12. Quantity of excisable goods

(1) This section shall apply where the First Schedule specifies a rate of excise duty payable by reference to a quantity measured by volume or weight.

(2) If—

- (a) excisable goods are imported into Kenya, or removed from the factory of a licensed manufacturer, in a package intended for sale with, or of a kind usually sold with the goods in a sale by retail; and
- (b) the package—
  - (i) is not marked or labelled with a net weight; or
  - (ii) is not commonly sold as containing, or is not commonly reputed to contain, a specific quantity or weight; and
- (c) the owner of the goods is unable to satisfy the Commissioner of the correct net weight of the package,

the excisable goods shall be liable to excise duty according to the gross weight of the package and its contents.

(3) Subject to subsection (4), if—

- (a) excisable goods are imported into Kenya, or removed from the factory of a licensed manufacturer, in a package intended for sale with, or of a kind usually sold with, the goods in a sale by retail; and
- (b) the package—
  - (i) is marked, or labelled as containing a specific quantity of the goods; or

(ii) is commonly sold as containing, or is commonly reputed to contain, a specific quantity of the goods, the package shall be treated as containing not less than the specific quantity.

(4) If the package referred to in subsection (3) contains more than the specific quantity, excise duty shall be computed on the actual quantity.

(5) The Commissioner may determine and specify the allowance for tare or wastage that may be granted and the conditions under which it is granted.

### **13. Place of supply of excisable services**

Subject to this section, a supply of excisable services shall be deemed to be made in Kenya if the services are supplied from a place of business of the supplier in Kenya.

### **14. Relief for raw materials**

(1) Where excise duty has been paid in respect of excisable goods imported into, or manufactured in Kenya by a licensed manufacturer and which have been used as raw materials in the manufacture of other excisable goods (hereinafter referred to as "finished goods"), the excise duty paid on the raw materials shall be offset against the excise duty payable on the finished goods.

(2) Where excise duty has been paid in respect of internet data services by a licensed person who purchases the data in bulk for resale, the excise duty paid shall be offset against the excise duty payable by that person on internet data services supplied to the final consumer.

## **PART III — LICENSING**

### **A — Application for a License**

### **15. Activities requiring a licence**

(1) A person shall not undertake any of the following activities unless the person is licensed or registered by the Commissioner to undertake the activity—

- (a) the manufacture of excisable goods in Kenya;
- (b) the importation into Kenya of excisable goods specified by the Cabinet Secretary under section 28 as requiring an excise stamp;
- (c) the supply of excisable services;
- (d) the use of spirit or illuminating kerosene to manufacture goods in Kenya that are not excisable goods; or
- (e) the carrying out of any other activity in Kenya for which the Commissioner, by notice in the Gazette, may impose a requirement for a licence.

(2) A person who manufactures excisable goods or supplies excisable services in contravention of subsection (1) shall be liable for the excise duty payable in respect of the excisable goods or services at the rate specified in the First Schedule.

(3) The excise duty payable by a person under subsection (2)—

- (a) shall be payable on demand made by the Commissioner; and
- (b) shall be in addition to any penalty or sanction imposed on the person under this Act or the Tax Procedures Act, 2015 for breach of subsection (1).

[Act No. 38 of 2016, s. 23, Act No. 15 of 2017, s. 3.]

**16. Applications for a licence**

(1) A person who intends to undertake any of the activities specified in section 15(1) shall apply to the Commissioner for a licence for any of the activities specified section 15 (1).

(2) An application under subsection (1) shall be—

- (a) in the prescribed form;
- (b) accompanied by the prescribed fees; and
- (c) lodged with the Commissioner in the prescribed manner.

**B – Issue of Licences****17. Issue of licence**

(1) Subject to subsection (2), the Commissioner shall consider an application under section 16 and may grant or refuse to issue the applicant with a licence.

(2) The Commissioner may refuse an application under section 16 if satisfied that—

- (a) the applicant has been convicted of an offence under this Act or the Tax Procedures Act, 2015;
- (b) the applicant has been convicted of an offence involving dishonesty or fraud under any law;
- (c) the applicant—
  - (i) is or has been declared bankrupt or insolvent; or
  - (ii) is in the process of liquidation or receivership;
- (d) in the case of an application to be a manufacturer of excisable goods, the factory, plant or equipment, specified in the application is not adequate to manufacture or secure excisable goods;
- (e) the applicant has not kept proper records as required under any tax law or has otherwise failed to comply with its obligations under a tax law; or
- (f) paragraphs (a), (b), (c) or (e) apply to a person related to the applicant and the Commissioner is satisfied that the related person is reasonably expected to be involved in the conduct of the activity to which the application relates.

(3) The Commissioner may impose such terms, conditions or restrictions as the Commissioner considers appropriate in relation to a licence issued under this section.

(4) The Commissioner shall give an applicant for a licence under section 16 written notice of the decision on the application and if the application is refused, the notice shall include reasons for the refusal.

(5) A licence shall take effect from the date specified therein by the Commissioner and shall unless earlier suspended, remain in force until cancelled under section 21.

**18. Form of licence**

(1) The license issued under section 17 shall be in the prescribed form.

(2) A licence issued to a manufacturer of excisable goods shall specify the following—

- (a) the class or classes of excisable goods that the manufacturer is licensed to manufacture;

(b) the factory or factories at which the manufacturer is permitted to manufacture excisable goods.

(3) A factory specified in a licence issued under this section shall be used only for the manufacture of the class or classes of excisable goods specified in the licence.

(4) Only the person specified as the licensed manufacturer in a licence issued under this section shall manufacture excisable goods in the factory specified in the licence.

(5) A licence issued to a supplier of excisable services shall specify the excisable services offered.

#### **19. Obligations of licensed person**

(1) A licensed person shall display in a conspicuous place—

- (a) the original of the licence at the principal place of business; and
- (b) in case of excisable services, a certified copy of the licence at every other place of business.

(2) A licensed person shall notify the Commissioner, in writing—

- (a) if the licensed person ceases to carry on the activity for which the licence is issued;
- (b) if there is any change in the name, address, place of business, ownership, constitution, or nature of the principal activity or activities carried on by the licensed person;
- (c) of any period in which the licensed person closes operations on a temporary basis; or
- (d) if, in the case of a licensed manufacturer, there is any change in the factory specified in the licence, or the plant and equipment used to manufacture excisable goods.

(3) A notification under subsection (2) shall be lodged with the Commissioner—

- (a) in the case of a notification under paragraph (c) where the closure was unplanned, within seven days after the event causing the closure; or
- (b) in any other case, at least seven days prior to the event requiring notification occurs.

### **C — Suspension and Cancellation of Licences**

#### **20. Suspension of licence**

(1) Subject to section 23, the Commissioner may suspend a licence issued under this Act if the Commissioner is satisfied that —[Act No. 10 of 2018, s. 26.]

- (a) any of the matters specified in section 19(2)(a), (b), or (c) apply to the licensed person;
- (b) the licensed person has not kept proper records as required under this Act or the Tax Procedures Act, or has otherwise failed to comply with obligations under this Act;
- (c) the licensed person has breached a condition of the licence;
- (d) the licensed person has made a false or misleading statement to the Commissioner;
- (e) for a licensed manufacturer, the factory, or plant or equipment, specified in the licence is no longer adequate to manufacture or secure excisable goods.

(2) Where a licence is suspended under subsection (1), the Commissioner shall serve the licensed person with written notice of the suspension.

(3) The suspension of a licence shall take effect from the date of service of the notice under subsection (2).

(4) A person served with a notice of suspension under subsection (2) may, by notice in writing and within fourteen days of service of the notice, or within such further time as the Commissioner may allow, appeal against the suspension.

(5) Where a licensed person lodges a notice of appeal in accordance with subsection (4), the Commissioner shall, within fourteen days after receipt of the notice, either—

- (a) accept the appeal and revoke the suspension of the licence;
- (b) provide the licensed person with written notice of the action required to be taken before the date specified in the notice to remedy the deficiencies that led to the suspension of the licence and revoke the suspension if the action is taken within the specified time; or
- (c) reject the appeal and cancel the licence under section 21.

(6) If the Commissioner fails to take action under subsection (5) within the time specified in that subsection, the suspension shall stand revoked.

## 21. Cancellation of licence

(1) The Commissioner shall, by notice in writing, cancel the licence of a person when—

- (a) the Commissioner has received notification under section 19 (2) (a);
- (b) the person fails to appeal the suspension of the licence within the time specified in section 20(4);
- (c) the person fails to comply with a notice served on the person under section 20 (5) (b) within the time specified in the notice or within such further time as the Commissioner may allow;
- (d) *deleted by Act No.10 of 2018, s.27*
- (e) the Commissioner rejects an appeal against the suspension of a licence under section 20(5)(c).

(2) The cancellation of a licence takes effect from the date specified in the notice of cancellation.

(3) Any obligation or liability of a licensed person under this Act or the Tax Procedures Act, 2015 in respect of anything done or omitted to be done by the person while licensed, including the obligation to pay excise duty or to file excise duty returns, shall not be affected by cancellation of the person's licence.

## 22. Consequences of suspension or cancellation of licence

(1) If the licence of a licensed manufacturer is suspended or cancelled—

- (a) the manufacturer shall—
  - (i) immediately cease to manufacture excisable goods;
  - (ii) immediately pay all excise duty on excisable goods on hand in respect of which duty is still unpaid;
  - (iii) dispose of excisable goods and materials in the manufacturer's factory in accordance with the direction of the Commissioner;
- (b) the Commissioner may—
  - (i) require the licensed manufacturer to remove excisable goods in the manufacturer's factory to another place approved by the Commissioner; and

(ii) take control of the manufacturer's factory and of any excisable goods at the factory as may be necessary for the protection of revenue and ensure compliance with this Act.

(2) If the licence of a person licensed to supply excisable services is cancelled, the person shall—

- (a) cease to supply the excisable services; and
- (b) pay excise duty on excisable services supplied in respect of which duty is not still unpaid.

(3) If the license of a person, other than a person to whom subsection (2) applies, is suspended or cancelled, the person shall immediately cease to undertake the activity for which the licence is issued.

(4) The Commissioner may, by notice in writing, require a licensed person to pay such costs as may be incurred by the Commissioner as a result of the suspension or cancellation of the person's licence as specified in the notice and the costs shall be treated as tax for the purposes of the Tax Procedures Act, 2015.

### **23. Commissioner to notify licensee prior to suspension of license.**

(1) Where the Commissioner seeks to suspend a licence under this Act, the Commissioner shall give the licensee twenty-one days' notice prior to the suspension, giving grounds on which the suspension shall be done.

(2) A notice issued under this section may require the licensee to remedy any circumstances which may be required to be remedied.

(3) Where a licensee fails to comply with the requirements indicated in the notice issued under this section, the Commissioner may proceed to suspend the licence under section 20.

(4) Despite any other provision of this Act, the Commissioner may suspend a licence, without notice, where the licensee—

- (a) has engaged in tax fraud;
- (b) has been found in possession of, or using, counterfeit stamps on excisable goods;
- (c) has been found in possession of goods bearing counterfeit stamps; or
- (d) has violated any regulations relating to health and safety, standards or packaging of goods.

*[Act No. 10 of 2018, s. 28.]*

#### **PART IV — EXCISE CONTROL**

### **24. Excisable goods under excise control**

(1) Excisable goods stored in the factory of a licensed manufacturer shall be subject to the control of the Commissioner (referred to as "excise control").

(2) Excisable goods shall be subject to excise control until the earlier of—

- (a) the removal of the goods from the factory of a licensed manufacturer for consumption in Kenya;
- (b) the export of the goods from Kenya; or
- (c) the destruction or disposal of goods in accordance with subsection (4), or section 7 (1) (d).

(3) When goods are subject to excise control—

- (a) an authorised officer may, at any time, examine the goods; and
- (b) no person shall, except with authority of the Commissioner granted in accordance with this Act, remove the goods from a factory or otherwise interfere in any way with the goods.

(4) When goods are subject to excise control, the Commissioner may permit the owner of those goods to abandon them to the Commissioner, and on such abandonment the goods may, at the expense of the owner thereof, be destroyed or otherwise disposed of as the Commissioner may direct.

**25. Obligations of licensed manufacturer in relation to excisable goods under excise control**

(1) For the purposes of ensuring proper accounting of excisable goods under excise control, a licensed manufacturer shall—

- (a) keep and maintain at the factory, metering and measuring devices, and such other equipment as may be necessary in order to enable the Commissioner to take an account of, or check by weight, gauge or measure, all excisable goods or materials in the factory;
- (b) store excisable goods in the factory in such manner as to facilitate the taking of a full account of the goods;
- (c) keep a materials account in the approved form and enter therein the particulars of all raw materials and intermediate goods received at the factory for use in manufacturing, and balance the account at the end of each month;
- (d) keep a finished goods account in the approved form and enter therein particulars of all excisable goods manufactured therein and delivered therefrom and shall balance the account at the end of each month;
- (e) ensure that excise duty is paid on any excisable goods consumed at the factory; and
- (f) comply with such other requirements as may be specified in the Regulations.

(2) For the purpose of subsection (1)(a), the Commissioner shall, by notice in the Gazette, specify the requirements of a measuring or metering device and such other equipment as may be required.

(3) The Commissioner—

- (a) may, at any time, take samples of excisable goods free of charge for such purposes of the Act as the Commissioner may deem necessary, and any such samples shall be disposed of and accounted for in such manner as the Commissioner may direct; or
- (b) may, subject to such written conditions as the Commissioner may impose, permit the owner of excisable goods to take samples which are of no commercial value without payment of the excise duty thereon.

**26. Keeping or use of still otherwise than by distiller or rectifier prohibited**

(1) Subject to subsection (2), no person other than a licensed distiller or rectifier shall keep or use a still.

(2) The Commissioner may permit, subject to such conditions as the Commissioner may impose, the keeping or use of a still by a person other than a licensed distiller or rectifier when the still is—

- (a) kept by a person who makes or keeps stills solely for the purpose of sale;
- (b) kept or used for experimental, analytical, or scientific purposes; or
- (c) kept or used for the manufacture of an article other than spirits.

**27. Deemed removal of excisable goods**

(1) A licensed manufacturer who cannot account, to the satisfaction of the Commissioner, for any quantity of excisable goods manufactured shall be deemed to have removed those goods from excise control in the month in which the discrepancy arose.

(2) A licensed manufacturer shall notify the Commissioner of any discrepancies between the manufacturer's actual and recorded inventory as soon as the manufacturer becomes aware of the discrepancy.

#### PART V — EXCISE STAMPS

##### **28. Excise stamps and other markings**

(1) The Cabinet Secretary may in the regulations specify—

- (a) the excisable goods to which excise stamps shall be affixed;
- (b) the systems for management of excise stamps and excisable goods, and
- (c) the place and time of affixing excise stamps.

(2) The Commissioner shall, by notice in at least two newspapers of national circulation, specify the types and descriptions of excise stamps to be affixed on goods specified under subsection (1).

(3) If excisable goods are manufactured for export, or for delivery to persons listed in subparagraph (2) or (3) of the Second Schedule, the goods shall be marked with such inscriptions as the Commissioner may specify to facilitate the tracking and tracing of the goods.

(4) A person shall not remove excisable goods specified in subsection (1) from the place designated for affixing stamps unless the goods have been affixed with stamps in accordance with the regulation.

(5) Notwithstanding subsection (4), the Commissioner may in exceptional circumstances, and with prior approval of the Cabinet Secretary, allow removal of excisable goods from excise control without affixing excise stamps on the goods.

#### PART VI — REFUNDS

##### **29. Refunds**

(1) If excise duty has been paid by a person on excisable goods manufactured in, or imported into, Kenya, the Commissioner shall, on written application by the person, refund the excise duty paid if satisfied that—

- (a) before being consumed or used in Kenya—
  - (i) the goods have been damaged or stolen during the voyage or transportation to Kenya;
  - (ii) the goods have been damaged or destroyed while subject to excise control;
  - (iii) the buyer has returned the goods to the seller in accordance with the contract of sale; or
- (b) the excise duty has been paid in respect of spirits or illuminating kerosene that have subsequently been used by a licensed or registered manufacturer to manufacture unexcisable goods.

(2) A licensed person may apply to the Commissioner for a refund of excise duty if the person has accounted for and paid excise duty on excisable goods or excisable services but has not received any payment from the purchaser for the goods or services, and the Commissioner may refund the excise duty if satisfied that payment for the goods or services has not been received.

(3) An application for a refund under subsection (2) may be made on the earlier of—

- (a) three years from the date of the sale of the goods or services; or
- (b) the purchaser becoming legally insolvent.

(4) An application for a refund under this section shall be—

- (a) in the prescribed form; and
- (b) lodged with the Commissioner in the prescribed manner—
  - (i) within twelve months from the date of payment of the duty, in the case of an application under subsection (1); or
  - (ii) within twelve months from the earlier date specified in subsection (3), in the case of an application under subsection (2).

(5) The amount of a refund of excise duty payable under this section shall be made in accordance with the Tax Procedures Act.

(6) If excise duty has been paid on the importation of excisable goods that have been subsequently exported, section 138 of the East African Community Customs Management Act, 2004 (No. 1 of 2005) shall apply to the export.

(7) If excise duty has been refunded under subsection (5) and the licensed person has subsequently recovered the whole or part of the excise duty from the purchaser of the goods or services, the licensed person shall repay the refunded excise duty to the Commissioner to the extent that it has been recovered within thirty days of the recovery.

[Act No. 15 of 2017, s. 4]

### **30. Excisable goods subject to a refund liable for excise duty on disposal or inconsistent use**

(1) Subject to this Act, when excisable goods in respect of which a refund of excise duty has been paid are subsequently disposed of, or used, in a manner inconsistent with the purpose for which the refund was granted, the goods shall be liable for the excise duty that would have been payable on the goods if the refund had not been granted.

(2) When a person who, being in possession of excisable goods in respect of which a refund of excise duty has been granted for any purpose, proposes to dispose of, or use, the goods for a purpose inconsistent with the purpose for which the refund was granted, the person shall furnish the Commissioner with the particulars of the proposed disposal or use, and shall pay the excise duty thereon.

### **31. Exempt excisable goods liable for excise duty on re-importation or purchase**

(1) Subject to this Act, when excisable goods that have been exported or shipped for use as stores on an aircraft or vessel operating in international traffic are subsequently unloaded in Kenya for home use, the importer shall be liable to pay excise duty on such goods at the rate in force at the time of unloading.

(2) Excisable goods imported or purchased free of excise duty shall be liable for excise duty on disposal or inconsistent use.

### **32. Exempt excisable goods liable for excise duty on disposal or inconsistent use**

When a person imports or purchases excisable goods which are exempt from excise duty under the Second Schedule and the person subsequently disposes of, or uses, the goods in a manner inconsistent with the exemption, the person shall be liable to pay excise duty on the goods at the rate applicable to goods of that class or description at the time of disposal or inconsistent use:

Provided that in the case of a motor vehicle, excise duty shall not be payable where in the case of a natural person, that person dies and the ownership of the motor vehicle is transferred by way of bequest to or inheritance by another person.

## PART VII — EXCISE DUTY PROCEDURE

**33. Application of Tax Procedures Act**

The Tax Procedures Act, 2015 shall subject to this Part, apply for the purposes of the administration of this Act.

**34. Record keeping**

A person liable to pay excise duty under this Act shall keep such records as may be specified in this Act or the Regulations and shall retain the records for the time period, and in the manner, specified in the Tax Procedures Act.

**35. Excise duty returns**

A licensed manufacturer or a supplier of excisable services shall submit an excise duty return, in the approved form and in the prescribed manner, for each calendar month not later than the twentieth day of the succeeding month, whether or not any excise duty is payable for that month.

**36. Payment of excise duty**

(1) The excise duty payable by a licensed manufacturer in respect of excisable goods removed from a manufacturer's factory during a calendar month shall be paid not later than the twentieth day of the succeeding month.

(2) The excise duty payable by a supplier of excisable services in respect of supplies of excisable services made by the supplier during a calendar month shall be paid not later than the twentieth day of the succeeding month.

(3) The excise duty payable by an importer in respect of the importation of excisable goods into Kenya shall be paid to the Commissioner at the time of importation.

(4) For the purpose of assessing, collecting, accounting and enforcing the payment of excise duty on the importation of goods into Kenya, the East African

(5) The Commissioner shall pay into the Sports, Arts and Social Development Fund established under the Public Finance Management Act, 2012 to support social development including universal health care sixteen percent of the excise duty paid in respect of money transfer by cellular phone service providers.

[Act No. 10 of 2018, s. 29.]

**37. Security**

(1) A licensed manufacturer shall provide such security for the payment of excise duty as the Commissioner may specify by notice in writing.

(2) The Commissioner may require a person to give security for the due compliance with this Act and generally for the protection of the excise duty revenue, and pending the giving of security in relation to goods subject to excise control, the Commissioner may refuse to permit removal or exportation of the goods, or to process any declaration in relation thereto, or to license any person to do so.

(3) A person required to provide security under this section shall provide the security in accordance with the Tax Procedures Act, 2015.

## PART VIII — OFFENCES AND PENALTIES

**38. Penalty**

- (1) A person who undertakes an activity referred to in section 15 (1) (a) or (b) without being licensed to do so shall be liable to a penalty equal to—
- (a) double the excise duty that would have been payable if the person were licensed "or five million shillings, whichever is higher" in the case of a person to whom section 15 (1) (a) applies; or
  - (b) double the amount of excise duty payable "or five million shillings, whichever is higher" in respect of the importation of excisable goods requiring an excise stamp, in the case of a person to whom section 15(1) (b) applies.

[Act No. 10 of 2018, s. 30.]

(2) A licensed manufacturer who manufactures excisable goods in premises that are not specified on the manufacturer's licence as the factory in which the manufacturer is permitted to manufacture the goods shall be liable to a penalty equal to double the excise duty payable on those goods.

(3) If under section 27(1) has been applied to deem a licensed manufacturer to have removed excisable goods from excise control, the manufacturer shall be liable to pay a penalty equal to double the excise duty payable on those goods.

(4) The Tax Procedures Act, 2015 shall apply to penalties imposed under this section.

### **39. Offences relating to licensing and excise control**

(1) Any person who contravenes the provisions of sections 17(3), 18(4), 25(1), or 26(1)" commits an offence.

(2) A licensed manufacturer commits an offence if he manufactures excisable goods in premises that are not specified on the manufacturer's licence as the factory in which such manufacture is permitted.

(3) A licensed person who fails to comply with section 19 (1) or 19 (2) commits an offence.

(4) A person commits an offence if he or she—

- (a) removes excisable goods from excise control in contravention of section 24 (3) (b);
- (b) enters any place where excisable goods are stored under excise control without authorisation; or
- (c) is involved in the unauthorised removal, alteration, or interference with excisable goods under excise control.

(5) Any person who buys, or, without proper authority, receives or has in the person's possession, any excisable goods that have been manufactured contrary to the provisions of this Act, or which have been removed from the place where they ought to have been charged with excise duty before such duty has been charged and either paid or secured commits an offence.

(6) Any plant or excisable goods or any materials, in respect of which an offence has been established in relation to sections 15,18,19, or 28 shall, in addition to any other penalty imposed under this Act, be forfeited to the Commissioner."

[Act No. 10 of 2018, s. 31.]

### **40. Offences relating to excise stamps**

Any person who contravenes section 28 commits an offence.

### **41. Sanctions for offences**

(1) Subject to subsection (2), a person convicted of an offence under sections 39 and 40, shall be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years, or to both a fine and imprisonment.

(2) Where an offence under this Part or the Tax Procedures Act has been committed in relation to excisable goods, the court may impose a fine not exceeding the higher of—

- (a) the maximum fine specified for the offence; or
- (b) three times the value of the excisable goods to which the offence relates.

(3) For the purposes of subsection (2), the value of excisable goods shall be determined in accordance with section 9.

#### 41A. General Penalty

A person who contravenes any provision of this Act or any regulation made thereunder for which no specific penalty is provided commits an offence and shall be liable, on conviction, to a fine not exceeding two million shillings or to imprisonment for a term not exceeding two years, or to both.

[Act No. 23 of 2019, s. 25.]

### PART IX — MISCELLANEOUS PROVISIONS

#### 42. Tax avoidance schemes

(1) Despite anything in this Act, if the Commissioner is satisfied that—

- (a) a scheme has been entered into or carried out;
- (b) a person has obtained a tax benefit in connection with the scheme; and
- (c) having regard to the substance of the scheme, it would be concluded that the person, or any other, who entered into or carried out the scheme did so for the sole or main purpose of enabling the person referred to in paragraph (b) to obtain the tax benefit,

the Commissioner may determine the excise duty liability of the person who obtained the tax benefit as if the scheme had not been entered into or carried out.

(2) If a determination is made under subsection (1), the Commissioner shall issue an assessment giving effect to the determination.

(3) A determination under subsection (1) shall be made within five years from the last day of the month in which the excise duty liability arose.

(4) In this section—

“**scheme**” includes a course of action, or an agreement, arrangement, promise, plan, proposal, or undertaking, whether express or implied, and whether or not legally enforceable;

“**tax benefit**” means—

- (a) a reduction in the liability of a person to pay excise duty, including a reduction of the liability to zero;
- (b) an entitlement to a refund of excise duty;
- (c) a postponement of a liability for the payment of excise duty;
- (d) any other advantage arising to the person because of a delay in payment of excise duty;
- (e) anything that causes—

- (i) excisable goods not to be excisable goods or excisable services not to be excisable services;
- (ii) excisable goods or excisable services not to be subject to excise duty; or
- (iii) excisable goods or excisable services to be subject to a lower rate of excise duty.

#### **43. Effect on prices of imposition, abolition, or variation of excise duty**

(5) If, after any agreement has been entered into by a licensed person for the sale of excisable goods or supply of excisable services at a price that is expressly or implicitly inclusive of excise duty, and any alteration takes place in the amount of duty payable in respect of the goods or services before the duty becomes due, then, in the absence of express written provisions to the contrary between the parties to the agreement and despite the provisions of any other written law, the agreement shall have effect as follows—

- (a) in the case of the alteration being an imposition of excise duty or an increased rate of excise duty, the licensed person may, after payment of the duty, whether directly or indirectly, add the difference caused by the alteration to the agreed price;
- (b) in the case of the alteration being the abolition of excise duty or a reduced rate of excise duty, the purchaser of the goods or services may, if the licensed person has not, directly or indirectly, paid the duty or has paid duty at a lower rate, deduct the difference caused by the alteration from the agreed price;
- (c) any refund or payment of increased duty resulting from the alteration not being finally adopted shall be adjusted between the parties to the agreement in such manner as the case may require.

(6) If, under any law relating to the control of prices or charges, a price is fixed, or any variation in the price is prohibited or regulated, in relation to any excisable goods or services, then, despite any provision of that law, when excise duty in relation to those goods or services is imposed or altered, the price may be varied strictly in accordance with that imposition or variation when the licensed person has, directly or indirectly, been affected by that imposition or alteration.

#### **44. Application of the East African Community Customs Management Act, 2004**

Subject to this Act, the East African Community Customs Management Act, 2004 and any rules made thereunder relating to customs generally, whether made before or after the commencement of this Act, shall have effect, with such exceptions and adaptations as may be prescribed, in relation to imported excisable goods, whether liable to any duty of customs or not, as if all such goods were liable to duties of customs and as if those duties include excise duty.

#### **45. Regulations**

(1) The Cabinet Secretary may make Regulations generally for the better carrying out of the provisions of this Act, and, in particular—

- (a) prescribing any fee or charge to be levied on excisable goods imported into, or manufactured in, Kenya; or
- (b) prescribing any matter required to be prescribed for the purposes of this Act.

(2) Regulations made under this Act may provide that any person contravening the Regulations commits an offence and shall be liable on conviction to a fine as specified in the Regulations.

#### **46. Repeals and transitional provisions**

- (1) Subject to this section, the Customs and Excise Act is repealed.
- (2) Section 117A of the Customs and Excise Act shall continue to apply until the railway development levy imposed under that section is provided for in other legislation.
- (3) The goods listed in the Fourth Schedule to the Customs and Excise Act (now repealed), shall continue to be chargeable to export duty at the rate specified in the third column of the Schedule until the export duty is imposed in another legislation.
- (4) Despite the repeal of the Customs and Excise Act, the provisions of that Act shall remain in force for the purposes of the assessment and collection of any tax and the recovery of any penalty payable under that Act and outstanding at the date of the commencement of this Act.
- (5) Any subsidiary legislation made under the repealed Act and in force at the commencement of this Act shall remain in force, so far as it is not inconsistent with this Act, until subsidiary legislation with respect to the same matter is made under this Act.
- (6) Notwithstanding the provisions of subsection (5), regulation 38A of the Customs and Excise Regulations, shall continue to be in force until legislation on imposition of the import declaration fee is made.
- (7) Any tax due to be paid or refunded under the repealed Act which is outstanding at the commencement of this Act shall be paid or refunded as if it were tax due to be paid or refunded under this Act.
- (8) Unless a contrary intention appears, the commencement of this Act shall not—
- (a) revive anything not in force or existing at the time at which the commencement takes effect;
  - (b) affect a penalty or punishment incurred in respect of an offence committed against the repealed Act in force at the commencement of this Act;
  - (c) affect any investigation, legal proceedings or remedy in respect of a right, privilege, obligation, liability, penalty or punishment, and any such investigation, legal proceedings or remedy may be instituted, continued, or enforced, and such penalty or punishment may be imposed, as if this Act has not been passed; or
  - (d) affect the employment or appointment of any person in the services of the Authority at the commencement of this Act.
- (9) Any person who is registered or licensed under the repealed Act shall be treated as registered or licensed under this Act unless the Commissioner provides otherwise notified in writing by the Commissioner.

#### FIRST SCHEDULE

[Act No. 38 of 2016, Act No. 11 of 2017, Sch., Act No. 15 of 2017, s. 5, Act No. 23 of 2019 s.26, Legal Notice No.240 and 239 of 2018, Legal Notice No. 109 of 2019, Act No. 2 of 2020, Act No. 8 of 2021]

#### RATES OF EXCISE DUTY

1. Subject to paragraph 2, the rates of excise duty on excisable goods are as set out in the following table:

#### PART I — EXCISABLE GOODS

<b>Tariff No.</b>	<b>Tariff Description</b>	<b>Rate</b>
2709.00.10	Condensates per 1000 litres @ 20degC	Shs. 6,868.94

2710.12.10	Motor Spirit (gasoline) regular per 1000 litres @20degC	Shs. 21,522.68
2710.12.20	Motor Spirit (gasoline) premium per 1000 litres @ 20degC	Shs. 21,953.02
2710.12.30	Aviation Spirit per 1000 litres @ 20degC	Shs. 21,953.02
2710.12.40	Spirit type Jet fuel per 1000 litres @ 20degC	Shs. 21,953.02
2710.12.50	Special boiling point spirit and white spirit per 1000 litres @ 20degC	Shs. 9,379.27
2710.12.90	Other light oils and preparations Per 1000 litres @ 20degC	Shs. 9,379.27
2710.19.10	Partly refined (including topped crude) per 1000 litres @ 20degC	Shs. 1,600.00
2710.19.21	Kerosene type Jet Fuel Per 1000 litres @ 20degC	Shs. 6,350.32
2710.19.22	Illuminating Kerosene Per 1000 litres @ 20degC	Shs. 11,370.98
2710.19.29	Other medium oils and preparations per 1000 litres @ 20degC	Shs. 5,848.25
2710.19.31	Gas oil (automotive, light, amber for high speed engines) per 1000 litres @ 20degC	Shs. 11,370.99
2710.19.32	Diesel oil (industrial heavy, black, for low speed marine and stationery engines) per 1000 litres @ 20degC	Shs. 4,082.74
2710.19.39	Other gas oils per 1000 litres @ 20degC	Shs. 6,951.70
2710.19.41	Residual fuel oils (marine, furnace and similar fuel oils) of a Kinematic viscosity of 125 centistokes per 1000 litres @ 20degC	Shs. 331.03
2710.19.42	Residual fuel oils (marine, furnace and similar fuel oils) of a Kinematic viscosity of 180 centistokes per 1000 litres @ 20degC	Shs. 662.07
2710.19.43	Residual fuel oils (marine, furnace and similar fuel oils) of a Kinematic viscosity of 280 centistokes per 1000 litres @ 20degC	Shs. 662.07
2710.19.49	Other residual fuels oils per 1000 litres @ 20 deg. C	Shs. 662.07

<b>Description</b>	<b>Rate of Excise Duty</b>
Fruit juices (including grape must), and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter	Shs. 12.17 per litre
Food supplements	10%
Cosmetics and Beauty products of tariff heading No. 3303, 3304, 3305 and 3307	10%
Bottled or similarly packaged waters and other non-alcoholic beverages, not including fruit or vegetable juices	Shs. 6.03 per litre
Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 6%. [Act No.8 of 2020 s.17(a)(i)]	Shs. 121.85 per litre
Powdered beer	Shs. 121.85 per kg
Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	Shs. 208.20 per litre
Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 6% [Act No.8 of 2020 S.17(a)(ii)]	Shs. 278.70 per litre
Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes	Shs. 13,906.04 per kg
Electronic cigarettes	Shs. 4,171.59 per unit
Cartridge for use in electronic cigarettes	Shs. 2,781.43 per unit
Cigarette with filters (Hinge lid and soft cap)	Shs. 3,477.61 per mille
Cigarettes without filters (plain cigarettes)	Shs. 2,502.74 per mille
Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and "reconstituted tobacco"; tobacco extracts and essences	Shs. 9,734.45 per kg
Motor vehicles of tariff heading 87.02, 87.03 and 87.04 excluding—	20%

(i) locally assembled motor vehicles; (ii) school buses for use by public schools; (iii) motor vehicles of tariff no. 8703.24.90 and 8703.33.90; and (iv) imported motor vehicles of cylinder capacity exceeding 1500cc	
Imported motor vehicles of cylinder capacity exceeding 1500cc of tariff heading 87.02, 87.03 and 87.04	25%
Motor vehicles of tariff no. 8703.24.90 and 8703.33.90	35%
100% electric powered motor vehicles of tariff no. 8702.40.11, 8702.40.19, 8702.40.21, 8702.40.22, 8702.40.29, 8702.40.91, 8702.40.99 and 8703.80.00	10%
Motor cycles of tariff 87.11 other than motor cycle ambulances and locally assembled motor cycles	Shs. 12,185.16 per unit
Imported sugar confectionary of tariff heading 17.04	Shs.36.74 per kg
White chocolate, chocolate in blocs, slabs or bars of tariff Nos. 1806.31.00, 1806.32.00,1806.90.00	Shs. 220.31 per kg
Imported gas cylinders	35%
Imported Glass Bottles (excluding imported glass bottles for packaging of pharmaceutical products) provided that it shall not apply to glass bottles imported from any of the countries within the East African Community.	25%
Jewellery of tariff heading 7113 and imported jewellery of tariff heading 7117	10%
Products containing nicotine or nicotine substitutes intended for inhalation without combustion or oral application but excluding medicinal products approved by the Cabinet Secretary responsible for matters relating to health and other manufactured tobacco and manufactured tobacco substitutes that have been homogenized and reconstituted tobacco, tobacco extracts and essences	Shs. 1,259.64 per kg
Articles of plastic of tariff heading 3923.30.00	10%
Imported pasta of tariff 1902 whether cooked or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni, couscous, whether or not prepared	20%
Imported furniture of any kind used in offices, kitchen, bedroom and other furniture of tariff number 9403	25%
Imported eggs of tariff heading 04.07	25%
Imported onions of tariff heading 07.03	25%
Imported potatoes, potato crisps and potato chips of tariff heading 07.01	25%
3907.91.00 unsaturated polyester	10%
3907.50.00 Alkyd	10%
3905.91.00 Emulsion VAM	10%
3903.20.00 Emulsion-styrene Acrylic	10%
3905.19.00 Homopolymers	10%
3906.90.00 Emulsion B.A.M	10%
<p><b>2.</b> (1) The specific rates of excise duty on excisable goods specified in this Schedule shall be adjusted for inflation "at the beginning of every financial year" in accordance with this paragraph.</p> <p style="text-align: center;"><i>[Act No. 10 of 2018, s. 32.]</i></p> <p>(2) Each rate of excise duty specified in the table in paragraph 1 shall be replaced by the rate of excise duty computed by reference to the following formula—</p> <p><b>A (1 + B)</b></p> <p>where —</p> <p style="margin-left: 40px;">A is the rate of excise duty on the day immediately before the adjustment day; and</p> <p style="margin-left: 40px;">B is the adjustment factor for the adjustment day, calculated as the average rate of monthly inflation of the preceding financial year.</p> <p style="text-align: center;"><i>[Act No. 38 of 2016, s. 24(g), Act No. 15 of 2017, s. 5(a)(iii), Act No. 10 of 2018, s. 32]</i></p>	
<b>PART II — EXCISABLE SERVICES</b>	
<p><b>1.</b> Telephone and internet data services shall be charged excise duty at a rate of twenty percent of their excisable value [Act no. 10 of 2018, s.32; Act No. 8 of 2021 s. 32(b)].</p>	

2. Excise duty in fees charged for money transfer services by banks, money transfer agencies and other financial service providers shall be twenty percent of their excisable value [Act no. 10 of 2018, s.32].
3. Excise duty on fees charged for money transfer services by cellular phone service providers, shall be twelve percent of the excisable value [Act no. 10 of 2018, s.32].
4. Excise duty on other fees charged by financial institutions shall be twenty percent of their excisable value [Act no. 10 of 2018, s.32].
- 4A. Excise duty on betting shall be seven-point five per cent of the amount wagered or staked.
- 4B. Excise duty on gaming shall be seven-point five percent of the amount wagered or staked.
- 4C. Excise duty on price competition shall be seven-point five percent of the amount paid or charged to participate in a prize competition.
- 4D. Excise duty on lottery (excluding charitable lotteries) shall be seven-point five percent of the amount paid or charged to buy the lottery ticket.  
[Act No. 8 of 2021 s. 32(b)].
5. Deleted by Act No.8 of 2020 S.17(b)  
[Act no. 23 of 2019, s.26, Act No.8 of 2020 s.17(b)]

### PART III — INTERPRETATION OF SCHEDULE

In this Schedule—

“**Adjustment day**” means 1st day of October of every year;

“**amount wagered or staked**” means the amount of money placed by a person for an outcome in a betting transaction [Act No. 23 of 2019, s. 26(c)(iii)]

“**beer**” includes ale, porter, and any other description of beer and any liquor, including beer substitute, which is produced as a result of the alcoholic fermentation of an extract derived from barley, malt, a cereal grain, starch or saccharine matter and hops or hops substitute, in potable water with other substitute ingredients and which contains more than two per centum of proof spirit, but does not include—

- (a) any beer brewed by any person for personal consumption and which is not offered for sale; or
- (b) any kind of beer that, by order of the Cabinet Secretary, is excluded from the provisions of this Act;

“**cigar**” means cigar, cheroot or cigarillo prepared from tobacco or tobacco substitutes;

“**cigarette**” means —

- (a) rolls of tobacco capable of being smoked as they are and which are not cigars or cigarillos;
- (b) rolls of tobacco which, by simple non-industrial handling, are inserted into cigarette-paper tubes; or
- (c) rolls of tobacco that, by simple non-industrial handling, are wrapped in cigarette paper;

“**cigarillos**” means —

- (a) rolls of tobacco made entirely of natural tobacco; or
- (b) rolls of tobacco with an outer wrapper of natural tobacco;

“**electronic cigarettes**” means electronic nicotine delivery system whether or not containing tobacco or tobacco substitutes and includes electronic cigarette cartridges;

“**financial institution**” means —

- (a) a person licensed under—
  - (i) the Banking Act;
  - (ii) the Insurance Act;
  - (iii) the Central Bank of Kenya Act; or
  - (iv) the Micro Finance Act, 2006;
- (b) a Sacco society registered under the Sacco Societies Act, 2008; or
- (c) the Kenya Post Office Savings Bank established the Kenya Post Office Savings Bank Act;

“**financial year**” means the period of twelve months ending on the 30<sup>th</sup> June of every year;

“**other fees**” includes any fees, charges or commissions charged by financial institutions relating to their licensed activities, but does not include interest on loan or return on loan or fees or commissions earned in respect of a loan or any share of profit or an insurance premium or premium based or related commissions specified in the Insurance Act or regulations made thereunder;

[Act No. 2 of 2020 s.2]

“**inflation**” means the average annual inflation rate in a financial year;

“**money transfer services**” includes services of sending and withdrawal of money;

“**powdered beer**” means any powder, crystals or any other dry substance which, after being mixed with water or any other non alcoholic beverage, ferments to, or otherwise becomes an alcoholic beverage;

“**proof**” means a standard of strength of distilled alcoholic liquors (or of vinegar);

“**proof spirit**” means spirit that at a temperature of 10.55 degrees Centigrade weighs 12/13<sup>th</sup> of an equal volume of distilled water at the same temperature;

“**rate of monthly inflation in each month**” means the movement in the consumer price index number published by the Kenya National Bureau of Statistics for that month when compared to the same month in the preceding year;

“**financial year**” means the period of twelve months ending on the 30<sup>th</sup> June of every year.

“**wine**” means a liquor of a strength not exceeding 50 degrees of proof that is made from fruit and sugar or from fruit and sugar mixed with any other material and which has undergone a process of fermentation and includes mead.

[Act No. 11 of 2017, Sch., Act No. 15 of 2017, s. 5(b).]

## SECOND SCHEDULE

[Section 7(1)(a), Act No. 38 of 2016, Act No. 15 of 2017, Act No. 10 of 2018, s. 33, Act No. 2 of 2020, Sch., Act No. 2 of 2021]

### PART A — EXEMPT EXCISABLE GOODS

The following excisable goods shall be exempt from excise duty when purchased before clearance through Customs or removal from excise control—

1. Excisable goods that are *bona fide* stores for a ship or aircraft, being goods for use or consumption by passengers or crew of the ship or aircraft while on board and while the ship is in international traffic, and in such quantities as approved by the Commissioner.

2. Excisable goods imported into Kenya or purchased in Kenya by a diplomatic or consular mission, or by a diplomat or consul, or a member of the diplomat or consul's family forming part of the diplomat or consul's household in Kenya to the extent provided for under the Privileges and Immunities Act, (Cap. 179).

3. Excisable goods imported into Kenya or purchased in Kenya by a foreign government, international organisation, or aid agency to the extent provided for under an international agreement or the Privileges and Immunities Act, 1970.

4. One motor vehicle for use by persons with disability:

Provided that exemption under this paragraph shall only apply once in every four years and upon payment of taxes on the previous vehicle.

5. Excisable Goods imported or Purchased locally by the Kenya Red Cross or St John Ambulance for official use in the provision of relief services in Kenya.

[Act No. 15 of 2017, s. 6(a).]

6. Excisable goods imported by a person changing residence or a returning resident subject to limitations provided for under the fifth schedule to the East African Community Management Act:

Provided that where the returning resident has owned and used a left hand drive vehicle for at least twelve months the person may sell the vehicle and import a right hand drive vehicle whose current retail selling price shall not exceed that of the previously owned left-hand drive vehicle, subject to the following—

- (a) proof of ownership and use of the previously owned left hand drive vehicle in the country of former residence for a period of at least one year prior to the return;
- (b) proof of disposal (transfer of ownership) of the previously owned left hand drive vehicle before changing residence.
- (c) *deleted by Act No. 15 of 2017, s. 6(b)(ii)*;
- (d) This proviso shall only apply to residents returning from countries that operate left hand drive motor vehicles.

[Act No. 15 of 2017, s. 6(b).]

7. Excisable goods imported by, and in the possession of a passenger subject to limitations provided for under the fifth schedule to the East African Community Management Act.

8. One motor vehicle previously owned and used by a deceased person outside Kenya subject to the conditions as the Commissioner may specify.

In this Part, "**international agreement**" means an agreement between the Government of Kenya and a foreign government, international organization, or aid agency for the provision of financial, technical, humanitarian, or administrative assistance to the Government of Kenya.

9. Excisable goods imported or purchased locally for direct and exclusive use in the implementation of an Official Aid-Funded Project, to the extent provided for under the financing agreement.

[Act No. 38 of 2016, s. 25.]

10. Excisable goods imported or purchased locally for direct use in the manufacture of sanitary towels.

[Act No. 38 of 2016, s. 25, Act No. 15 of 2017, s. 6(c).]

11. All goods including materials supplies, equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and the National Police Service.

[Act No. 38 of 2016, s. 25.]

12. Alcoholic or non-alcoholic beverages supplied to the Kenya Defence Forces Canteen Organization.

13. Illuminating kerosene supplies to licenced or registered manufacturers of paint, resin or shoe polish in such quantities as the Commissioner may approve [Act No. 8 of 2021 s. 33].

13. Deleted by Act No.2 of 2020 Sch. 2

14. Deleted by Act No.2 of 2020 Sch. 2, Act No. 10 of 2018, s. 33.

#### **PART B — EXEMPT EXCISABLE SERVICES**

1. The following excisable services shall be exempt from excise duty—

- (a) Excisable services supplied in Kenya to a diplomatic or consular mission or to a diplomat or consul, or a member of the diplomat or consul's family forming part of the diplomat or consul's household in Kenya to the extent provided for under the Privileges and Immunities Act (Cap. 179).
- (b) Excisable services supplied in Kenya to a foreign government, international organisation, or aid agency to the extent provided for under an international agreement or the Privileges and Immunities Act (Cap. 179).

2. In this Part, "**international agreement**" means an agreement between the Government of Kenya and a foreign government, international organization, or aid agency for the provision of financial, technical, humanitarian, or administrative assistance to the Government of Kenya.

3. Excisable services supplied in Kenya by a mobile telecommunication service provider on the sale of a ring back tune to a subscriber.

#### **LEGAL NOTICE No. 53**

##### **THE EXCISE DUTY ACT**

##### **THE EXCISE DUTY (EXCISABLE GOODS MANAGEMENT SYSTEM) REGULATIONS, 2017**

1. These Regulations may be cited as the Excise Duty (Excisable Goods Management System) Regulations, 2017. Citation.

2. In these Regulations, unless the context otherwise requires Interpretation.

"authorised officer" means an officer authorised by the Commissioner to perform any function under these Regulations;

"compounded spirit" means a spirit that is ready for consumption as a beverage and put up for retail;

"excise stamp" means a paper stamp, digital stamp or any mark that the Commissioner may approve for affixation or printing on excisable goods in accordance with these regulations.

"importer" means a person registered as an importer by the Commissioner to import excisable goods specified under these Regulations;

"manufacturer" means a manufacturer licensed to manufacture goods specified under these Regulations;

"package" means a packet, bottle or similar retail unit of excisable goods specified under these Regulations;

"printer" means a person appointed by the Commissioner to print and supply excise stamps; and

<p>"System" means the Excisable Goods Management System and includes excise stamps, a track and trace system, a production accounting system, and related software and hardware.</p>	
<p><b>3.</b> (1) Every package of excisable goods, except motor vehicles, manufactured in or imported into Kenya shall be affixed with an excise stamp</p> <p>(2) The Commissioner shall specify the type and the manner of affixing excise stamps.</p>	<p>Excisable goods to be affixed with excise stamps.</p>
<p><b>4.</b> Every excise stamp required to be affixed under regulation 3 shall be of such specifications as to —</p> <p>(a) deter counterfeiting;</p> <p>(b) facilitate tracking of the stamps and excisable goods along the supply chain;</p> <p>(c) enable accounting for the production of excisable goods manufactured or imported; and</p> <p>(d) facilitate any persons in the supply chain to authenticate the stamps and excisable goods.</p>	<p>Features of excise stamp.</p>
<p><b>5.</b> (1) Excise stamp fees to be charged on excise stamps for each type of excisable goods shall be as specified in the Schedule hereto.</p> <p>(2) The excise stamp fees shall be paid to the Commissioner by the manufacturers and importers of excisable good based on quantity of stamps issued to them.</p> <p>(3) The excise stamp fees shall be payable before the stamps are issued to the manufacturer or importer.</p>	<p>Excise stamps fee.</p>
<p><b>6.</b> The revenue from the excise stamp fees shall be retained by the Commissioner for the financing of the System.</p> <p><b>7.</b> (1) The Commissioner shall register the importers of any excisable goods specified under these Regulations and may impose such conditions as may be necessary on the importers for the purposes of the registration.</p> <p>(2) A person shall not manufacture or import excisable goods for which an excise stamp is required to be affixed under these Regulations unless that person is licenced or registered by the Commissioner.</p>	<p>Retention of revenue from excise stamp fees. Registration.</p>
<p><b>8.</b> (1) A manufacturer or importer of excisable goods shall apply to the Commissioner for excise stamps in the prescribed form.</p> <p>(2) An application for excise stamps shall be submitted to the Commissioner at least sixty days before the manufacture or importation of the excisable goods</p> <p>(3) A manufacturer or importer of excisable goods shall pay the excise stamp fees on the approval of the application by the Commissioner.</p> <p>(4) The Commissioner may require proof of importation by an importer of excisable goods before issuing the importer with the excise stamps.</p> <p>(5) Despite the provisions of paragraph (4), the Commissioner may, subject to any conditions as the Commissioner may impose, issue excise stamps to an importer of excisable goods before importation.</p>	<p>Application for excise stamps.</p>

<p><b>9.</b> The Commissioner may require a manufacturer or importer of excisable goods to provide, at least sixty days before the beginning of the month in which the manufacturer or importer will require the stamps, a forecast of the quantities of excise stamps which the manufacturers or importer intends to use in each month for the subsequent period of six months.</p>	Forecast of consumption.
<p><b>10.</b>(1) Subject to the law regulating public procurement, the Commissioner shall appoint a suitable person to</p> <ul style="list-style-type: none"> <li>(a) print and supply excise stamps;</li> <li>(b) develop and install the System; and</li> <li>(c) install any other related systems.</li> </ul> <p>(2) A person appointed under paragraph (1) shall not print any excise stamps required under these Regulations unless requested by Commissioner to do so.</p>	Appointments.
<p><b>11.</b>(1) The Commissioner may, where necessary and subject to such conditions as the Commissioner may impose, require the person appointed to print excise stamps to deliver the stamps directly to a manufacturer or importer of excisable goods.</p> <p>(2) The person appointed to print excise stamps shall notify the Commissioner of the quantity and type of excise stamps supplied under paragraph (1) within such period as the Commissioner may require.</p>	Delivery of excise stamps.
<p><b>12.</b> (1) Excise stamps shall be affixed on excisable goods in the manner specified by the Commissioner —</p> <ul style="list-style-type: none"> <li>(a) in case of locally manufactured goods, at the production facility immediately after packaging; or</li> <li>(b) in the case of imported goods, at a place approved by the Commissioner within five days of the clearance for importation of the goods for home use:</li> </ul> <p>Provided that the Commissioner may allow excise stamps on imported excisable goods to be affixed at the production facility in the exporting country in accordance with such conditions as the Commissioner may specify.</p> <p>(2) The Commissioner may, upon the application, permit digital stamps to be printed by the System on each package and in a visible place with indelible security ink to enable the authentication of, tracking and tracing of, and production accounting for excisable goods.</p> <p>(3) A manufacturer or importer of excisable goods shall declare in the System the excise stamps used immediately after affixing on the excisable goods or the package containing excisable goods.</p> <p>(4) A person who contravenes the provisions of this regulation commits an offence and shall be liable on conviction to a penalty of one hundred thousand shillings or double the value of the excise duty payable on the excisable goods, whichever is higher.</p>	Place and time of affixing, declaration of excise stamps and the printing of digital stamps on excisable goods.
<p><b>13.</b>(1) A manufacturer or an importer of excisable goods shall return the unused excise stamps to the Commissioner when —</p> <ul style="list-style-type: none"> <li>(a) the manufacturer stops manufacturing;</li> <li>(b) there are defects in the excise stamp sheets or reels;</li> </ul>	Return of excise stamps.

<p>(c) there is a discrepancy between the declared and the verified imports of the excisable goods;</p> <p>(d) the excise stamps have been declared out of use by the Commissioner; or</p> <p>(e) the excisable goods have been excluded from the requirements of these Regulations.</p> <p>(2) The Commissioner shall refund to the manufacturer or the importer of excisable goods, as the case may be, the excise stamp fees paid for excise stamps within ninety days of the return of the stamps.</p>	
<p><b>14.</b> (1) Damaged excise stamps shall be preserved for verification by an authorised officer.</p> <p>(2) Where a manufacturer or importer of excisable goods cannot account for any excise stamps issued to him by the Commissioner, the Commissioner shall compute the excise duty and other taxes on the unaccounted for stamps based on the highest excise rate of excise duty, value and volume of excisable goods manufactured or imported by the manufacturer or importer, as the case may be.</p> <p>(3) In computing excise duty in the case of unaccounted for excise stamps, the Commissioner shall allow for wastage and damages which shall not exceed one percent of the quantity of the issued stamps.</p>	<p>Allowance for wastage or damage.</p>
<p><b>15.</b> (1) A manufacturer or importer of excisable goods may, with the prior approval of the Commissioner, transfer excise stamps held in stock by the manufacturer or importer to another manufacturing or importing unit owned by the same manufacturer or importer.</p> <p>(2) The Commissioner shall prescribe the procedure and conditions for the transfer and accounting of excise stamps.</p> <p>(3) A manufacturer or importer of excisable goods who transfers excise stamps without the prior approval of the Commissioner commits an offence.</p>	<p>Transfer of excise stamps.</p>
<p><b>16.</b> A manufacturer or importer of excisable goods specified in these Regulations shall facilitate the installation of the System in the manufacturer's or importer's premises used for the manufacture or storage of imports, as the case may be.</p>	<p>Installation of the System.</p>
<p><b>17.</b> The System shall be composed of —</p> <p>(a) excise stamps authentication and validation equipment;</p> <p>(b) devices for identification and association of each package with an individual excise stamp;</p> <p>(c) production accounting equipment; and</p> <p>(d) devices for the control, registration, recording and transmission of data on quantities of excisable goods which have been stamped to the Commissioner.</p>	<p>Composition of the system.</p>
<p><b>18.</b> (1) The installation, integration, preventive and corrective maintenance procedures of all the equipment comprising the System at the manufacturers' or importers' premises shall be done by a contractor under the supervision of an authorised officer.</p>	<p>Integration.</p>

<p>(2) For the purposes of these Regulations, "contractor" means a person appointed by the Commissioner to supply, install, integrate or maintain the System.</p>	
<p><b>19.</b> The Commissioner shall be responsible for —</p> <p>(a) defining the functional, security and fiscal control requirements to be observed by the contractor in developing the System;</p> <p>(b) supervising and monitoring the process of installing the System.</p>	<p>Development and supervision.</p>
<p><b>20.</b> (1) The System shall be installed on all production lines at the manufacturer's premises corresponding to each packaging machine or labeling machine;</p> <p>(2) The System for the management of imports shall be installed in the manner specified by the Commissioner.</p>	<p>Installation of equipment and devices.</p>
<p><b>21.</b> (1) Where a new or modified System is required, the Commissioner shall notify the manufacturers or importers of excisable goods in writing at least thirty days before the installation and integration of the new or modified System and the notice shall state—</p> <p>(a) the requirements for the equipment to facilitate use of System;</p> <p>(b) the adaptive features required, on each production line;</p> <p>(c) the connectivity features and operating environment for the installation and operation of computers and other equipment comprising the System; and</p> <p>(d) the starting date of installation of the System.</p> <p>(2) Manufacturers or importers of excisable goods shall be responsible for the cost of excise stamps applicators, adjustments or adaptations of their equipment and premises necessary to install and integrate the new or modified System on each production line.</p> <p>(3) Where a manufacturer or importer of excisable goods is required to carry out adjustments or provide information required by the Commissioner for the installation of the new or modified System, the manufacturer or importer shall carry out the adjustments or provide the information at least seven days before the date of the installation of the new or modified System.</p>	<p>Notice of installation.</p>
<p><b>22.</b> During the installation of the System, the manufacturer or importer of excisable goods shall ensure that the production lines are in proper operating condition.</p>	<p>Production line to be in operating condition.</p>
<p><b>23.</b> (1) The manufacturer or importer of excisable goods shall report to the Commissioner any non-operational production lines within twenty-four hours of the production lines becoming non-operational and the Commissioner shall secure the lines using a security seal and register the seal in the System.</p> <p>(2) Manufacturer's or importers of excisable goods shall not resume operations on non-operational production lines without the authority of the Commissioner.</p>	<p>Manufacturer and importer to report inoperative production lines.</p>

<p><b>24.</b>(1) A manufacturer or importer of excisable goods shall be responsible for conservation and security of the System installed in their premises.</p>	Security of equipment.
<p>(2) Manufacturer or importer of excisable goods shall report any operating failure or tamper of the security seals within twenty-four hours.</p>	
<p><b>25.</b> (1) The preventive or corrective maintenance of the System shall be performed by the contractor under supervision of an authorised officer.</p>	Preventive and corrective maintenance of the system.
<p>(2) The contractor shall provide the Commissioner a list of technicians authorised to carry out the installation or maintenance of the System.</p>	
<p><b>26.</b> A manufacturer or importer of excisable goods shall—</p> <p>(a) declare to the Commissioner the packages and labels of brands manufactured or imported including those for export and duty free shops;</p> <p>(b) declare to the Commissioner, at least thirty days before the start of the production of new brands of goods or any change in the graphic art of existing brands of goods and the corresponding packages and labels;</p> <p>(c) apply to the Commissioner, at least thirty days before installation or removal, for the installation or removal of the System, as the case may be, if the manufacturer or importer —</p> <p>(i) reactivates inoperative production lines;</p> <p>(ii) deactivates production lines;</p> <p>(iii) carries out maintenance works on or reallocates production lines;</p> <p>(iv) installs new production lines; or</p> <p>(v) acquires or sells industrial machinery or equipment.</p>	Advance reports of new brands, etc.
<p><b>27.</b>(1) All packages of duty free or export excisable goods specified in these Regulations shall bear distinct markings to enable the goods to be trackable and traceable.</p>	Marking of duty free products and packages
<p>(2) The material wrapping the package for wholesale purposes shall have printed on it —</p> <p>(a) in the case of exports, the country of final destination;</p> <p>(b) in the case of excisable goods for consumption in Kenya, "FOR USE IN KENYA";</p> <p>(c) in the case of excisable goods for sale to duty-free shops, or Diplomatic shops, "DUTY FREE";</p> <p>(d) in the case of excisable goods for consumption by Kenya Defence Forces, "KENYA DEFENCE FORCES" and,</p> <p>(e) in the case of excisable goods for consumption by National Police Service, "NATIONAL POLICE SERVICE"</p>	
<p><b>28.</b>(1) The following excisable goods shall be exempted from the requirement of excise stamps —</p> <p>(a) excisable goods manufactured for export, the Kenya Defence Forces, the National Police Service or delivered to a duty free shop;</p>	Exemption from excise stamps.

(b) excisable goods imported or purchased from a duty free shop by privileged persons or institutions listed in the Second Schedule to the Act; and

(c) excisable goods imported into Kenya as samples which shall have been exempted from import duty under the Fifth Schedule to the East African Community Customs Management Act, 2004.

(2) The commissioner may require goods under paragraph (1) to be marked with such distinct markings as may be necessary for their identification, authentication and traceability.

**29.** (1) A manufacturer, importer, distributor, retailer or any other person involved in the supply chain of excisable goods, shall verify and authenticate the stamps placed on excisable goods before admitting the goods in the manufacturer's, importer's, distributor's, retailer's or other person's premises.

Verification of stamps.

(2) A person engaged in the distribution or retail of excisable goods shall —

(a) keep delivery notes, invoices or such other documents from the supplier of the excisable goods; and

(b) provide in that person's premises sufficient light as may be necessary for the verification or authentication of excise stamps;

(3) A person who fails to keep the documents required under paragraph (2) commits an offence and shall be liable on conviction to a penalty equal to double the open market value of the excisable goods or a fine of one hundred thousand shillings whichever is higher.

(4) The Commissioner may recommend to the relevant authority the withdrawal, cancellation or suspension of the trading license for a person convicted of repeatedly committing an offence under paragraph (2).

**30.** (1) A person shall not —

Offences.

(a) print over or deface an excise stamp affixed on any excisable goods or package;

(b) be in possession of excisable goods on which the excise stamps have not been affixed and which have not been exempted under these Regulations;

(c) attempt to acquire or acquire an excise stamp without the authority of the Commissioner;

(d) counterfeit, or print, make or in any way create an excise stamp without the authority of the Commissioner;

(e) be found in possession of an excise stamp printed, made or in any way acquired without the authority of the Commissioner;

(f) be found in possession of, convey, distribute, sell, offer for sale or by way of trade expose excisable goods without affixing excise stamps in accordance with these Regulations; or

(g) be found in possession of, convey, distribute, sell, offer for sale or by way of trade expose excisable goods affixed with counterfeit excise stamps.

(2) A person who contravenes the provisions of paragraph (1) commits an offence and is liable upon conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years or to both.

<p><b>31.</b> The Commissioner may refuse to issue excise stamps to a person if that person has —</p> <p>(a) not fully accounted for excise stamps previously issued to him or her;</p> <p>(b) not fully paid for excise stamps previously issued to them; or</p> <p>(c) failed to fully comply with the provisions of the Act relating to filing of returns and payment of excise duty</p>	<p>Refusal to issue stamps.</p>
<p><b>32.</b> The Commissioner shall seize excise stamps, equipment, vehicles or goods where —</p> <p>(a) excise stamps —</p> <p>(i) have been counterfeited;</p> <p>(ii) which were subject to be returned to the Commissioner, were not returned; or</p> <p>(iii) have been found in the possession of persons other than those to whom they were supplied;</p> <p>(b) the vehicle is used in the storage, concealment or transportation of excisable goods that have not met the requirements of these regulations;</p> <p>(c) the equipment or plant is used in the manufacture of counterfeit excise stamps; or</p> <p>(d) the excisable goods —</p> <p>(i) bear counterfeited excise stamps;</p> <p>(ii) bear excise stamps affixed in a manner not consistent with guidelines prescribed by the Commissioner; or</p> <p>(iii) do not bear excise stamps as required in accordance with these Regulations.</p>	<p>Seizure of stamps, equipment and goods</p>
<p><b>33.</b> Any excisable goods, stamps, motor vehicle and equipment which are seized under these Regulations shall be disposed of in the manner that the Commissioner may consider fit.</p>	<p>Disposal of forfeited excise stamps and seized goods.</p>
<p><b>34.</b> A person who fails to comply with the provisions of these Regulations commits an offence.</p>	<p>General offence.</p>
<p><b>35.</b> A person who commits an offence under these Regulations for which no specific penalty is provided is liable, on conviction, to a fine not exceeding one million and five-hundred thousand shillings or to imprisonment for a term not exceeding three years or to both.</p>	<p>General penalty.</p>
<p><b>36.</b> The Customs and Excise (Excisable Goods Management System) Regulations, 2013, are hereby revoked.</p>	<p>Revocation of L.N. 110/2013.</p>
<p><b>SCHEDULE</b></p>	
<p><b>Excise Stamps Fees</b></p>	
<p><i>Category of excisable goods</i></p> <p>Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes</p> <p>Cigarettes containing tobacco or tobacco Substitutes</p>	<p>Fees (Ksh.)</p> <p>2.8 per stamp</p> <p>2.8 per stamp</p>

Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and "reconstituted tobacco"; tobacco extracts and essences.	2.8 per stamp
Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits.	2.8 per stamp
Compounded spirits of alcoholic strength exceeding 10%	2.8 per stamp
Spirituous beverages of alcoholic strength not exceeding 10%	1.5 per stamp
Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages	1.5 per stamp
Mineral water and aerated water of tariff no. 2201.10.00	0.5 per stamp
Fruit juices (including grape must), and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter	0.6 per stamp
Sweetened or flavoured water and non-alcoholic beverages not including fruit or vegetable juices of tariff heading 2202	0.6 per stamp
Cosmetics and Beauty products of tariff heading Nos. 3303, 3304, 3305 and 3307	0.6 per stamp

Made on the 30th March, 2017.  
HENRY ROTICH,

*Cabinet Secretary for the National Treasury.*

**LEGAL NOTICE No. 52****THE EXCISE DUTY (REMISSION OF EXCISE DUTY) REGULATIONS, 2017**

1. These Regulations may be cited as the Excise Duty (Remission of Excise Duty) Regulations, 2017. Citation.
  2. (1) The Cabinet Secretary may, on the application by a manufacturer, grant the remission of excise duty at eighty per centum with respect to beer made from sorghum, millet or cassava or any other agricultural produce grown in Kenya. Remission of excise duty.
  - (1A) Despite paragraph (1), the Cabinet Secretary may, on the application by a manufacturer, grant remission of excise duty at ninety per centum with respect to beer made from sorghum, millet or cassava or any other agricultural produce grown in Kenya: Amended by LN 196/2019
- Provided that —
- (a) the manufacturer shall invest at least five billion shillings in the manufacture of the beer;
  - (b) the Government and the manufacturer shall enter into an agreement whereas the manufacturer shall meet specific commitments related to the manufacture of the beer, and
- the remission of excise duty under this paragraph shall be for a period not exceeding five years from the date of the commencement of the manufacture of the beer.

(2) This regulation shall not apply in respect of beer made from barley.

3. A manufacturer applying for remission under paragraph 2(1) and 2 (1A) shall –

Conditions necessary for remission of exam duty.

- (a) be tax compliant;
- (b) have a valid excise license to produce beer;
- (c) have a fully installed Excisable Goods Management System;
- (d) ensure that the beer has at least seventy five per centum content of sorghum, millet or cassava or any other agricultural products grown in Kenya excluding sugar and barley;
- (e) pack the beer in a pressurized container of at least thirty litres or such other container and quantity as the Cabinet Secretary may approve;
- (f) sell the beer at not more than one hundred shillings per litre;
- (g) meet other regulatory requirements related to the manufacture and distribution of beer including the requirements of public health and Kenya Bureau of Standards; and
- (h) comply with such other conditions as the Commissioner may impose.

Amended by LN 196/2019

4. (1) Subject to the provisions relating to returns under the Act, a manufacturer who has been granted remission under these Regulations shall provide to the Commissioner in the prescribed manner a detailed return of the quantities and types —

Returns

- (a) of raw materials used;
- (b) of beer manufactured; and
- (c) of beer sold.

(2) A return made under paragraph (1) shall be submitted once in each month or at such other intervals as the Commissioner may require.

5. A manufacturer who is granted a remission under regulation 2 (1) based on false or misleading information shall, upon demand by the Commissioner, refund the excise duty remitted in addition to any other fine that may be imposed under the Act or any other written law.

Penalty

6. The Customs and Excise (Remission of Excise Duty) Regulations, 2013, are revoked.

Revocation. L.N. 103/2013.

Made on the 30th March, 2017.  
HENRY ROTICH,

*Cabinet Secretary for the National Treasury*