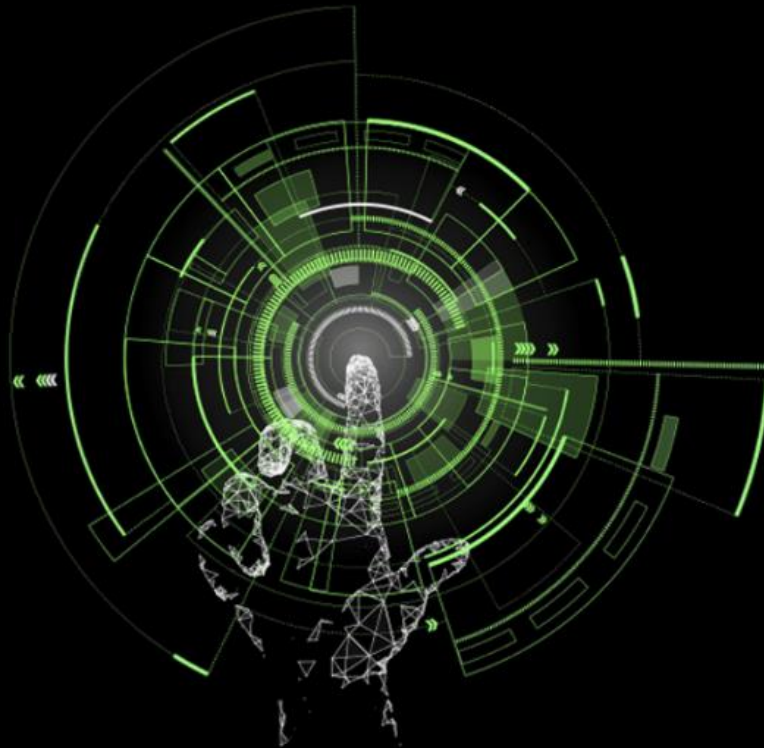


Tax & Legal Alert  
April 2023



## Tax Alert

### Increase in excise stamp fees

The Cabinet Secretary for the National Treasury and Economic Planning (“CS”) has published the Excise Duty (Excisable Goods Management System – “EGMS”) (Amendment) Regulations 2023 (“Amendment Regulations”) vide Legal Notice No. 30 of 2023 dated 10 March 2023 in accordance with Section 45 of the Excise Duty Act (“EDA”).

The Amendment Regulations have, amongst other changes, increased the price of excise stamps on alcoholic beverages, cigarettes, juices, and cosmetics by between 78% and 317%.

This publication provides our detailed analysis of the amendments proposed through the Amendment Regulations and their impact.



## Background

The EGMS Regulations, 2017 (Principal Regulations) were published by the CS vide Legal Notice No. 53 on 30 March 2017 in accordance with Section 45 of the EDA.

The Schedule to the Principal Regulations prescribes fees charged on excise stamps for specified excisable goods.

In February 2023, the CS proposed to amend the Principal Regulations and invited members of the public and stakeholders to provide their views on the proposed changes in accordance with the Statutory Instruments Act. The CS published the Amendment Regulations in the Kenya Gazette on 14 April 2023 having considered the views of the members of the public and stakeholders.

## Increase in excise stamp fees

The Amendment Regulations have revised the Schedule to the Principal Regulations by increasing the prices of excise stamps on all goods listed in the Schedule except bottled water. In addition, the Amendment Regulations have introduced electronic cigarettes, liquid nicotine for electronic cigarettes, and products containing nicotine or nicotine substitutes intended for inhalation without combustion or oral application in the Schedule. See attached the revised prices in Appendix I.

Further to the public participation conducted in February 2023, the CS adopted the excise stamp fees proposed in the draft Amendment Regulations with the exception of compounded spirits of alcoholic strength exceeding 6%, which has reduced from KES 5 per stamp to KES 3 per stamp.

The Kenya Revenue Authority (KRA) notified manufacturers of the affected products that the excise stamp fees were revised effective 31 March 2023.

Stamps are affixed on excisable goods as an enforcement measure to enable the KRA to monitor compliance of excisable goods in the market and seal revenue leakages. In our view, the cost of enforcing compliance with tax laws, such as cost of stamps should not be used by the government as a source for revenue generation.

Manufacturers and importers of the affected products are likely to pass down the cost of the stamps to the final consumers who are already grappling with the recent 6.3% adjustment for inflation that came into effect in October 2022 and 10% increase in excise duty in July 2022. This is likely to further suppress the demand for these products, encourage consumption of illicit goods, and ultimately reduce the excise duty revenue collected by the government.

The Law Society of Kenya (LSK) has filed a petition at the High Court of Kenya challenging the constitutionality of the Amendment Regulations. One of the key grounds of the petition is that the Amendment Regulations were not tabled before the National Assembly as required by the Statutory Instruments Act.

If the High Court grants conservatory orders being sought by LSK, the KRA will be required to temporarily suspend the revised excise stamp fees until the matter before the court is determined.

The introduction of new products in the Schedule of excise stamp fees is geared towards factoring in recent changes in the list of excisable goods as provided under the First Schedule of the EDA.

### Exemption from excise stamps

The Amendment Regulations have revised the list of goods exempted from the requirement of excise stamps as provided under Regulation 28 of the Principal Regulations.

Regulation 28 of the Principal Regulations provided for exemption from excise stamps requirement on certain goods including:

- a) Goods imported or purchased from a duty-free shop by privileged persons or institutions listed in the Second Schedule to the EDA;
- b) Goods manufactured for export, the Kenya Defence Forces, the National Police Service, or delivered to a duty-free shop; and
- c) Samples exempt from import duty under the Fifth Schedule to the East African Community Customs Management Act, 2004.

The Amendment Regulations have amended Regulation 28 of the Principal Regulations to only exempt goods not subject to excise duty under the Section 7(1) of the EDA as follows:

- a) Goods exempt from excise duty under the Second Schedule of the EDA;
- b) Excisable goods exported under customs control;
- c) Excisable goods destroyed by the manufacturer 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;
- d) Denatured spirits for use in the manufacture of gasohol or as a heating fuel;
- e) Excisable goods that have been lost and destroyed by accident or other unavoidable cause:
  - During removal of the goods by the manufacturer from the manufacturer's factory including when loading or unloading the goods;
  - In the factory of the manufacturer in which the goods were manufactured before removal from the factory; or
  - On board an aircraft or vessel prior to importation into Kenya.

In our view, the amendment seeks to align excisable goods exempt from excise stamps with the list of goods not subject to excise duty as per the Section 7(1) of the EDA.



## Appendix I – Excise stamp fees

No.	Category of excisable goods	Previous fee per stamp (KES)	Current fee per stamp (KES)
1.	Cigars, cheroots, cigarillos, containing tobacco, or tobacco substitutes	2.8	5.0
2.	Cigarettes containing tobacco or tobacco substitutes	2.8	5.0
3.	Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and "reconstituted" tobacco; tobacco extracts and essences	2.8	5.0
4.	Electronic cigarettes and other nicotine delivery devices <sup>(a)</sup>	-	5.0
5.	Liquid nicotine for electronic cigarettes <sup>(a)</sup>	-	5.0
6.	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 <sup>(a)</sup>	-	5.0
7.	Wines including fortified wines and other alcoholic beverages obtained by fermentation of fruits	2.8	5.0
8.	Compounded spirits of alcoholic strength exceeding 6% <sup>(b)</sup>	2.8	3.0
9.	Spirituos beverages of alcoholic strength not exceeding 6% <sup>(c)</sup>	1.5	3.0
10.	Beer, cider, perry, mead, opaque beer, and mixtures of fermented beverages with non-alcoholic beverages	1.5	3.0
11.	Bottled or similarly packaged waters <sup>(d)</sup>	0.5	0.5
12.	Other non-alcoholic beverages not including fruit and vegetable juices <sup>(e)</sup>	0.6	2.2
13.	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	2.2
14.	Cosmetics and beauty products of tariff heading Nos. 3303, 3304, 3305, and 3307	0.6	2.5

### Notes

(a) Additional excisable goods to be affixed with excise stamps.

- The Principal Regulations had the following descriptions for item no. 8, 9, 11 and 12

b) Compounded spirits of alcoholic strength exceeding 10%

c) Spirituous beverages of alcoholic strength not exceeding 10%

d) Mineral water and aerated water of tariff 2201.10.00

e) Sweetened or flavored water and non-alcoholic beverages not including fruit or vegetable juices of tariff heading 2202

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