

Tax & Legal Alert
January 2023



Tax Alert

Excise Duty (Excisable Goods Management System) (Amendment) Regulations 2023

The Cabinet Secretary for the National Treasury and Economic Planning (“CS”) has published draft Excise Duty (Excisable Goods Management System) (Amendment) Regulations 2023 (“Regulations”) in accordance with Section 45 of the Excise Duty Act (“EDA”). The Regulations seek to amend the Excise Duty (Excisable Goods Management System) Regulations 2017 (“Principal Regulations”). Some of the key proposals include increase in the price of excise stamps on alcoholic beverages, cigarettes, juices and cosmetics.

The Commissioner General of the Kenya Revenue Authority on behalf of the CS has invited members of the public and stakeholders to provide their views on the proposed changes by **3 February 2023** pursuant to the Statutory Instruments Act.

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

Amendment of list of excisable goods to be affixed with excise stamps

The measure

The Regulations propose to limit the scope of excisable goods required to be affixed with an excise stamp to goods that are listed in the First Schedule of the Principal Regulations.

Who will be affected

Manufacturers and importers of excisable goods listed in the First Schedule to the Principal Regulations

When

Effective 01 March 2023

Our view

Regulation 3 of the Principal Regulations requires all excisable goods excluding motor vehicles to be affixed with stamps. However, in practice only a few excisable goods are required to be affixed with stamps including alcoholic beverages, cigarettes, water, juices and cosmetics.

The CS has proposed to limit the scope of goods required to be affixed with stamps to those listed in the Schedule to the Principal Regulations. In our view, this proposal is geared towards aligning the law to the current practice where only some excisable goods are required to be affixed with stamps. This is a welcome move that factors in the impracticality of affixing stamps on some excisable goods such as eggs and potatoes.

Exemption from excise stamps

The measure

The Regulations propose to amend the list of goods exempted from the requirement of excise stamps as provided under Regulation 28 of the Principal Regulations.

Who will be affected

Manufacturers and importers

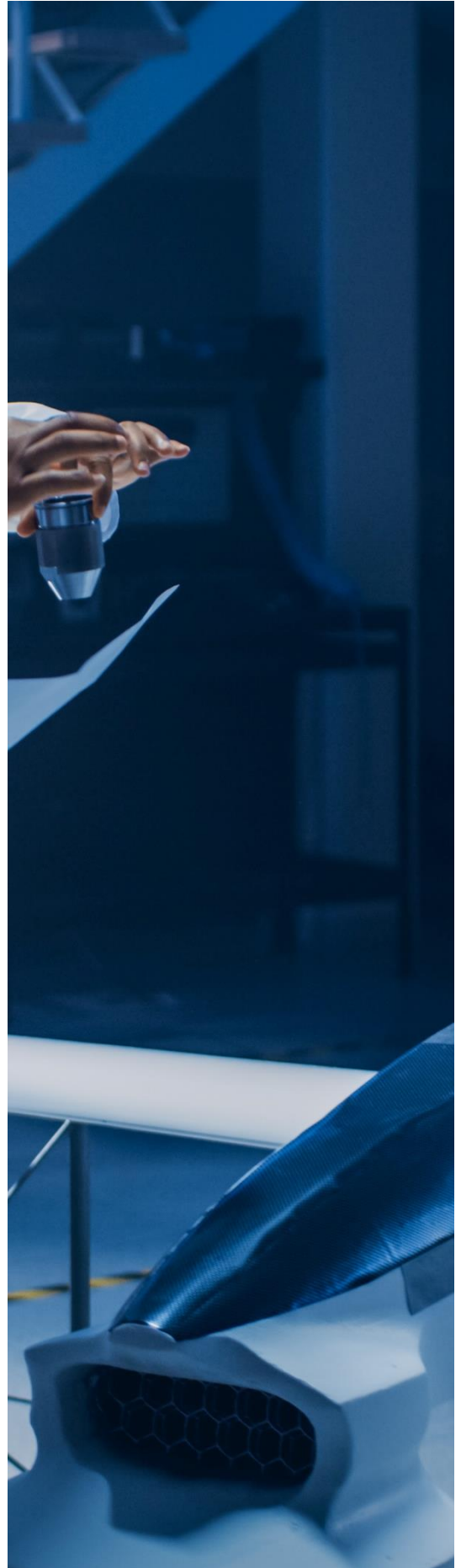
When

Effective 01 March 2023

Our view

Regulation 28 of the Principal Regulations provide for exemption from excise stamps requirement on certain goods exempted from excise duty under the Second Schedule of the EDA, exported goods and samples exempt from import duty under the Fifth Schedule to the East African Community Customs Management Act, 2004 (“EACCMA”). The Regulations propose to amend Regulation 28 of the Principal Regulations to only exempt goods exempted from excise duty under the Second Schedule of the EDA from excise stamps requirement.

However, exported goods covered under Section 7 of the EDA and samples have been excluded from the proposed list of goods to be exempted from the excise stamps requirement.





In our view, the proposed amendment seeks to align excisable goods exempt from excise stamps with the list of the goods exempted from excise duty as per the Second Schedule of the EDA. However, if the proposal is adopted as is, exported goods and samples will no longer be exempt from the excisable stamps requirement as they are not listed in the Second Schedule of the EDA. It remains to be seen whether exported goods and samples will be excluded in the adopted amendments.

Increase in excise stamp fees

The measure

The Regulations propose to amend the Schedule to the Principal Regulations by increasing the prices of excise stamps and introducing additional excisable goods. See attached the proposed new prices in Appendix I.

Who will be affected

Manufacturers, importers, and final consumers

When

Effective 01 March 2023

Our view

The CS proposes to increase excise stamp fees on all excisable goods listed in the Schedule to the Principal Regulations except water perhaps due to an increase in cost of procuring stamps from suppliers.

Stamps are affixed on excisable goods as an enforcement measure to enable the Kenya Revenue Authority 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 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.

The additional goods include electronic cigarettes, liquid nicotine for electronic cigarettes, and products containing nicotine or nicotine substitutes intended for inhalation without combustion or oral application.

Appendix I – Excise stamp fees

No.	Category of excisable goods	Current fee per stamp (KES)	Proposed 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 ^(a)	-	5.0
5.	Liquid nicotine for electronic cigarettes ^(a)	-	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 ^(a)	-	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% ^(b)	2.8	5.0
9.	Spirituos beverages of alcoholic strength not exceeding 6% ^(c)	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 ^(d)	0.5	0.5
12.	Other non-alcoholic beverages not including fruit and vegetable juices ^(e)	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 currently has 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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