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Tax Alert
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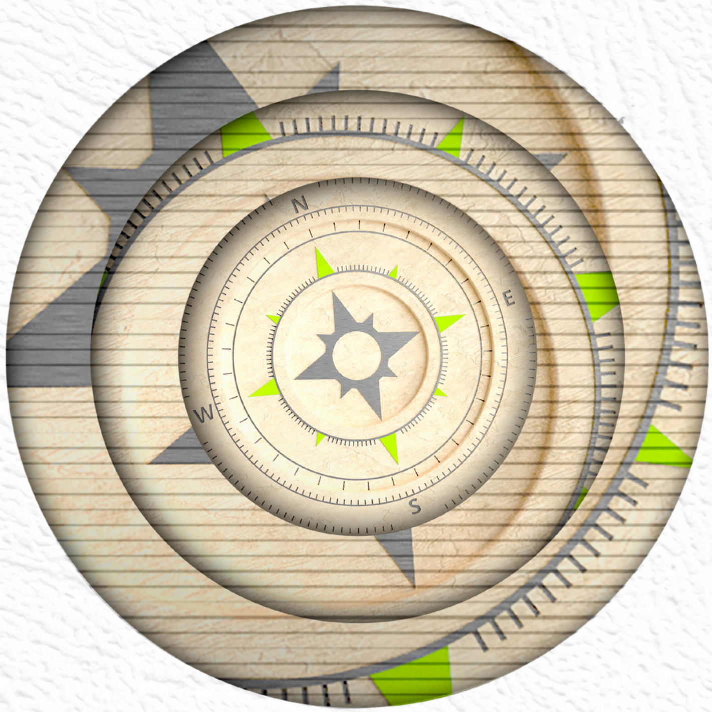


EAC Tax Alert

Preferential tariff treatment extension

The East African Community ("EAC") Council of Ministers ("Council") has granted the Republics of Burundi, Rwanda, Uganda and Kenya a stay of application of the East African Community Common External Tariff ("EAC CET") on originating goods imported from the Common Market for Eastern and Southern Africa ("COMESA") from 1 January, 2020 up to 30 June, 2021. Similarly, the Council has granted Tanzania a stay of application of the EAC CET on originating goods imported from the Southern African Development Community ("SADC") from 1 January, 2020 up to 30 June, 2021.

The application of preferential tariff treatment on goods imported from COMESA and SADC under Section 112 of the East African Community Customs Management Act, 2004 (EAC CMA) expired on 31 December, 2019.

The aforementioned measures were communicated through EAC Gazette Notice No Vol. AT 1 – No. 17 dated 15 September 2020. The Gazette also contains other measures on stay of application of the EAC CET and duty remission under Section 140 of the EAC CMA.

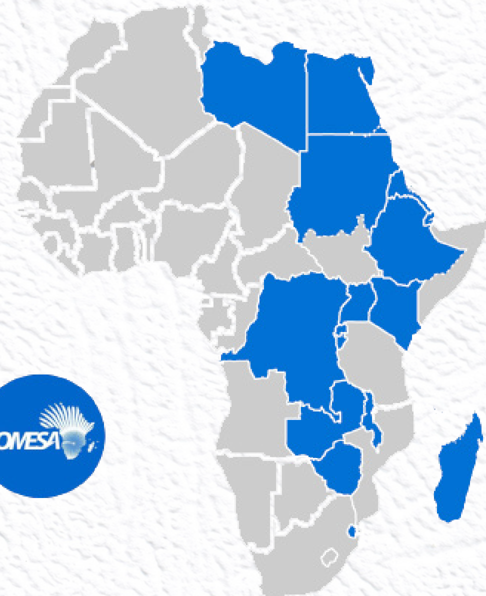
We have summarized notable measures contained in the EAC Gazette Notice and analyzed the impact of these changes in this tax alert.

Background

Kenya is member of the COMESA Free Trade Area (FTA), which also includes Burundi, Comoros, Djibouti, Democratic Republic of Congo, Egypt, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Uganda, Zambia, and Zimbabwe whilst Tanzania is a Member of SADC. The application of preferential rates on goods imported from COMESA and SADC is provided for under Section 112 of the EAC CMA. Further, Section 112 (2) of the EAC CMA provided that the preferential rates would not apply after 31 December 2019.

The East African Legislative Assembly (EALA) has in the past granted extension of application of Section 112, the last one having been made in March 2016 to allow for conclusion of negotiations under the COMESA-EAC-SADC Tripartite Free Trade Area (TFTA). The Partner States through the EAC Secretariat had sought for extension of the provisions of Section 112 until the negotiations for the TFTA are concluded. We note that the Sectoral Council on Trade, Industry, Finance, and Investments (SCTIFI) during a meeting held on 31 May 2019 observed that the timeframe was no longer necessary since the negotiations for TFTA and African Continental Free Trade Area (AfCFTA) were ongoing and recommended deletion of Section 112(2). Following further consultations by the EAC Partner States on amendment of Sub-section 2, it was agreed that a request be made to EALA to grant a further extension to 31 December 2023.

The SCTIFI, during an extra ordinary meeting held 11 September 2020 noted that there were challenges encountered while undertaking the amendment procedures and recommended for a mechanism that will enable the Partner States accord preferential tariff treatment on goods imported from COMESA and SADC. It was therefore agreed that a stay of application of the EAC CET be granted to the Partner States on goods imported from COMESA and SADC subject to amendment of Section 112(2) of the EAC CMA.



Our View

A strict interpretation of the provisions of the EAC CMA would imply that failure to extend the period for application of COMESA and SADC preferential rates would indicate that there is no legal backing to accord preferential tariff treatment on goods imported from COMESA and SADC. The stay of application of the EAC CET on originating goods imported from COMESA and SADC is therefore a welcome relief as it will enable importers to continue importing goods from COMESA (in the case of Kenya, Uganda, Rwanda and Burundi) and SADC (in the case of Tanzania) Member States duty free and quota free.

Despite the provisions of the EAC CMA, COMESA and SADC Member States are bound by the COMESA Treaty and the SADC Treaty respectively. Both Treaties require adherence to the provisions of the Agreements and abstaining from agreed measures would jeopardize trade and implementation of the Treaties The primary objective of the COMESA FTA and SADC FTA is to eliminate tariff and non-tariff barriers on trade and to provide duty free and quota free market access to Member States on COMESA and SADC originating products.

We note that the stay of application of the EAC CET rate on originating goods imported from COMESA and SADC has been back dated to 1 January 2020 to cover for the gap in the Customs law that currently supports application of preferential rates following the expiry of the period under Section 112(2) of the EAC CMA. The stay will provide a legal basis for application of preferential rates on goods imported from COMESA and SADC between 1 January 2020 to 30th June 2021. It is hoped that any further extensions that may be required will be done in a timely manner to ensure that there are no future disruptions in application of preferential treatment of originating goods imported from COMESA and SADC.

Other changes

Stay of application of the EAC CET

The Council has approved the following measure on customs duty rates in the EAC CET:

a. Granted Uganda a stay of application of the EAC CET rate on lithium ion to apply a rate of 0% instead of 25% up to 30 September 2020.

b. Defer the implementation date for stay of application of the EAC CET rate granted to Uganda on the following products in EAC Gazette of 30 June, 2020 to 1 October 2020:

   - Wire of iron or non alloy steel of tariff code 7217.20.00 at 35% or USD 350/MT instead of 10%;
   - Flat rolled products of iron or non alloy steel of tariff code 7210.49.00 at 35% or USD 350/MT instead of 25% or USD 200/M; and
   - Various textile products at 35% or USD 5.0/Kg instead of 25%.

c. Revocation of the stay of application of the EAC CET rate granted to Uganda on the following products in EAC Gazette of 30 June, 2020:

   - Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes of plastics of tariff code 3919.10.00 and 3919.90.10;
   - Toothpaste and other mouth wash preparations of tariff heading 3306; and
   - Certain textile products.

Our view

The revocation of the stay of application of the EAC CET rate on the above mentioned products means that the products will be imported at a lower import duty rate which is expected the reduce the cost of importing these products. Further, the deferral of implementation of stay of application of the EAC CET rates granted to Uganda from 1 July 2020 on the affected iron, steel and textile products will reduce the import rate applicable on these products until 1 October 2020 when the import duty rates will revert to the higher rates approved through the EAC Gazette of 30 June 2020.

Duty Remission under Section 140 of the EACCMA

The Council has approved remission of duty on the following raw materials and industrial inputs for the manufacture of goods as follows:

a. Rwanda granted a remission of duty to apply a duty rate of 0% on specific raw materials and inputs for the manufacture of soap;

b. Rwanda granted a remission of duty to apply a duty rate of a 0% on specific inputs for the manufacture granite tiles and slabs; and

c. Uganda granted a remission of duty at 0% on specific inputs to assemble speakers.

The Council has also amended item 16 of Legal Notice No. EAC/7/2009 of 2nd July, 2009 to include diapers, from 1st October, 2020. The amended provision shall now read as follows:

"Raw material for the manufacture of sanitary towels, tampons and diapers imported by manufacturers of sanitary towels, tampons and diapers"

Our view

We note that the Council approved duty remission on specific inputs used for manufacture of baby diapers vide Legal Notice No. EAC/71/2020. The duty remission was however restrictive and only covered raw materials listed in the above mentioned Legal Notice. The amendment of item 16 of Legal Notice EAC/7/2009 to include raw materials used for manufacture of diapers in the duty remission scheme means that all raw materials used for manufacture of diapers will be covered in the EAC duty remission scheme.

The Council has also approved duty remission on additional inputs and raw materials imported by gazetted manufacturers of soap, tiles and slabs in Rwanda and speakers in Uganda. The duty remission will reduce the cost of manufacturing these products and promote growth of the affected industries.

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