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# Tax Alert

## Commissioner revokes restriction of bonded warehousing

On 15 April 2021, the Commissioner of Customs and Border Control ("Commissioner") revoked Gazette Notice No. 3530 of 2020, which had prohibited bonded warehousing of certain goods, vide Gazette Notice No. 3738 of 2021..

This communication details our analysis of the change and the anticipated implications.

## Background

Regulation 64 of the East African Community Customs Management Regulations (“EACCMR”) prohibits warehousing of certain goods including, inter alia, acids, arms, ammunitions, chalk, explosives and perishable goods. Further, Regulation 64 (k) allows the Commissioner to prohibit warehousing of any other goods through a gazette notice.

Pursuant to the foregoing provisions, the Commissioner, on 13 May 2020, gazetted a list of certain goods, mostly fast moving, regularly imported and high value goods such as phones, tyres, wine, spirits, lubricants, batteries and second-hand motor vehicles that would not be deposited in a bonded warehouse effective 11 August 2020. This measure meant that import taxes were to be paid upfront at the time of importation of the prohibited goods and was viewed as geared towards improving revenue collection and the overall cash position of the Government.

The revocation of Gazette Notice No. 3530 on 15 April 2021 now implies that importers of goods listed in the Gazette Notice may deposit the goods in a bonded warehouse without paying for import taxes in accordance with Section 47 of the East African Community Customs Management Act. Further, import taxes will be paid on removal of the goods from the bonded warehouse for use in Kenya. Where such goods are removed from the bonded warehouse for export, no import taxes will be payable in Kenya.

## Our view

The bonded warehousing regime allows businesses involved in cross border trade to temporarily deposit goods in a warehouse without payment of import taxes as they source for customers. Import taxes are subsequently paid on removal of the goods from the warehouse for home consumption. Importantly, the facility enables importers of goods destined for markets outside Kenya to hold the goods temporarily before exportation without the requirement of paying import taxes in Kenya. In this regard, the continued prohibition of bonded warehousing of the foregoing goods disrupted trade for businesses who utilise the bonded warehousing facility. Notably, the prohibition of bonded warehousing was expected to negatively impact the cashflow position of these businesses.

The revocation of cessation of bonded warehouse is a welcome relief for importers who have been utilising the bonded warehousing facility as this will enable the businesses continue reaping the benefits of the duty suspension regime. This measure is expected to further cement Kenya`s position as the preferred business hub for existing companies and potential investors considering setting up in East Africa.

Further, bonded warehousing exists globally and plays an important role in international trade and therefore the action by KRA on the cessation of warehousing of goods was punitive and it is likely that the move did not yield the expected results.

*Should you wish to discuss this further, kindly feel free to contact any of the contacts below or your usual Deloitte contact who will be more than glad to offer you guidance and assistance.*

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