

*Paper laid
By the Hon. Sunkuli
Julius, Member of
Committee on Wed
5/7/2023 (PM) -
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REPUBLIC OF KENYA

*Approved by tabling
SNA
5/7/23*

THIRTEENTH PARLIAMENT- SECOND SESSION (2023)

THE NATIONAL ASSEMBLY

COMMITTEE ON DELEGATED LEGISLATION

REPORT ON THE CONSIDERATION OF THE VALUE ADDED TAX
(ELECTRONIC, INTERNET AND DIGITAL MARKETPLACE SUPPLY)
REGULATIONS, 2023
(LEGAL NOTICE NO. 29 OF 2023)

JULY, 2023

 THE NATIONAL ASSEMBLY PAPER LAID	
DATE: 05 JUL 2023	DAY: Wednesday
TABLED BY:	Hon. Julius Sunkuli (Member, Delegated Legislation Committee)
CLERK-AT THE TABLE:	Modo

*The Directorate of Audit, Appropriations & Other Select Committees
The National Assembly
Parliament Buildings
NAIROBI.*

TABLE OF CONTENTS

TABLE OF CONTENTS	3
ABBREVIATIONS	4
CHAIRPERSON'S FOREWORD	5
1.0 PREFACE	7
1.1 Establishment and Mandate of the Committee	7
1.2 Committee Membership.....	8
1.3 COMMITTEE SECRETARIAT.....	9
2.0 CONSIDERATION OF THE VALUE ADDED TAX (ELECTRONIC, INTERNET AND DIGITAL MARKETPLACE SUPPLY) REGULATIONS (LEGAL NOTICE No. 29 of 2023)	10
2.1 Introduction.....	10
2.2 Summary of the Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023, Legal Notice No. 29 of 2023	11
2.3 Purpose of the Regulations	12
2.4 Legislative Context	13
2.5 Policy Background.....	13
3.0 COMMITTEE OBSERVATIONS	13
3.1 Statutory Timelines	13
3.2 Public Participation	13
3.3 Regulatory Impact Statement.....	14
4.0 COMMITTEE RECOMMENDATION.....	14
ANNEXURES.....	15

ABBREVIATIONS

KRA	Kenya Revenue Authority
LN	Legal Notice
RMA	Regulatory Making Authority
SI	Statutory Instruments
SO	Standing Order
VAT	Value Added Tax

CHAIRPERSON'S FOREWORD

The Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023 ("the Regulations") are made *vide* LN No. 29 of 2023, pursuant to powers conferred on the Cabinet Secretary for National Treasury and Economic Planning under section 67(1) of the Value Added Tax Act, (No. 35 of 2013) hence, is a statutory instrument within the meaning of section 2 of the Statutory Instruments Act (No 23 of 2013).

The Regulations were published in the Gazette on 14th April, 2023, and received by the Clerk of National Assembly on 17th April, 2023 and were tabled before the House on the 19th April, 2023, being within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act. They were subsequently referred to the Committee on Delegated Legislation for consideration.

Pursuant to section 16 of the Statutory Instruments Act, 2013 which requires the Committee to confer with the Regulation –making authorities before making its decision, the Committee held a joint meeting with National Treasury and Economic Planning and Kenya Revenue Authority the 20th of June, 2023 within Parliament Buildings to deliberate on Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023.

Public Participation

Articles 10 and 118 of the Constitution require a mandatory conduct of Public Participation by all Regulation making Authorities before publication of a statutory instrument. The National Treasury and Economic Planning through the Kenya Revenue Authority, invited stakeholders and members of the Public to submit their comments on the draft Legal Notice on 24th January, 2023 through a public notice, in compliance with the provisions of section 5 of the Statutory Instruments Act, 2013 and Article 201(a) of the constitution. The Stakeholders were required to submit their comments by 7th February, 2023.

The Kenya Revenue Authority invited Stakeholders and industry players for a meeting on 8th February, 2023 to discuss comments received.

Stakeholder submissions were reviewed and their feedback incorporated, where appropriate, to improve the Regulations.

Having examined the Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023 (LN. No. 29 of 2023) against the Constitution, the Interpretations and General Provisions Act (Cap 2), the Statutory Instruments Act, 2013 (No. 23 of 2013), the Value Added Tax Act (No. 67 of 2013), The Committee **resolved to recommend to the House to approve partly the Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023(L.N. No. 29 of 2023) subject to the regulation-making authority publishing a corrigendum to rectify the errors relating to offences under Regulation 14.**

I wish to most sincerely thank the Speaker and the Office of the Clerk of the National Assembly for the invaluable support accorded to the Committee in the discharge of its mandate.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to Standing Order 210 (4) (b) it is my pleasure and duty to present to the House, the Committee's **Report on the Consideration of the Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023**(*LN. No. 29 of 2023*).

HON. CHEPKONGA KIPRONO SAMUEL, CBS, MP.

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Select Committee on Delegated Legislation is established pursuant to *Standing Order No. 210* and is mandated to consider statutory instruments submitted to Parliament for consideration. The Committee is expected to consider in respect of any statutory instrument, whether it is in accord with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws.
2. During the scrutiny, the Committee is guided by the principles of good governance, rule of law considers whether the instrument-
 - a) is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws;
 - b) infringes on fundamental rights and freedoms of the public;
 - c) contains a matter which in the option of the Committee should more properly be dealt with in an Act of the Parliament;
 - d) contains imposition of taxation;
 - e) directly or indirectly bars the jurisdiction of the court;
 - f) gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;
 - g) it involves expenditure from the consolidated fund or other public revenues;
 - h) is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;
 - i) appears to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which it is made;
 - j) appears to have had unjustifiable delay in its publication or laying before Parliament;
 - k) makes rights, liberties or obligations unduly dependent upon non-renewable decisions;
 - l) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
 - m) inappropriately delegates legislative powers;
 - n) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
 - o) appears for any reason to infringe on the rule of law;
 - p) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
 - q) Accords to any other reason that the Committee considers fit to examine.

1.2 Committee Membership

3. The Committee membership comprises –

Hon. Chepkonga Kiprono Samuel, CBS, M.P. (Chairperson)

Ainabkoi Constituency

UDA

Hon. Githinji Robert Gichimu, M.P. (Vice Chairperson)

Gichugu Constituency

UDA

COMMITTEE MEMBERS

Hon. Mbui Robert, CBS, M.P

WDM-KENYA

Kathiani Constituency

Hon. Maj (Rtd) Dekow Barrow Mohamed,
M.P

UDA

Garrisa Township Constituency

Hon. Julius Lekakeny Ole Sunkuli, EGH,
EBS, M.P.

KANU

Kilgoris Constituency

Hon. Kamene Joyce, M.P

WDM-KENYA

Machakos County

Hon. Onchoke, Mamwacha Charles, M.P.

UPA

Bonchari Constituency

Hon Kimaiyo, Gideon Kipkoech, M.P.

UDA

Keiyo South Constituency

Hon. Komingoi, Kibet Kirui, M.P.

UDA

Bureti Constituency

Hon. Chebor, Paul Kibet, M.P

UDA

Rongai Constituency

Hon. Yakub Adow Kuno, M.P

UPIA

Bura Constituency

Hon. (Maj) (Rtd) Abdullahi, Bashir Sheikh
,M.P.

UDM

Mandera North Constituency

Hon. Mwirigi John Paul, M.P.

UDA

Igembe South Constituency

Hon. Odoyo, Jared Okello, M.P.

ODM

Nyando Constituency

Hon. Chepkorir Linet, M.P.

UDA

Bomet County

Hon. Munyoro Joseph Kamau, M.P

UDA

Kigumo Constituency

Hon. Ruku, Geoffrey Kariuki Kiringa,
M.P.

DP

Mbeere North Constituency

Hon. Lenguris Pauline, M.P.
UDA

Samburu County

Hon. Mwale, Nicholas S. Tindi M.P.
ODM

Butere Constituency

Hon Mnyazi Amina Laura, MP.
ODM

Malindi Constituency

Hon. Mugabe Innocent Maino, M.P.
ODM

Lukuyani Constituency

1.3 COMMITTEE SECRETARIAT

4. The secretariat facilitating the Committee comprises –

Ms. Esther Nginyo
Clerk Assistant I (Team Leader)

Mr. Dima Dima
Principal Legal Counsel I

Mr. Jacknorine Buleemi
Clerk Assistant III

Ms. Winny Otieno
Clerk Assistant III

Mr. Brian Langwech
Clerk Assistant III

Ms Fiona Wanjiru
Legal Counsel II

Mr. Daniel Ominde
Research Officer III

Mrs. Sheila Chebotibin
Serjeant at Arms

Mr. Charles Ayari
Audio Officer

2.0 CONSIDERATION OF THE VALUE ADDED TAX (ELECTRONIC, INTERNET AND DIGITAL MARKETPLACE SUPPLY) REGULATIONS (LEGAL NOTICE NO. 29 OF 2023)

2.1 Introduction

5. The Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023, (Legal Notice No. 29 of 2023) were made pursuant to powers conferred on the Cabinet Secretary for National Treasury and Economic Planning by section 67(1) of the Value Added Tax Act, (*No. 35 of 2013*) hence, is a statutory instrument within the meaning of section 2 of the Statutory Instruments Act (*No 23 of 2013*).
6. The Regulations were published in the Gazette on 14th April, 2023 and received by the Clerk of National Assembly on 17th April, 2023 and tabled before the House on the 19th of April, 2023, being within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act. They were subsequently referred to the Committee on Delegated Legislation for consideration.
7. Pursuant to section 16 of the Statutory Instruments Act, 2013 which requires the Committee to confer with the regulation-making authorities before making its decision, the Committee held a meeting with the Kenya Revenue Authority on 20th June, 2023 within Parliament Buildings to deliberate on the Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations 2023.
8. The primary objective of the Value Added Tax (Electronic, Internet and Digital Marketplace Supply) 2023 is to provide the legal framework to enable the government implement the tax measures necessary for financing its economic Development Agenda.
9. The increase in the use of digital space has opened up the Kenyan Market to the outside World allowing Non-Residents to supply digital presence in the country. The import of this is that, such supplies are not chargeable to Value Added Tax (VAT) a situation which has disadvantaged local suppliers who offer similar digital services since they charge and account for VAT on such supplies.
10. This necessitated the amendment of the VAT Act to ensure non-resident suppliers, who account for a large percentage of the digital marketplace in Kenya, to register and account for VAT on supplies made in Kenya.
11. This Legal notice seeks to revoke the Legal Notice No. 190 of 2020 in order to align the Regulations with the changing business models and to correct numbering errors in the Legal Notice No. 190 of 2020.

2.2 Summary of the Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023, Legal Notice No. 29 of 2023

12. **Regulations 1 and 2** provides for the Citation and Interpretation of the Regulations.
13. **Regulation 3** provides for Electronic, Internet or digital market supplies which includes;
- a) Downloadable digital content,
 - b) Subscription based media,
 - c) Over the top services,
 - d) Software programs
 - e) Electronic data management
 - f) Music and Games,
 - g) Search Engines and automated help desk services,
 - h) Online Education programs,
 - i) Digital content for listening, viewing or playing on any audio, visual or digital media,
 - j) Ticketing services for events, theatre, restaurants and similar services,
 - k) Services to link the supplier to the recipient including transport hailing platforms,
 - l) Electronic services specified under section 8(3),
 - m) Sales, licensing,
 - n) Facilitation of online payment for exchange, transfer of digital assets excluding services exempted under the Act.
 - o) Any other services provided through an electronic, internet and digital marketplace that is not exempted under the Act.
14. **Regulation 4** provides that the Tax shall apply to taxable electronic, internet or digital marketplace supply made in Kenya.
15. **Regulation 5** provides for a simplified tax registration framework that shall be done within 30 days after the date of making taxable supply in accordance with section 34 if -
- a) The supplies are made by a person from an export country to a recipient in Kenya,
 - b) The person is conducting business in Kenya in accordance to section 8(2) and
 - c) Any of the following circumstances apply-
 - i. The recipient of the supply is in Kenya,
 - ii. The payment for services is made to the supplier in the export country from a bank registered under the Banking Act, or
 - iii. The payment of services that is made to the supplier in the export country is authorized in Kenya
16. **Regulation 6** provides that registration shall be made through an online registration form provided by the commissioner. The Registration shall be accompanied by the following information-
- a) The name of the business including the trading names,
 - b) The name of the contact person responsible for tax matters
 - c) The postal address or registered address of the business and the contact person,
 - d) The telephone number and email, address of the contact person,

- e) The website or uniform resource locator of the applicant through which business is conducted,
 - f) The national tax identifier number issued to the applicant in the applicant's jurisdiction,
 - g) The certificate of Registration or incorporation issued to the applicant in the country where the applicant's business is registered or incorporated and
 - h) Any other information that the commission may require.
17. **Regulation 7** provides for the appointment of a tax representative in accordance to section 15A of the Tax procedures Act, 2015.
18. **Regulation 8** provides that an Electronic, internet or digital marketplace shall be deemed to have made in Kenya where the recipient of the supply is in Kenya.
19. **Regulation 9** provides that the time that an Electronic, internet or digital marketplace supply is made in Kenya shall be earlier of-
- a) A date on which the payment for the supply is received in whole or in part; or
 - b) The date on which the invoice or receipt of the supply is issued
20. **Regulation 10** provides for exemptions to suppliers who makes an electronic, internet or digital marketplace supply from an export country that is registered under the Regulations shall not be required to issue an electronic tax invoice.
21. **Regulation 11** provides that a deduction of input tax by a supplier shall not be allowed for transactions relating to an electronic, internet or digital marketplace supply.
22. **Regulation 12** provides that a tax in respect of an electronic, internet or digital marketplace supply made to a recipient in Kenya shall be paid by the supplier or the tax representative of the supplier.
23. **Regulation 14** provides that a person who fails to comply with the provisions of these Regulations Commits an offence and shall be liable to penalties prescribed under the Act or Tax Procedures Act, 2015.
24. **Regulation 15** provides for the revocation of the Value Added Tax (Digital Market Supply) Regulations, 2020.

2.3 Purpose of the Regulations

- 25. The purpose of this Statutory Instrument is to guide the taxation of transactions undertaken through the Electronic, Internet and Digital marketplace supply, platforms which has been necessitated by the rapid change in technology thereby changing the way people conduct businesses.
- 26. The increase in use of digital space has opened up the Kenyan Market to the outside world allowing nonresidents to apply digital services to Kenyan Consumers with ought necessarily having physical presence in the country thus escaping from being charged VAT.
- 27. This situation has therefore disadvantaged local suppliers who offer similar digital services since they are charged and account for VAT on supplies.
- 28. To allow equity and fairness, the VAT Act was amended in the year 2020 to require non-residents suppliers, who account for a large percentage of the digital marketplace in Kenya, to register and account for VAT supplies made in Kenya.
- 29. It is expected that this Regulations once approved will enhance compliance with VAT Act by suppliers in the digital marketplace, internet and electronic platforms and thus enhance equity and compliance in administration of the Value Added Tax.

2.4 Legislative Context

30. The Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations 2023 is made pursuant to section 5(8) as read with section 67 of the Value Added Tax Act, 2013. The section empowers the Cabinet Secretary for the National Treasury and Economic planning to provide mechanisms for collection of Value Added tax on supplies made through a digital marketplace.

2.5 Policy Background

31. The legal Notice revokes the Legal Notice No. 190 of 2020 on the Value added Tax (Digital Marketplace Supply) Regulations, 2020 to correct the numbering errors in Legal Notice No. 190.
32. The primary objective of this Legal notice therefore is to provide the Legal framework to enable the government implement the tax measures necessary for financing its economic development agenda.
33. Technology is quickly changing the way people are conducting businesses thus an increase in the use of digital space which has opened up the Kenyan Market to the outside world allowing non-residents to supply digital services to Kenyan consumers without the necessity of having a physical presence in the Country. The import of this is that, such supplies are not chargeable to VAT.
34. This situation has therefore disadvantaged local suppliers who offer similar digital services since they are charged and account for VAT on supplies
35. To allow equity and fairness, the VAT Act was amended in the year 2020 to require non-residents suppliers, who account for a large percentage of the digital marketplace in Kenya, to register and account for VAT supplies made in Kenya.
36. The Legal Notice Revokes the Legal Notice No. 190 of 2020 in order to align the Regulations with the changing business models and to correct numbering errors in Legal Notice No. 190 of 2020.

3.0 COMMITTEE OBSERVATIONS

37. Having examined the Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023 are in accordance with the Constitution, the Interpretations and General Provisions Act (*Cap. 2*), the Value Added Tax Act, (*No. 35 of 2013*), and the Statutory Instruments Act (*No. 23 of 2013*) the Committee made the following observations –

3.1 Statutory Timelines

38. THAT the Regulations were published as LN No. 29 of 2023 on 14th April, 2023 submitted to the Clerk of the National Assembly on 17th April, 2023, being within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.

3.2 Public Participation

39. The Regulation Making Authority submitted a detailed explanatory memorandum providing for the extent of consultation that they conducted. The Committee after seeking a number of clarifications was satisfied with the level of public participation as contemplated under Articles 10 and 118 of the Constitution and sections 5, 5A, and

the Schedule to the Statutory Instruments Act, 2013 read together with Standing Order 210 of the National Assembly Standing Orders.

3.3 Regulatory Impact Statement

40. It is expected that this Regulation will lead to compliance by suppliers in the digital market place and thus enhance equity in the administration of taxes.


4.0 COMMITTEE RECOMMENDATION

Having examined the Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023, Legal Notice No. 29 of 2023 in accordance with the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Statutory Instruments Act (*No 23 of 2013*), the Value Added Tax Act, (*No. 35 of 2013*), the Committee recommends that the House approves the Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023, LN. No. 29 of 2023 *subject to the Regulation making authority publishing a corrigendum to rectify the error in the provision on offences under Regulation 14.*

Signed.....

Date.....

THE HON. CHEPKONGA SAMUEL KIPRONO, CBS, MP
(CHAIRPERSON)

 THE NATIONAL ASSEMBLY PARLIAMENT BUILDING	
DATE: 05 JUL 2023	
DAY: Wednesday	
TABLED BY:	Hon. Julius Sunkuli (Member, Delegated legislation committee)
CLERK-AT-THE-TABLE:	Mado

ANNEXURES

- 1. Adoption List**
- 2. Legal Notice Number 29 of 2023 and the Explanatory Memorandum**
- 3. Committee Minutes**



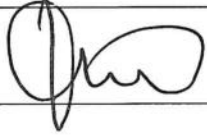
COMMITTEE ON DELEGATED LEGISLATION ADOPTION LIST

DATE: 04/02/2023

VENUE: SMALL DINING STARTING TIME: 10.00AM

AGENDA: VALUE ADDED TAX (ELECTRONIC, INTERNET AND DIGITAL MARKETPLACE
SUPPLY CREDIT NOTICE NO 29 OF 2023) REGULATIONS, 2023

	NAME	SIGNATURE
1.	The Hon. Chepkonga Kiprono Samuel, CBS, M.P, Chairperson	
2.	The Hon. Githinji, Robert Gichumi, M.P. Vice-Chairperson	
3.	The Hon. Mbui, Robert, CBS, M.P.	
4.	The Hon. Sunkuli Julius Lekakeny, EGH,EBS,MP	
5.	The Hon. Maj. (Rtd) Abdullahi Bashir Sheikh, M.P.	
6.	The Hon. Mwirigi, John Paul, M.P.	
7.	The Hon. Kamene, Joyce, M.P.	
8.	The Hon. Mwale, Nicholas S. Tindi, M.P.	
9.	The Hon. Odoyo, Jared Okello, M.P.	
10.	The Hon. Komingoi, Kibet Kirui, M.P.	
11.	The Hon. Maj. (Rtd.) Dekow Barrow Mohamed, M.P.	
12.	The Hon. Munyoro, Joseph Kamau, M.P.	
13.	The Hon, Kimaiyo, Gideon Kipkoech, M.P.	
14.	The Hon. Ruku, Geoffrey Kariuki Kiringa, M.P.	
15.	The Hon. Chepkorir, Linet, M.P.	
16.	The Hon. Chebor, Paul, M.P.	
17.	The Hon. Lenguris, Pauline, M.P.	
18.	The Hon. Mamwacha Onchoke Charles, M.P.	
19.	The Hon. Yakub, Adow Kuno, M.P.	
20.	The Hon. Mnyazi, Amina Laura, M.P.	

21.	The Hon. Mugabe, Innocent Maino, M.P.	
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COMMITTEE CLERK:SIGNATURE.....

DIRECTOR, DAA&OSC: SIGNATURE.....

MINUTES OF THE 35TH SITTING OF THE COMMITTEE ON DELEGATED
LEGISLATION HELD ON TUESDAY, 20TH JUNE, 2023 IN THE SMALL DINING,
NEW WING, MAIN PARLIAMENT BUILDING AT 10:00 AM.

PRESENT

1. The Hon Samuel Kiprono Chepkonga, CBS, M.P. Chairperson
2. The Hon. Robert Gichimu Githinji, M.P., Vice Chairperson
3. The Hon. Robert Mbui, CBS, M.P
4. The Hon. Julius Lekakeny Ole Sunkuli, EGH, EBS, MP
5. The Hon. Nicholas S. Tindi Mwale, M.P.
6. The Hon. John Paul Mwirigi, M.P.
7. The Hon. Jared Okello Odoyo M.P.
8. The Hon. Innocent Maino Mugabe, M.P.
9. The Hon. Maj. (Rtd). Dckow Barrow Mohamed, M.P
10. The Hon. Ruku Geoffrey Kariuki Kiringa, M.P.
11. The Hon. Joseph Kamau Munyoro, M.P.
12. The Hon. Pauline Lenguris, M.P
13. The Hon. Linet Chepkorir M.P.
14. The Hon. Paul Chebor, M.P.

APOLOGIES

1. The Hon. Joyce Kamene, M.P.
2. The Hon. Gideon Kipkoech Kimaiyo, M.P.
3. The Hon. Maj. (Rtd). Abdullahi Bashir Sheikh, MP
4. The Hon. Onchoke Charles Mamwacha. M.P.
5. The Hon. Laura Amina Mnyazi, M.P.
6. The Hon. Adow Kuno Yakub, M.P.
7. The Hon. Kibet Kirui Komingoi, M.P.

SECRETARIAT

- | | | |
|---------------------------|---|---------------------------|
| 1. Ms. Esther Nginyo | - | Clerk Assistant I |
| 2. Mr. Wilson Dima Dima | - | Principal Legal Counsel I |
| 3. Mr. Brian Langwech | - | Clerk Assistant III |
| 4. Ms. Winny Otieno | - | Clerk Assistant III |
| 5. Mr. Jacknorine Buleemi | - | Clerk Assistant III |
| 6. Mr. Daniel Ominde | - | Research Officer III |
| 7. Ms. Fiona Wanjiru | - | Legal Counsel II |
| 8. Mr. Samuel Leparachao | - | Serjeant-At-Arms. |
| 9. Mr. Charles Ayari | - | Audio Officer |

IN ATTENDANCE

KENYA REVENUE AUTHORITY

1. Ms. Rispah Simiyu - Ag. Commissioner General
2. Mr. Mohamed Omar - Commissioner
3. Mr. Maurice Oray - Deputy Commissioner

4. Ms. Josphine Mogure - CM-SIRM
5. Ms. Sharon Kirai - Parliamentary Liaison Officer

AGENDA

1. Prayers
2. Preliminaries
3. Adoption of the Agenda
4. Confirmation of minutes
5. Matters arising
6. Briefing by the Cabinet Secretary National Treasury and Economic Planning on the following Regulations;
 - i. The Value Added Tax (Electronic Internet and Digital Marketplace Supply) Regulations, 2023.
 - ii. The Excise Duty (Excisable Goods Management) (Amendment) Regulations, 2023, 2023
 - iii. Adoption of the Public Finance Management (National Pecae Support Operations Fund) Regulations, 2023.
7. Any Other Business; and
8. Adjournment

MIN. DAA&OSC/CDL/226/2023

PRELIMINARIES

The Chairperson called the Meeting to order at 10:30 a.m. He welcomed all present to the meeting after which he prayed followed by a round of introduction.

MIN. DAA&OSC/CDL/227/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as was proposed by the Hon. Jared Okello MP and seconded by the Hon. Pauline Lenguris, M.P.

MIN. DAA&OSC/CDL/228/2023

CONFIRMATION OF MINUTES

Minutes of the 32nd Sitting held on Tuesday, 13th June, 2023, were confirmed as true records of the deliberations as proposed by the Hon. Innocent Maino Mugabe, M.P. and seconded by the Hon. Ruku Geoffrey Kariuki Kiringa, M.P.

MIN. DAA&OSC/CDL/229/2023

CONSIDERATION OF THE VALUE ADDED TAX (ELECTRONIC, INTERNET AND DIGITAL MARKETPLACESUPPLY) REGULATION, 2023.LEGAL NOTICE NO.29

Ms. Rispah Simiyu, Ag. Commissioner General, KRA, briefed the Committee on The Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023 as follows, that;

1. **Regulations 1 and 2** provides for the Citation and Interpretation of the Regulations.
2. **Regulation 3** provides for electronic, Internet or digital market supplies which includes;
 - a) Downloadable digital content,
 - b) Subscription based media,

- c) Over the top services,
- d) Software programmes
- e) Electronic data management
- f) Music and Games,
- g) Search Engines and automated help desk services,
- h) Online Education programmes,
- i) Digital content for listening, viewing or playing on any audio, visual or digital media,
- j) Ticketing services for events, theatre, restaurants and similar services,
- k) Services to link the supplier to the recipient including transport hailing platforms,
- l) Electronic services specified under section 8(3),
- m) Sales, licensing,
- n) Facilitation of online payment for exchange, transfer of digital assets excluding services exempted under the Act.
- o) Any other services provided through an electronic, internet and digital marketplace that is not exempted under the Act.

3. **Regulation 4** provides that the Tax shall apply to taxable electronic, internet or digital marketplace supply made in Kenya.

4. **Regulation 5** provides for a simplified tax registration framework that shall be done within 30 days after the date of making taxable supply in accordance with section 34 if -

- a) The supplies are made by a person from an export country to a recipient in Kenya,
- b) The person is conducting business in Kenya in accordance to section 8(2) and
- c) Any of the following circumstances apply-
 - i. The recipient of the supply is in Kenya,
 - ii. The payment for services is made to the supplier in the export country from a bank registered under the banking Act, or
 - iii. The payment of services that is made to the supplier in the export country is authorized in Kenya

5. **Regulation 6** provides that registration shall be made through an online registration form provided by the commissioner. The Registration shall be accompanied by the following information-

- a) The name of the business including the trading names,
- b) The name of the contact person responsible for tax matters,
- c) The postal address or registered address of the business and the contact person,
- d) The telephone number and email, address of the contact person,
- e) The website or uniform resource locator of the applicant through which business is conducted,
- f) The national tax identifier number issued to the applicant in the applicants' jurisdiction,
- g) The certificate of Registration or incorporation issued to the applicant in the country where the applicants' business is registered or incorporated and
- h) Any other information that the commission may require.

6. **Regulation 7** provides for the appointment of a tax representative in accordance to section 15A of the Tax procedures Act, 2015.

7. **Regulation 8** provides that an electronic, internet or digital marketplace shall be deemed to have made in Kenya where the recipient of the supply is in Kenya.

8. **Regulation 9** provides that the time that an Electronic, internet or digital marketplace supply is made in Kenya shall be earlier of-
 - a) A date on which the payment for the supply is received in whole or in part; or
 - b) The date on which the invoice or receipt of the supply is issued
9. **Regulation 10** provides for exemptions to suppliers who makes an electronic, internet or digital marketplace supply from an export country who is registered under the Regulations shall not be required to issue an electronic tax invoice.
10. **Regulation 11** provides that a deduction of input tax by a supplier shall not be allowed for transactions relating to an electronic, internet or digital marketplace supply.
11. **Regulation 12** provides that a tax in respect of an electronic, internet or digital marketplace supply made to a recipient in Kenya shall be paid by the supplier or the tax representative of the supplier.
12. **Regulation 13** provides for any amendment to a return submitted in accordance with these Regulations shall be made in accordance with section 31 of the Tax Procedures Act, 2015.
13. **Regulation 14** provides that a person who fails to comply with the provisions of these Regulations Commits an offence and shall be liable to penalties prescribed under the Act or Tax Procedures Act, 2015.
14. **Regulation 15** provides for the revocation of the Value Added Tax (Digital Market Supply) Regulations, 2020.
15. The Committee sought clarification on Regulation 14 on the penalties. The Commission needed to be specific on which they based the penalties. The Regulations provided for penalties in the Value Added Tax Act and Tax Procedures Act.
16. The Committee noted that the Regulations were published on 21st March, 2023 and submitted to the National Assembly on 18th April, 2023, which was outside the timelines provided for in Section 11 of the Statutory Instruments Act, 2013 of seven si.

MIN. DAA&OSC/CDI./230/2023

**CONSIDERATION OF THE EXCISE DUTY
(EXCISABLE GOODS MANAGEMENT
SYSTEM (AMMENDMENT)
REGULATION, 2023.
LEGAL NOTICE. NO 30**

Ms. Rispah Simiyu, Ag. Commissioner General KRA, briefed the Committee on The Excise Duty (Excisable goods Management System) (Amendment) Regulations, 2023 as follows, that;

1. **Regulation 1** provided for the citation of the Regulations.
2. **Regulation 2** provided for the amendment of the Excise Duty (Excisable Goods Management System) Regulations, 2017 in Regulation 3 in the he Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023 by deleting the words "except motor vehicles, manufactured in or imported into Kenya"
3. **Regulation 3** provided for the amendment of the Principal Regulation in Regulation 6 by inserting the words "and compliance management activities in respect of excisable goods" immediately after the word "system".
4. **Regulation 4** provided for the amendment of in Regulation 28 by deleting sub Regulation (1) and substituting therefore with the following new sub regulations-

(1) Goods not liable to excise duty under section 7(1) shall be exempted from the requirements of excise stamps.

5. **Regulation 5** provided for the deletion of the schedule and replacing it with;

1. Cigars, charoots, cigarillos, containing tobacco or tobacco substitutes stamp	Ksh.5 per stamp
2. Cigarettes containing tobacco or tobacco substitutes stamp	Ksh. 5 per stamp
3. Other Manufactured Tobacco and manufactured tobacco substitutes Stamp	Ksh. 5 per Stamp
4. Electronic cigarettes and other nicotine delivery devices stamp	Ksh. 5 Per stamp
5. Liquid nicotine for electronic cigarettes stamp	Ksh. 5 per stamp
6. Products containing nicotine intended for inhalation without combustion or oral application	Ksh. 5 Per Stamp.
7. Wine including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	Ksh. 5 Per Stamp.
8. Compounded spirits of alcoholic strength exceeding 6%	Ksh. 3 Per Stamp.
9. Spirituous beverages of alcoholic strength not exceeding 6%	Ksh. 3 Per Stamp.
10. Beers, cider, perry mead opaque beer mixtures of fermented beverages with non-alcoholic beverages Stamp.	Ksh. 3 Per Stamp.
11. Bottled or similarly packaged water Stamp.	Ksh. 0.5 Per Stamp.
12. Other non -alcoholic beverages, not including fruit and vegetable juices Stamp.	Ksh. 2.2 Per Stamp.
13. Fruit juices (including grape must) and vegetable juices, fermentented and not containing added spirits, whether or not containing added sugar or other sweetening matter Stamp.	Ksh. 2.2 Per Stamp.
14. Cosmetics and beauty products of tariff heading 3303,3304,3305 and 3307.	

6. The Committee observed that an international company was involved in the production of the stamp duties which the country was buying at higher cost than the value that was being paid for such stamps. This in effect had led to high pending bills for the part of the government to the supplier of the stamps. There was need to consider having a local supplier upon expiry of the contract.
7. The increment on the pricing of the stamp duty on commodities such as cigarette, alcoholic and beauty products was making the country less competitive with the neighbouring countries. This had attracted influx of cheaper products from the neighbouring country. Ag. Commissioner General noted that the influx of alcoholic

beverages from the neighbouring countries was as a result of cheaper cost of raw materials such as ethanol in the manufacturing of the alcoholic beverages.

8. The Soma Label Application had been infiltrated by counterfeit stamps hence encouraging sale of counterfeit products in the market. In their response, the Ag. Commissioner General indicated that the Application security features had been enhanced to ensure that duplication of stamps was detected.

MIN. DAA&OSC/CDL/231/2023

ADOPTION OF THE REPORT ON THE
PUBLIC FINANCE MANAGEMENT
(NATIONAL SUPPORT OPERATIONS
FUND)
REGULATIONS, 2023.

The Committee considered and adopted the Report on the Public Finance Management (National Peace Support Operations Fund) Regulations, 2023 as proposed by the Hon. Innocent Maino Mugabe, M.P and seconded by The Hon. Ruku Geoffrey Kariuki Kiringa, M.P. with the following recommendation, that:

Having examined the Public Finance Management (National Peace Support Operations Fund) Regulations, 2023 in accordance with the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Statutory Instruments Act (*No 23 of 2013*), the Public Finance Act, the Committee recommends that the House approves the Public Finance Management (National Peace Support Operations Fund) Regulations, 2023 (*LN. No. 58 of 2023*) in accordance with section 24(4) the Public Finance Management Act (*No. 18 of 2012*).

MIN. DAA&OSC/CDI./232/2023

ANY OTHER BUSINESS

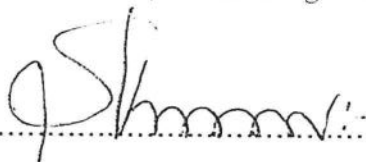
There was no business under this agenda item.

MIN. DAA&OSC/CDL/233/2023

ADJOURNMENT

There being no other business, the meeting was adjourned at Thirty Minutes past Twelve O'clock.

SIGNED:



THE HON. SAMUEL CHEPKONGA, CBS. M.P.

CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION

DATE:

27/06/2023

**MINUTES OF THE 38TH SITTING OF THE COMMITTEE ON DELEGATED
LEGISLATION HELD ON TUESDAY, 4TH JULY, 2023 AT THE SMALL DINING,
NEW WING, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.**

PRESENT

1. The Hon Samuel Kiprono Chepkonga, CBS, M.P., Chairperson
2. The Hon. Robert Gichimu Githinji, M.P., Vice Chairperson
3. The Hon. Robert Mbui, CBS, M.P
4. The Hon. Nicholas S. Tindi Mwale, M.P.
5. The Hon. Julius Lekakeny Ole Sunkuli, EGH, EBS, MP
6. The Hon. Jared Okello Odoyo M.P.
7. The Hon. Joyce Kamene, M.P
8. The Hon. Gideon Kipkoech Kimaiyo, M.P.
9. The Hon. Maj. (Rtd). Dekow Barrow Mohamed, M.P.
10. The Hon. Pauline Lenguris, M.P
11. The Hon. Onchoke Charles Mamwacha. M.P
12. The Hon. Joseph Kamau Munyoro, M.P.
13. The Hon. John Paul Mwirigi, M.P.
14. The Hon. Innocent Maino Mugabe, M.P.

APOLOGIES

1. The Hon. Linet Chepkorir M.P.
2. The Hon. Ruku Geoffrey Kariuki Kiringa, M.P.
3. The Hon. Laura Amina Mnyazi, M.P.
4. The Hon. Maj. (Rtd). Abdullahi Bashir Sheikh, MP
5. The Hon. Paul Chebor, M.P.
6. The Hon. Kibet Kirui Komingoi, M.P.
7. The Hon. Adow Kuno Yakub, M.P.

SECRETARIAT

- | | | |
|---------------------------|---|---------------------------|
| 1. Ms. Esther Nginyo | - | Clerk Assistant I |
| 2. Mr. Wilson Dima Dima | - | Principal Legal Counsel I |
| 3. Mr. Brian Langwech | - | Clerk Assistant III |
| 4. Mr. Jacknorine Buleemi | - | Clerk Assistant III |
| 5. Ms. Winny Otieno | - | Clerk Assistant III |
| 6. Mr. Charles Ayari | - | Audio Officer |
| 7. Ms. Fiona Wanjiru | - | Legal Counsel II |
| 8. Ms. Sheila Chebotibin | - | Sergeant-at Arms |
| 9. Mr. Manuel Leparachao | - | Sergeant-at-Arms |

IN ATTENDANCE

MINISTRY OF MINING, BLUE ECONOMY AND MARITIME AFFAIRS

- | | | |
|----------------------------|---|---------------------|
| 1. Hon Salim Mvurya, E.G.H | - | Cabinet Secretary |
| 2. Mr. Elijah G. Mwangi | - | Principal Secretary |

- | | | |
|--------------------------|---|------------------------------|
| 3. Ms. Linet Bunei | - | Senior State Counsel |
| 4. Mr. Edward Omuro | - | Manager, Voi Gemstone Centre |
| 5. Mr. Rodgers Chimega | - | Chief Advisor to the Cs |
| 6. Ms. Patricia C. Mabil | - | Senior State Counsel |
| 7. Mr. Muhia Kagwi | - | PA, PS Mining |

AGENDA

1. Prayers
2. Preliminaries
3. Adoption of the Agenda
4. Confirmation of minutes
5. Matters arising
6. **Briefing by the Cabinet Secretary Ministry of Mining, Blue Economy and Maritime Affairs on the Mining (Gemstone identification and Value Addition) (Fees) Regulations, 2023.**
7. **Consideration of Reports on The Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023 Legal Notice No. 29 of 2023.**
8. Any Other Business; and
9. Adjournment.

MIN. DAA&OSC/CDL/250/2023

PRELIMINARIES

The Chairperson called the Meeting to order at 10.20 a.m. after which prayers were said. The Chairperson then welcomed all present to the meeting followed with a round of introductions.

MIN. DAA&OSC/CDL/251/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as was proposed by the Hon. Julius Lekakeny Ole Sunkuli, EGH, EBS, MP and seconded by the Hon. Onchoke Charles Mamwacha. M.P

MIN. DAA&OSC/CDL/252/2023

CONFIRMATION OF MINUTES

Minutes of the 36th Sitting held on Tuesday, 27th June, 2023 were confirmed as true records of the deliberations as proposed by the Hon. Sunkuli Julius Lekakeny, EGH, EBS, MP and seconded by the Hon. Pauline Lenguris, M.P

Minutes of the 37th Sitting held on Thursday, 29th June, 2023 were confirmed as true records of the deliberations as proposed by the Hon. Sunkuli Julius Lekakeny, EGH, EBS, MP and seconded by the Hon. Onchoke Charles Mamwacha. MP.

MIN. DAA&OSC/CDL/253/2023

MATTERS ARISING

No matter arose under this Agenda item.

MIN. DAA&OSC/CDL/254/2023

BRIEFING BY THE CABINET SECRETARY, MINISTRY OF MINING, BLUE ECONOMY AND MARITIME AFFAIRS ON THE MINING

**(GEMSTONE IDENTIFICATION AND
VALUE ADDITION) (FEES), 2023. LEGAL
NOTICE NO. 75 OF 2023**

The Hon. Salim Mvurya, Cabinet Secretary, Ministry of Mining, Blue Economy and Maritime Affairs briefed the Committee on the on the Mining(Gemstone Identification and Value Addition)(Fees) Regulations, 2023.as follows; That

1. The Ministry of Mining, Blue Economy and Maritime Affairs has three (3) State departments under it namely;
 - i. State Department for Mining,
 - ii. State Department for Blue Economy and Fisheries and
 - iii. State Department for Shipping and Maritime Affairs.
2. There are 970 mineral occurrences in Kenya which fall under the State Department for Mining. The Ministry through the State Department for Mining was working on decentralized laboratory services to revamp the mining sector.
3. The Ministry was also working on a framework to create cooperative societies to take care of Artisanal mining in the country. This would ensure effective training to artisan as well as enable effective provision of the required equipment to this sector thereby ensuring effective mining. The launch of online license application would also ensure effective monitoring of mining activities in the country.
4. The Mining (Gemstone Identification and Value Addition) (Fees) Regulations, 2023 seeks to;
 - a) Provide the fees payable for services provided at the Voi Gemstone Identification and Value Addition Centre as respectively specified by the person under or for the purpose of the Act and ;
 - b) Provide guidance that a person who requests for a service to be rendered at the Gemstone Identification and Value Addition Centre or the person for whose benefit the service is provided, shall pay fees as specified in the Regulations.
5. **Regulation 1** provides for Citation.
6. **Regulation 2** provides for the application of the Regulations which shall be gemstone identification and value addition at the Voi Gemstone Centre.
7. **Regulation 3** provides for the fees chargeable at the value addition center as set out in the schedule as follows;

Services	Description	Fees in Kes.
Identification	Identification certificate. Gives complete lab report on the	500

	Gemstone Characteristics				
Sawing	Reduction per piece		100		
Faceting	Category 1	0.1ct-0.5ct	0.5ct-2.0ct	3.0ct-4.0ct	Above 4ct
	1. Corundum 2. Tsavorite 3. Tanzanite 4. Spinel 5. Emerald 6. Zircon 7. Demantoid 8. Alexandrite	500 Kes per piece	500 Kes per piece	100 Kes per piece	2500 Kes per piece
	Category	0.1ct-0.9ct	1.0ct-3.0ct	4.0ct and above	Special stones>.5.0ct
	1. Aquamarine 2. Tourmaline 3. Rhodolite 4. Pyrope 5. Quartz 6. Spessartite 7. Malaya-garnet 8. Iolite 9. Hessonite 10. Change colour garnet	300 Kes per piece	300 Kes per piece	500 Kes per piece	2500 Kes per piece
Tumbling	Bulk material for beadwork,cabochon materials in kilograms	Kes 2500per kg			

Gabbing	Cabochon material using cabbing Machine per piece	Kes 500 per piece
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8. Upon deliberations, the Committee observed that the Regulations did not clearly provide for definitions of terms used i.e., Gabbling, Tumbling, faceting and Sawing. There was therefore need to capture definitions of terms used in the Regulations.
9. The Committee also sought to be enlightened on illegal mining and the measures the Ministry was putting in place to curb the menace. In his response, the Cabinet Secretary pointed out that illegal mining had been fueled by a Moratorium that had been put in place in 2019 debarring issuance of mining permits. To cushion the sector, the Ministry was set to lift the Moratorium on the issuance of mining licenses upon instituting the requisite reforms in the sector.
10. Further, the Committee noted that the Regulations were region specific and were limiting testing of minerals for other regions not covered by the Regulations. The Committee therefore recommended that the Regulations should be left open by omitting the "Voi Gemstone" part.
11. The Committee also noted that there was lack of evidence to show that effective public participation was carried out during the Regulation making process. Section 5 of the Statutory Instruments Act requires regulatory making bodies to conduct effective public participation during the process but this did not reflect in the Explanatory Memorandum..
12. The Committee also noted that a regulatory impact statement was missing and this was against the requirements of section 6 of the Statutory Instruments Act (No. 23 of 2013) which requires a regulatory making body to provide an impact statement on Regulations that are likely to impose significant costs on the community or part of the community.
13. The Committee consequently resolved that there was need for the Ministry to address the following issues: conducting adequate public participation; conducting assessment on the impact of the Regulations on the community; and addressing drafting gaps such as definitions of terms among others, and then resubmit the revised Regulations to the National Assembly within two weeks' time from the date of the meeting.

MIN/DAA&OSC/CDL/255/2023

CONSIDERATION AND ADOPTION
OF THE REPORT ON THE VALUE
ADDED TAX (ELECTRONIC,

**INTERNET AND MARKETPLACE
SUPPLY) REGULATIONS, 2023.**

The Committee considered the report on the Value Added Tax(Electronic, Internet and Marketplace Supply) Regulations, 2023. and adopted it as was proposed by the Hon. Julius Lekakeny Ole Sunkuli, EGH, EBS, MP and seconded by the Hon. Pauline Lenguris, M.P with the following recommendation, that:

Having examined the Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023, Legal Notice No. 29 of 2023 in accordance with the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Statutory Instruments Act (*No 23 of 2013*), **the Value Added Tax Act, (No. 35 of 2013)**, the Committee recommends that the House approves the Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023, LN. No. 29 of 2023 *subject to the Regulation making authority publishing a corrigendum to rectify the error in the provision on offences under Regulation 14.*

MIN. DAA&OSC/CDL/256/2023 ANY OTHER BUSINESS

There was no deliberations under this agenda

MIN. DAA&OSC/CDL/257/2023 ADJOURNMENT

There being no other business, the meeting was adjourned at Twenty Minutes past Twelve O'clock.

SIGNED: 

THE HON. SAMUEL CHEPKONGA, CBS. M.P.

CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION

DATE: 31/07/2023



REPUBLIC OF KENYA
THE NATIONAL TREASURY AND ECONOMIC PLANNING

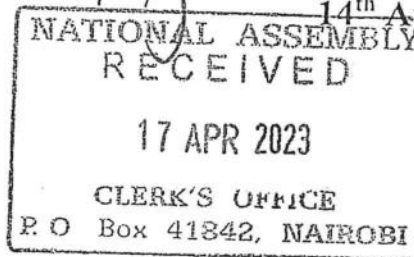
Telegraphic Address: 22921
Finance – Nairobi
Fax No. 315779
Telephone: 2252299

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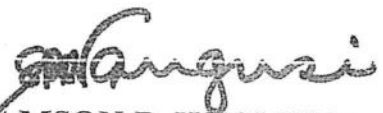
Mr. Samuel Njoroge
Clerk of the National Assembly
Parliament Building
NAIROBI

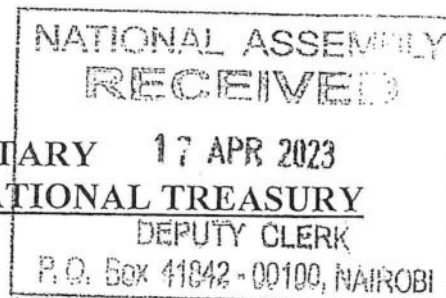


RE: LEGAL NOTICE NO. 29 OF 2023 ON THE VALUE ADDED TAX (ELECTRONIC, INTERNET AND DIGITAL MARKETPLACE SUPPLY) REGULATIONS, 2023, AND LEGAL NOTICE NO. 30 OF 2023 ON THE EXCISE DUTY (EXCISABLE GOODS MANAGEMENT) (AMENDMENT) REGULATIONS, 2023

The above-mentioned two Regulations were Gazetted on 21st March, 2023 through Kenya Gazette Supplement No. 33, Legislative Supplement No. 12. The Legal Notices were thereafter published in the Kenya Gazette Vol. CXXV – No. 86 of 14th April, 2023.

In compliance with section 11 of the Statutory Instruments Act, I hereby submit the above-mentioned Legal Notices on the Regulations, Explanatory Memoranda and evidence of public participation on the same for tabling in the National Assembly.


SAMSON P. WANGUSI, OGW
PRINCIPAL ADMINISTRATIVE SECRETARY
FOR: PRINCIPAL SECRETARY/THE NATIONAL TREASURY



Encl.

Copy to: Cabinet Secretary/The National Treasury and Economic Planning

Principal Secretary/The National Treasury

FCCA, CS Rispah Simiyu (Mrs.) Advocate, EBS
Ag. Commissioner General
Kenya Revenue Authority
NAIROBI

SPECIAL ISSUE

111

Kenya Gazette Supplement No. 33

21st March, 2023

(Legislative Supplement No. 12)

LEGAL NOTICE No. 29

THE VALUE ADDED TAX ACT, 2013

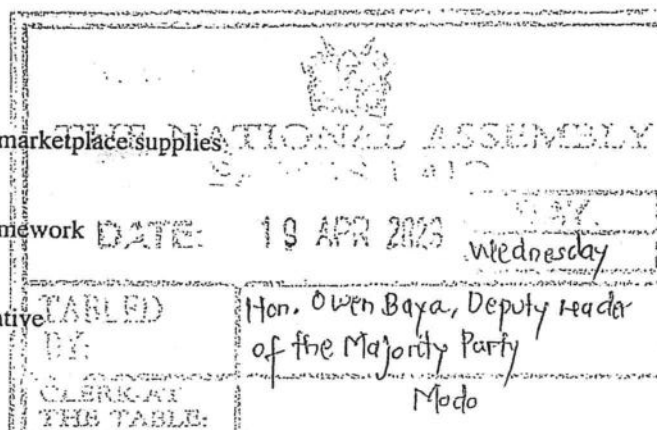
(No. 35 of 2013)

THE VALUE ADDED TAX (ELECTRONIC, INTERNET AND
DIGITAL MARKETPLACE SUPPLY) REGULATIONS, 2023

ARRANGEMENT OF REGULATIONS

Regulation

- 1—Citation
- 2—interpretation
- 3—Electronic, internet or digital marketplace supplies
- 4—Application of tax
- 5—Simplified tax registration framework
- 6—Registration
- 7—Appointment of tax representative
- 8—Place of supply
- 9—Time of supply
- 10—Exemption from issuing an electronic tax invoice
- 11—Claim for input tax
- 12—Accounting for and payment of tax
- 13—Amendment of returns
- 14—Penalties
- 15—Revocation



THE VALUE ADDED TAX ACT, 2013

(No. 35 of 2013)

THE VALUE ADDED TAX (ELECTRONIC, INTERNET AND DIGITAL MARKETPLACE SUPPLY) REGULATIONS, 2023

IN EXERCISE of the powers conferred by section 67 of the Value Added Tax Act, 2013, the Cabinet Secretary for the National Treasury and Economic Planning makes the following Regulations—

THE VALUE ADDED TAX (ELECTRONIC, INTERNET AND DIGITAL MARKETPLACE SUPPLY) REGULATIONS, 2023

1. These Regulations may be cited as the Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023. Citation.

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

“electronic, internet or digital marketplace supply” means the supply made over the internet, an electronic network or any digital marketplace;

“export country” means any country, other than Kenya, and includes any place which is not situated in Kenya;

“intermediary” means a person who facilitates the supply of an electronic, internet or digital marketplace supply and who is responsible for issuing invoices or collecting payments in respect of the supply;

“recipient”, in relation to any supply of an electronic, internet or digital marketplace supply, means the person to whom the supply is made; and

“tax period” means a calendar month.

3. For the purposes of these Regulations, a taxable electronic, internet or digital marketplace supply includes— Electronic,
internet or digital
marketplace
supplies.

- (a) downloadable digital content including downloadable mobile applications, eBooks and films;
- (b) subscription-based media including news magazines and journals;
- (c) over-the-top services including streaming television shows, films, music, podcasts and any form of digital content;
- (d) software programmes including software, drivers, website filters and firewalls;
- (e) electronic data management including website hosting,

- (g) search engines and automated helpdesk services including customisable search engine services;
- (h) ticketing services for events, theatres, restaurants and similar services;
- (i) online education programmes including distance teaching programmes through pre-recorded media, eLearning, education webcasts, webinars, online courses and training but excluding education services exempted under the First Schedule to the Act;
- (j) digital content for listening, viewing or playing on any audio, visual or digital media;
- (k) services that link the supplier to the recipient including transport hailing platforms;
- (l) electronic services specified under section 8(3);
- (m) sales, licensing, or any other form of monetizing data generated from users' activities;
- (n) facilitation of online payment for, exchange or transfer of digital assets excluding services exempted under the Act; and
- (o) any other service provided through an electronic, internet and digital marketplace that is not exempt under the Act.

4. Tax shall apply to a taxable electronic, internet or digital marketplace supply made in Kenya.

Application of tax.

5. (1) A person supplying a taxable electronic, internet or digital marketplace supply specified in regulation 3 shall register for tax in Kenya within thirty days after the date of making taxable supply in accordance with section 34 if—

Simplified tax registration framework.

- (a) the supplies are made by a person from an export country to a recipient in Kenya;
- (b) the person is conducting business in Kenya in accordance with section 8(2); and
- (c) any of the following circumstances apply—
 - (i) the recipient of the supply is in Kenya;
 - (ii) the payment for the services is made to the supplier in the export country from a bank registered under the Banking Act; or
 - (iii) the payment for services that is made to the supplier in the export country is authorised in Kenya.

(2) A person registered under sub-regulation (1) shall be treated as a taxable person for the purposes of this Act.

6. (1) An application for registration under regulation 5(1) shall be made through an online registration form prescribed by the Commissioner. Registration.

(2) An application under subregulation (1) shall be accompanied by the following information—

- (a) the name of the business including its trading name;
- (b) the name of the contact person responsible for tax matters;
- (c) the postal address or registered address of the business and its contact person;
- (d) the telephone number and email address of the contact person;
- (e) the website or uniform resource locator of the applicant through which business is conducted;
- (f) the national tax identification number issued to the applicant in the applicant's jurisdiction;
- (g) the certificate of incorporation or registration issued to the applicant in the country where the applicant's business is registered or incorporated; and
- (h) any other information that the Commissioner may require.

(3) The Commissioner may require an applicant under subregulation (1) to submit additional documents that may be necessary to substantiate the information provided in the application.

(4) Upon registration, the Commissioner shall issue the applicant with a personal identification number in accordance with the Tax Procedures Act, 2015, for the purpose of filing returns and payment of tax.

(5) A person registered under this regulation who ceases to make taxable electronic, internet and digital marketplace supplies in Kenya shall apply to the Commissioner for deregistration in accordance with section 36 of the Act.

7. Where a person from an export country making an electronic, internet or digital marketplace supply to a recipient in Kenya elects not to register in accordance with regulation 6, that person shall appoint a tax representative in accordance with section 15A of the Tax Procedures Act, 2015. Appointment of
tax representative.

8. (1) An electronic, internet or digital marketplace supply shall be deemed to have been made in Kenya where the recipient of the supply is in Kenya. Place of supply.

(a) whether the payment proxy, including credit card or debit card information and bank account details of the recipient, is in Kenya;

(b) whether the residence proxy, including the billing or home address, is in Kenya; or

(c) whether the access proxy, including internet address or mobile country code of the subscriber identification module card of the recipient, is in Kenya.

9. The time that an electronic, internet or digital marketplace supply is made in Kenya shall be the earlier of—

Time of supply.

(a) the date on which the payment for the supply is received in whole or in part; or

(b) the date on which the invoice or receipt of the supply is issued.

10. (1) A supplier who makes an electronic, internet or digital marketplace supply from an export country who is registered under these Regulations shall not be required to issue an electronic tax invoice:

Exemption from issuing an electronic tax invoice.

Provided that the supplier shall issue an invoice or receipt showing the value of the supply, the tax deducted thereon and the personal identification number of the customer.

(2) The invoice or receipt issued under subregulation (1) shall be deemed to be a tax invoice.

11. A deduction of input tax by a supplier shall not be allowed for transactions relating to an electronic, internet or digital marketplace supply.

Claim for input tax.

12. (1) The tax in respect of an electronic, internet or digital marketplace supply made to a recipient in Kenya shall be paid by the supplier or the tax representative of the supplier.

Accounting for and payment of tax.

(2) A registered person shall submit a return in the prescribed form and remit the tax due in each tax period to the Commissioner on or before the twentieth day of the month following the end of the tax period.

(3) Where an intermediary makes an electronic, internet or digital marketplace supply on behalf of another person, the intermediary shall be required to charge and account for the tax on the supply whether such other person is registered for tax or not.

13. (1) Any amendment to a return submitted in accordance with these Regulations shall be made in accordance with section 31 of the Tax Procedures Act 2015.

Amendment of returns.

favour of the person who overpaid and offset against the tax payable in the subsequent tax period.

14. A person who fails to comply with the provisions of these Regulations commits an offence and shall be liable to the penalties prescribed under the Act or Tax Procedures Act, 2015. Penalties.

15. The Value Added Tax (Digital Market Supply) Regulations, 2020, are revoked. Revocation.
L.N. 190/2020.

Made on the 15th March, 2023.

NJUGUNA NDUNG'U,
*Cabinet Secretary for the
National Treasury and Economic Planning.*

LEGAL NOTICE NO. 30

THE EXCISE DUTY ACT

(No. 23 of 2015)

THE EXCISE DUTY (EXCISABLE GOODS MANAGEMENT SYSTEM) (AMENDMENT) REGULATIONS, 2023

IN EXERCISE of the powers conferred by section 45 of the Excise Duty Act, 2015, the cabinet Secretary for the National Treasury and Economic Planning makes the following Regulations—

THE EXCISE DUTY (EXCISABLE GOODS MANAGEMENT SYSTEM) (AMENDMENT) REGULATIONS, 2023

1. These Regulations may be cited as the Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023. Citation.

2. The Excise Duty (Excisable Goods Management System) Regulations, 2017 (in these Regulations referred to as the "principal Regulations"), are amended in regulation 3 by deleting the words "except motor vehicles, manufactured in or imported into Kenya". L.N. 53/2017.

3. The principal Regulations are amended in regulation 6 by inserting the words "and compliance management activities in respect of excisable goods" immediately after the word "System".

4. The principal Regulations are amended in regulation 28 by deleting subregulation (1) and substituting therefor the following new subregulation—

(1) Goods not liable to excise duty under section 7(1) shall be exempted from the requirement of excise stamps.

5. The principal Regulations are amended by deleting the Schedule and replacing it with the following new Schedule—

SCHEDULE

EXCISE STAMP FEES

r. 5

No.	Category of excisable goods	Fees KSh.
2.	Cigarettes containing tobacco or tobacco substitutes	5 per stamp
3.	Other manufactured tobacco and manufactured tobacco substitutes; homogenous" and "reconstituted" tobacco; tobacco extracts and essences	5 per stamp
4.	Electronic cigarettes and other nicotine delivery devices	5 per stamp
5.	Liquid nicotine for electronic cigarettes	5 per stamp
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	5 per stamp
7.	Wines, including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	5 per stamp
8.	Compounded spirits of alcoholic strength exceeding 6%	3 per stamp
9.	Spiritous beverages of alcoholic strength not exceeding 6%	3 per stamp
10.	Beer, cider, perry, mead, opaque beer and mixtures of fermented beverages with non-alcoholic beverages	3 per stamp
11.	Bottled or similarly packaged waters	0.5 per stamp
12.	Other non-alcoholic beverages, not including fruit and vegetable juices	2.2 per stamp
13.	Fruit juices (including grape must) and vegetable juices, fermented and not containing added spirit, whether or not containing added sugar or other sweetening matter	2.2 per stamp
14.	Cosmetics and beauty products of tariff heading 3303, 3304, 3305 and 3307	2.5 per stamp

Dated the 10th March, 2023.

NJUGUNA NDUNG'U,
Cabinet Secretary for the
National Treasury and Economic Planning.

**EXPLANATORY MEMORANDUM TO THE VALUE ADDED TAX
(ELECTRONIC, INTERNET AND DIGITAL MARKETPLACE
SUPPLY) REGULATIONS 2023**

**LEGAL NOTICE NO. 29, KENYA GAZETTE SUPPLEMENT NO. 33
OF 2023, KENYA GAZETTE VOL. CXXV – NO. 86 OF 14TH APRIL,
2023**

PART I

Name of Statutory Instrument	: The Value Added Tax (Electronic, Internet & Digital Marketplace Supply) Regulations 2023.
Name of Parent Act	: Value Added Tax Act 2013.
Enacted Pursuant to	: Section 5(8) as read with section 67 of the Value Added Tax Act, 2013.
Name of the Ministry/Department	: The National Treasury and Economic Planning.
Gazetted on	: 21 st March, 2023 and Published on 14 th April, 2023.

PART II

1.0 Purpose of the Statutory Instrument

- 1.1 The objective of this Memorandum is to submit the Legal Notice No. 29, Kenya Gazette Supplement No. 33 of 2023, and published in the Kenya Gazette Vol. CXXV – No. 86 of 14th April, 2023, for tabling in the National Assembly in accordance with the provisions of Section 11 of the Statutory Instruments Act, 2013.
- 1.2 The Legal Notice introduces the Value Added Tax (Electronic, Internet & Digital Marketplace Supply) Regulations 2023 which revokes the Value added Tax (Digital Marketplace Supply) Regulations, 2020.

2.0 Legislative Context

- 2.1 The Legal Notice on the Value Added Tax (Electronic, Internet & Digital Marketplace Supply) Regulations 2023 is made pursuant to Section 5(8) as read with section 67 of the Value Added Tax Act, 2013. The Section empowers the Cabinet Secretary for the National Treasury

and Economic Planning to make regulations to provide mechanism for collection of Value added Tax on supplies made through a digital marketplace.

3.0 Policy Background

- 3.1 This Legal Notice revokes the Legal Notice No. 190 of 2020 on the Value added Tax (Digital Marketplace Supply) Regulations, 2020 to correct numbering errors in Legal Notice No. 190.
- 3.2 The primary objective of this Legal Notice therefore is to provide the legal framework to enable the government implement the tax measures necessary for financing its economic development agenda.
- 3.3 Technology is quickly changing the way people conduct business, a departure from the way of doing things a few years ago.
- 3.4 This increase in the use of digital space has opened up the Kenyan market to the outside world allowing non-residents to supply digital services to Kenyan consumers without the necessity of having physical presence in the country. The import of this is that, such supplies are not chargeable to Value Added Tax (VAT).
- 3.5 This situation has disadvantaged local suppliers who offer similar digital services since they charge and account for VAT on such supplies.
- 3.6 To allow equity and fairness, the VAT Act was amended to require non-resident suppliers, who account for a large percentage of the digital marketplace in Kenya, to register and account for VAT on supplies made in Kenya.
- 3.7 This Legal Notice revokes the Legal Notice No. 190 of 2020 in order to align the regulations with the changing business models and to correct numbering errors in the Legal Notice No. 190 of 2020.

4.0 Public Consultation Outcome

- 4.1 In developing this Legal Notice, public participation was undertaken in compliance with the provisions of Section 5 of the Statutory Instruments Act, 2013 and Article 201 (a) of the Constitution.
- 4.2 The National Treasury and Economic Planning, through the Kenya Revenue Authority, invited stakeholders and members of the public to submit their comments on the draft Legal Notice on 24th January

2023, through a Public Notice. The stakeholders were required to submit their comments by 7th February 2023.

4.3 The Kenya Revenue Authority invited stakeholders and industry players for a meeting on 8th February 2023 to discuss comments received. This stakeholder engagement was conducted online on **8th February, 2023** to allow the stakeholders provide context on their submissions. This is in line with the provisions of the Constitution on public participation.

4.4 Stakeholders' submissions were reviewed and their feedback incorporated, where appropriate, to improve the regulations.

5.0 Impact

5.1 The Legal Notice provides for collection of VAT on supplies made through a digital marketplace. It is expected that this regulation will lead to compliance by suppliers in the digital marketplace and thus enhance equity in administration of taxes.

6.0 Monitoring and review

The Legal Notice will be implemented by the Kenya Revenue Authority and will be effective from the date of publication in the Gazette.

7.0 Request to the National Assembly

The National Assembly is invited to:

- a) Note the contents of this memorandum.
- b) Adopt Legal Notice No. 29, Kenya Gazette Supplement No. 33 of 2023.

8.0 Contact

Cabinet Secretary
The National Treasury and Economic Planning
P. O. Box 30007-00100
NAIROBI

**EXPLANATORY MEMORANDUM TO THE THE EXCISE DUTY
(EXCISABLE GOODS MANAGEMENT SYSTEM) (AMENDMENT)
REGULATIONS, 2023**

**LEGAL NOTICE NO. 30, KENYA GAZETTE SUPPLEMENT NO. 33
OF 2023, KENYA GAZETTE VOL. CXXV – NO. 86 OF 14TH APRIL,
2023**

PART I

Name of Statutory Instrument	: Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023.
Name of Parent Act	: Excise Duty Act, 2015.
Enacted Pursuant to	: Section 45 of the Excise Duty Act, 2015.
Name of the Ministry/Department	: The National Treasury and Economic Planning.
Gazetted on	: 21 st March, 2023, and Published on 14 th April, 2023.

PART II

1.0 Purpose of the Statutory Instrument

- 1.1 The objective of this Memorandum is to submit Legal Notice No. 30 Kenya Gazette Supplement No. 33 of 2023, and published in the Kenya Gazette Vol. CXXV – No. 86 of 14th April, 2023, for tabling in the National Assembly in accordance with the provisions of Section 11 of the Statutory Instruments Act, 2013.
- 1.2 The Legal Notice implements the Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023, in line with the requirements of the Excise Duty Act 2015.

2.0 Legislative Context

- 2.1 The Legal Notice on the Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023, is made pursuant to Section 45 of the Excise Duty Act 2015. The Section empowers the Cabinet Secretary for the National Treasury and Economic Planning to make regulations for the better carrying out of the provisions of the Act,

particularly the prescription of any fee or charge to be levied on excisable goods imported into, or manufactured in, Kenya.

- 2.2 This Legal Notice amends specific provisions of the Excise Duty (Excisable Goods Management System) Regulations, 2017, referred to herein as the principal Regulations.

3.0 Policy Background

- 3.1 The primary objective of the Legal Notice is to amend various provisions of the principal Regulations. This will improve the administration of excise duty and improve compliance. This is also meant to raise revenue to finance the cost of excise stamps.
- 3.2 The principal Regulations provide a legal framework for implementing the Excise Duty Act 2015 legislation regarding the affixation of excise stamps and the imposition of excise stamp fees on excisable goods imported into or manufactured in Kenya.
- 3.3 The Schedule to the principal Regulations provides the excise stamp fees to be charged on excise stamps for different types of excisable goods. The goods included in the Schedule include tobacco products, wines, spirits, beer, mineral and aerated water, fruit juices, flavoured water, cosmetics, and beauty products.
- 3.4 The excise stamp fees are paid to the Commissioner by manufacturers and importers of excisable goods based on the number of stamps issued to them.
- 3.5 Product marking using stamps is important because they :— deter counterfeiting; facilitate tracking of excisable goods along the supply chain; enable accounting for the production of excisable goods manufactured or imported; and enable any individual to authenticate/validate the genuineness of excisable goods.
- 3.6 The prices of excise stamps have remained constant since 2017. This is despite the increasing inflation as well as the depreciation of the Kenyan shilling against major currencies such as the Euro, over time. As a result, the money collected from the sale of stamps to manufacturers and importers has not been adequate to finance the system for three main reasons:
-

- 3.7 **First, the shift in product volume mix in favour of low-priced products.** The 2017 pricing model had been designed so that high-price products, mainly alcoholic products, cross-subsidize low-priced non-alcoholic products with the anticipation that the volumes sold for spirits, tobacco and wines (high-priced products) would compensate for the gap arising from the deficit of non-alcoholic volumes (low-priced products). However, since the roll-out of stamps for low-priced products in November 2019, the volumes for low-priced products significantly exceeded those of high-priced products. The non-alcoholic beverage stamps account for about 70% of the total volumes of stamps, while spirits, tobacco and wines account for 18% of the stamps. Beer volumes are about 12% of the total stamps.
- 3.8 **Second, the Covid-19 containment measures** in 2020 disproportionately affected sales of high-priced excisable products due to the closure of bars and restaurants, whereas the sales of low-priced products were largely unaffected by the pandemic. As a result, the volumes of the high-priced products could not compensate for the deficit from the low-priced products and hence widening the EGMS funding deficit.
- 3.9 **Third, the depreciation of Kenya shillings against the Euro.** When the EGMS was rolled out, the cost of the stamps to KRA was about Ksh 1.5 per stamp. The cost of acquisition of the stamps rose from about Ksh 1.5 to about Ksh 1.8 per stamp as of June, 2022. This was due to the depreciation of the Kenyan shillings against the Euro, which as of June 2022, was about Ksh 136 from Kshs 100.55 in 2015, against the Euro. As a result of all these factors, the government has accumulated a deficit of about Kshs 4.5 billion.
- 3.10 Thus, the review of the pricing model of the excise stamps is necessary to enable full recovery of the cost of the system, settlement of accumulated debts and ensure the system's sustainability in the long term.
- 3.11 Further, the Legal Notice aligns various provisions of the principal regulations with provisions of the Excise Duty Act 2015, which appear to be inconsistent.

4.0 Public Consultation Outcome

- 4.1 In developing this Legal Notice, public participation was undertaken in compliance with the provisions of Section 5 of the Statutory Instruments Act, 2013 and Article 201 (a) of the Constitution.
- 4.2 Through the Kenya Revenue Authority, the National Treasury and Economic Planning invited stakeholders and members of public to submit their comments on the draft Legal Notice on **17th January, 2023** through a Public Notice.
- 4.3 The Authority received comments only from PwC. Further, stakeholders were invited for a physical meeting at the Times Tower, 5th Floor Auditorium on **1st February, 2023** to ventilate on their submissions. This is in line with the provisions of the Constitution on public participation. Member organizations operating in the Excisable goods sector, such as the Institute of Certified Public Accountants of Kenya (ICPAK), the Kenya Association of Manufacturers (KAM) and the Water Bottlers Association (WABK), and the Alcoholic Beverages Association of Kenya (ABAK) attended the engagement.
- 4.4 Stakeholders' submissions were reviewed, and their feedback were incorporated into the draft Legal Notice, where appropriate, to improve the regulations. For instance, the proposed amendment to Regulation 28(1) was revised to incorporate exported goods in the list of goods exempt from affixation of stamps.

5.0 Impact

- 5.1 The Legal Notice revises the fees to be charged on the excise stamps. It is expected that sufficient revenues will be generated to meet the cost of excise stamps.
 - 5.2 It is expected that the additional revenue collected will be used to offset the cost of producing the excise stamps, the accumulated debts as well as the maintenance of the system.
 - 5.3 Section 9 of the Statutory Instrument Act 2013 provides that a regulatory impact statement need not be prepared for a proposed statutory instrument if the proposed legislation only provides for an amendment of a fee, charge, or tax consistent with announced government policy. Since the Regulations are in line with the
-

provisions of the Excise Duty Act, 2015, a regulatory impact statement has not been prepared.

6.0 Monitoring and review

The Legal Notice will be implemented by the Kenya Revenue Authority and will be operational from the date of publication in the Kenya Gazette.

7.0 Request to the National Assembly

The National Assembly is invited to:

- a) Note the contents of this Memorandum.
- b) Adopt Legal Notice No. 30, Gazette Supplement No. 33 of 2023.

8.0 Contact

Cabinet Secretary

The National Treasury and Economic Planning

P. O. Box 30007-00100

NAIROBI



THE NATIONAL ASSEMBLY
17th APRIL 2023

Hon. Owen Baya
Deputy Leader of Majority Party
Mado

THE KENYA GAZETTE

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GAZETTE NOTICES		CONTENTS	GAZETTE NOTICES—(Contd.)	
	PAGE			
The State Corporations Act—Appointments.....	1712, 1713	Disposal of Uncollected Goods	1756–1757	
The Community Service Orders Act—Appointment	1712	Change of Names.....	1757–1759	
The Auctioneers Act—Appointment	1712	SUPPLEMENT Nos. 33 and 34		
The Criminal Procedure Code—Fingerprint Experts	1713	<i>Legislative Supplements, 2023</i>		
County Government Notices	1713–1715, 1743–1750	LEGAL NOTICE NO.		PAGE
The Senate—Calendar	1715	29—The Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023		111
The Narcotics and Psychotropic Substances (Control) Act—Appointment of Seizures Registrar	1715	30—The Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023		116
The Land Registration Act—Issue of Provisional Certificates, etc	1715–1733	31—The Communication Workers Union of Kenya (Deduction of Agency Fee) (No. 1) Order, 2023....		119
The National Treasury and Planning—Statement of Actual Revenues and Net Exchequer Issues as at 31st March, 2023	1734–1737	32—The Communication Workers Union of Kenya (Deduction of Agency Fee) (No. 2) Order, 2023....		120
Customs and Border Control Department—Goods to be Sold at Customs Warehouse, Lodwar, KRA Offices	1737	33—The Communication Workers Union of Kenya (Deduction of Agency Fee) (No. 3) Order, 2023....		120
The Physical Planners—Registered Physical Planners.....	1737–1742	34—The Dock Workers Union (Deduction of Agency Fee) Order, 2023		121
The Unclaimed Financial Assets Act—No Objection	1742–1743	35—The Kenya National Union of Service Employees (Deduction of Agency Fee) Order, 2023		122
The National Government Constituencies Development Fund Act—Appointment	1750	36—The Kenya Union of Water and Sewerage Employees (Deduction of Agency Fee) Order, 2023		123
The Political Parties Act—Change of Political Party Officials.....	1750–1751	SUPPLEMENT No. 37		
The Environmental Management and Co-ordination Act— Environmental Impact Assessment Study Reports	1751–1756	<i>National Assembly Bills, 2023</i>		
The Insolvency Act—Creditors' Voluntary Winding up	1756			PAGE
The Records Disposal (Court) Rules—Intended Destruction of Court Records	1756	The County Governments (Revenue Raising Process) Bill, 2023		147



**KENYA REVENUE
AUTHORITY**

ISO 9001:2015 CERTIFIED

Office of the Commissioner General

KRA/5/1002/26(8533)

16th February 2023

Prof. Njuguna Ndung'u, CBS
The Cabinet Secretary
National Treasury &
Economic Planning
Treasury Building
Nairobi

Dear *CS,*

**VAT (ELECTRONIC, INTERNET AND DIGITAL MARKETPLACE SUPPLY)
REGULATIONS, 2023**

Reference is made to the above subject matter.

As previously advised, the Authority conducts regular reviews of the regulations it administers in accordance with the Statutory Instruments Act, 2013. In light of this, it has drafted the VAT (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023 which will revoke the VAT (Digital Market Place) Regulations, 2020.

In compliance with the same Act, the Authority invited interested members of the public and stakeholders to submit their inputs and comments for consideration through a public notice issued on 24th January 2023. In addition, a physical engagement was held with the key stakeholders on Wednesday, 8th February 2023. The stakeholders' comments were analysed and considered in the preparation of the final draft of the Regulations.

The purpose of this letter is to forward the:

- i. updated draft Legal Notice and the explanatory memorandum on the same;
- ii. copy of the public notice calling for stakeholders' engagement;
- iii. comments received from stakeholders on the draft Regulations and a report on the stakeholder engagement.

These are for your consideration and publication subject to your concurrence.

Yours sincerely,

DR. MOHAMED OMAR
Ag. COMMISSIONER GENERAL

Copy to: Dr. Chris Kiptoo, CBS
Principal Secretary
National Treasury
Nairobi

Tuliye Ushuru, Tujitegemee!

LEGAL NOTICE NO. _____ OF 2023

THE VALUE ADDED TAX, 2013 (No. 35 of 2013)	
IN EXERCISE of the powers conferred by section 5(8) as read with section 67 of the Value Added Tax Act, 2013, the Cabinet Secretary for the National Treasury and Economic Planning makes the following Regulations –	
THE VALUE ADDED TAX (ELECTRONIC, INTERNET AND DIGITAL MARKETPLACE SUPPLY) REGULATIONS, 2023	
Citation	1. These regulations may be cited as the Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023.
Interpretation	2. In these Regulations, unless the context otherwise requires— "Act" means the Value Added Tax Act of 2013; "digital marketplace" has the meaning assigned to it in section 5(9); "electronic, internet and digital marketplace supply" means the supply made over the internet, an electronic network, or any digital marketplace. "export country" means any country other than Kenya and includes any place which is not situated in Kenya; "intermediary" means any person who facilitates the supply of services through the digital marketplace and is responsible for issuing invoices or collecting payments for the supply; "Personal Identification Number" or "PIN" has the meaning assigned to it in section 2 of the Tax Procedures Act, 2015; "recipient", in relation to any supply of services, means the person to whom the supply is made; "tax" has the meaning assigned to it under section 2 (1); and

	"tax period" means a calendar month.
Scope of taxable supply over the internet, an electronic network or through any digital marketplace	<p>3. Taxable supplies made over the internet, an electronic network or through any digital marketplace include—</p> <ul style="list-style-type: none"> (a) downloadable digital content including downloadable mobile applications, e-books and films; (b) subscription-based media including news, magazines and journals; (c) over-the-top services including streaming television shows, films, music, podcasts and any form of digital content; (d) software programmes including software, drivers, website filters and firewalls; (e) electronic data management including website hosting, online data warehousing, file-sharing and cloud storage services; (f) music, and games; (g) search engine and automated helpdesk services including customisable search engine services; (h) ticketing services for events, theatres, restaurants and similar services; (i) online education programmes such as distance teaching programmes through pre-recorded media, e-learning, education webcasts, webinars, online courses and training but excluding education services exempted under the First Schedule to the Act; (j) digital content for listening, viewing or playing on any audio, visual or digital media; (k) services that link the supplier to the recipient including transport hailing services or platforms; (l) electronic services under section 8 (3); and (m) sale of, licensing of, or any other form of monetizing data generated from the users' activities (n) facilitation of online payments, exchange or transfer of digital assets excluding services exempt in the Act. (o) any other service provided through an electronic, internet and digital marketplace that is not exempt under the Act.
Application of tax	4. Tax shall apply to taxable supplies specified under regulation 3 when supplied in Kenya.
Simplified tax registration framework	5. (1) A person supplying the taxable services specified in regulation 3 shall register for tax in Kenya within 30 days from the date of making taxable

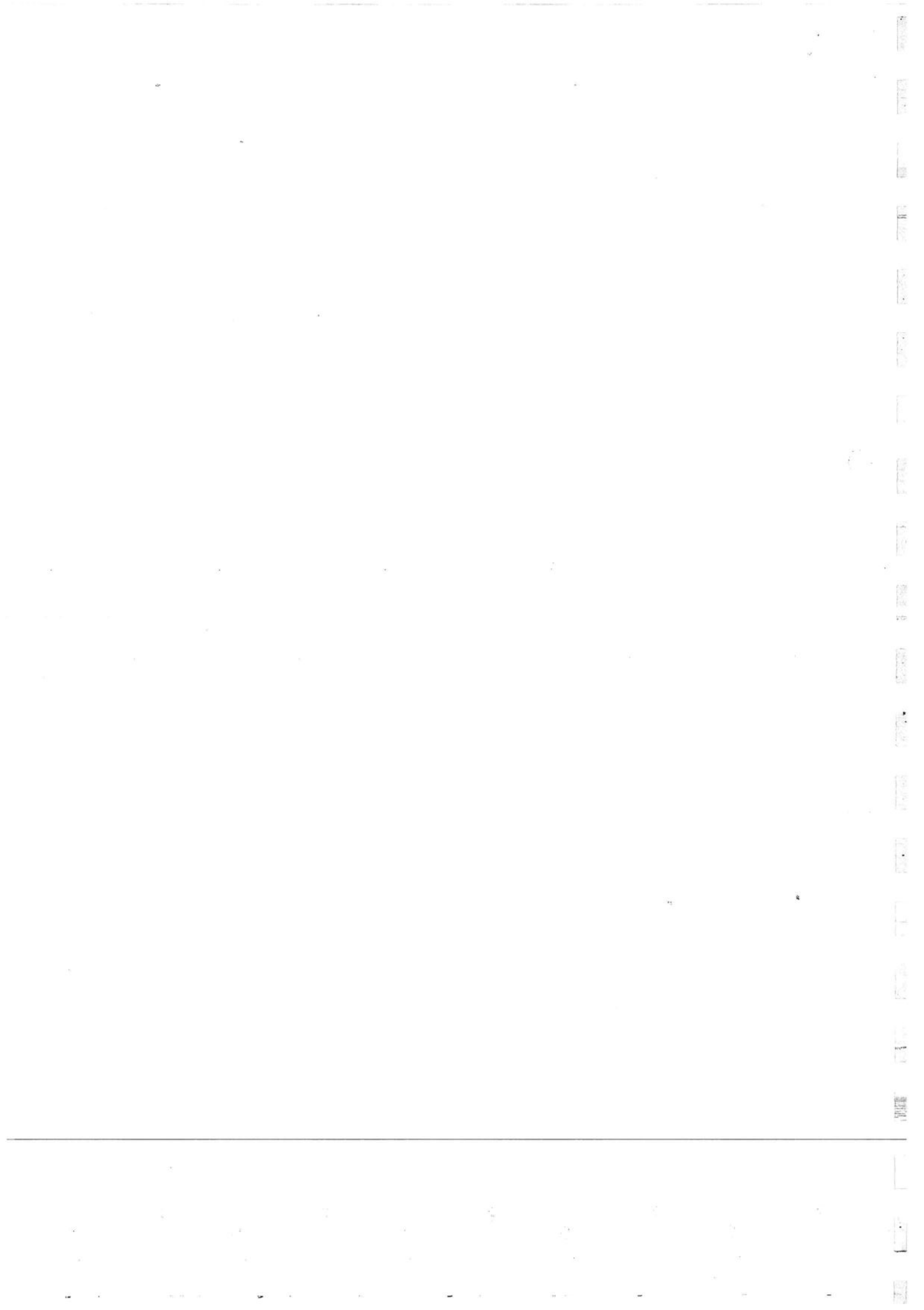
	<p>supplies in accordance with section 34 of the Act through a simplified tax registration framework in accordance with regulation 7 if —</p> <ul style="list-style-type: none"> (a) the supplies are made by a person from an export country to a recipient in Kenya; and (b) the person is conducting business in Kenya in accordance with section 8 (2) and any of the following circumstances apply — <ul style="list-style-type: none"> (i) the recipient of the supply is in Kenya; (ii) the payment for the services is made to the supplier in the export country from a bank registered under the Banking Act; or (iii) the payment for services that is made to the supplier in the export country is authorized in Kenya <p>(2) A person registered under paragraph (1) shall declare and pay tax on the supplies made over the internet or an electronic network or through any digital marketplace at the rate specified in section 5 (2) (b) of the Act.</p>
Appointment of Tax representatives	<p>6. Despite regulation 5 (1), a person from an export country making a supply to a recipient in Kenya who elects not to register in accordance with regulation 7 shall appoint a tax representative in accordance with section 15A of the Tax Procedures Act, 2015.</p>
Registration	<p>7. (1) An application for registration under paragraph 5(1) shall be made through an online registration form prescribed by the Commissioner.</p> <p>(2) The information required for registration under paragraph (1) shall include—</p> <ul style="list-style-type: none"> (a) the name of the business including the business's trading name; (b) the name of the contact person responsible for tax matters; (c) the postal address or registered address of the business and its contact person; (d) the telephone number of the contact person; (e) the email address of the contact person; (f) the websites or uniform resource locators (URLs) of the supplier through which business is conducted; (g) the national tax identification number issued to the supplier in the supplier's jurisdiction; (h) the certificate of incorporation or registration issued to the business in the country where the business is incorporated; and

	<p>(i) any other information that the Commissioner may require.</p> <p>(3) An applicant under paragraph (1) may be required to submit to the Commissioner additional documents that may be necessary to substantiate the information provided in the application.</p> <p>(4) Upon registration under this regulation, the Commissioner shall issue the applicant with a PIN for the purpose of filing returns and the payment of tax.</p> <p>(5) A person registered under this regulation who ceases to make taxable supplies on a digital marketplace shall apply to the Commissioner for deregistration in accordance with section 36 of the Act.</p>
Place of supply	<p>8. (1) A supply made over the internet, an electronic network, or through any digital marketplace shall be deemed to have been made in Kenya where the recipient of the supply is in Kenya.</p> <p>(2) In determining whether the recipient of a supply is in Kenya, the Commissioner shall consider—</p> <p>(a) whether the payment proxy including credit card or debit card information and bank account details of the recipient of the digital supplies is in Kenya; or</p> <p>(b) whether the residence proxy including the billing or home address or access proxy including internet address, mobile country code of the SIM card of the recipient is in Kenya.</p>
Time of supply	<p>9. The time of supply made over the internet or an electronic network or through any digital marketplace shall be the earlier of—</p> <p>(a) the date on which the payment for the supply is received in whole or in part; or</p> <p>(b) the date on which the invoice or receipt for the supply is issued.</p>
Exemption from issuing an electronic tax invoice	<p>10. A supplier who makes supplies over the internet or an electronic network or through any digital marketplace from an export country who is registered under these Regulations shall not be required to issue an electronic tax invoice:</p> <p>Provided that the supplier shall issue an invoice or receipt showing the value of the supply, the tax deducted thereon and the PIN of the customer. The invoice or receipt shall be deemed to be a tax invoice.</p>

Claim for input tax	11. A deduction of input tax by a supplier shall not be allowed for transactions for a supply made over the internet, an electronic network, or through any digital marketplace.
Accounting for and payment of tax	12. (1) The tax for a supply made over the internet or an electronic network or through any digital marketplace from an export country to a recipient in Kenya shall be paid by the supplier or the tax representative of the supplier (2) A registered person shall submit a return in the prescribed form and remit the tax due in each tax period to the Commissioner on or before the twentieth day of the month following the end of the tax period. (3) Where an intermediary makes a supply over the internet or an electronic network or through any digital marketplace on behalf of another person, the intermediary shall be required to charge and account for the tax on the supply whether such other person is registered for tax or not.
Amendment of returns	13. (1) Any amendments to a return submitted in accordance with these Regulations shall be made in accordance with section 31 of the Tax Procedures Act, 2015. (2) Where an amendment under paragraph (1) results in the overpayment of tax, the amount overpaid shall be retained as a credit in favour of the person who overpaid and offset against the tax payable in the subsequent tax period.
Penalties	14. A person who fails to comply with the provisions of these Regulations commits an offence and shall be liable to the penalties prescribed under the Act or the Tax Procedures Act, 2015.
Revocation L.N. No. 190 of 2020	15. The Value Added Tax (Digital Marketplace Supply) Regulations, 2020 are revoked.

Made on the _____, 2023.

NJUGUNA NDUNG'U,
*Cabinet Secretary for
the National Treasury and Economic Planning.*





EXPLANATORY MEMORANDUM TO THE VALUE ADDED TAX
(ELECTRONIC, INTERNET AND DIGITAL MARKETPLACE
SUPPLY) REGULATIONS 2023

LEGAL NOTICE NO. xx of 2023

PART I

Name of Statutory Instrument	: The Value Added Tax (Electronic, Internet & Digital Marketplace Supply) Regulations 2023.
Name of Parent Act	: Value Added Tax Act 2013.
Enacted Pursuant to	: Section 5(8) as read with section 67 of the Value Added Tax Act, 2013.
Name of the Ministry/Department	: The National Treasury and Economic Planning.
Gazetted on	: xx February, 2023.

PART II

1.0 Purpose of the Statutory Instrument

- 1.1 The objective of this Memorandum is to submit the Legal Notice No. xxxx of 2023 for tabling in the National Assembly in accordance with the provisions of Section 11 of the Statutory Instruments Act, 2013.
- 1.2 The Legal Notice introduces the Value Added Tax (Electronic, Internet & Digital Marketplace Supply) Regulations 2023 which revokes the Value added Tax (Digital Marketplace Supply) Regulations, 2020.

2.0 Legislative Context

- 2.1 The Legal Notice on the Value Added Tax (Electronic, Internet & Digital Marketplace Supply) Regulations 2023 is made pursuant to Section 5(8) as read with section 67 of the Value Added Tax Act, 2013. The Section empowers the Cabinet Secretary for the National Treasury and Economic Planning to make regulations to provide mechanism for



collection of Value added Tax on supplies made through a digital marketplace.

3.0 Policy Background

- 3.1 This Legal Notice revokes the Legal Notice No. 190 of 2020 on the Value added Tax (Digital Marketplace Supply) Regulations, 2020 to correct numbering errors in Legal Notice No. 190.
- 3.2 The primary objective of this Legal Notice therefore is to provide the legal framework to enable the government implement the tax measures necessary for financing its economic development agenda.
- 3.3 Technology is quickly changing the way people conduct business, a departure from the way of doing things a few years ago.
- 3.4 This increase in the use of digital space has opened up the Kenyan market to the outside world allowing non-residents to supply digital services to Kenyan consumers without the necessity of having physical presence in the country. The import of this is that, such supplies are not chargeable to Value Added Tax (VAT).
- 3.5 This situation has disadvantaged local suppliers who offer similar digital services since they charge and account for VAT on such supplies.
- 3.6 To allow equity and fairness, the VAT Act was amended to require non-resident suppliers, who account for a large percentage of the digital marketplace in Kenya, to register and account for VAT on supplies made in Kenya.
- 3.7 This Legal Notice revokes the Legal Notice No. 190 of 2020 in order to align the regulations with the changing business models and to correct numbering errors in the Legal Notice No. 190 of 2020.

4.0 Public Consultation Outcome

- 4.1 In developing this Legal Notice, public participation was undertaken in compliance with the provisions of Section 5 of the Statutory Instruments Act, 2013 and Article 201 (a) of the Constitution.



- 4.2 The National Treasury and Economic Planning, through the Kenya Revenue Authority, invited stakeholders and members of the public to submit their comments on the draft Legal Notice on 24th January 2023, through a Public Notice. The stakeholders were required to submit their comments by 7th February 2023.
- 4.3 The Kenya Revenue Authority invited stakeholders and industry players for a meeting on 8th February 2023 to discuss comments received. This stakeholder engagement was conducted online on *8th February, 2023* to allow the stakeholders provide context on their submissions. This is in line with the provisions of the Constitution on public participation.
- 4.4 Stakeholders' submissions were reviewed and their feedback incorporated, where appropriate, to improve the regulations.
- 5.0 Impact**
- 5.1 The Legal Notice provides for collection of VAT on supplies made through a digital marketplace. It is expected that this regulation will lead to compliance by suppliers in the digital marketplace and thus enhance equity in administration of taxes.
- 6.0 Monitoring and review**
- The Legal Notice will be implemented by the Kenya Revenue Authority and will be effective from the date of publication in the Gazette.
- 7.0 Request to the National Assembly**
- The National Assembly is invited to:
- a) Note the contents of this memorandum.
 - b) Adopt Legal Notice No. xx of 2023.
- 8.0 Contact**
- Cabinet Secretary
The National Treasury and Economic Planning
P. O. Box 30007-00100
NAIROBI



**PUBLIC PARTICIPATION REPORT ON VALUE ADDED TAX
(ELECTRONIC, INTERNET AND DIGITAL MARKETPLACE SUPPLY)
REGULATIONS, 2023**

1.0 Preamble

In compliance with the Statutory Instruments Act, the Kenya Revenue Authority (KRA) Commissioner General (CG) on behalf of the Cabinet Secretary, National Treasury and Economic Planning, proposed to revoke the Value Added Tax (Digital Marketplace Supply) 2020 and replace with the Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023.

Conforming with the Statutory Instruments Act, and on behalf of the Cabinet Secretary, National Treasury and Economic Planning, the CG send out an invitation on 20th January 2023 for comments and inputs from stakeholders for consideration in the finalising of the above Regulations. In this regard, Kenya Revenue Authority hosted a virtual public participation on **Tuesday 8th February 2023 at 09:00am.**

The forum was attended by 270 participants both internal and external stakeholders. The external stakeholders were from: Pricewaterhouse Coopers (PwC), Ernst & Young, Cellulant Group and KPMG.

2.0 Opening Remarks

The meeting chair, Ms Josephine Mugure, Chief Manager Corporate Policy Unit, KRA, thanked the stakeholders for attending the meeting. She stated that the Authority had not received written submissions from stakeholders, and the public participation offered a platform for oral submissions.

Ms Priya Shah, Tax Advisor at PwC representing the Industry, gave her opening remarks where she appreciated KRA for the public participation and advised that the Regulation should be made clear and understandable to facilitate compliance.

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3.0 Stakeholder's Submissions

No.	Organisation	Submission
1.	Pricewaterhouse Coopers (PwC Kenya)	<p>PwC submission proposed the following amendments:</p> <p>1. In Regulation 2</p> <p>The definition for "digital assets" will need to be reviewed to enable taxpayers to distinguish what constitutes digital assets and what does not. This will aid taxpayers in planning appropriately on how to account for tax should their products be construed to mean digital assets as defined by these Regulations.</p> <p>Furthermore, she noted that it is important to tighten the definition of the digital marketplace. As it is currently, one may allude to a meaning not intended by the Regulation.</p> <p>Members were told that for the Regulations geared towards non-resident suppliers, it will be important to define electronic tax invoicing since electronic tax invoicing is very different worldwide. Thus, it is crucial to clarify and define this term from a Kenyan perspective.</p> <p>2. Regulation 3</p> <p>Regulation 3 (1) should be clarified to state "" "electronic services under section 8 (3) of the Act"" to provide clarity that section 8 (3) refers to the VAT Act. Members were told that leaving it as it is may lead to misinterpreting the legislation.</p> <p>3. Regulation 5 (b)</p> <p>Regulation (5) (b) should be clarified to state that "the person is conducting business in Kenya in accordance with section 8 (2) of the Act". Tying the Regulation to the Act, means that this Regulation is referring to the VAT Act. It</p>



No.	Organisation	Submission
		<p>was stated that this allows for easy application of the law by the taxpayers and other stakeholders without contingencies.</p> <p>Amendment of Regulation 5 (b) (2) to provide clarity on the legislation by specifying the legislation being referred to by the Regulation making it easier for taxpayers and other stakeholders when applying the law. Members were told that this will avoid confusion and false deductions that may be made in the future.</p> <p>4. Regulation 10</p> <p>Clarification in stating the Personal Identification Number ("PIN") on the tax invoice for customers who provide the PIN. This Regulation should clarify that where the recipient provides a PIN, the supplier must state the customer's PIN on the invoice and state the value of the supply and the tax deducted thereon." Clarifying the instances under which the supplier is required to state the PIN on the invoice is necessary to ensure that the recipient can claim input tax despite there being no electronic tax invoice from the transaction.</p> <p>5. Regulation 15</p> <p>For the Transitional provisions, the Regulation should be reworded to state that:</p> <p>""A supplier on a digital marketplace from an export country who is required to register under these Regulations shall apply to the Commissioner for registration within six months from the date of publication of these Regulations or within 30 days from the date of making taxable supplies by the supplier, whichever is later""." Further it was stated that when the Regulations</p>

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No.	Organisation	Submission
		<p>have been approved and effective, they should state the date from which they are effective to avoid confusion.</p> <p>In addition, the Regulations should also consider new businesses still in the process of setting up. For such suppliers, it would be difficult to determine at what point they should register under these regulations. By adding "the 30 days from the date of making taxable supplies by the supplier", it allows newly businesses time to comply with the Regulations in line with section 34 of the Act.</p>
2.	Ernest & Young (EY Kenya)	<p>The Regulation defines intermediaries as any person who facilitates the supply of services through the digital marketplace and is responsible for issuing invoices or collecting payments.</p> <p>EY proposed the definition for intermediaries to be relooked at since some people only facilitate the supply of services through the digital marketplace and are not responsible for issuing invoices or collecting payment, which is what most digital traders do.</p>
3.	Cellulant Group	<p>Cellulant highlighted that Legislation 3 (n), which states "facilitation of online payment or exchange of digital assets excluding services exempt in the Act" is a repetition of all services provided for in 3 (a) to 3 (o).</p>
4.	KPMG Kenya	<p>KPMG questioned why Section 17 of the VAT act contradicts Legislation 10 in the amendment Act. From 1st July 2022 VAT is applied to B2B and B2C transactions in the digital market. The companies in Kenya pay input VAT tax but are allowed to claim input VAT if only they present an original tax invoice which opposes Section 10 states that</p>



No.	Organisation	Submission
		suppliers under the Regulation shall not be required to issue electronic tax invoices.

4.0 KRA Response

KRA clarified that it is difficult to give dates for when a Regulation is published because there are numerous stages before it is passed, which the Authority does not have control over. Further, it stated that it has taken note of the definition issues and will seek to ensure the legislation is clear.

KRA informed the members that Legislation 3 (n) has been repeated to cover all the loopholes of services not mentioned but will explore further the idea of separating the facilitation service from payments and collections. KRA also committed to reviewing Regulation 10 to match Section 17 of the VAT Act.

5.0 Conclusion

The stakeholders appreciated the KRA team for the opportunity to give their views on the Draft Regulations and were positive that their submissions would be taken into consideration in the final Regulations. They looked forward to further engagements.

The Chair thanked the stakeholders for their participation and informed them that the next step will be to review and analyse the submitted submissions, then incorporate them accordingly and forward them to the National Treasury. She further stated that there will not be another public participation engagement after the publication of the final Regulations.

Sign off

Prepared by: Mr. Tobias Maurice

Sign.......... Date 09/02/2025

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Reviewed by: Dr. Benard Kirui

Sign.....*Bkirui*..... Date.....*09/02/2023*.....

Approved by: Ms. Josephine Mugure

Sign.....*JMugure*..... Date.....*09/02/2023*.....

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STAKEHOLDER COMMENTS ON VAT(DMS) REGULATIONS 2023

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
1.	PWC	Regulation 2	Definition of the term "digital assets" The Regulation should provide the definition of "digital assets" to enable taxpayers distinguish what constitutes digital assets and what does not.	An addition to Regulation 2 to include the definition of "digital assets"	This will aid taxpayers to plan appropriately on how to account for tax should their products be construed to mean digital assets as defined by these Regulations. Failure to define this term will lead to confusion and uncertainty.	The definition is provided for in the Income Tax Act, thus reference can be made from there when there is need for clarification.
			Definition of the term "digital marketplace" should be tightened to include "the Act" In our view, it is important to tighten the definition of digital marketplace to include "...of the Act" to make it more clear on the legislation to which the section refers to. As it is currently, one may allude to the meaning not intended by the Regulation.	Amendment of Regulation 2 as follows- "digital marketplace has the meaning assigned to it in section 5(9) of the Act"	This will make it more clear on the legislation to which the section refers to.	The definition sufficient the way it is provided since the regulation are made under the VAT Act.



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			<p>Tightening of the definition of "tax" to refer to the Act. It is important for the Regulation to provide clarity on the legislation to which section (2) (1) is being referred to.</p>	<p>Amendment of Regulation 2 as follows- "tax has the meaning assigned to it under section 2 (1) of the Act"</p>	<p>This will provide clarity on the legislation to which section (2) (1) is being referred to and avoid confusion by the taxpayers and other stakeholders on the legislation being referred to.</p>	<p>The definition sufficient the way it is provided since the regulation are made under the VAT Act.</p>
			<p>Leaving the Regulation as 'open' as it is, may lead to confusion by the taxpayers and other stakeholders on the legislation being referred to.</p>			<p>Proposal effected. Clause 10 was reviewed to incorporate the comment.</p>
			<p>As these Regulations are geared towards non-resident suppliers, it is very important to define electronic tax invoicing. The reason for this is that electronic tax invoicing is very different all over the world. As such, it is important to clarify and define this term from a Kenyan perspective.</p>	<p>"Electronic tax invoice refers to invoicing requirements as detailed under the Value Added Tax (Electronic Tax Invoices) Regulations, 2020.</p>		
	Regulation 3	<p>Regulation 3 (1) should be clarified to state "electronic services under section 8 (3) of the Act"</p>	<p>Amendment of Regulation 3 (1) as follows: "...electronic services under section 8 (3) of the Act."</p>	<p>Leaving this as it is, may lead to the taxpayers and other stakeholders involved into misinterpreting the legislation to which</p>	<p>The regulation as provided is sufficient since the regulation are made under the VAT Act and is</p>	



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			The Regulation should provide clarity that section 8 (3) refers to the VAT act. Leaving this as it is, may lead to the taxpayers and other stakeholders involved into misinterpreting the legislation to which section (8) (3) is referred.	section (8) (3) is referred.	clearly stated in the preamble.
Regulation 5(b)	Regulation (5) (b) should be clarified to state "the person is conducting business in Kenya in accordance with section 8 (2) of the Act and..." By tightening the Regulation to the Act, means that this regulation is referring to the VAT Act.	Amendment of Regulation (5) (b) as follows: "(b) the person is conducting business in Kenya in accordance with section 8 (2) of the Act..."	This allows for ease application of the law by the taxpayers and other stakeholders without contingencies.	The regulation as provided is sufficient since the regulation are made under the VAT Act and is clearly stated in the preamble.	
Regulation 5 (b) (2)	Amendment of the Regulation to provide clarity on the legislation. Specifying the legislation being referred to by the Regulation makes it easier for taxpayers and other stakeholders when applying the law.	Amendment of the Regulation 5 (b) (2) as follows: "A person registered under paragraph (1) shall declare and pay tax on the supplies made over the internet or an electronic	This will avoid confusion and false deductions that may be made in the future.	The regulation as provided is sufficient since the regulation are made under the VAT Act and is clearly stated in the preamble.	



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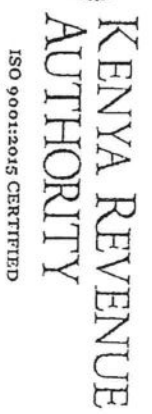
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			<i>network or through any digital marketplace at the rate specified in section 5 (2) (b) of the Act."</i>		
Regulation 10	Clarification in stating the Personal Identification Number ("PIN") on the tax invoice for customers who provide the PIN. This Regulation should clarify that where the recipient provides a PIN, the supplier is required to state the customer's PIN on the invoice and state the value of the supply and the tax deducted thereon."	This Regulation should clarify that <i>where the recipient provides a PIN, the supplier is required to state the customer's PIN on the invoice and state the value of the supply and the tax deducted thereon."</i>	Clarifying the instances under which the supplier is required to state the PIN on the invoice is necessary to ensure that the recipient is then able to claim despite there being no electronic tax invoice from the transaction.	Proposal effected. Clause 10 was reviewed to incorporate the comment.	
Regulation 15	Registration date for a supplier on a digital marketplace from an export country. Whereas this Regulation is aimed for current suppliers on a digital marketplace, it is likely that some suppliers from an export country may delve into the digital marketplace after the publishing of this Regulations. In addition, these Regulations should also take into account new businesses that are still in the process of setting up. For such	Transitional provisions - this regulation should be reworded to state that- "A supplier on a digital marketplace from an export country who is required to register under these Regulations shall apply to the Commissioner for registration within six months from the date of publication of these	By adding, "the 30 days from the date of making taxable supplies by the supplier", it allows newly incorporated businesses time to comply with the Regulations in line with section 34 of the Act.	Proposal effected. Regulation 5(1) was reviewed to incorporate the comment.	



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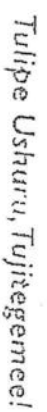
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			suppliers, it would be difficult to determine at what point they should register under these regulations.		
			<i>Regulations or within 30 days from the date of making taxable supplies by the supplier, whichever is later.</i>		
			Further when the Regulations have been approved and effective, they should state the date on which they are effective from to avoid confusion.		

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INTERNAL

Abdijabar Sheikh	abdijabar.sheikh@kra.go.ke	No	N/A	VoIP
Philip Korir	philip.korir@jtl.co.ke	No	N/A	VoIP
PURITY MURIUKI	purity.muriuki@kra.go.ke	No	N/A	VoIP
Anastacia Musembi	Anastacia.Musembi@Kra.go.ke	No	N/A	VoIP
Robert Maina	robert.maina@ke.ey.com	No	N/A	VoIP
Elizabeth Mwema	elizabeth.mwema@kra.go.ke	No	N/A	VoIP
Elsy Kathurima	Elsy.Kathurima@kra.go.ke	No	N/A	VoIP
Nurdin Ibrahim	nurdin.ibrahim@kra.go.ke	No	N/A	VoIP
Cedric Tado	Cedric.Odhiambo@kra.go.ke	No	N/A	VoIP
Violet Sabwa	violet.sabwa@kra.go.ke	No	N/A	VoIP
Anthony Musee	tonymusee.am@gmail.com	No	N/A	VoIP
Noodon Omond-KRA	noodondi@gmail.com	No	N/A	VoIP
Dorcas Kemunto	dorcas.kemunto@kra.go.ke	No	N/A	VoIP
Erick Wanderi	erickwanderi@gmail.com	No	N/A	VoIP
JUDITH NJERU	JUDITH.NJERU@KRA.GO.KE	No	N/A	VoIP

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KENYA REVENUE AUTHORITY

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INTERNAL

Danny M	Danny.mumina@kra.go.ke	No	N/A	VoIP
Benjamin Oleno	benjamin.oleneno@kra.go.ke	No	N/A	VoIP
Cyprian Chepkirui	chepkirui.kitur@kra.go.ke	No	N/A	VoIP
Evans Nyamweya	Evans.nyamweya@kra.go.ke	No	N/A	VoIP
Malick Mathenge	malick.mathenge@kra.go.ke	No	N/A	VoIP
Esther Muthoni	esther.muthoni@kra.go.ke	No	N/A	VoIP
Rachael Wamwea	rachaelwamwea@kra.go.ke	No	N/A	VoIP
Vionah Omollo	vionah.omollo@kra.go.ke	No	N/A	VoIP
Jackline Wanjiru	jackline.wanjiru@kra.go.ke	No	N/A	VoIP
Digital Economy	digitaleconomy@kra.go.ke	No	N/A	VoIP
Yvonne	ngatiayvonne3@gmail.com	No	N/A	VoIP
Michael Omiya	Michael.Omiya@kra.go.ke	No	N/A	VoIP
Faith Aghan	faith.aghan@kra.go.ke	No	N/A	VoIP
Milda Mutethia	Milda.mutethia@kra.go.ke	No	N/A	VoIP
Hildah Ongaga	hildah.ongaga@ke.ey.com	No	N/A	VoIP

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INTERNAL

Tariq Omar	Stakeholder.engagement@kra.go.ke	No	N/A	VoIP
Tariq Omar	tariq.omar@kra.go.ke	No	N/A	VoIP
Audrey Asudi	audrey.asudi@kra.go.ke	No	N/A	VoIP
Isaac Musyoka	isaac.musyoka@kra.go.ke	No	N/A	VoIP
Boaz Musina	Boaz.Musina@ke.ey.com	No	N/A	VoIP
Rodgers Kemboi	rodgers.kemboi@kra.go.ke	No	N/A	VoIP
Arbe Godana	arbe.godana@kra.go.ke	No	N/A	VoIP
Jackline Wanjiru	jackline.wanjiru@kra.go.ke	No	N/A	
George Kidayi	George.kidayi@kra.go.ke	No	N/A	VoIP
Margaret Wanyonyi	Margaret.Wanyonyi@kra.go.ke	No	N/A	VoIP
Sylvia Asubwa	asubwasylvia@gmail.com	No	N/A	VoIP
CHRISTINE MUKIRI	Christine.Mukiri@kra.go.ke	No	N/A	
Samuel Makokha	samuel.makokha@kra.go.ke	No	N/A	VoIP
Victor Ojijo	victor.ojijo@kra.go.ke	No	N/A	VoIP
Elizabeth Roimen	elizabeth.roimen@kra.go.ke	No	N/A	VoIP

Tulipe Ushuru, Tujitegemea!



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INTERNAL

3247	guyatu.g.barako@kra.go.ke	No	N/A	VoIP
Susan	susan.agwata@huawei.com	No	N/A	VoIP
George - Uganda	george.muganda@kra.go.ke	No	N/A	VoIP
Lilian Ndambuki	Lilian.Ndambuki@kra.go.ke	No	N/A	VoIP
Susan Kiama	Susan.Kiama@kra.go.ke	No	N/A	VoIP
Miraj Vadvay	miraj.vadvay@kra.go.ke	No	N/A	VoIP
Mercy Muthoni	mercy.muthoni@kra.go.ke	No	N/A	VoIP
Sala Abdullahi	siidi09@gmail.com	No	N/A	VoIP
Kassim Mohamed	mohamed.kassim@kra.go.ke	No	N/A	VoIP
Janette	janette.nyakundi@kra.go.ke	No	N/A	VoIP
Patrick Nganda	patrick.mua@kra.go.ke	No	N/A	VoIP
Regina Mwangili	regina.mulinda@kra.go.ke	No	N/A	VoIP
132-4	Herman.yator@kra.go.ke	No	N/A	VoIP
Susan Kairu	susan.kairu@kra.go.ke	No	N/A	VoIP
	ann.magundu@ke.ey.com	No	N/A	VoIP

Tuipia Ushuru, Tuipigemeel



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INTERNAL

Henry M. Mutiso	P&TAMeetings@kra.go.ke	No	N/A	VoIP
Mario M. Mutiso	wamucii.masaku@gmail.com	No	N/A	VoIP
David Karanja	david.karanja@kra.go.ke	No	N/A	VoIP
Thadayo Mitoko	Thadayo.mitoko@kra.go.ke	No	N/A	
Kairu Ng'ang'a	kairu.ng'ang'a@kra.go.ke	No	N/A	VoIP
Munanie Mutio	munanie.mutio@kra.go.ke	No	N/A	VoIP
AMOS KIPKECHEM	AMOS.KIPKECHEM@KRA.GO.KE	No	N/A	VoIP
Herman Yator	Herman.yator@kra.go.ke	No	N/A	VoIP
Monaforex	monaforex@ymail.com	No	N/A	VoIP
Wenjing4	wenjing4@huawei.com	No	N/A	VoIP
Christine Muthui	christine.muthui@alphataxadvisory.com	No	N/A	VoIP
Pauline Kagechi	Pauline.Kagechi@kra.go.ke	No	N/A	VoIP
Joseph Obuya	joseph.obuya@kra.go.ke	No	N/A	VoIP
Patrobas Kivuu	patrobas.kivuu@kra.go.ke	No	N/A	VoIP
Idd Chuphi	idd.chuphi@kra.go.ke	No	N/A	VoIP

Tulipe Ushuru, Fujitegemeet



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INTERNAL

risper.mwiringi@kra.go.ke	No	N/A	VoIP
nancy.ougo@kra.go.ke	No	N/A	VoIP
Martin.Murithi@kra.go.ke	No	N/A	VoIP
mary.nganga@kra.go.ke	No	N/A	VoIP
vmatelong@kpmg.co.ke	No	N/A	VoIP
Billy.Oginga@ncbagroup.com	No	N/A	VoIP
beatrice.kimechwa@kra.go.ke	No	N/A	VoIP
smuyonga@fb.com	No	N/A	VoIP
anita.ngugi@kra.go.ke	No	N/A	VoIP
ngendo.kamau@kra.go.ke	No	N/A	VoIP
ombukiperis@gmail.com	No	N/A	VoIP
susan.kairu@kra.go.ke	No	N/A	VoIP
brian.mbugua@kra.go.ke	No	N/A	VoIP
peter.nyakundi@kra.go.ke	No	N/A	VoIP
patronamuma@gmail.com	No	N/A	VoIP

Tutipe Ushuru, Tutitegeni



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INTERNAL

Judith Kivuti	judith.kivuti@kra.go.ke	No	N/A	VoIP
Dkarehuu	dkarehuu@gmail.com	No	N/A	VoIP
Ivonne Ngatia	ivonne.ngatia@kra.go.ke	No	N/A	VoIP
Peter Kiplimo	peter.kiplimo@kra.go.ke	No	N/A	VoIP
Mercy Mwangera	mercy.mwongera@kra.go.ke	No	N/A	VoIP
Christine Aganyo	chistine.aganyo@kra.go.ke	No	N/A	
RUTH MWANZIA	ruth.mwanzia@kra.go.ke	No	N/A	
Lydia Welimo	Lydia.Welimo@kra.go.ke	No	N/A	VoIP
Brian Maingi	brianmaingi@gmail.com	No	N/A	VoIP
Rita Gachuru	Rita.gachuru@cellulant.co	No	N/A	VoIP
Renee Oyuo	oyuo.renee@kra.go.ke	No	N/A	VoIP
ATHMAN YUSUF 91038588	athmanyusuf@kra.go.ke	No	N/A	VoIP
Hezron Ligare	hezron.ligare@kra.go.ke	No	N/A	VoIP
Sandra Muchiri	muchirisandie@gmail.com	No	N/A	VoIP

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INTERNAL

verah.mecheo@kra.go.ke	No	N/A	
antonyarondo@gmail.com	No	N/A	VoIP
shiwit.koropu@kra.go.ke	No	N/A	VoIP
sylvia.lagat@kra.go.ke	No	N/A	
Soslaniflowersltd@gmail.com	No	N/A	VoIP
NRRwebex2@kra.go.ke	No	N/A	VoIP
luciewira@gmail.com	No	N/A	VoIP
IRINE.IROTO@KRA.GO.KE	No	N/A	VoIP
Eric.Maru@kra.go.ke	No	N/A	VoIP
dawe.dawe@kra.go.ke	No	N/A	VoIP
smaingi@ccbgroup.com	No	N/A	VoIP
Benard.Kirui@gmail.com	No	N/A	VoIP
Francis.Hiribae@kra.go.ke	No	N/A	VoIP
wanjohisimon5693@gmail.com	No	N/A	VoIP
Gk?123456@gmail.com	No	N/A	VoIP

Tolpe Ushun, Tuftegemed



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INTERNAL

Judy Tangai	judy.tangai@kra.go.ke	No	N/A	VoIP
Meimuna Mohamud	meimuna.mohamud@kra.go.ke	No	N/A	VoIP
Betty Chepkoech	betty.chepkoech@kra.go.ke	No	N/A	VoIP
Allan Panyako	allan.panyako@kra.go.ke	No	N/A	VoIP
Gideon Magaki	gideon.magaki@kra.go.ke	No	N/A	VoIP
KITEME, ITONGE	KITEME,ITONGE@KRA.GO.KE	No	N/A	VoIP
Milly Georgies	millygeorgies@gmail.com	No	N/A	VoIP
Josephine Mugure	Josephine.Mugure@kra.go.ke	No	N/A	VoIP
David Okiriamu	david.okiriamu@kra.go.ke	No	N/A	VoIP
Swnganga	swnganga@kpmg.co.ke	No	N/A	VoIP
Linda Kadenge	lindakadenge@gmail.com	No	N/A	VoIP
Romantic Hotels Ltd	romantichotelskld@gmail.com	No	N/A	
Lizah Miriti	Lizah.miriti@kra.go.ke	No	N/A	
Jackline Owinga	Jackline,Owinga@Kra.go.ke	No	N/A	VoIP
Eugenenzioka	eugenenzioka@gmail.com	No	N/A	VoIP

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INTERNAL

Eunice	Eunice.Munyuny@kra.go.ke	No	N/A	VoIP
Grace Iloice	grace.loice@kra.go.ke	No	N/A	VoIP
Benson Mutyooti	Benson.mutyooti@kra.go.ke	No	N/A	VoIP
Jonathan Kipchirchir	jonathan.kipchirchir@kra.go.ke	No	N/A	VoIP
Wahinyajulia	wahinyajulia@gmail.com	No	N/A	VoIP
Ali Ali	ali.ali@kra.go.ke	No	N/A	VoIP
Anthony Kinyua	Anthony.Kinyua@kra.go.ke	No	N/A	
Joshua	joshua.ndiga@ke.ey.com	No	N/A	VoIP
Priya Shah - PwC Kenya	priya.u.shah@pwc.com	No	N/A	VoIP
Esther Muthaiga	esther.muthaiga@kra.go.ke	No	N/A	VoIP
Hiram	kaluhiram47@gmail.com	No	N/A	
Juster Majau	juster.majau@kra.go.ke	No	N/A	VoIP
Irene Mathenge	IRENE.MATHENGE@KRA.GO.KE	No	N/A	VoIP
Jheta	jheta@kpmg.co.ke	No	N/A	VoIP
Judith Mbithi	Judith.mbithi@kra.go.ke	No	N/A	VoIP

Tutuu Ushuru, Tutuu Gempesi



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INTERNAL

Fridah	Fridah.kathambi@afica.airtel.com	No	N/A	VoIP
Charles Osoro	Charles.Osoro@kra.go.ke	No	N/A	VoIP
Mercy	mercygaki77@gmail.com	No	N/A	VoIP
Milka Gitari	milka.gitari@kra.go.ke	No	N/A	VoIP
Viona	vionah.omollo@kra.go.ke	No	N/A	VoIP
Malcom	malcom.mwangi@dhl.com	No	N/A	VoIP
Ochiedu	ochiedu@uber.com	No	N/A	VoIP
Judith Ombuor	judith.ombuor@kra.go.ke	No	N/A	VoIP
GOERGE SARAFU NAMANYA	goerge.namanyanya@kra.go.ke	No	N/A	VoIP
Beryl Otieno	Beryl.Otieno@kra.go.ke	No	N/A	VoIP
North Rift Region Webex2	NRRwebex2@kra.go.ke	No	N/A	VoIP
Gideon Kipyegon	gideon.kipyegon@kra.go.ke	No	N/A	VoIP
Ibrahim	njugunaibrahim10@gmail.com	No	N/A	VoIP
Patrick Gikere	patrick.gikere@kra.go.ke	No	N/A	VoIP

Tulipe Usburu, Tughegemeei



Session Detail Report

Session detail for 'Public Participation on amendments of the VAT (DMS) Regulations 2023':

All sessions in Nairobi Time (Nairobi, GMT+03:00)

Meeting information

Topic:	Public Participation on amendments of the VAT (DMS) Regulations 2023	Meeting type:	Meetings
Start date:	2/8/2023	Start time:	8:50 am
Duration:	73 mins	Invited:	1
Registered:	N/A	Client attended:	270

Client participant list

Name	Email	Invited	Registered	Audio types used
Kenneth Chabogor-14063	kenneth.kapkosum@kra.go.ke	No	N/A	VoIP
RUTTO SUSSY	jepkorirutto03@gmail.com	No	N/A	
Hellen Kodiko	hellen.kodiko@kra.go.ke	No	N/A	VoIP
BENJAMIN MBALU	benjamin.mbalu@kra.go.ke	No	N/A	
malick mathenge	malick.mathenge@kra.go.ke	No	N/A	
mbaukaranja	mbaukaranja@gmail.com	No	N/A	VoIP
Grace Kinuthia	Grace.kinuthia@ncbagroup.com	No	N/A	VoIP



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INTERNAL

Issa Chahzu	Issa.Chahzu@kra.go.ke	No	N/A	VoIP
STACY MWANGI	STACY.MWANGI@KRA.GO.KE	No	N/A	VoIP
Ian Nganga	ian.nganga@kra.go.ke	No	N/A	VoIP
Winfred Mwaniki	Winfred.Mwaniki@kra.go.ke	No	N/A	VoIP
Catherine Musau	catherine.musau@kra.go.ke	No	N/A	VoIP
Christine Mukami	christine.mukami@pwc.com	No	N/A	VoIP
Dennis Mutunga	dennis.mutunga@ke_ey.com	No	N/A	VoIP
Hellen Gitonga	hellen.gitonga@kra.go.ke	No	N/A	VoIP
Joseph Ambole	Joseph.ambale@kra.go.ke	No	N/A	VoIP
Alex Kalama	alex.kalama@kra.go.ke	No	N/A	VoIP
Fahia Mohamed	FARHIA.MOHAMED@KRA.GO.KE	No	N/A	VoIP
Mercy	mercygaki77@gmail.com	No	N/A	VoIP
Kelvin Ngige (MKT)	kelvin.ngige@kra.go.ke	No	N/A	VoIP
Esther Mwendia	esther.mwendia@kra.go.ke	No	N/A	VoIP
Paul Asuma	paul.asuma@kra.go.ke	No	N/A	VoIP

Tulipe Ushuru, Tufitegemoe!



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INTERNAL

Sylvia A. Ochieng	Sylvia.A.Ochieng@ke.ey.com	No	N/A	VoIP
Janice Kiema	janice.kiema@kra.go.ke	No	N/A	VoIP
Stephen Ndegwa	stephen.ndegwa@ke.ey.com	No	N/A	VoIP
Loise Nderitu	Loise.Nderitu@kra.go.ke	No	N/A	VoIP
David Waithaka	david.waithaka@cellulant.co	No	N/A	VoIP
Mohamed Jama	Mohamed.Jama@kra.go.ke	No	N/A	VoIP
DENIS GACHERU	DENIS.GACHERU@KRA.GO.KE	No	N/A	VoIP
Kennedy Okoth	kennedy.okoth@kra.go.ke	No	N/A	VoIP
Jackline Koome	jackline.koome@kra.go.ke	No	N/A	VoIP
Emungai	Emungai@kpmg.co.ke	No	N/A	VoIP
Jacinta Gichungu	jacinta.gichungu@kra.go.ke	No	N/A	VoIP
Sam Ngure	sam.ngure@kais.or.ke	No	N/A	VoIP
Cedric Odhiambo	Cedric.Odhiambo@kra.go.ke	No	N/A	VoIP
Edith Muiri	Edith.muiri@kra.go.ke	No	N/A	VoIP
Faith Nthale	faith.nthale@kra.go.ke	No	N/A	VoIP

Tutuu Ushiru, Tutuogentel



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INTERNAL

Engumi	engumi@coca-cola.com	No	N/A	VoIP
Gabriel Amukat	gabriel.amukat@kra.go.ke	No	N/A	VoIP
Alex Gikonyo	alex.gikonyo@kra.go.ke	No	N/A	VoIP
Eva Wanjohi	Eva.wanjohi@kra.go.ke	No	N/A	VoIP
Calvin Ongera	calvin.ongera@kra.go.ke	No	N/A	VoIP
Grace Kinuthia	Grace.kinuthia@ncbagroup.com	No	N/A	VoIP
Accounts	accounts@mbagild.com	No	N/A	VoIP
Robert Maina	robert.maina@ke.ey.com	No	N/A	VoIP
Edward Apaa	edward.apaa@kra.go.ke	No	N/A	
Eric Mutsotso	Eric.mutsotso@kra.go.ke	No	N/A	VoIP
Jingling Ouyang	ouyangjingling@huawei.com	No	N/A	VoIP
Stephen	stephen.ndegwa@ke.ey.com	No	N/A	VoIP

Tulipe Ushuru, Tufitege mbe

2/8/23, 12:36 PM

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From:
To:
Cc:

KRAStakeholder Engagement/KRA
KRAStakeholder Engagement/KRA@KRA

muhsin.m.makassy@pwc.com, michael.w.wachinga@pwc.com, maurice.mwaniki@pwc.com, irene.opiyo@pwc.com, ben.kangangi@pwc.com, hilda.chepnetich@pwc.com, corazon.ongoro@pwc.com, job.kabochi@pwc.com, gideon.rotich@pwc.com, David.Kingori@ke.ey.com, francis.kamau@ke.ey.com, Rachel.W.Njuguna@ke.ey.com, ann.magondou@ke.ey.com, robert.maina@ke.ey.com, kkandie@deloitte.co.ke, pchege@deloitte.co.ke, fkimotho@deloitte.co.ke, info@kpmg.co.ke, AARONZHUAY@ZHUAY.COM, TONY.WATUKA@KRA.GO.KE, T.MONENE@GMAIL.COM, VICTOR.EZEAGA@GTBANK.COM, ZEII907@GMAIL.COM, NDIRANGU.WILFRED@EKENYA.CO.KE, MISTIANI.MWENCHA@GMAIL.COM, KIMANIJ@STANBIC.CO.KENYA.KITHU@DHL.COM, MISESJUMA@CBAGROUP.COM, REGIONALFX@GMAIL.COM, JOAN@AFRICANONLINE.ORG, MUKHTAR@ROG.ORG.KE, PKEBATI@EASTERNPRODUCE.CO.KE, MANISH.MEHTA@FREIGHT-IN-TIME.COM, MARGARETNDIBO.KIANA@NBHOSP.ORG, DORINE.NALO@KE.EG.COM, T.MURAHID@CROWN.CO.KE, GOWUOR@FB.COM, REMUITA@GMAIL.COM, FNANJ@DTBAFRICA.COM, FREDRICK.NYASAKA@BOAKENYA.COM, FANXINZO@HUAWEI.COM, BRIANOWINO6@GMAIL.COM, ALEX.KIMANI@CELLULANT.COM, GEOFFREY.MAINA@YAHOO.COM, ERIC.GITHONGO@KE.G4S.CO.KENYA@MICROSOFT.COM, LEEK.DENG@EQUITYBANK.CO.KE, Dilton Nzaro/MKT/KRA@KRA, CHOESTHER31@GMAIL.COM, Grace Silole Karasha/MKT/KRA@KRA, NGUMBONJOROGE@KUSCCO.COM, BMUTUMA@CO-OPBANK.CO.KE, FRIDA.MWANGI@OPWAK.ORG.KE, MARKETING@RESORTSANDCITIES.CO.KE, AMWENGI@FINTECH.GROUP.COM, JOE.MARWA@KENIC.ORG.KE, CLIVEAKORA@KPMG.CO.KE, BAKIRING@EASTERNPRACTICE.CO.KE, WAITHERA.NDINDIRI@CITI.COM, SAMUEL.NGURE@KAIIS.ORG, JULIE.OJWAYA@INTERSWITCHGROUP.COM, VINCENT2030ONYANGO@GMAIL.COM, ZACK@JTL.CO.KE, GRACE.KINUTHIA@CBAGROUP.COM, LEZANNE@UBER.COM, NMOSA@KPMG.CO.KE, ACCOUNTS@LSK.ORG.KE, EUNICE.NDIRANGU@PRIMEBANK.CO.KE, DAVID.MUKARU@FAULU.COM, CEO@KENIC.ORG.KE, GSETTIM@MEBKENYA.COM, PHILIP.KORIRJTL.CO.KE, LINDA@KUSCO.COM, ALICE.K.MURITHI@PWC.COM, PETER.MAKAU@DTBKENYA.CO.KE, MMASY.DEOGRAJTUS@PWC.COM, OJAMBO@GMAIL.COM, JULIUSMBURUB1@GMAIL.COM, MICHAELMURUNGI@GOOGLE.COM, SUSAN.AGWATA@HUAWEI, JUNEJOSSE@GMAIL.COM, JWODERA@POSTKENYA.POST, SAMUEL.MWAURA@KE.GT.COM, MMOHAMED@KCBGROUP.COM, NDLOVUVEVISA.COM, LEONARD.SHALAKHA@PWC.COM, ISAAC.AWUONDO@CBAGROUP.COM, ERICK.MURUKI@CBAGROUP.COM, BEATRICE.GICHUI@KRA.GO.KE, FELICIA.SOLOMON@OXYGENE.CO.KE, MONAFOREX@YMAIL.COM, LILNGUGUNA@GMAIL.COM, REALVALUE@GMAIL.COM, EOUA@DORION.CO.KE, WILSON.MWAURAEQUITYBANK.CO.KE, KKITUKU@MICROSOFT.COM, SWALUBENGO@DORION.CO.KE, OCHIENG.OWINDO@GMAIL.COM, SMUCHIRI@IPFKENYA.ORG.KE, NMWAI@CO-OPBANK.CO.KE, PAUL.KAGURU@SBMBANK.CO.KE, KAMAUJEDYIM@GMAIL.COM, ENGUMI@AFRICAPRACTICE.COM, LYOWENGA@YAHOO.COM, MULINDIJ@PESATRANSACT.CO.KE, VICTOR.WAIRIMU@EQUITYBANK.CO.KE, CAROLYN.NGUGI@EQUITYBANK.CO.KE, AKTBERA@IPSL.CO.KE, JULIE.QWINDO@CAPITALFM.CO.KE, JBRAGANZA@ISLP.ORG, ANAND.MOHAN@TECHNOBRAIN.COM, JAPHETH.MUSAU@SBMBANK.CO.KE, DAVID.WAITHAKA@CELLULANT.COM, KEBABI@CBK.GO.KE, KINUTHIA@CARGO.KE, MOSES@JTL.CO.KE, RSSHAH@JMBANK.CO.KE, FRIDAH.KATHAMBI@AFRICA.AIRTEL.COM, KAREMISON@CENTRALBANK.GO.KE, JNGINA@AFRICAPRACTICE.COM, AKAMANDE@KPMG.CO.KE, SUSAN.AKINYI@KOCELA.COM, DAVID.KANDIE@KOCELA.COM, ELSIE.WACHIRA-KAGURU@MASTERCARD.COM, RKOLA@ECOBANK.COM, INFO@JUBAEXPRESS.CO.KE, INFO@TAWAKALUMONEYEXPRESS.COM, INFO@SATELLITETEX.COM, BMURUKI@KENS SWITCH.COM, HIRAMMMK@GMAIL.COM, ANNE.MUGAI@FINSERVE.AFRICA, TWAKHISI@FINTECH-GROUP.COM, MA55AE.HAPPINESS@EKENYA.CO.KE, KHADIJAH@GMAIL.COM, MUCHIRADANIEL@GMAIL.COM, NJUEVE85@GMAIL.COM, MARYANNE.KURIA@SBMBANK, PMUNGUTTI@KENS SWITCH.COM, PHILIP@IPAYAFRICA.COM, RODNEYCHEMONTI@KUSCCO.COM, HADI.ABDULLAHI@KRA.GO.KE, FRED.AMINGA2@GMAIL.COM, LEWI.MAINA@IBM.COM, MBGGPJIMMY@GMAIL.COM, INFO@KURIA.CO.KE, ESTHERTRUNGU98@GMAIL.COM, CRUZ.MOMANYI@AFRICAONLINE.COM, SIMON.NGURE@SC.COM, DMGAKU@SIDIANBANK.CO.KE, khaydi@gmail.com, enwankwo@atafax.org, "Emmanuel Ochieng" <ochieng@kepsa.or.ke>, Sharon Kirai/MKT/KRA@KRA, Elizabeth Karanta Roimen/MKT/KRA@KRA, May Muthama/MKT/KRA@KRA

Date:
Subject:

Monday, February 06, 2023 04:49PM
Public Participation on amendments of the VAT (DMS) Regulations 2023

Dear Esteemed Stakeholder,

[https://kramail.kra.go.ke/mail/sengagengm.ns/\(/%24Sent\)/F176C616E3C5D6424325894E0049ADBA/7?OpenDocument&Form=h_PrintUI&PreselFields=s_NotesForm.memo&u](https://kramail.kra.go.ke/mail/sengagengm.ns/(/%24Sent)/F176C616E3C5D6424325894E0049ADBA/7?OpenDocument&Form=h_PrintUI&PreselFields=s_NotesForm.memo&u)

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KRA invites you to a public participation on amendments of the VAT (DMS) Regulations 2023 on **Wednesday, 8th February 2023 between 9:00am - 10:00am**, with the meeting link below:

<https://kra.webex.com/join?MTID=mo2e0628026d7b4db7b1e577500324515>

Meeting number:

2373 457 9767

Password:

DVuY8jmX4X8

Please find attached the Draft Legal Notice.

Kindly confirm attendance to facilitate tightening of the engagement details.

Regards,

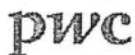
Stakeholder Engagement Unit | Marketing & Communication | Kenya Revenue Authority
P. O. Box 43740 - GPO 00100 Nairobi | +254 (020) 499 2045 or Ext. 2045 | 254 (0711) 099 999 |
Email: stakeholderengagement@kra.go.ke



<https://www.kra.go.ke/images/KRA-Mail-Disclaimer.pdf>

Attachments:

Legal Notice - Draft



The Commissioner General
Kenya Revenue Authority
P.O Box 48240-00100
Nairobi

06 February 2023

Sent via email to: stakeholderengagement@kra.go.ke

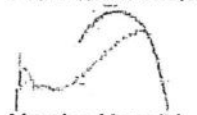
Dear Sir,

**Subject: The Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023
PricewaterhouseCoopers Limited Comments and Recommendations**

Pursuant to the public notice issued on 20 January 2023 by the Cabinet Secretary for the National Treasury and Planning (the "CS NT") and Article 201 of the Constitution of Kenya, we ("PricewaterhouseCoopers", "PwC", "us") are pleased to share with you our comments and recommendations on The Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023 for your consideration. We have included our comments as an appendix to this cover letter.

We would be grateful for an opportunity to engage you further on our proposals and provide any additional information should you require us to.

Yours faithfully,
For: PricewaterhouseCoopers Limited



Maurice Mwaniki
Associate Director

cc:
Cabinet Secretary – Njuguna Ndung'u,
National Treasury and Economic Planning.
Treasury Building
Harambee Avenue
Nairobi

*PricewaterhouseCoopers Limited. PwC Tower, Waiyaki Way/Chiromo Road, Westlands
P O Box 43963 – 00100 Nairobi, Kenya
T: +254 (20)285 5000 F: +254 (20)285 5001 www.pwc.com/ke*

Directors: U Akpata* S Cheruiyot J Kabochi E Kerich B Kimani M Mugasa T Mukora A Murage F Muriu S Mutinda P Ngahu B Ngunjiri R Njoroge
S O Norbert's O Nyambogo S Okello B Okundi K Saiti M Tholthi G Weri (* Nigerian)



Background

The CS NT reviewed the Value Added Tax (Digital Marketplace Supply) Regulations, 2023 ("the Regulations") and published the Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023 (the "Draft Regulations"). In compliance with the Statutory Instruments Act, and on behalf of the Cabinet Secretary, the National Treasury and Economic Planning, the Commissioner General of the Kenya Revenue Authority (the "KRA") invited interested members of the public and stakeholders to submit their inputs and comments for consideration. A public notice to this effect was issued on 20 January 2023 and the submissions should be channelled to the office of the Commissioner General on or before 7 February 2023.

Public Comments Received on the Value Added Tax (Digital Marketplace Supply) Regulations, 2023 (Public Comments Received on the Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023)			
Sl. No.	Regulation	Comments	Response
1	Regulation 2	Definition of the term "digital assets"	An addition to Regulation 2 to include the definition of "digital assets"
2	Regulation 2	Definition of the term "digital marketplace" should be tightened to include "the Act"	Amendment of Regulation 2 as follows- "digital marketplace has the meaning assigned to it in section 5(9) of the Act"

The Regulation should provide the definition of "digital assets" to enable taxpayers distinguish what constitutes digital assets and what does not.

This will aid taxpayers to plan appropriately on how to account for tax should their products be construed to mean digital assets as defined by these Regulations. Failure to define this term will lead to confusion and uncertainty.

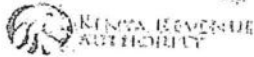
In our view, it is important to tighten the definition of digital marketplace to include "...of the Act" to make it more clear on the legislation to which the section refers to.

As it is currently, one may allude to the meaning not intended by the Regulation.

3	Regulation 2	Tightening of the definition of the definition of "tax" to refer to the Act.	Amendment of Regulation 2 as follows- "tax has the meaning assigned to it under section 2 (1) of the Act"	It is important for the Regulation to provide clarity on the legislation to which section (2) (1) is being referred to. Leaving the Regulation as 'open' as it is, may lead to confusion by the taxpayers and other stakeholders on the legislation being referred to.
4	Regulation 2	Please consider defining "electronic tax invoice"	An addition to Regulation 2 to include the definition of "electronic tax invoice" as follows- "Electronic tax invoice refers to invoicing requirements as detailed under the Value Added Tax (Electronic Tax Invoices) Regulations, 2020.	As these Regulations are geared towards non-resident suppliers, it is very important to define electronic tax invoicing. The reason for this is that electronic tax invoicing is very different all over the world. As such, it is important to clarify and define this term from a Kenyan perspective.
5	Regulation 3	Regulation 3 (i) should be clarified to state "electronic services under section 8 (3) of the Act"	Amendment of Regulation 3 (1) as follows: "...electronic services under section 8 (3) of the Act."	The Regulation should provide clarity that section 8 (3) refers to the VAT act. Leaving this as it is, may lead to the taxpayers and other stakeholders involved into misinterpreting the legislation to which section (8) (3) is referred.
6	Regulation 5 (b)	Regulation (5) (b) should be clarified to state "the person is conducting business in Kenya in accordance with section 8 (2) of the Act and..."	Amendment of Regulation (5) (b) as follows: "(b) the person is conducting business in Kenya in accordance with section 8 (2) of the Act..."	By tightening the Regulation to the Act, means that this regulation is referring to the VAT Act. This allows for ease application of the law by the taxpayers and other stakeholders without contingencies.

7	Regulation 5 (b) (2)	Amendment of the Regulation to provide clarity on the legislation.	<p>Amendment of the Regulation 5 (b) (2) as follows:</p> <p><i>"A person registered under paragraph (1) shall declare and pay tax on the supplies made over the internet or an electronic network or through any digital marketplace at the rate specified in section 5 (2) (b) of the Act."</i></p>	<p>Specifying the legislation being referred to by the Regulation makes it easier for taxpayers and other stakeholders when applying the law.</p> <p>It avoids confusion and false deductions that may be made in the future.</p>
8	Regulation 10	Clarification in stating the Personal Identification Number ("PIN") on the tax invoice for customers who provide the PIN.	<p>Regulation 10 states that-</p> <p><i>"(10) A supplier who makes supplies over the internet or an electronic network or through any digital marketplace from an export country who is registered under these Regulations shall not be required to issue an electronic tax invoice."</i></p> <p><i>"Provided that the supplier shall issue an invoice or receipt showing the value of the supply and the tax deducted thereon."</i></p> <p>This Regulation should clarify that <i>where the recipient provides a PIN, the supplier is required to state the customer's PIN on the invoice and state the value of the supply and the tax deducted thereon.</i></p>	<p>Clarifying the instances under which the supplier is required to state the PIN on the invoice is necessary to ensure that the recipient is then able to claim despite there being no electronic tax invoice from the transaction.</p>
9	Regulation 15	Registration date for a supplier on a digital marketplace from an export country.	<p>Transitional provisions - this regulation should be reworded to state that-</p> <p>[Emphasis ours]</p> <p><i>"A supplier on a digital marketplace from an export country who is required to register under these Regulations shall apply to the</i></p>	<p>Whereas this Regulation is aimed for current suppliers on a digital marketplace, it is likely that some suppliers from an export country may delve into the digital marketplace after the publishing of this Regulations.</p>

				<p>Commissioner for registration within six months from the date of publication of these Regulations or within 30 days from the date of making taxable supplies by the supplier, whichever is later."</p> <p>Further when the Regulations have been approved and effective, they should state the date on which they are effective from to avoid confusion.</p>	<p>In addition, these Regulations should also take into account new businesses that are still in the process of setting up. For such suppliers, it would be difficult to determine at what point they should register under these regulations.</p> <p>By adding, "the 30 days from the date of making taxable supplies by the supplier", it allows newly incorporated businesses time to comply with the Regulations in line with section 34 of the Act.</p>
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FN SW



Regulations Under the Excise Duty Act, 2015 and The Value Added Tax Act, 2013

In compliance with the Statutory Instruments Act, the The Commissioner General on behalf of the Cabinet Secretary, the National Treasury and Economic Planning, has reviewed the subsidiary legislation listed below and made the following draft regulations:

- The Excise Duty (Amendment) Regulations, 2023;
- The Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023.

In compliance with the same Act, and on behalf of the Cabinet Secretary, the National Treasury and Economic Planning, the Commissioner General invites interested members of the public and stakeholders to submit their inputs and comments for consideration in the finalising of the above regulations. These draft regulations have been posted on the KRA website, www.kra.go.ke. You may download the same for your reference.

Please channel your submissions to the Commissioner General Kenya Revenue Authority, P.O Box 48240-00100, Nairobi or by email to stakeholder.engagement@kra.go.ke to be received on or before 7th February 2023.

Commissioner General

Never miss a thing about KRA

Email address





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Office of the Commissioner General

KRA/5/1002/26(8484)

8th February 2023

Prof. Njuguna Ndung'u, CBS
The Cabinet Secretary
National Treasury &
Economic Planning
Treasury Building
Nairobi

Dear CS,

**DRAFT EXCISE DUTY (EXCISABLE GOODS MANAGEMENT SYSTEM)
(AMENDMENT) REGULATIONS 2023**

Reference is made to our letter Ref: KRA/5/1002/26(8381) dated 13th January 2023 on the above subject matter.

As advised, the Authority conducts regular reviews of the regulations it administers in accordance with the Statutory Instruments Act, 2013. In light of this, it has drafted the Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023.

In compliance with the same Act, the Authority invited interested members of the public and stakeholders to submit their inputs and comments for consideration through a public notice issued on 17th January 2023. In addition, a physical engagement was held with the key stakeholders on 1st February, 2023. The stakeholders' comments were analyzed and considered in the preparation of the final draft of the Regulations.

The purpose of this letter is to forward the:

- i. updated draft Legal Notice and the explanatory memorandum on the same;
- ii. copy of the public notice calling for stakeholders' engagement;
- iii. comments received from stakeholders on the draft Regulations and a report on the stakeholder engagement.

These are submitted for your consideration and publication subject to your concurrence.

Yours sincerely,

**FCPA Githii Mburu, MGH, CBS
COMMISSIONER GENERAL**

Copy to: Dr. Chris Kiptoo, CBS
Principal Secretary
National Treasury
Nairobi

Tulipe Ushuru, Tujitegemee!



KENYA REVENUE AUTHORITY

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Office of the Commissioner General

KRA/5/1002/26(8484)

8th February 2023

Prof. Njuguna Ndung'u, CBS
The Cabinet Secretary
National Treasury &
Economic Planning
Treasury Building
Nairobi

Dear C.S.,

DRAFT EXCISE DUTY (EXCISABLE GOODS MANAGEMENT SYSTEM) (AMENDMENT) REGULATIONS 2023

Reference is made to our letter Ref: KRA/5/1002/26(8381) dated 13th January 2023 on the above subject matter.

As advised, the Authority conducts regular reviews of the regulations it administers in accordance with the Statutory Instruments Act, 2013. In light of this, it has drafted the Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023.

In compliance with the same Act, the Authority invited interested members of the public and stakeholders to submit their inputs and comments for consideration through a public notice issued on 17th January 2023. In addition, a physical engagement was held with the key stakeholders on 1st February, 2023. The stakeholders' comments were analyzed and considered in the preparation of the final draft of the Regulations.

The purpose of this letter is to forward the:

- i. updated draft Legal Notice and the explanatory memorandum on the same;
- ii. copy of the public notice calling for stakeholders' engagement;
- iii. comments received from stakeholders on the draft Regulations and a report on the stakeholder engagement.

These are submitted for your consideration and publication subject to your concurrence.

Yours sincerely,

**FCPA Githii Mburu, MGH, CBS
COMMISSIONER GENERAL**

Copy to: Dr. Chris Kiptoo, CBS
Principal Secretary
National Treasury
Nairobi

Tulipe Ushuru, Tujitegemee!



EXPLANATORY MEMORANDUM TO THE THE EXCISE DUTY
(EXCISABLE GOODS MANAGEMENT SYSTEM) (AMENDMENT)
REGULATIONS, 2023

LEGAL NOTICE NO. xx of 2023

PART I

Name of Statutory Instrument : Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023.

Name of Parent Act : Excise Duty Act 2015.

Enacted Pursuant to : Section 45 of the Excise Duty Act, 2015.

Name of the Ministry/Department : The National Treasury and Economic Planning.

Gazetted on : xx January, 2023.

PART II

1.0 Purpose of the Statutory Instrument

- 1.1 The objective of this Memorandum is to submit Legal Notice No. xx of 2023 for tabling in the National Assembly in accordance with the provisions of Section 11 of the Statutory Instruments Act, 2013.
- 1.2 The Legal Notice implements the Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023, in line with the requirements of the Excise Duty Act 2015.

2.0 Legislative Context

- 2.1 The Legal Notice on the Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023, is made pursuant to Section 45 of the Excise Duty Act 2015. The Section empowers the Cabinet Secretary for the National Treasury and Economic Planning to make regulations for the better carrying out of the provisions of the Act,

Tulipe Ushuru Tujitegemeet



particularly the prescription of any fee or charge to be levied on excisable goods imported into, or manufactured in, Kenya.

- 2.2 This Legal Notice amends specific provisions of the Excise Duty (~~Excisable Goods Management System~~) Regulations, 2017, referred to herein as the principal Regulations.

3.0 Policy Background

- 3.1 The primary objective of the Legal Notice is to amend various provisions of the principal Regulations. This will improve the administration of excise duty and improve compliance. This is also meant to raise revenue to finance the cost of excise stamps.
- 3.2 The principal Regulations provide a legal framework for implementing the Excise Duty Act 2015 legislation regarding the affixation of excise stamps and the imposition of excise stamp fees on excisable goods imported into or manufactured in Kenya.
- 3.3 The Schedule to the principal Regulations provides the excise stamp fees to be charged on excise stamps for different types of excisable goods. The goods included in the Schedule include tobacco products, wines, spirits, beer, mineral and aerated water, fruit juices, flavoured water, cosmetics, and beauty products.
- 3.4 The excise stamp fees are paid to the Commissioner by manufacturers and importers of excisable goods based on the number of stamps issued to them.
- 3.5 Product marking using stamps is important because they :- deter counterfeiting; facilitate tracking of excisable goods along the supply chain; enable accounting for the production of excisable goods manufactured or imported; and enable any individual to authenticate/validate the genuineness of excisable goods.
- 3.6 The prices of excise stamps have remained constant since 2017. This is despite the increasing inflation as well as the depreciation of the Kenyan shilling against major currencies such as the Euro, over time.



As a result, the money collected from the sale of stamps to manufacturers and importers has not been adequate to finance the system for three main reasons:

- 3.7 ~~First, the shift in product volume mix in favour of low-priced products.~~ The 2017 pricing model had been designed so that high-price products, mainly alcoholic products, cross-subsidize low-priced non-alcoholic products with the anticipation that the volumes sold for spirits, tobacco and wines (high-priced products) would compensate for the gap arising from the deficit of non-alcoholic volumes (low-priced products). However, since the roll-out of stamps for low-priced products in November 2019, the volumes for low-priced products significantly exceeded those of high-priced products. The non-alcoholic beverage stamps account for about 70% of the total volumes of stamps, while spirits, tobacco and wines account for 18% of the stamps. Beer volumes are about 12% of the total stamps.
- 3.8 Second, the **Covid-19 containment measures** in 2020 disproportionately affected sales of high-priced excisable products due to the closure of bars and restaurants, whereas the sales of low-priced products were largely unaffected by the pandemic. As a result, the volumes of the high-priced products could not compensate for the deficit from the low-priced products and hence widening the EGMS funding deficit.
- 3.9 Third, the **depreciation of Kenya shillings against the Euro.** When the EGMS was rolled out, the cost of the stamps to KRA was about Ksh 1.5 per stamp. The cost of acquisition of the stamps rose from about Ksh 1.5 to about Ksh 1.8 per stamp as of June, 2022. This was due to the depreciation of the Kenyan shillings against the Euro, which as of June 2022, was about Ksh 136 from Kshs 100.55 in 2015, against the Euro. As a result of all these factors, the government has accumulated a deficit of about Kshs 4.5 billion.
- 3.10 Thus, the review of the pricing model of the excise stamps is necessary to enable full recovery of the cost of the system, settlement of



accumulated debts and ensure the system's sustainability in the long term.

- 3.11 Further, the Legal Notice aligns various provisions of the principal regulations with provisions of the Excise Duty Act 2015, which appear to be inconsistent.

4.0 Public Consultation Outcome

- 4.1 In developing this Legal Notice, public participation was undertaken in compliance with the provisions of Section 5 of the Statutory Instruments Act, 2013 and Article 201 (a) of the Constitution.
- 4.2 Through the Kenya Revenue Authority, the National Treasury and Economic Planning invited stakeholders and members of public to submit their comments on the draft Legal Notice on *17th January, 2023* through a Public Notice.
- 4.3 The Authority received comments only from PwC. Further, stakeholders were invited for a physical meeting at the Times Tower, 5th Floor Auditorium on *1st February, 2023* to ventilate on their submissions. This is in line with the provisions of the Constitution on public participation. Member organizations operating in the Excisable goods sector, such as the Institute of Certified Public Accountants of Kenya (ICPAK), the Kenya Association of Manufacturers (KAM) and the Water Bottlers Association (WABK), and the Alcoholic Beverages Association of Kenya (ABAK) attended the engagement.
- 4.4 Stakeholders' submissions were reviewed, and their feedback was incorporated into the draft Legal Notice, where appropriate, to improve the regulations. For instance, the proposed amendment to Regulation 28(1) was revised to incorporate exported goods in the list of goods exempt from affixation of stamps.
- 4.5 Attached find the following documents: -
- a) Copy of Legal Notice No. xx of 2023;
 - b) Copy of the gazette notice dated xx February, 2023;



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c) The public notice issued on 17th January 2023 calling for stakeholder comments on the Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023;

~~d) A summary of the feedback received from stakeholders in response to the call for comments on the Regulations.~~

5.0 Impact

- 5.1 The Legal Notice revises the fees to be charged on the excise stamps. It is expected that sufficient revenues will be generated to meet the cost of excise stamps and offset the outstanding debt of Kshs 4.5 billion.
- 5.2 It is expected that the additional revenue collected will be used to offset the cost of producing the excise stamps, the accumulated debts as well as the maintenance of the system.
- 5.3 Section 9 of the Statutory Instrument Act 2013 provides that a regulatory impact statement need not be prepared for a proposed statutory instrument if the proposed legislation only provides for an amendment of a fee, charge, or tax consistent with announced government policy. Since the Regulations are in line with the provisions of the Excise Duty Act, 2015, a regulatory impact statement has not been prepared.

6.0 Monitoring and review

The Legal Notice will be implemented by the Kenya Revenue Authority and will be operational from the date of publication in the Kenya Gazette.

7.0 Request to the National Assembly

The National Assembly is invited to:

- a) Note the contents of this Memorandum.
- b) Adopt Legal Notice No. xx of 2023.

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8.0 Contact

Cabinet Secretary

The National Treasury and Economic Planning

P.O. Box 30007-00100

NAIROBI



APPENDIX 1- DRAFT LEGAL NOTICE

LEGAL NOTICE NO.

THE EXCISE DUTY ACT															
(No. 23 of 2015)															
IN EXERCISE of the powers conferred by section 45 of the Excise Duty Act, 2015, the Cabinet Secretary for the National Treasury and Economic Planning makes the following Regulations—															
THE EXCISE DUTY (EXCISABLE GOODS MANAGEMENT SYSTEM) (AMENDMENT) REGULATIONS, 2023															
Citation.	1. These Regulations may be cited as the Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023.														
L.N. 53/2017.	2. Regulation 3 of the Excise Duty (Excisable Goods Management System) Regulations, 2017 hereinafter referred to as the principal Regulations, is amended by deleting the paragraph (1) and replacing it with following new paragraph – (1) Every package of excisable goods manufactured or imported into Kenya listed in the first schedule to the regulations shall be affixed with an excise stamp.														
	3. Regulation 6 of the principal Regulation is amended by inserting the words “and compliance management activities for excisable goods” immediately after the expression “System”.														
	4. Regulation 28 of the principal Regulation is amended in paragraph 1 by deleting the paragraph (1) and replacing it with the following new paragraph – (1) Goods not liable to excise duty under Section 7(1) of the Act shall be exempted from affixation of excise stamps.														
	5. The Schedule to the Principal Regulations is deleted and replaced with the one below, which is effective from 1 st March 2023: <table><tr><th colspan="3">Excise Stamp Fees</th></tr><tr><th></th><th>Category of Excisable Goods</th><th>Excise Stamp Fee per Stamp Kshs</th></tr><tr><td>1.</td><td>Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes</td><td rowspan="3">5 per stamp</td></tr><tr><td>2.</td><td>Cigarettes containing tobacco or tobacco Substitutes</td></tr><tr><td>3.</td><td>Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and</td></tr></table>		Excise Stamp Fees				Category of Excisable Goods	Excise Stamp Fee per Stamp Kshs	1.	Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes	5 per stamp	2.	Cigarettes containing tobacco or tobacco Substitutes	3.	Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and
Excise Stamp Fees															
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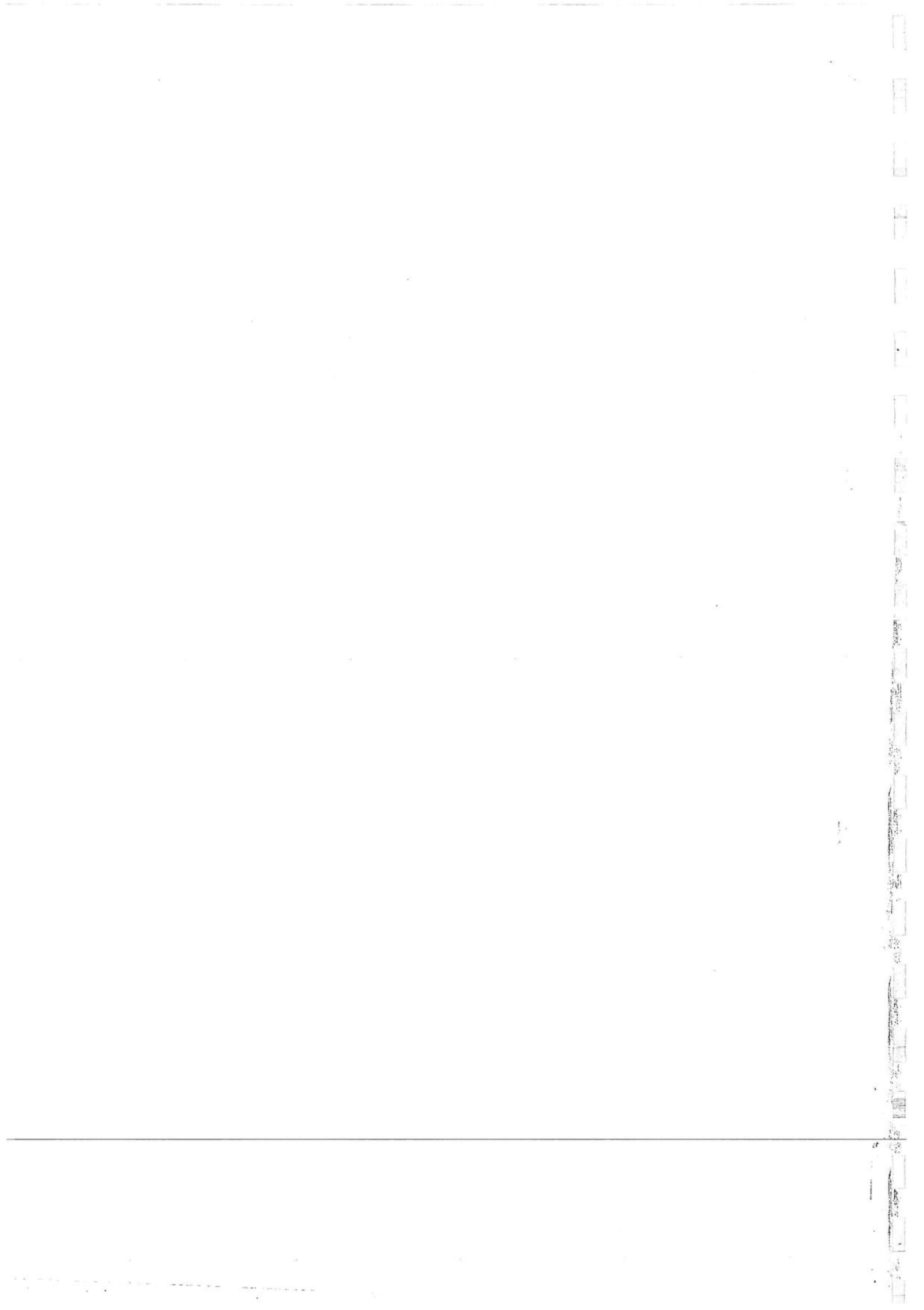
INTERNAL

	"reconstituted tobacco"; tobacco extracts and essences	
4.	Electronic cigarettes and other nicotine delivery devices	
5.	Liquid nicotine for electronic cigarettes	
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	
7.	Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	5 per stamp
8.	Compounded spirits of alcoholic strength exceeding 6%	5 per stamp
9.	Spirituous beverages of alcoholic strength not exceeding 6%	3 per stamp
10.	Beer, Cider, Perry, Mead, Opaque beer, and mixtures of fermented beverages with non-alcoholic beverages	3 per stamp
11.	Bottled or similarly packaged waters	0.5 per stamp
12.	Other non-alcoholic beverages, not including fruit and vegetable juices	2.2 per stamp
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.	2.2 per stamp
14.	Cosmetics and Beauty products of tariff heading Nos. 3303, 3304, 3305 and 3307.	2.5 per stamp

Made on the _____, 2023.

NJUGUNA NDUNG'U,
Cabinet Secretary for
the National Treasury and Economic Planning.

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**REPORT ON STAKEHOLDER ENGAGEMENT ON EXCISABLE GOODS
MANAGEMENT SYSTEM (EGMS) (AMENDMENT) REGULATIONS, 2023**

1.0 Preamble

In compliance with the Statutory Instruments Act, the Commissioner General on behalf of the Cabinet Secretary, National Treasury and Economic Planning, reviewed the Excise Duty (Excisable Goods Management System) Regulations, 2017 and made the Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023 through a public notice published on Tuesday 17th January 2023.

In this regard, KRA invited various stakeholders for an engagement on **Wednesday, 1st February 2023** from **8.00 am** at the Convention Centre, 5th floor, Times Tower to present their views on the regulation.

The engagement hosted about 85 participants drawn from:

- Alcoholic Beverages Association of Kenya (ABAK)
- Kenya Association of Manufacturers (KAM)
- Institute of Certified Public Accountants of Kenya (ICPAK)
- Kenya National Chamber of Commerce and Industry (KNCCI)
- Water Bottlers Association of Kenya (WABAK)
- Petroleum Outlet Association of Kenya (POAK)
- Kenya International Freight and Warehousing Association (KIFWA)
- Pricewaterhouse Coopers (PWC Kenya), and Institute Economic Affairs.

The Cabinet Secretary for National Treasury & Economic Planning - Prof. Njuguna Ndung'u, and the Commissioner General Kenya Revenue Authority (KRA) - FCPA Githii Mburu, graced the engagement with Chief Manager Stakeholder Engagement & Events Management, Mr. Andrew Osiany as the moderator.

2.0 Remarks by Commissioner General

The Commissioner General welcomed stakeholders to the engagement. He stated that the proposed amendments to the EGMS regulations are part of KRA's ongoing efforts to improve the tax administration process in Kenya. Furthermore, he stated that KRA values the input and perspectives of the stakeholders and is committed to incorporating their feedback into the final version of the regulations.



3.0 Remarks by Cabinet Secretary

The Cabinet Secretary noted that excisable products are taxable based on the structure of demand and the purpose of excise tax is to encourage responsible consumption behaviour. He expressed that one of the strategies towards an economic transformation in the market segments is the Bottom-up Economic Transformation Agenda (BETA). Furthermore, some safeguards that work in the short to medium term such as the amended EGMS regulations can be provided while the National Tax Policy that will streamline tax policy making and ensure optimum taxation is being finalized. The CS stated that there was a need to develop a system with no tax exemptions and no tax waivers. He concluded that the forum was an open discussion and that all suggestions would be considered.

4.0 Summary of Presentation by Stakeholders

S/No.	Stakeholder	Submission
1.	KAM	<p><u>Cosmetic products</u></p> <ul style="list-style-type: none">• Proposal to delete excise stamp of Kes. 2.50 per stamp on cosmetic products of tariff headings 3303, 3304, 3305, and 3307. From the cost-benefit analysis perspective, imposing the stamp fee makes the products too expensive, considering that SMEs are likely to be locked out of operation.• Cosmetics of heading 3304 used for albinism would not be available for people with albinism, which sits on human rights.• The cost of collecting excise stamps as per the proposed rating against the overall excise tax payable in the cosmetic industry is 17%, compared to the average 10%.• Kenya would become less competitive compared to EAC states in terms of being competitive in the sector. For instance, Rwanda does not charge excise, Tanzania charges a lower excise rate, and both do not have EGMS stamp fees as compared to Kenya.• The local directors of multinationals are under intense pressure to move operations from Kenya to Egypt as the operations there are cheaper by 23% compared to Kenya. <p><u>Non-alcoholic beverages</u></p> <ul style="list-style-type: none">• Proposal to delete Kes.2.20 per stamp for fruit and vegetable juices and Kes.0.50 per stamp for bottled water and retain the current charges. The



S/No.	Stakeholder	Submission
		<p>proposed increment stands at about 206%. No rationale has been provided for the increment.</p> <ul style="list-style-type: none">• This sector also contains products that retail around Kes.10 and Kes.15. The excise stamp fee would constitute the larger share of the product cost. This would make Kenya less competitive in the region.• Excise duty has gone through adjustments in the last 6 months, i.e. on 1st July 2022, the Finance Act 2022 excise rate was adjusted, the on 1st October 2022, it was increased following an inflation adjustment of 6.3%, and now increase of 35%. The incremental rate per year is too high. <p><u>Alcoholic beverages</u></p> <ul style="list-style-type: none">• Proposal to delete the proposed rate and retain the current rate. There is a 79% arbitrary increase in the excise stamp from Kes.2.8 to Kes.5. Additionally, there was no public participation on how the rate was arrived at, thus contravening the Article 201 of the Constitution of Kenya and Section 5 of the Statutory Instrument Act. <p><u>Tobacco</u></p> <ul style="list-style-type: none">• Proposal to delete the proposed rate and retain the current rate of Kes.2.80 per stamp. There is no rationale for how the increment was arrived at. In addition, the rate is higher compared to the rates offered in other African countries.• KAM suggested suspending the implementation of the proposed amended regulations until further consultations.
2.	ICPAK	<ul style="list-style-type: none">• The EGMS regulations need to be reviewed to ensure it is not counterproductive due to the cost. In some instances, the stamp cost is much higher than the excise duty being collected, considering the stamp is per stock-keeping unit (SKU).• In some jurisdictions, excise stamps were introduced but were withdrawn due to their counterproductive nature.• An increment in the excise would increase the gap where the illegitimate players in the market might end up benefiting from the increase therefore, EGMS may not end up serving its purpose of driving compliance.• Excisable products have undergone a mirage of increases whereby in July 2022, the tax increased by 10% and in October 2022, it increased by 6.3% due



S/No.	Stakeholder	Submission
		<p>to inflation adjustment. The impact of inflation adjustment has increased excise tax to about 26% on some of the products between 2018 and 2020.</p> <ul style="list-style-type: none">• Consumers are price sensitive when it comes to excisable products. A price increase will lead to a decrease in volume of sales hence affecting other taxes such as corporate tax and VAT. Excise tax collection will go down, and the government will not reach the laffer curve.• The cost of compliance should be as low as possible to drive voluntary compliance.
3.	ABAK	<ul style="list-style-type: none">• The EGMS system is effective for the government but inefficient for the private sector as it has increased the cost of doing business and increased administrative burden. Thus, it is only prudent for KRA not to increase the cost of compliance management to an already compliant taxpayer.• KRA to use funds from legal fines imposed on non-compliant players to fund compliance management activities. For instance, KENHA uses fines from overloaded vehicles to fund road repairs.• Excise-led high costs of goods will impact citizens' purchasing power, leading to consumers resorting to purchasing counterfeits and illicit alcohol, which risks lives and denies the government the taxes they target to collect.• KRA has not justified the approximately 79% increase in the excise stamp for wine and spirits and a 100% increase for the excise stamp of beer and ciders.• The current excise stamps have failed to prevent counterfeit products due to counterfeited stamps which negates the main reason for introducing the excise stamp.• The cost of excise stamps has not been apportioned proportionately among the different excisable goods. KRA has not given a justification for the variation of excise stamp prices. The cost of an excise stamp should be equal among all excisable goods.• A further increase in the excise stamp leads to an increased financial burden and production costs, and the manufacturer may not absorb the costs of the excise stamp. This is so because the manufacturer incurs additional costs from having multiple authentication systems by the three agencies i.e. KRA, Kenya Bureau of Standards and Anti-Counterfeit Agency. These agencies need to collaborate and work on one system.



S/No.	Stakeholder	Submission
		<ul style="list-style-type: none">• A comparison of the cost of the stamps for alcoholic products in Kenya, Uganda and Tanzania reveals that Kenya is charging the highest, with the same supplier.• The government to consider reducing the cost of excise stamps to below Kshs.1 per stamp as a result of economies of scale as well as the government's takeover of the EGMS system.
4.	WABAK	<ul style="list-style-type: none">• The open market value of water is Kes.6.41 per litre. The open market value was not considered when excise was introduced to bottled water. The excise on the open market price of water is 320%. This is punishing their business.• Proposal to charge excise on suppliers of plastic water bottles.• Some members have been having challenges with stamp approval.
5.	PWC	<ul style="list-style-type: none">• PWC recommended reviewing this proposed amendment before implementing the new EGMS Regulations and providing clarity on the applicability of excise stamps on 'excisable goods manufactured for export' to avoid unnecessary future disputes with the impacted taxpayers and interested members of the public.• PWC recommended deferring adjusting prices of the excise stamps to help the corporations accounting for excise duties under this category to thrive in their businesses and encourage more investments in the country.• The government should also consider deferring this adjustment and focus on enhancing the capabilities of the existing excise stamps. This should form a reasonable basis for future adjustment of the fees.• Ongoing price hikes have eroded consumers' purchasing power significantly. Consequently, the proposed increase in prices for the excise stamps will result in price increases and lower demand for these products, thereby reducing revenue collected by the government in the long run.• Excisable products such as juices, carbonated drinks, alcoholic beverages and tobacco are price sensitive. Therefore, an increase in the excise stamp fees for these products will disrupt the demand and supply chains for these companies.• PWC recommended that KRA consider standardizing the pricing of the excise stamps as they serve the same purpose for all excisable products. There is no plausible justification for the differentiation across categories as the actual



S/No.	Stakeholder	Submission
		<p>difference in the products is reflected in the excise duties applicable under each product.</p> <ul style="list-style-type: none">• KRA could also consider reducing the cost of excise stamps to align with the East African Community (EAC) partner states. For instance, Tanzania Revenue Authority reduced the cost of excise stamps in 2022 following engagements between manufacturers and the TRA requesting a review of the excise tax stamps prices as this significantly impacted the manufacturers' operating cost.

5.0 NT and KRA Response

- KRA urged stakeholders to understand how KRA arrives at the tax rates before comparing them to other jurisdictions. KRA looks at the range of excisable products and the costs of stamps based on the number of stamps needed and computes a suitable rate for each product. The difference in tax rates between Kenyan products and other African states is the range of excisable goods.
- KRA responded that excise duty is a domestic tax and to exported goods is not subjected to it; therefore, the claim that excise stamp fees and excise duty applies to exported goods was a misinterpretation.
- KRA stated that the claims to suspend the regulations and seek further consultations could not be done since the public engagement was ongoing.
- KRA stated that excise duty is not imposed on water supplied by county governments but bottled water because it is a luxury good, and excise duty should apply to luxury goods. The luxury element is based on the fact that bottled water is not available to everybody, and it has value addition i.e. purified, added minerals etc. It was added that all East African countries have excise on water, and in terms of benchmarking, Kenya was not far from other jurisdictions.
- KRA mentioned that the proposal by WABAK on taxing other water vendors, such as water kiosks and water vendors in the supermarkets, would be considered in future budget cycles.
- It was stated that taxation on water bottles is done to discourage the consumption of plastic items because of environmental issues such as environmental degradation and not just revenue generation.



- Stakeholders were assured that KRA took note of the impact of the tax increment on the businesses.
- Stakeholders were told that the turnaround time for approvals on tax compliance was being worked on by having automated systems to reduce the turnaround time without having to wait for a tax officer. It was added that the tax officer only comes in when there is a non-compliance issue.
- The CG assured stakeholders to consider their submissions vis-à-vis what was anticipated to achieve on the way forward with the regulation.
- The CS treasury noted the predictability of taxes and assured the stakeholders that it will be looked upon. He added that tax is not a resistance and it should not distort the business operations. Additionally, the tax GDP has declined from about 19% to 14% and there was need to find transformations that can be made to improve on it.

6.0 Conclusion

Kenya National Chamber of Commerce and Industry, Chairman Mr. Peter Nyangweso, gave a vote of thanks on behalf of the stakeholders. He thanked the Cabinet Secretary and the Commissioner General for creating time to be part of the forum and for the opportunity to give their views on the proposed regulations. He also urged the KRA team to engage people in the regions through regional forums to cascade the discussions into the regions. The stakeholders hoped that their submissions would be considered in the final regulations. They looked forward to further engagements.



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Sign off:

Prepared by:

Miriam Onyango

Sign M. Onyango Date 6/02/2023

Prepared by:

Elizabeth Roimen

Sign E. Roimen Date 6/02/2023

Reviewed by:

Dr. Benard Kirui

Sign B. Kirui Date 06/02/2023

Approved by:

for Mr. Maurice Oray

Sign M. Oray Date 06/02/2023



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STAKEHOLDER COMMENTS ON EXCISE DUTY (EGMS) (AMENDMENT) REGULATIONS 2023

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
1.	PWC	Clause 4	<p>The CG has proposed under Clause 4 of the draft Amendment Regulations to amend Regulation 28(1) of the EGMS Regulations by deleting paragraph (1) and replacing it with a new paragraph (1).</p> <p>We note the draft Amendment overlooked the applicability of excise stamps on excisable goods locally manufactured for export.</p> <p>As it stands, it is notable that the intention of the amendment of Regulation 28 (1) of the EGMS Regulations was to merely exempt the use of excise stamps on goods that are exempted from excise duty as provided for under the Second Schedule to the Excise Duty Act, 2015 ("EDA").</p> <p>We note that "excisable goods manufactured for exports" are not listed under the Second Schedule of the EDA. This can mean that</p>	<p>Review the proposed amendment before the issuance of the new Regulations and provide clarity on the applicability of excise stamps on 'excisable goods manufactured for export'.</p>	<p>This will avoid future unnecessary disputes with the impacted taxpayers and interested members of the public.</p>	<p>Proposal effected: Clause 4 was reviewed to incorporate the comment.</p>



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No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
			excisable goods locally manufactured for exports will be subject to excise stamps. The proposed amendment, therefore, contravenes the provisions of the EDA under section 7, which provides for non-applicability of excise duty on 'excisable goods exported from Kenya under customs control'; hence the amendment is unfounded in law.	a) Defer adjusting prices of the excise stamps to: <ul style="list-style-type: none">• Help the corporations accounting for excise duties under this category to thrive in their businesses and encourage more investments in the country.• Allow the Government to focus on enhancing the capabilities of the existing excise	• The proposed increase in prices for the excise stamps will result in price increases and lower demand for these products, thereby reducing revenue collected by the Government in the long run.	The Government has accumulated debt on excise stamps of Kshs 4.5 billion. The review of excise stamp fees is necessary to allow full-cost recovery and offset the accumulated debt. Therefore, the comment was not incorporated in revising the legal notice.
		Clause 5	a) The draft Regulations seek to replace the Schedule, which will increase the cost of excise stamps by a margin ranging from 79% to 317%. This increase in the prices of excise stamps is likely to be shifted by the impacted manufacturers and importers to final consumers in the form of increased prices of the goods, adding to the recent 6.3% adjustment for inflation on specific rates that became effective in October 2022. Therefore, EGMS regulations and subsequently proposing amendments with increased prices for the excise duty stamps in a period of 3 months			



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No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
			<p>from the previous excise duty rate adjustments is counter-intuitive and ill-timed.</p> <p>b) The current rates for excise stamps imposed for excisable goods listed under the First Schedule to the EGMS Regulations are already amongst the highest compared to the rates provided for the same category of excisable products in other jurisdictions across Africa and globally. The increase in the fees for excise stamps results in an increase in business operating costs to the impacted manufacturers in Kenya thus resulting Kenyan products under this category becoming less competitive in the East African region and the global market at large due to increased overhead costs compared to its peers who have not made further adjustments on the fees charged on excise stamps.</p> <p>c) The KRA proposes to increase the current prices of the excise stamps while not considering</p>	<p>stamps. This should form a reasonable basis for future adjustment of the fees.</p> <p>b) KRA to consider standardizing the pricing of the excise stamps as they serve the same purpose for all excisable products.</p> <p>c) The KRA should consider reducing the cost of excise stamps to align with the East African Community ("EAC") Partner States, similar to the approach that the Tanzania Revenue Authority ("TRA") took in 2022.</p>	<ul style="list-style-type: none">• Stamps being an excise tax administration tool, there is no plausible justification for the differentiation across categories as the actual difference in the products is reflected in the excise duties applicable under each product.• This price reduction will provide much-needed relief to manufacturers by lowering the production costs and consequently making their products affordable to consumers.	



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INTERNAL

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
			resolving the prevailing challenges encountered by the users of the excise stamps nor enhancing their functionalities/ capabilities. It is on this basis that the increase in the stamp fees is unjustifiable in terms of the unsatisfactory salient features of the existing stamps not meeting modern business requirements hence resulting in deficiencies to effective and efficient running of the production lines.			
			d) Excise stamps are meant to deter counterfeiting and enable tracking of excisable goods along the supply chain, which also provides for a mechanism through which the KRA is able to compute the excise duty due from manufacturers and importers. Our clients have observed that the current excise stamps do not have the track and trace functionality. That notwithstanding, the increase in prices for these stamps is likely to result in an increase in counterfeit and illicit trade and			



KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

INTERNAL

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
			<p>consequently resulting in a loss of government revenue.</p> <p>e) The differentiation pricing of the excise stamps for excisable goods is irrational. For example, the charge of varying prices for excise stamps for tobacco and nicotine products does not provide any enhanced features in terms of functionalities of the excise stamps that have been paid for with varying prices and hence this creates an impression towards unfair tax administration and further justifying higher operational costs incurred by companies operating in the tobacco industry.</p>			
	KAM		<p>Cosmetics The cost of collecting excise stamps as per the proposed rating against the overall excise tax payable in the cosmetic industry is 17%, compared to the average 10%. Kenya would become less competitive compared to EAC states in terms of being competitive in the sector. For instance, Rwanda does not charge</p>	<p>Delete excise stamps on cosmetic products - kes 2.5 Retain the current rates for alcoholic beverages, non-alcoholic beverages and Tobacco.</p>	<p>The increase makes the product less competitive in the region.</p>	<p>The Government has accumulated debt on excise stamps of Kshs 4.5 billion. The review of excise stamp fees is necessary to allow full-cost recovery and offset the accumulated debt. Therefore,</p>



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ISO 9001:2015 CERTIFIED

INTERNAL

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
			<p>excise, Tanzania charges a lower excise rate, and both do not have EGMS stamp fees as compared to Kenya.</p> <p>The local directors of multinationals are under intense pressure to move operations from Kenya to Egypt as the operations there are cheaper by 23% compared to Kenya.</p> <p>Non-alcoholic beverages</p> <p>Finance Act 2022, inflation adjustments increased the rates of some excisable products. Adjusting the rates of excise stamps not be suitable for business.</p> <p>Alcoholic</p> <p>There is a 79% arbitrary increase in the excise stamp from Kes.2.8 to Kes.5. Additionally, there was no public participation on how the rate was arrived at, thus contravening the Article 201 of the Constitution of Kenya and Section 5 of the Statutory Instrument Act.</p> <p>Tobacco</p> <p>There is no rationale for how the increment was arrived at. In addition, the rate is higher</p>			<p>the comment was not incorporated in revising the legal notice.</p>



KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

INTERNAL

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
	ABAK	Clause 3	<p>compared to the rates offered in other African countries:</p> <p>Ease of doing business- The EGMS system is effective for the Government but not efficient for the private sector as it has resulted in an increase in the cost of doing business and increased administrative burden. In addition, the cost of purchasing excise stamps, manufacturers have also experienced the following:</p> <ul style="list-style-type: none">• Production down times caused by inefficiency of EGMS machines.• Increased logistic costs of transporting the stamps from KRA.• Increased internet connectivity-requirement of dedicated internet.• Increased cost of hosting KRA and SICPA teams on site.	Delete the proposal		
		Clause 4	The proposal seeks to retain Kenyan manufacturers ability to export out of the country. Currently, our neighboring countries each have their own tax stamp and it will be undesirable to	Amend clause 4 to exclude exports from requirements of excise stamps.	This will make products originating from Kenya competitive.	Proposal effected. Clause 4 was reviewed to incorporate the comment.

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INTERNAL

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
			<p>purchase an excise stamp, have it applied on the bottle only for the stamp to be removed and reapplied with a new URA/TRA stamp at the border.</p> <p>Because excise tax is a domestic tax, importers of Kenyan made beverages will also incur an extra cost of removing the KRA stamps and reapplying with the destination stamps.</p> <p>Rates for non-compliance in the alcoholic beverages</p> <p>Excise stamps to be applied in exported products based in the provisions of Clause 4 in the proposed regulations.</p> <p>About 44% of alcohol sales are illicit (WHO, 2018)</p> <p>The frequent changes in the rates provides unpredictable excise tax regime</p> <p>Same service provider providing cheap excise stamps in other country.</p> <p>Can it go lower than kshs 1</p>			



KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

INTERNAL

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
			Suspend the regulations Include multi-agency - Govt sticker			
		Clause 5	<p>The cost of excise stamps has not been apportioned proportionately among the different excisable goods. KRA has not given a justification for the variation of excise stamp prices. The cost of an excise stamp should be equal among all excisable goods.</p> <p>A further increase in the excise stamp leads to an increased financial burden and production costs, and the manufacturer may not absorb the costs of the excise stamp. This is so because the manufacturer incurs additional costs from having multiple authentication systems by the three agencies, i.e. KRA, Kenya Bureau of Standards and Anti-Counterfeit Agency. These agencies need to collaborate and work on one system.</p>	<p>Suspend the gazette notice to give time for strategic consultations between the Government and the industry on the way forward.</p> <p>Roll out the implementation of the Integrated product marking and authentication system (IPMAS)</p> <p>The government to consider reducing the cost of excise stamps to below Kshs.1 per stamp as a result of economies of scale as well as the government's takeover of the EGMS system.</p>		

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KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

INTERNAL

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
			<p>The chocolate industry is currently overtaxed and cannot bear any further costs.</p> <p>The current tax to price ratio is already punitive.</p> <p>The unpredictable high excise rates have led to growth of illicit trade.</p> <p>The frequent changes in the rates provides unpredictable excise tax regime</p>			
	ICPAK		<p>A comparison of the cost of the stamps for alcoholic products in Kenya, Uganda and Tanzania reveals that Kenya is charging the highest, with the same supplier.</p> <p>Excise stamp is highest in EAC</p> <p>In some instances, the stamp cost is much higher than the excise duty being collected, considering the stamp is per stock-keeping unit (SKU)</p> <p>An increment in the excise would increase the gap where the illegitimate players in the market might end up benefiting from the increase therefore, EGMS may not</p>	<p>Review the rates of the excise stamps.</p>	<p>This will ensure that the rates are not too high to be counterproductive.</p>	<p>The Government has accumulated debt on excise stamps of Kshs 4.5 billion. The review of excise stamp fees is necessary to allow full-cost recovery and offset the accumulated debt. Therefore, the comment was not incorporated</p>



KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

INTERNAL

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
			end up serving its purpose of driving compliance. Consumers are price sensitive when it comes to excisable products. A price increase will lead to a decrease in volume of sales hence affecting other taxes such as corporate tax and VAT. Excise tax collection will go down, and the government will not reach the laffer curve. The cost of compliance should be as low as possible to drive voluntary compliance.			in revising the legal notice.
	WBAK		The open market value of water is Kes.6.41 per litre. The open market value was not considered when excise was introduced to bottled water. The excise on the open market price of water is 320%. This is punishing their business. Some members have been having challenges with stamp approval it takes too long with back and forth..	Charge excise duty on imported plastics Collect excise duty on plastic players rather than the water.	It will be easy to administer the tax as there are few players.	Proposal to be evaluated.



KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

INTERNAL

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
	European Business Council Kenya (EBC)		<p>Illicit is there for other products but not water. It is either sold with or without an excise stamp.</p> <p>Discrimination – those who don't blow their plastics pay excise on bottles while those who blow are not charged excise.</p> <p>In the past year, cosmetics and related products have been hit by several tax increments' even though the industry is yet to recover from post covid effects.</p> <p>This will mean introduction of complexities in the production of the products as it will involve the purchase of additional machinery and modification of production line's therefore increasing the cost of production and overall increase of product to consumer.</p> <p>With the current inflation rate, most consumers will resolve to buying cheaper products which most of the time are counterfeits products and are damaging to their health.</p>	Withdraw proposal	Increment will make the local companies not competitive when it comes to their product cost compared to the regional market.	<p>The Government has accumulated debt on excise stamps of Kshs 4.5 billion. The review of excise stamp fees is necessary to allow full-cost recovery and offset the accumulated debt. Therefore, the comment was not incorporated in revising the legal notice.</p>



KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

INTERNAL

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
			<p>Regionally, some of the cosmetic companies that we represent will not be competitive when it comes to their product cost and this is an area where there is already grave concern, these new excise proposals will slowly but surely drive local manufacturing and investment to a shutdown with a tax overload.</p> <p>For European companies with investments locally, these measures will drive the mother company to consider closure of local manufacturing plant and focus on importation. This will lead to a huge reduction in the workforce and will decrease investor confidence.</p>			
	BAT Kenya	Clause 4	<p>Amendment of Section 28(1) to the proposed text effectively means that manufacturers will have to apply tax stamps on products for both domestic consumption as well as exports.</p> <p>BAT shares KRA's concerns about the potential for product</p>	<p>Amend clause 4 to exclude exports from requirements of excise stamps.</p>	<p>This will make products originating from Kenya competitive.</p>	<p>Proposal effected. Clause 4 was reviewed to incorporate the comment.</p>



KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

INTERNAL

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
			<p>manufactured for export being diverted into the domestic market prior to crossing the border or being round tripped back into Kenya on reach its destination market. However, without full track and trace functionality to help identify the point at which product is diverted from the legal supply chain, we do not believe that the new requirement will materially reduce these risks.</p> <p>Application of lax stamps to smuggled non-duty paid round-tripped product will make it harder, not easier, for Enforcement Authorities as well as consumers to visually identify illicit product at retail. As such, in our view, this move will promote illicit trade and cause confusion for the public and Enforcement Authorities (as diverted export product will now look legitimate as it contains a stamp).</p> <p>From an economic perspective, the measure undermines the Government's priority on</p>			



KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

INTERNAL

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
			<p>expansion of manufacturing sector to produce goods that can compete in the world market.</p> <p>There are already sufficient measures in place to track export production volumes as below:</p> <p>i. The EGMS machines comprise of production counters that record and transmit to the KRA systems data on all production lines in use, including exports.</p> <p>ii. KRA has also mandated all excise manufacturers to provide office space for a customs officer under whose control the excise facilities fall.</p> <p>iii. Manufacturers provide their monthly production records for both domestic and export sales to the KRA as well as declare this in the monthly excise duty returns.</p> <p>In addition to the measures above, tax stamps are an excise administration tool for the Commissioner to assess excise duty payable and exports are not subject to Excise Duty.</p>			

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INTERNAL

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
			Further, different countries also require that their stamps be applied to products imported into their jurisdictions. This new requirement in the Draft Regulations will therefore introduce unnecessary complexities on the markings on export products and will not assist the KRA in the collection of Excise duty.			
		Clause 5	The Draft Regulations propose a 79% increase on the current price of tax stamps applicable to tobacco products, which presently stands at KShs 2.8 per stamp and is already the highest rate in the world. In the absence of any improvements on the capabilities of the EGMS system, this dramatic price increase creates a number of serious concerns related to Kenya's public policy goals: i. Destabilises the Kenya market and erodes Government revenues by imposing excessive tax	Withdraw the proposal Impose a traceability fee that is limited to the approximate cost of services provided.	The proposed increase will further increase the differential in costs in comparison to similar stamps provided by the current supplier to other countries across Africa, as well as against pricing by other providers across the world. Reducing the fee to comparable fees in other markets will stabilise market dynamics, will not incentivize illicit traders, and will help secure an important and	The Government has accumulated debt on excise stamps of Kshs 4.5 billion. The review of excise stamp fees is necessary to allow full-cost recovery and offset the accumulated debt. Therefore, the comment was not incorporated in revising the legal notice.



KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

INTERNAL

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
			<p>administration fees on legitimate manufacturers far beyond the case in neighbouring countries and higher than any other country in the world;</p> <p>ii. Incentivizes illicit trade by making the stamps, which are ideally a tax administration tool, untenably expensive and subsequently widening the price gap between legitimate and illicit brands;</p> <p>iii. Threatens Kenya with compliance international obligations. Article 8 of the World Health Organisation (WHO) protocol to eliminate illicit trade in Tobacco products, speaks to the requirements on track and trace, which the current tax stamps do not meet. Further, GATT Article VIII.1 also spells out that tax stamp fees are meant to cover the specific administration cost and not to be treated as a revenue source by Governments.</p> <p>The Proposed amendment to the Principal Regulations attempts</p>		<p>stable source of government revenues through improved excise tax compliance.</p>	



KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

INTERNAL

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
	RETAIL TRADE ASSOCIATION OF KENYA (RETRAK)	Clause 5	<p>defeat the judgement by the Honourable Constitutional Court in the Constitutional & Human Rights Division Petition No. 532 of 2017 Omtata Versus KRA and SICPA</p> <p>In the matter, the Court in its decision concluded that the Sourcing of SICPA was unprocedural and unconstitutional and that it did not meet the threshold for direct procurement as provided by the Public Procurement Act. It further found that the Principal Regulations were enacted without due process and were unconstitutional. Consequently, the court quashed the award of tender to SICPA and "The Excise Duty (Excisable Goods Management System) Regulations, 2017 (Principal Regulations).</p>	Retain the current rates	Increasing the stamp duty will increase the cost of an essential good, burdening further a very lean pocketed consumer	



KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

INTERNAL

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
			<p>either from informal sector which and/or counterfeiters. This leads to a decrease in revenues collectible by Government as many informal traders are not captured in the tax basket. This may also affect the employment numbers within the sector, as low sales require less shop attendants.</p> <p>These Commodities especially cosmetics and beauty products are prone to counterfeiting and will be counterfeited if the cost has to increase arbitrarily.</p> <p>Local alcoholic beverages will struggle to compete against local brews and illicit alcohol brewed in unsanitary conditions. This will in turn lead to the associated social problems such as underage drinking and health related risks of illicit alcohol such as blindness. Reduction of illicit alcohol has been one of the clarion calls of the Government of the day.</p>			
	KBL	Clause 5	<p>KRA has not provided a justification for the approximately 9% arbitrarily increase in the excise stamps from KES.2.8 to 5.0. This leads to unprecedented and unexpected cost to business. A look at the initial EGMS project in 2015 shows that it was conceptualized as a selffunding project.</p> <p>Public participation was not conducted by KRA before they came up with the proposed excise stamps costs increment.</p>	<p>Halt and review the proposed increase in excise stamps under the draft regulations Roll ou the IPMAS Reduce the cost of stamps below KSH.1 per stamp.</p>		

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KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

INTERNAL

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
			Excise stamps have failed to prevent counterfeited stamps which negates the main reason for introducing the excise stamps. Therefore, it is important to phase out paper stamps in favor of digital stamps. Poor quality paper stamps leads to low Operational Equipment Effectiveness numbers, not environmentally friendly and also leads to losses of stamps which cannot be refunded by KRA but are borne by the manufacturers.			
		Clause 4	Exported goods covered under section 7(b) of EDA have been excluded from the proposed list of goods to be exempted from the excise stamps requirement.	exempt export product from excise stamps		
	Coca Cola	Clause 5	The current cost of the excise stamp which is aimed at ensuring compliance and protection of the excise tax is already not efficient and any further increase in its cost, will have a negative impact including: -A reduction in the overall tax collection -Increased illicit trade driven by the high cost of compliance with excise tax -Reduced investment in the manufacturing sector -Reduced disposable income at the bottom of the pyramid The 267% proposed increase on non alcoholic beverages and juices is punitive on businesses and on	The Government should hold any intended increase in the cost of stamps as it may be a deterrent to voluntary compliance. The cost of excise tax plus ECGMS is extremely punitive to businesses. The Government should engage taxpayers and other stakeholders in the review of the place of ECGMS as a tool to drive compliance, excise tax protection and in combating illicit trade.		



KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

INTERNAL

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
			<p>the consumer.</p> <p>The cost of the stamp which is aimed at ensuring compliance and protection of the excise tax is very high compared to the excise tax it purports to collect. (In some instances, higher than the excise tax)</p> <p>The cost of the stamp as a percentage of excise tax collected is highest in Kenya. Increasing the cost of the stamp may be a deterrent to voluntary compliance.</p> <p>Due to the increased cost, the stamps may become counterproductive.</p> <p>An increase in the cost of stamps to an already strained business environment that is enduring a myriad of taxes, inflation in cost of materials and a weakening shilling will impact negatively on the manufacturing sector and the stakeholders across the value chain!</p>	<p>Key areas for consideration should include:</p>		
	The Pubs, Entertainment & Restaurants Association of Kenya		<p>KRA has not provided a justification for the approximately 79% arbitrarily increase in the excise stamp from KES 2.80 to 5.0. This leads to unprecedented and unexpected cost to business. A look at the initial EGMS project in 2015 shows that it was conceptualized as a self-funding project.</p>	<p>Halt and review the proposed increase of excise stamp under the draft regulations.</p> <p>Roll out the implementation of the Integrated Product Marking and Authentication System</p>		



KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

INTERNAL

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
			<p>According to the SICPA contract, the initial cost of the EGMS stamp was to pay for the stamping equipment to be installed on the Manufacturers equipment.</p> <p>The expectation is that the cost of the stamps should be going down considering that the initial stamp prices catered for sourcing of the equipment from SICPA.</p> <p>The cost of ink and paper used for the stamps is generally known. KRA should therefore give a justification for the proposed increase.</p> <p>Public participation was not conducted by KRA before they came up with the proposed excise stamp cost increments. This contravenes Article 201 of the Constitution which provides for public participation in matters of public finance; and Section 5 of the Statutory Instruments Act which provides that before a regulation-making authority makes a statutory instrument, and in particular where the proposed statutory instrument is likely to have a direct, or a substantial indirect effect on business, the regulation-making authority shall make appropriate consultations with persons who are likely to be affected by the proposed instrument.</p>	<p>(IPMAS) but first engage the Business Community on the regulatory impact and on any additional cost.</p> <p>The government considers reducing the cost of excise stamps to below Kshs 1/= per stamp as a result of economies of scale as well as government's takeover of the EGMS system.</p>		



KENYA REVENUE AUTHORITY

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INTERNAL

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
			<p>Excise stamps have failed to prevent counterfeit products as a result of counterfeited stamps which negates the main reason for introducing the excise stamp. Therefore, it is important to phase out paper stamps in favor of digital stamps. In curbing illicit trade, the greatest issue at present is the counterfeiting of the KRA excise stamps by manufacturers in an effort to evade payment of excise duty which is high and unsustainable for businesses. Increase in the cost of excise stamps leads to over taxation of manufacturers who are already paying high excise duty subject to regular increases (almost annual) and the annual inflationary adjustments.</p> <ul style="list-style-type: none">• As an alternative the increased cost of excise stamps should offset payable excise duty.• The cost of excise stamps has not been apportioned proportionately among the different excisable goods. <p>KRA has not given a justification to</p>			



KENYA REVENUE AUTHORITY

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INTERNAL

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
			<p>the variation of excise stamp prices. The cost of an excise stamp should be equal among all excisable goods as there is no discernable difference in the stamps.</p> <ul style="list-style-type: none">• Manufacturers have continued to suffer loss occasioned from the system downtimes and delays in stamp activation and data synchronization yet the cost of the excise stamps are arbitrarily increased.• In addition to downtimes experienced from the system, manufacturers have to bear the logistical costs due to the centralized collection point for excise stamps. A further addition to the cost of excise stamp is a financial burden on the manufacturers.			



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STAKEHOLDER ENGAGEMENT FORUM ON EXCISE DUTY (AMENDMENT) REGULATIONS, 2023

Date: 1st February 2023

Time: 8:00am

Venue: 5th Floor Convention Centre, Times Tower

No.	Name	Organization	Email	Sign
1.	Ms. Ruth Wadenya Manager Partnership	Kenya National Chamber of Commerce and Industry	ruth.wadenya@kenya chamber of commerce	
2.	Mr. Francis Theuri National Director	Kenya National Chamber of Commerce and Industry		
3.	Ms. Caroline Kosom Manager Trade Policy and Advocacy	Kenya National Chamber of Commerce and Industry	Caroline Kosom @Kenya chamber of commerce	
4.	Mr. Anthony Mwangi Chief executive officer	Kenya Association of Manufacturers	Anthony Mwangi @Kenya Association of Manufacturers	
5.	Ms. Miriam Bommet Secretariat	Kenya Association of Manufacturers	miriam.bommet@kam.co.ke	
6.	Ms. Akinyi Gikonyo Tax expert	Kenya Association of Manufacturers	akinyi.gikonyo@kam.co.ke	
7.	Mr. Job Wanjohi Secretariat	Kenya Association of Manufacturers	job.wanjohi@kam.co.ke	
8.	Ms. Zipporah Kuria	Kenya Association of Manufacturers		

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No.	Name	Organization	Email	Sign
9.	Ms. Fridah Mbugua	EABL		
10.	Dr. Gasheri Mugo	Sheth Natural		
11.	Ms. Selina Musalia	Unilever	Selina.musalia@unilever.com	
12.	Ms. Susan Maingi	Cocacola		
13.	Brij Tanuj Raja	Maisha Beverages	RAJATANJA@GMAIL.COM	
14.	Anup Bid	Jetlak		
15.	Ms. Christin Muthui Tax Expert	Alpha Tax advisory ltd		
16.	Malcom Mwangi Secretariat	Kenya Association of Manufacturers		
17.	Paul Maina KML	Kenafic		
18.	Mr. Emmanuel Otieno KEPSA policy officer	Kenya Private Sector Association		
19.	Ms. Susan Maingi Vice Chair Trade and Industry	Kenya Private Sector Association		
20.	Mr. Eugene Ngumi Member Public Finance Sector Board	Kenya Private Sector Association		
21.	Mr. Patrick Lavince KEPSA Legal	Kenya Private Sector Association	patrick.lavince@kepsa.or.ke Private Law Firm - Goga & Njoroge	

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No.	Name	Organization	Email	Sign
22.	Mr. Eric Githua Chairman	Alcoholic Beverages Association of Kenya	ericgithua@kwaibv.ac.ke	
23.	Mr. Eric Kiniti	Alcoholic Beverages Association of Kenya	Eric.Kiniti@kwaibv.ac.ke	
24.	Nadida Rowlands	Alcoholic Beverages Association of Kenya	nadida_rowlands@kwaibv.ac.ke	
25.	Ms. Frida Mbugua	Alcoholic Beverages Association of Kenya		
26.	Mr. PS Mann	Alcoholic Beverages Association of Kenya	PS Mann 123@kwaibv.ac.ke	
27.	Mr. Elijah Mwangi	Alcoholic Beverages Association of Kenya	Elijah Mwangi@kwaibv.ac.ke	
28.	Mr. James Kamau	Alcoholic Beverages Association of Kenya	James Kamau@kwaibv.ac.ke	
29.	Peter Baraza Importers Manager Carrefour	Retail Traders Association of Kenya		
30.	Mr. Henry Kabogo Chairperson	Water Bottlers Association of Kenya	Henry Kabogo@kwaibv.ac.ke	
31.	Ms. Wangui Kagera	Water Bottlers Association of Kenya	Wangui@kwaibv.ac.ke	
32.	Ms. Sheila Murgor	Water Bottlers Association of Kenya		

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No.	Name	Organization	Email	Sign
33.	Mr. Samuel Waweru	Water Bottlers Association of Kenya		
34.	Mr. James Kibui	Water Bottlers Association of Kenya	James.Kibui@gmail.com	
35.	Mr. Onyango	Water Bottlers Association of Kenya		
36.	Mr. Ali Bule	Water Bottlers Association of Kenya	bule@hybrid.co.ke	
37.	FCPA Robert Waruiru	Institute of Certified Public Accountants of Kenya	RobertW@gmail.com	
38.	CPA Christine Kahema Muthui	Institute of Certified Public Accountants of Kenya	CPAChristine@gmail.com	
39.	Ms. Winnie Gloria Nkatha	Institute of Certified Public Accountants of Kenya	Winnie.Nkatha@gmail.com	
40.	Mr. Martin Chomba Chairman	Petroleum Outlet Association of Kenya	Martin Chomba@gmail.com	
41.	Mr. Daniel Kimemia Ngugi Secretary	Petroleum Outlet Association of Kenya	danielkimugi@gmail.com	

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No.	Name	Organization	Email	Sign
42.	Mr. Victor Wangombe Board Member	Petroleum Outlet Association of Kenya		
43.	Mr. Daniel Kibugi Nganga Board Member	Petroleum Outlet Association of Kenya	info@petroleumoutlet.co.ke	
44.	Mr. Godfrey Makolha Mashiya Accountant	Petroleum Outlet Association of Kenya	Godfrey.makolha@petroleumoutlet.co.ke	
45.	Mr. Roy Mwanthi Chairman	Kenya International Freight and Warehousing Association	nationalchairs@kifa.co.ke	
46.	Mr. Leonard M. Njiru	Kenya International Freight and Warehousing Association	Leonard@kifa.co.ke	
47.	Md. Umulkheir Abdi	Kenya International Freight and Warehousing Association	abdi@kifa.co.ke	
48.	Mr. Noah Wamalwa Programs Coordinator	Institute of Economic Affairs	Wamalwa@iea.or.ke	
49.	Mr. Maurice Mwaniki Associate Director- Indirect Taxes	Price Water Coopers (PWC)	Maurice.Mwaniki@pwc.co.ke	

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1000 999 998 997 996 995 994 993 992 991 990 989 988 987 986 985 984 983 982 981 980 979 978 977 976 975 974 973 972 971 970 969 968 967 966 965 964 963 962 961 960 959 958 957 956 955 954 953 952 951 950 949 948 947 946 945 944 943 942 941 940 939 938 937 936 935 934 933 932 931 930 929 928 927 926 925 924 923 922 921 920 919 918 917 916 915 914 913 912 911 910 909 908 907 906 905 904 903 902 901 900 899 898 897 896 895 894 893 892 891 890 889 888 887 886 885 884 883 882 881 880 879 878 877 876 875 874 873 872 871 870 869 868 867 866 865 864 863 862 861 860 859 858 857 856 855 854 853 852 851 850 849 848 847 846 845 844 843 842 841 840 839 838 837 836 835 834 833 832 831 830 829 828 827 826 825 824 823 822 821 820 819 818 817 816 815 814 813 812 811 810 809 808 807 806 805 804 803 802 801 800 799 798 797 796 795 794 793 792 791 790 789 788 787 786 785 784 783 782 781 780 779 778 777 776 775 774 773 772 771 770 769 768 767 766 765 764 763 762 761 760 759 758 757 756 755 754 753 752 751 750 749 748 747 746 745 744 743 742 741 740 739 738 737 736 735 734 733 732 731 730 729 728 727 726 725 724 723 722 721 720 719 718 717 716 715 714 713 712 711 710 709 708 707 706 705 704 703 702 701 700 699 698 697 696 695 694 693 692 691 690 689 688 687 686 685 684 683 682 681 680 679 678 677 676 675 674 673 672 671 670 669 668 667 666 665 664 663 662 661 660 659 658 657 656 655 654 653 652 651 650 649 648 647 646 645 644 643 642 641 640 639 638 637 636 635 634 633 632 631 630 629 628 627 626 625 624 623 622 621 620 619 618 617 616 615 614 613 612 611 610 609 608 607 606 605 604 603 602 601 600 599 598 597 596 595 594 593 592 591 590 589 588 587 586 585 584 583 582 581 580 579 578 577 576 575 574 573 572 571 570 569 568 567 566 565 564 563 562 561 560 559 558 557 556 555 554 553 552 551 550 549 548 547 546 545 544 543 542 541 540 539 538 537 536 535 534 533 532 531 530 529 528 527 526 525 524 523 522 521 520 519 518 517 516 515 514 513 512 511 510 509 508 507 506 505 504 503 502 501 500 499 498 497 496 495 494 493 492 491 490 489 488 487 486 485 484 483 482 481 480 479 478 477 476 475 474 473 472 471 470 469 468 467 466 465 464 463 462 461 460 459 458 457 456 455 454 453 452 451 450 449 448 447 446 445 444 443 442 441 440 439 438 437 436 435 434 433 432 431 430 429 428 427 426 425 424 423 422 421 420 419 418 417 416 415 414 413 412 411 410 409 408 407 406 405 404 403 402 401 400 399 398 397 396 395 394 393 392 391 390 389 388 387 386 385 384 383 382 381 380 379 378 377 376 375 374 373 372 371 370 369 368 367 366 365 364 363 362 361 360 359 358 357 356 355 354 353 352 351 350 349 348 347 346 345 344 343 342 341 340 339 338 337 336 335 334 333 332 331 330 329 328 327 326 325 324 323 322 321 320 319 318 317 316 315 314 313 312 311 310 309 308 307 306 305 304 303 302 301 300 299 298 297 296 295 294 293 292 291 290 289 288 287 286 285 284 283 282 281 280 279 278 277 276 275 274 273 272 271 270 269 268 267 266 265 264 263 262 261 260 259 258 257 256 255 254 253 252 251 250 249 248 247 246 245 244 243 242 241 240 239 238 237 236 235 234 233 232 231 230 229 228 227 226 225 224 223 222 221 220 219 218 217 216 215 214 213 212 211 210 209 208 207 206 205 204 203 202 201 200 199 198 197 196 195 194 193 192 191 190 189 188 187 186 185 184 183 182 181 180 179 178 177 176 175 174 173 172 171 170 169 168 167 166 165 164 163 162 161 160 159 158 157 156 155 154 153 152 151 150 149 148 147 146 145 144 143 142 141 140 139 138 137 136 135 134 133 132 131 130 129 128 127 126 125 124 123 122 121 120 119 118 117 116 115 114 113 112 111 110 109 108 107 106 105 104 103 102 101 100 99 98 97 96 95 94 93 92 91 90 89 88 87 86 85 84 83 82 81 80 79 78 77 76 75 74 73 72 71 70 69 68 67 66 65 64 63 62 61 60 59 58 57 56 55 54 53 52 51 50 49 48 47 46 45 44 43 42 41 40 39 38 37 36 35 34 33 32 31 30 29 28 27 26 25 24 23 22 21 20 19 18 17 16 15 14 13 12 11 10 9 8 7 6 5 4 3 2 1 0



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STAKEHOLDER ENGAGEMENT FORUM ON EXCISE DUTY (AMENDMENT) REGULATIONS, 2023.

Date: 1st February 2023

Time: 8:00am

Venue: 5th Floor Convention Centre, Times Tower

S/NO	NAME	ORGANIZATION	EMAIL	PHONE NUMBER	SIGN
1.	Edgar Njiru	Coca-Cola	engumi@coca-cola.com	011 131 95 89	[Signature]
2.	Belian Mwangi	Coca-Cola	smangi@ccbagroup.com	0724 462 144	[Signature]
3.	Melinda Mwangi	KRA	mwangi.melinda@kra.go.ke	0722 22 77	[Signature]
4.	Theresa Tello	KRA	theresa.tello@kra.go.ke	0766 631 25	[Signature]
5.	Wendeline Mwangi	KRA	wendeline.mwangi@kra.go.ke	0720 882 52	[Signature]
6.	Benjamin Mwangi	KRA	benjamin.mwangi@kra.go.ke	0724 462 144	[Signature]
7.	James Ombaka	LEA	ombaka2@leap.org.ke	0715 708090	[Signature]
8.	Kelvin Kueh	KRA	kelvin.kueh@kra.go.ke	0722 943 679	[Signature]
9.	CPN General Committee	ICDRA	cpn.general@icdra.go.ke	0722 943 679	[Signature]
10.	Festus Njiru	KRA	festus.njiru@kra.go.ke	0722 943 679	[Signature]
11.	John Mwangi	KRA	john.mwangi@kra.go.ke	0722 943 679	[Signature]
12.	Andrew Mwangi	KRA	andrew.mwangi@kra.go.ke	0722 943 679	[Signature]
13.	Benjamin Mwangi	TED	benjamin.mwangi@ted.go.ke	0722 943 679	[Signature]
14.	Benjamin Mwangi	KRA	benjamin.mwangi@kra.go.ke	0722 943 679	[Signature]

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STAKEHOLDER ENGAGEMENT FORUM ON EXCISE DUTY (AMENDMENT) REGULATIONS, 2023

Date: 1st February 2023

Time: 8:00am

Venue: 5th Floor Convention Centre, Times Tower

S/NO	NAME	ORGANIZATION	EMAIL	PHONE NUMBER	SIGN
1.	Tulipe Njiru	ABK	tulipe@abk.co.ke	0705497474	
2.	Tulipe Njiru	ABK	Tulipe Njiru	0724245501	
3.	Tulipe Njiru	ABK	Tulipe Njiru	0715172249	
4.	Tulipe Njiru	ABK	Tulipe Njiru	0712735590	
5.	Tulipe Njiru	ABK	Tulipe Njiru	0715172249	
6.	Tulipe Njiru	ABK	Tulipe Njiru	0722052764	
7.	Tulipe Njiru	ABK	Tulipe Njiru	0722172249	
8.	Tulipe Njiru	ABK	Tulipe Njiru	0722654506	
9.	Tulipe Njiru	ABK	Tulipe Njiru	0722052764	
10.	Tulipe Njiru	ABK	Tulipe Njiru	0722172249	
11.	Tulipe Njiru	ABK	Tulipe Njiru	0722654506	
12.	Tulipe Njiru	ABK	Tulipe Njiru	0722052764	
13.	Tulipe Njiru	ABK	Tulipe Njiru	0722172249	
14.	Tulipe Njiru	ABK	Tulipe Njiru	0722654506	

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Date: 1st February 2023

Time: 8:00am

Venue: 5th Floor Convention Centre, Times Tower

S/NO	NAME	ORGANIZATION	EMAIL	PHONE NUMBER	SIGN
1.	Leonard Chasowa	KRA	leonard.chasowa@kra.go.ke	0722 699402	(Signature)
2.	Benard Oluo	KRA	Benard.Oluo@kra.go.ke	0759 01 2673	(Signature)
3.	Lawrence Njoroge	KRA	Lawrence.Njoroge@kra.go.ke	0725 273477	(Signature)
4.	Alfred Oluo	Chapman	Alfred.Oluo@chapman.go.ke	0714 13 8846	(Signature)
5.	Pauline Wanjau	KRA	Pauline.Wanjau@kra.go.ke	0722 699402	(Signature)
6.	Patricia Ombili	KRA	Patricia.Ombili@kra.go.ke	0712 342819	(Signature)
7.	Boniface Ngunjiri	KRA	Boniface.Ngunjiri@kra.go.ke	0722 699402	(Signature)
8.	Annastacia Wanjau	RETRAK	annastacia.wanjau@retrak.com	0711 213 484	(Signature)
9.	Peter Bwalya	WAD	Peter.Bwalya@wad.go.ke	0726 550878	(Signature)
10.	John Wanjau	KRA	John.Wanjau@kra.go.ke	0723 583730	(Signature)
11.	Vera Ngunjiri	KRA	Vera.Ngunjiri@kra.go.ke	0726 572747	(Signature)
12.	Elizabeth Ngunjiri	KRA	Elizabeth.Ngunjiri@kra.go.ke	0726 572747	(Signature)
13.	Raymond Ngunjiri	KRA	Raymond.Ngunjiri@kra.go.ke	0726 572747	(Signature)
14.	Sharon Kariuki	KRA	Sharon.Kariuki@kra.go.ke	0726 572747	(Signature)

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S/NO	NAME	ORGANIZATION	EMAIL	PHONE NUMBER	SIGN
1.	Vionah Achiro	KRA	Vionah.vionah@kra.go.ke	0746745184	
2.	Miriam Ganyaga	KRA	miriam.ganyaga@kra.go.ke	0741463073	
3.	Constance Kivuti	KRA	Constance.kivuti@kra.go.ke	0703829750	
4.	Leah Odede	KRA	leah.odede@kra.go.ke	0744834348	
5.	Fidrick Aliu	KRA	Fidrick.aliu@kra.go.ke	0757407986	
6.	T. Remyah Kimani	KRA	remyah.kimani@kra.go.ke	0731135121	
7.	Guadalupe Jogo	KRA	Guadalupe.jogo@kra.go.ke	0746402900	
8.	Tulipe Ushuru	KRA	Tulipe.ushuru@kra.go.ke	0728871112	
9.					
10.					
11.					
12.					
13.					
14.					

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Cover your mouth when sneezing



Wash hands with water and soap/sanitizer



Avoid hand-to-hand contact



Don't touch eyes, nose or mouth with unwashed hands



Use tissues to wipe nose or mouth



Keep objects and surfaces clean



PREVENTION

JANUARY 24, 2023

ADVERTS | 7

PRINTED BY: PEOPLE DALEY

KENHA steps up crackdown on rogue cane transporters to reduce accidents

BY CHRIS MAHANDARA (KNA)

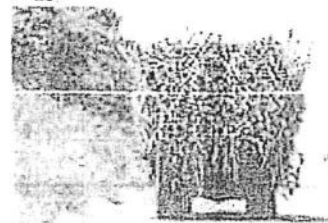
The Kenya National Highway Authority (KenHA) has mounted a crackdown on rogue sugarcane transporters to tame rampant destruction of road infrastructure in the Nyanza region.

This follows a sharp rise in the number of cases, among them accidents, involving sugarcane trucks and lorries causing a trail of destruction in the Authority's critical infrastructure.

KenHA Nyanza Regional Director, Eng. Julius Mak'oderoh blamed the incidents to the free hand given to transporters by sugarcane millers, making it difficult for them to monitor and check on their activities on the roads while transporting cane.

"Sugar millers have outsourced this service by contracting the transporters, then we approach them on these issues, they claim that they have no control," he said.

The drivers, he said, are fond of freewheeling, especially when approaching a fly-over to gain momentum



A tractor ferrying sugar cane. (FILE)

to move uphill resulting to accidents.

He specifically pointed out the Kasagam flyover, where a number of sugarcane trucks have rolled due to freewheeling.

"These facilities have been designed to be navigated at a certain speed. For example, the maximum speed for Kasagam fly-over is 40 km/hr. So, a driver doing any speed above the limit is at risk of causing accidents," he said.

Mak'oderoh said KenHA has directed sugar millers to rein in on their contracted firms delivering cane in the region to restore sanity and

safeguard the road network in the area.

The Agency's officials, he said, have mounted a crackdown on the rogue transporters to ensure that they stick to the set regulations.

Among the regulations to be enforced is observation of the operating hours, adding that no sugarcane truck shall be allowed on the road before 6 am and after 6 pm.

Other measures include strict adherence to traffic rules, and control of littering which has become synonymous with cane transportation.

"We have directed them to strap the sugarcane to

avoid littering. Those found contravening these regulations will be apprehended and taken to court," he said.

KenHA, he disclosed, continues to experience cases of vandalism in the area, adding that the patrol teams have rolled out a robust program to rein in on the vandals.

The vandals, he said, target metallic guard rails, street lights and signage along the 1,500 kilometres of road under KenHA in the Nyanza region.

Efforts to replace metal with plastic, he said, have been futile since the vandals still destroy them.

"We are conducting research to find out how best to deal with this menace. We must strike a balance between finding an appropriate replacement for the precious metal and dealing with the anger of the vandals who also destroy the alternative materials we use to replace metal," he said.

Mak'oderoh urged members of the public to partner with the Agency and volunteer information to tame the vice.

Global fund earmarks Sh3b for construction of Oxygen piping

BY LINET WAFULA (KNA)

Over 320 health facilities in remote outposts across the Country are set to benefit from a reliable supply of oxygen after Global Fund earmarked Sh3 billion toward oxygen piping.

Amref Programme Director in-charge of Disease Control and Infection, Dr. Bernard Langat, said Global Fund has pumped in Ksh 3 billion towards the construction of Oxygen hubs.

Speaking at Nandi County headquarters after meeting Governor Stephen Sang, Dr. Langat said the project involves oxygen cylinders, liquid oxygen and infrastructure.

"We are piping all 320 health facilities across the 45 Counties. We put the Pipes for oxygen outlets and money for them to distribute the oxygen that are in the cylinders," he said.

Dr. Langat noted that they are also doing 14 liquid oxygen tanks across the 14 counties.

"We are also doing oxy-



Dr. Bernard Langat (Left), Amref Programme Director greets Nandi County Governor Stephen Sang at his office during a courtesy call.

gen plugs mainly targeting remote places like Kapecho, Lamu, Chemolingot in Baringo County among other regions. We know it's a bit challenging transporting oxygen in those areas that's why we need them to be able to generate oxygen and fill some of the cylinders in their facilities," he said.

He said the biggest challenge in the Country is lack of cylinders adding that plans are underway to purchase 21,000 empty oxygen cylinders before March.

CONTINUED ON PAGE 16



KENYA REVENUE AUTHORITY

Tender Notice

The Kenya Revenue Authority invites bids from eligible candidates for the following tenders:

TENDER DESCRIPTION	ELIGIBILITY	PRIED DATE, TIME AND VENUE	CLOSING/OPENING DATE, TIME AND VENUE
KRA/HQ/SCS-244-2022-2023: Renewal of Kapsapungu, Kapsapungu and Kapsapungu Services for a Period of Two (2) Years (The advertisement)	OPEN	31 st January 2023 11:00 AM VIRTUAL	7 th February 2023 11:00 AM TIMES TOWER
KRA/HQ/SCS-244-2022-2023: Supply, Delivery, Installation and Commissioning of Two (2) Diesel-powered Generators for Atrial Surveillance for a Period of Three (3) Years (The advertisement)	OPEN	1 st February 2023 11:00 AM VIRTUAL	8 th February 2023 11:00 AM TIMES TOWER
KRA/HQ/SCS-244-2022-2023: Provision of Technical Scheme Administration Services for a Period of Three (3) Years.	OPEN	30 th January 2023 11:00 AM VIRTUAL	7 th February 2023 11:00 AM TIMES TOWER

Tender documents detailing the requirements of the above tenders may be obtained from the Kenya Revenue Authority website www.kra.go.ke.

Deputy Commissioner - Supply Chain Management
Times Tower Building, 21st Floor,
P.O. Box 48240-00100 GPO,
Tel: +254700 012323
Nairobi, Kenya
Website: www.kra.go.ke
Email: procurement@kra.go.ke

Any canvassing or giving of false information will lead to automatic disqualification.

Thank you for Paying Taxes to build Kenya

www.kra.go.ke

Kenya Revenue Authority (KRA) is a public corporation established under the Kenya Revenue Authority Act, 2008 (Act No. 17 of 2008). It is a body corporate with legal personality, separate from the Government of Kenya. It is a public corporation established under the Kenya Revenue Authority Act, 2008 (Act No. 17 of 2008). It is a body corporate with legal personality, separate from the Government of Kenya.

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The National Treasury & Planning



KENYA REVENUE AUTHORITY

Public Notice

Regulations under the Excise Duty Act, 2015

In compliance with the Statutory Instruments Act, the The Commissioner General on behalf of the Cabinet Secretary, the National Treasury and Economic Planning, has reviewed the The Excise Duty (Excisable Goods Management System) Regulations, 2017 and made the The Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023.

In compliance with the same Act, and on behalf of the Cabinet Secretary, the National Treasury and Economic Planning, the Commissioner General invites interested members of the public and stakeholders to submit their inputs and comments for consideration in the finalising of the above regulations. These draft regulations have been posted on the KRA website, www.kra.go.ke. You may download the same for your reference.

Please channel your submissions to the Commissioner General, Kenya Revenue Authority, P.O. Box 48240-00100, Nairobi or by email to stakeholderengagement@kra.go.ke to be received on or before 3rd February, 2023.

Commissioner General

Thank You for Paying Taxes to Build Kenya

www.kra.go.ke

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Tulipe Ushuru, Tujitegemeel



Head Office
8 Likoni Road, Industrial Area
P.O. Box 30000-00100
Nairobi, Kenya
Tel: +254 (0) 711 062000
Email: info_ke@bat.com
Website: www.batkenya.com

2 February 2023

The Commissioner General
Kenya Revenue Authority
Times Tower
P.O Box 48240-00100
Nairobi

Advance copy via email: stakeholder.engagement@kra.go.ke

RE: Comments on The Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023 ("Draft Regulations")

We refer to the Kenya Revenue Authority (KRA) public notice of 16th January 2023 on the above subject and hereby submit our views on the Draft Regulations, which the KRA proposes to be effective from 1st March 2023. These Draft Regulations intend to make changes to The Excise Duty (Excisable Goods Management System) Regulations, 2017 (Principal Regulations)

We note with concern that the Draft Regulations contain clauses that will no doubt result in negative unintended consequences for the fiscus, the tobacco industry at large and the wider public interest. We explicate on our concerns below:

1. Proposed amendment to Regulation 28 by replacing paragraph (1) with the following text:

(1) The excisable goods provided under the Second Schedule of the Act shall be exempted from the requirement of excise stamps.

Amendment of Section 28(1) to the proposed text effectively means that manufacturers will have to apply tax stamps on products for both domestic consumption as well as exports. BAT shares KRA's concerns about the potential for product manufactured for export being diverted into the domestic market prior to crossing the border or being round tripped back into Kenya on reach its destination market. However, without full track and trace functionality to help identify the point at which product is diverted from the legal supply chain, we do not believe that the new requirement will materially reduce these risks.

Indeed, the application of tax stamps to smuggled non-duty paid round-tripped product will make it harder, not easier, for Enforcement Authorities as well as consumers to visually identify illicit product at retail. As such, in our view, this move will promote illicit trade and cause confusion for the public and Enforcement Authorities (as diverted export product will now look legitimate as it contains a stamp).

From an economic perspective, the measure undermines the Government's priority on expansion of manufacturing sector to produce goods that can compete in the world market. In our view, there are already sufficient measures in place to track export production volumes as below:

- i. The EGMS machines comprise of production counters that record and transmit to the KRA systems data on all production lines in use, including exports.
- ii. KRA has also mandated all excise manufacturers to provide office space for a customs officer under whose control the excise facilities fall.
- iii. Manufacturers provide their monthly production records for both domestic and export sales to the KRA as well as declare this in the monthly excise duty returns.

In addition to the measures above, tax stamps are an excise administration tool for the Commissioner to assess excise duty payable, and exports are not subject to Excise Duty. Further, different countries also require that their stamps be applied to products imported into their jurisdictions. This new requirement in the Draft Regulations will therefore introduce unnecessary complexities on the markings on export products and will not assist the KRA in the collection of Excise duty.

2. Proposal to amend the Schedule to the Principal Regulations to increase the tax stamp fees.

The Draft Regulations propose a 79% increase on the current price of tax stamps applicable to tobacco products, which presently stands at KShs 2.8 per stamp and is already the highest rate in the world. The proposed increase will further increase the differential in costs in comparison to similar stamps provided by the current supplier to other countries across Africa, as well as against pricing by other providers across the world. (We have provided an analysis of the costings in Appendix 1 for your reference).

The proposed increase in costs further undermines the KRA's reliance on the direct procurement exemption under the Public Procurement Act Section 102(2) for the award of the contract to SICPA.

Further, the current stamps are not compliant to the requirements of Regulation 4 of the Principal Regulations and note as follows:

Specification feature	Compliance ¹	Comment
Deter counterfeit	⊗	There has been an increase in number of counterfeit stamps in the market. As a result, the EGMS system is not deterring counterfeiting.
Facilitate tracking of the stamps and excisable goods along the supply chain	⊗	The stamps only have manufacturer's details. The EGMS system is unable to track goods along the supply chain.
Enable accounting for the production of excisable goods manufactured or imported	⊙	The EGMS system counts activated stamps which KRA uses to assess production
Facilitate any persons in the supply chain to authenticate the stamps and excisable goods	⊙	KRA has provided a validation application, however, some counterfeits in the market are being validated as authentic

In the absence of any improvements on the capabilities of the EGMS system, this dramatic price increase creates a number of serious concerns related to Kenya's public policy goals:

- i. Destabilises the Kenya market and erodes government revenues by imposing excessive tax administration fees on legitimate manufacturers far beyond the case in neighbouring countries and higher than any other country in the world;
- ii. Incentivizes illicit trade by making the stamps, which are ideally a tax administration tool, untenably expensive and subsequently widening the price gap between legitimate and illicit brands;
- iii. Threatens Kenya compliance with international trade obligations. Article 8 of the World Health Organisation (WHO) protocol to eliminate illicit trade in Tobacco products, speaks to the requirements on track and trace, which the current tax stamps do not meet. Further, GATT Article VIII.1 also spells out that tax stamp fees are meant

1 Compliant Not compliant Partially compliant

to cover the specific administration cost and not to be treated as a revenue source by Governments.

3. The Proposed schedule to the Principal Regulations proposes differentiated stamp fees for excisable products

As highlighted in (2) above, Regulation 4 of the Principal Regulations stipulates the specifications for excise tax stamps. There has been no change to the EGMS system since implementation and therefore the price increase can only be seen by industry as a new revenue collection tool for Government.

We also note that since the stamps have been introduced illicit trade has grown <1% in 2015 to 25.8% in 2022, demonstrating that the system is not effective in deterring illicit trade within the tobacco industry.

The tax stamp is an excise tax administration tool, and there is therefore no plausible justification for the differentiation across categories as the actual difference in the products is reflected in the excise duty applied.

4. The Proposed amendment to the Principal Regulations attempts defeat the judgement by the Honourable Constitutional Court in the Constitutional & Human Rights Division Petition No. 532 of 2017 Omtata Versus KRA and SICPA

In the matter, the Court in its decision concluded that the Sourcing of SICPA was unprocedural and unconstitutional and that it did not meet the threshold for direct procurement as provided by the Public Procurement Act. It further found that the Principal Regulations were enacted without due process and were unconstitutional. Consequently, the court quashed the award of tender to SICPA and "The Excise Duty (Excisable Goods Management System) Regulations, 2017 (Principal Regulations).

The decision has so far been stayed pending an appeal instituted by KRA. A further amendment of the quashed Principal Regulations would defeat the ends of justice in the matter. We request the appellant (KRA) to expedite the conclusion of the appeal as a matter of urgent public interest. It is thus in the interest of the public that no further amendments are made on the Principal Regulations pending the finalization of the matter.

CONCLUSION

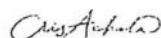
We encourage the Government of the Kenya to reconsider its arrangement with the current provider and impose a traceability fee that is limited to the approximate cost of services provided. Reducing the fee to comparable fees in other markets will stabilise market dynamics, will not incentivize illicit traders, and will help secure an important and stable source of government revenues through improved excise tax compliance.

We request that the Commissioner General takes into account the concerns we have raised above in order to avoid unintended consequences that will arise from the move to increase the tax stamp fees.

We kindly request an opportunity to discuss the above further at your earliest convenience and remain available to provide any additional information on our proposals as may be required.

Yours sincerely,

For: British American Tobacco Kenya plc



Crispin Achola
MANAGING DIRECTOR

Appendix 1: Impact of proposed changes

1. Loss of Government revenue to illicit trade

The proposed fees are excessive and will threaten the stability of the Kenya tobacco product market and jeopardise a predictable source of government revenue. The new fee will be charged in addition to excise tax, currently at KShs 81 per pack of 20 cigarettes, and other taxes already levied on tobacco products. You will recall that excise was increased by 21% in 2022 and a subsequent stamp fee increase on the same product does not reflect a stable tax environment for manufacturers.

Manufacturers will be faced with the unfortunate choice of passing additional costs to price-sensitive consumers and affect the sustainability of the businesses. Both decisions will result in a significant loss of government revenues. If the new costs are passed through to consumers, this will likely result in consumer migration to lower-priced illicit brands. As at end 2022, the illicit trade prevalence for cigarettes in Kenya was at 25.8%.

2. High cost of stamps which do not meet the intended requirements

The EGMS Regulations state that excise stamps are intended to deter counterfeiting, facilitate tracking of goods along the supply chain, enable accounting for production as well as facilitate authentication along the supply chain.

Further, the KRA issued tax stamp system does not comply with Illicit Trade Protocol (ITP) requirements as it does not satisfy the Unique identifiers (UID) creation rules and scanning to the first independent economic operator, as highlighted below:

ITP Article	T&T Feature	Compliance ²	Comments
ART. 8.3 – Unique Identifiers (UIDS)	Unique, secure and non-removable identification markings (UIDs) must be affixed to packs	✓	Tax stamps with UIDs and security features built in and cannot be removed without a mark
ART. 8.4.2 – UID Data Incorporation	Manufacture date, location, facility, intended retail market and product description must be part of the UID	✗	Because tax stamps are pre-ordered and pre-printed, they are not product-specific and do not incorporate key data required to be embedded in the UID
ART. 8.5 – Data Recording	All ITP-required data must be recorded at the time of production, first shipment, or upon import		Tax stamps are pre-ordered, not product specific, and cannot be aggregated into cases and pallets. When packs are in transit in pallets and cases, it is impossible to capture and record all pack-level data required under the ITP because packs cannot be accessed
ART. 8.6, 8.7, 8.8 – Data Accessibility and Sharing	The information recorded is accessible by that Party by means of a link with the UID required and is accessible to the	✗	Even though the government can use specific devices to verify packs, there is no scanning through the supply chain up to first independent

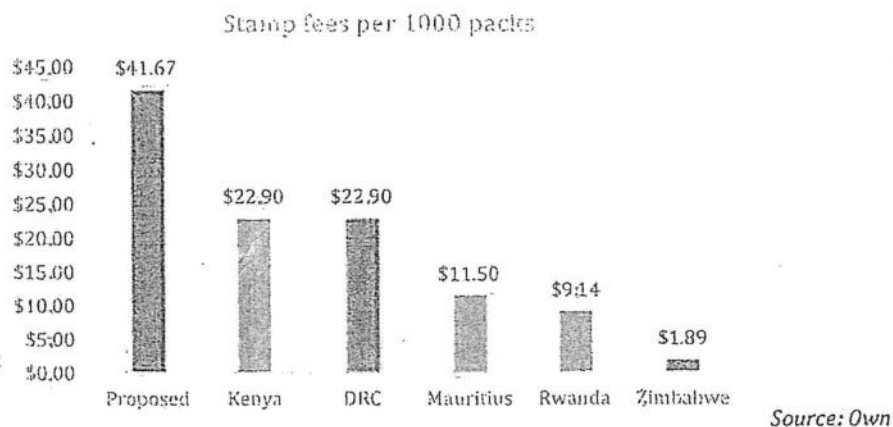
²  Compliant  Not compliant  Partially compliant

British American Tobacco Kenya plc – A member of the BAT Group

	global information-sharing focal point on request through a standard electronic secure interface		economic operator, hence the product is not traceable
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We however note that the only feature that the current stamps address is accounting for production by licensed manufacturers. Key to note is that the current paper stamps do not have a track and trace feature embedded, and as such, goods cannot be tracked along the supply chain. Further, counterfeit stamps are rampant in the market, indicating that the stamps as they are, are not compliant to the existing regulations.

The current price far exceeds fees by the same supplier, in other African markets, including Mauritius, Rwanda and Zimbabwe as illustrated below:



In addition to this, other service providers offer considerably lower fees for the same service in different countries. This is further evidence that the fees are excessive, out of step with industry counterparts, and that the stamps could be offered at much lower rates.



In our view, KRA should request the current providers to reduce the fee or in the alternative open up the contract to another service provider who will be willing to charge a better rate for ITP compliant stamps. Currently, the Kenyan consumers of excisable products are already being over-charged for a system that is not compliant to set legislation or international best practice in the space of track and trace capabilities.

3. Excessive Fees are not aligned to EGMS Regulations and World Trade Organization (WTO) Obligations

As a WTO Member, Kenya must ensure that fees associated with importation, such as the tax stamp fees, are limited to the approximate cost of services rendered. GATT Article VIII.1 states the following:

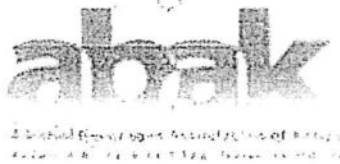
"All fees and charges of whatever character (other than import and export duties and other than taxes within the purview of Article III) imposed by contracting parties on or in connection with importation or exportation shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes."

Regulation 6 of the EGMS Regulations 2017 provide that the stamp fees shall be retained by the Commissioner for financing of the System which is comprised of the stamps, production accounting system and related software and hardware. As such, Kenya must not use these fees for government revenue raising purposes.

Given the fact that alternative providers are able to offer its product at far lower rates in neighbouring African countries, the KShs 5 fee charged in the Kenya would appear to far exceed the "approximate cost of services rendered." The excessive fee jeopardises the Kenya's compliance with WTO obligations, opening the country to challenge within WTO Committees and dispute settlement proceedings.

4. Discriminatory tax stamp fees

The EGMS Regulations articulate that the stamp fees are necessary for the maintenance of the 'System' which has been put in place to facilitate tracking of excisable goods and collection of taxes. However, tobacco and nicotine products are charged higher than other excisable goods, despite not having any enhanced features to justify the price differentiation.



31ST January, 2023

Commissioner General,
Kenya Revenue Authority
P.O Box 48240-00100
Nairobi.

ATTN: FCPA Githii Mburu, MGH, CBS

Dear Sir,

RE: ABAK MEMORANDUM ON THE EXCISE DUTY (Excisable Goods Management System)
(Amendment) REGULATIONS..2023

We are grateful for the opportunity to submit and present our memorandum as the alcohol beverage industry.

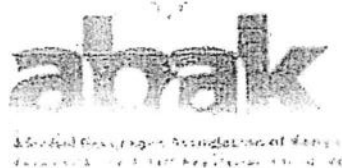
We have attached the ABAK submission herein.

Thank you.

Yours Sincerely,

A handwritten signature in black ink, appearing to read "Eric Githua", with a horizontal line drawn through it.

Eric Githua
Chairperson
Alcohol Beverages Association of Kenya (ABAK)



31ST January, 2023

Commissioner General,
Kenya Revenue Authority
P.O Box 48240-00100
Nairobi.

ATTN: FCPA Githii Mburu, MGH, CBS

Dear Sir,

RE: ABAK MEMORANDUM ON THE EXCISE DUTY (Excisable Goods Management System)
(Amendment) REGULATIONS, 2023

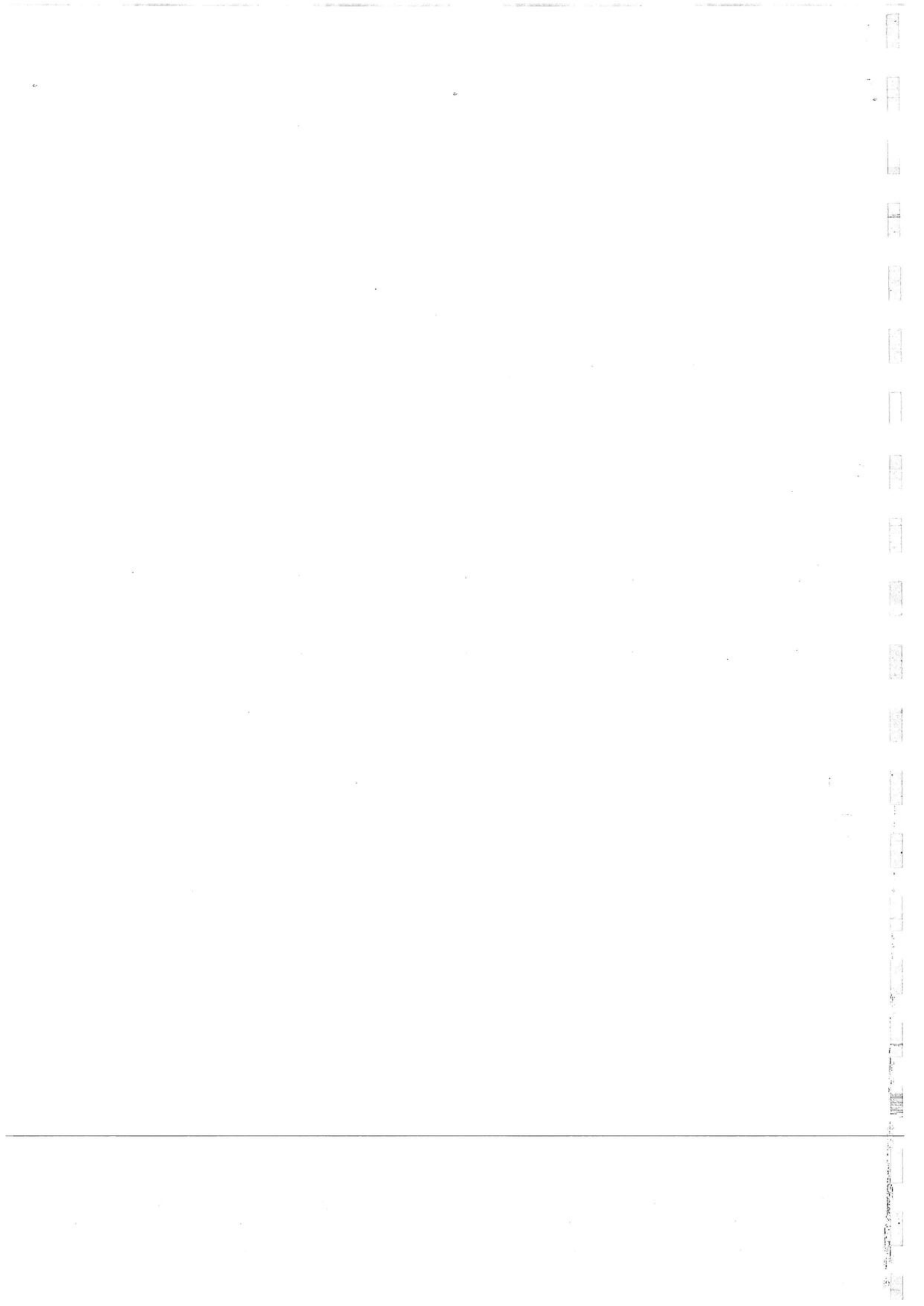
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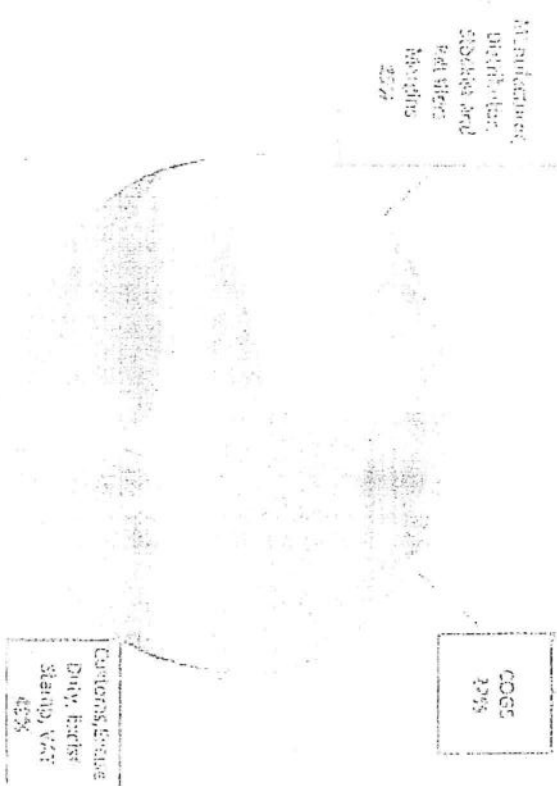


ABAK's submission on Excise Duty (EGMS) Amendment Regulations 2023

Current clause in the regulation	Proposed Amendment	The Rationale for Change
Clause 3 Regulation 6 of the principal Regulation is amended by inserting the words "and compliance management activities of the excise sector" immediately after the expression "System"	Delete the proposal	<ul style="list-style-type: none"> The current clause reads as follows: 6. <i>The revenue from the excise stamp fees shall be retained by the Commissioner for the financing of the System.</i> Ease of Doing Business - The EGMS system is effective for the Government but not efficient for the private sector as it has resulted in an increase in the cost of doing business and increased administrative burden. In addition to the cost of purchasing the tax stamp manufacturers have also experienced the following: <ul style="list-style-type: none"> (a) Production down times caused by inefficiency of the EGMS machines (b) Increased logistics cost of transporting the stamps from KRA (c) Increased internet connectivity – requirement of dedicated internet (d) Increased cost of hosting the KRA and SICPA teams on site. <p>Thus, it is only prudent for KRA not to increase the cost of compliance management to an already compliant tax payer;</p> <p>Proposed solution:</p> <ul style="list-style-type: none"> KRA to use funds generated from legal fines that are imposed to non-compliant;

Current clause in the regulation	Proposed Amendment	The Rationale for Change
<p>Clause 4</p> <p>Regulation 28 of the principal Regulation is amended in paragraph 1 by deleting the paragraph (1) and replacing it with the following new paragraph –</p> <p>(1) The excisable goods provided under the Second Schedule of the Act shall be</p>	<p>Amend the Proposal to read as follows:</p> <p>Regulation 28 of the principal Regulation is amended in paragraph 1</p>	<p>players to fund compliance management activities. I.e KENHA uses fines collected from overloaded vehicles to fund road repairs</p> <ul style="list-style-type: none"> Excise stamp cost should be offset by the payable excise duty <p>Section 7(1) b of the act provides:</p> <p>7. <i>Goods and services not liable to excise duty</i></p> <p><i>Subject to this section, no excise duty shall be charged on the following —</i></p> <p><i>(b) excisable goods exported under customs control, including as stores;</i></p> <ul style="list-style-type: none"> The proposal seeks to retain Kenyan manufacturers ability to export products out of the country. Currently, our neighbouring countries each have their own tax stamp and it will be undesirable to purchase an excise stamp, have it applied on the bottle only for the stamp to be removed and reapplied with a new URA /TRA stamp at the border. Because excise tax is a domestic consumption tax, importers of Kenyan made beverages will also incur an extra cost or removing the KRA stamps and reapplying it with the destination stamps. The regulation does not seek to cure any harm currently we have differentiation marks such as the term Export/DEFCO for any goods being sold to the export and Defco market respectively.

Current clause in the regulation	Proposed Amendment	The Rationale for Change																				
exempted from the requirement of excise stamps.	stamps.	Proposed solution: Export products should not be affixed with an excise stamp																				
Clause 5(7) Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits The regulation seeks to increase the cost of stamps from Kes.2.80 to Kes. 5.0 per stamp Clause 5(8) Compounded spirits	Delete the proposals	1. The alcohol industry is currently over taxed and cannot bear any further costs- In the last thirteen months we have had three excise tax increases <table><tr><th>Excise rate per liter</th><th>Pre 2nd November 2021</th><th>2nd November 2021</th><th>1st July 2022</th><th>2nd October 2022</th></tr><tr><td>Wine</td><td>Kes. 198.34</td><td>Kes. 208.20</td><td>Kes. 229</td><td>Kes. 243.43</td></tr><tr><td>Spirits</td><td>Kes. 265.50</td><td>Kes. 278.70</td><td>Kes. 335.30</td><td>Kes. 356.42</td></tr><tr><td>Beer</td><td>Kes.116.08</td><td>Kes. 121.85</td><td>Kes. 134</td><td>Kes. 142.44</td></tr></table> Source: various Finance Acts and Legal Notices	Excise rate per liter	Pre 2 nd November 2021	2 nd November 2021	1 st July 2022	2 nd October 2022	Wine	Kes. 198.34	Kes. 208.20	Kes. 229	Kes. 243.43	Spirits	Kes. 265.50	Kes. 278.70	Kes. 335.30	Kes. 356.42	Beer	Kes.116.08	Kes. 121.85	Kes. 134	Kes. 142.44
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Current clause in the regulation	Proposed Amendment	The Rationale for Change
<p>of alcoholic strength exceeding 6%</p> <p>The regulation seeks to increase the cost of stamps from Kes.2.80 to Kes.5.0 per stamp</p> <p>Clause 5 (9) (10)</p> <p>9. Spirituous beverages of alcoholic strength not exceeding 6%</p> <p>10. Beer, Cider, Perry, Mead, Opaque beer,</p>		<p>2. The Current Tax to price ratio is already punitive</p>  <p>At production, distribution, storage and retail there is no stamping</p> <p>COGS 29%</p> <p>Excise Duty, Stamp and Packaging 25%</p> <p>Customs, Excise Duty, Bottle Stamp, VAT 42%</p> <p>Data based on average cost of producing a 250 ml spirits bottle</p> <p>Source: ABAK</p>

	Current clause in the regulation	Proposed Amendment	The Rationale for Change
	<p>and mixtures of fermented beverages with non-alcoholic beverages</p> <p>The regulation seeks to increase the cost of stamps from Kes1.50 to Kes. 3.0 per stamp</p>		<p>3. The unpredictable high excise rates have led to growth of illicit alcohol trade</p> <div data-bbox="534 728 965 1064"> <p>56% alcohol supplied by regulated and tax paying businesses</p> <p>44% illicit trade</p> <p>Legend: ■ Illicit trade ■ Legal Trade</p> </div> <p>Source: 2018 WHO data</p> <p>Excise-led high costs of goods will impact purchasing power of the citizens in turn leading to consumers resorting to purchasing counterfeits and illicit alcohol which risks lives and denies the Government the taxes they target to collect.</p>

Current clause in the regulation	Proposed Amendment	The Rationale for Change
		<p>4. The proposal will increase the cost of compliance and discourage further legitimate business investments into the sector.</p> <p>5. KRA has not provided a justification for the approximately 79% increase in the excise stamp for wine and spirits and a 100% increase for the excise stamp of beer and ciders.</p> <p>According to the SICPA contract, the initial cost of the EGMS stamp was to pay for the stamping equipment to be installed on the Manufacturers equipment. The SICPA contract is now coming to an end which means that KRA has paid for the equipment that was being managed by SICPA. It therefore does not make any sense from a financial point of view to increase the cost of the stamp when the contract with SICPA is changing from a maintenance contract to a service contract. The expectation is that the cost of the stamps should be going down considering that the initial stamp prices catered for sourcing of the equipment from SICPA. The Public Investments Committee (PIC) 2019 investigation report shows that SICPA and KRA explained that they failed to budget for the project prior to commencing the procurement (which was in violation of Section 26 (5) of the Public Procurement and Assets Disposal Act 2005) was because the project was self-financing. If the financing period is over for the equipment, the cost should come down. Therefore, the government needs to be very</p>

	Current clause in the regulation	Proposed Amendment	The Rationale for Change
			<p>transparent on the EGMS system. Our understanding is that the system should now be fully managed by KRA and not SICPA hence a reduction in cost. Any engagements with SICPA should only be on servicing and maintenance of the equipment which is the property of the Government of Kenya having been acquired using public funds (taxes)</p> <p>The cost of ink and paper used for the stamps is generally known. KRA should therefore give a justification for the proposed increase.</p> <p>6. The current excise stamps have failed to prevent counterfeit products as a result of counterfeited stamps which negates the main reason for introducing the excise stamp.</p> <p>7. Poor quality of paper stamps leads to low Operational Equipment Effectiveness (OEE) numbers, not environmentally friendly and also leads to losses of stamps which cannot be refunded by KRA - but are borne by the manufacturer.</p> <p>8. The cost of excise stamps has not been apportioned proportionately among the different excisable goods. KRA has not given a justification to the variation of excise stamp prices. The cost of an excise stamp should be equal among all-excisable goods</p>

Current clause in the regulation	Proposed Amendment	The Rationale for Change																
		<p>as there is no discernible difference in the stamps.</p> <p>9. A further increase on the excise stamp leads to an increased financial burden and costs of production and the manufacturer may not absorb the costs of the excise stamp. This is so because the manufacturer incurs additional costs from having multiple authentication systems by the three agencies, Kenya Revenue Authority (KRA), the Kenya Bureau of Standards and Anti-Counterfeit Agency. This duplication of efforts was noted in the PIC investigation report of 2019 which called for the three agencies to collaborate and work on one system.</p> <p>10. A comparison of the cost of the stamps for alcoholic products in Kenya, Uganda and Tanzania reveals that Kenya is charging the highest, with the same supplier.</p> <table><tr><th>Cost of Kenya (Current)</th><th>Kenya (Proposed)</th><th>Tanzania (Current)</th><th>Uganda (Current)</th></tr><tr><td>Stamps (KES)</td><td>3.4</td><td>0.96- local</td><td>1.16</td></tr><tr><td>Beer</td><td>1.50</td><td>1.21-imported</td><td></td></tr><tr><td>Spirits</td><td>2.80</td><td>2.21</td><td>3.55</td></tr></table> <p>11. Manufacturers have continued to suffer losses occasioned from the system downtimes and delays in stamp activation data synchronization, yet the cost of the excise stamps are arbitrarily increased. In addition to downtimes experienced from</p>	Cost of Kenya (Current)	Kenya (Proposed)	Tanzania (Current)	Uganda (Current)	Stamps (KES)	3.4	0.96- local	1.16	Beer	1.50	1.21-imported		Spirits	2.80	2.21	3.55
Cost of Kenya (Current)	Kenya (Proposed)	Tanzania (Current)	Uganda (Current)															
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Spirits	2.80	2.21	3.55															

	Current clause in the regulation	Proposed Amendment	The Rationale for Change
			<p>the system, manufacturers have to bear logistic costs due to the centralized collection point for excise stamps. A further addition to the cost of excise stamp is a financial burden on the manufacturers.</p> <p>Proposed solution:</p> <ul style="list-style-type: none"> • The National Treasury suspends the draft gazette notice to give time for strategic consultations between the Government and industry on the way forward. • Roll out the implementation of the Integrated Product Marking and Authentication System (IPMAS) • The Government considers reducing the cost of excise stamps to below Kshs 1/= per stamp as a result of economies of scale as well as Government's takeover of the EGMS system. • A Regulatory Impact Assessment should be done first before any considerations are made on the proposed EGMS regulations



Honorable Cabinet Secretary for National Treasury and Economic Planning
Njuguna N'Dungu
Old Treasury Building
Harambee Avenue
Nairobi

Commissioner General
Kenya Revenue Authority
Times Tower
Haile Selassie Avenue
Nairobi

Nairobi 1st February 2023

Re: Draft Excise regulation 2023 –Excise Stamp Fees
Introduction of 2.5 per stamp on Cosmetics and Beauty products of tariff heading Nos.
3303, 3304, 3305 and 3307-

Dear Honorable Cabinet Secretary

Greetings from the Board of the European Business Council in Kenya a private body that represents around 650 European Companies based and doing business in Kenya.

I write with regards to the above draft excise regulation in line with the stakeholder engagement that you have sought, and we would ask you to **withdraw the proposal** based on the following assessment and the real issues that it will bring to some of our membership involved in the cosmetic industry here in Kenya.

- In the past year, cosmetics and related products have been hit by several tax increment's even though the industry is yet to recover from post covid effects.
- This will mean introduction of complexities in the production of the products as it will involve the purchase of additional machinery and modification of production line's **therefore** increasing the cost of production and overall increase of product to consumer.
- With the current inflation rate, most consumers will resolve to buying cheaper products which most of the time are counterfeits products and are damaging to their health.
- The challenge of application of the said excise stamp on some cosmetics products as they are already too small for example if you consider eye pencils.


c/o AHK, Delegation of German Industry, Westpark Towers 6th Floor, Ojijo Road, Parklands, Nairobi
info@ebckkenya.org

- Regionally, some of the cosmetic companies that we represent will not be competitive when it comes to their product cost and this is an area where there is already grave concern, these new excise proposals will slowly but surely drive local manufacturing and investment to a shutdown with a tax overload.

For European companies with investments locally, these measures will drive the mother company to consider closure of local manufacturing plant and focus on importation. This will lead to a huge reduction in the workforce and will decrease investor confidence.

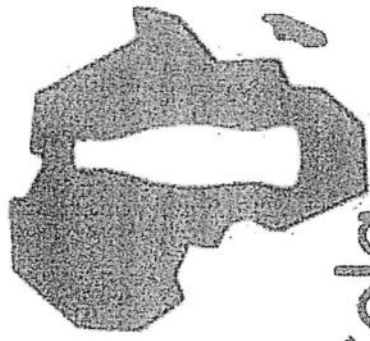
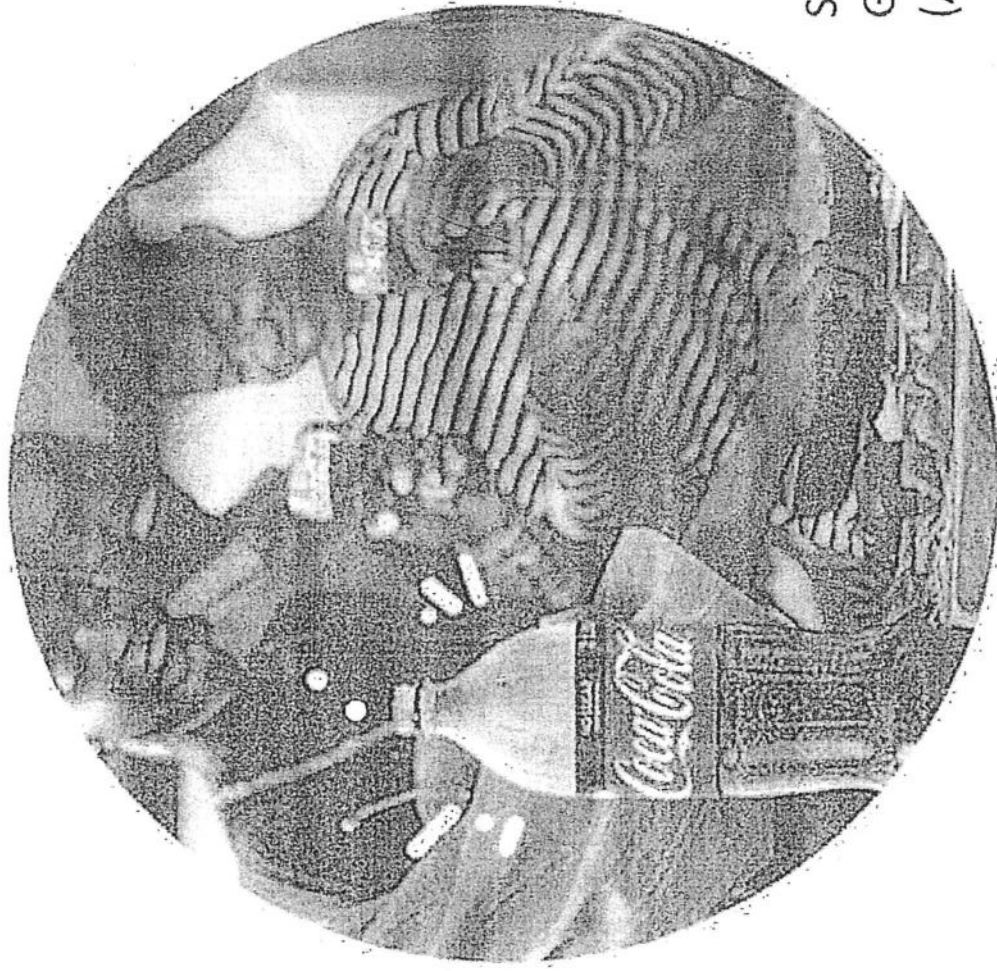
Based on these points we would ask that you therefore to withdraw the proposal.

Yours sincerely



Darren J Gillen
Chairman
European Business Council in Kenya

Cc: H.E Henriette Geiger – EU Ambassador to Kenya
Mr. Martijn Boelen – Trade Counsellor, EU Delegation in Kenya
Honorable Principal Secretary for Investment- Mr Abubakar Hassan
The Board of the European Business Council in Kenya

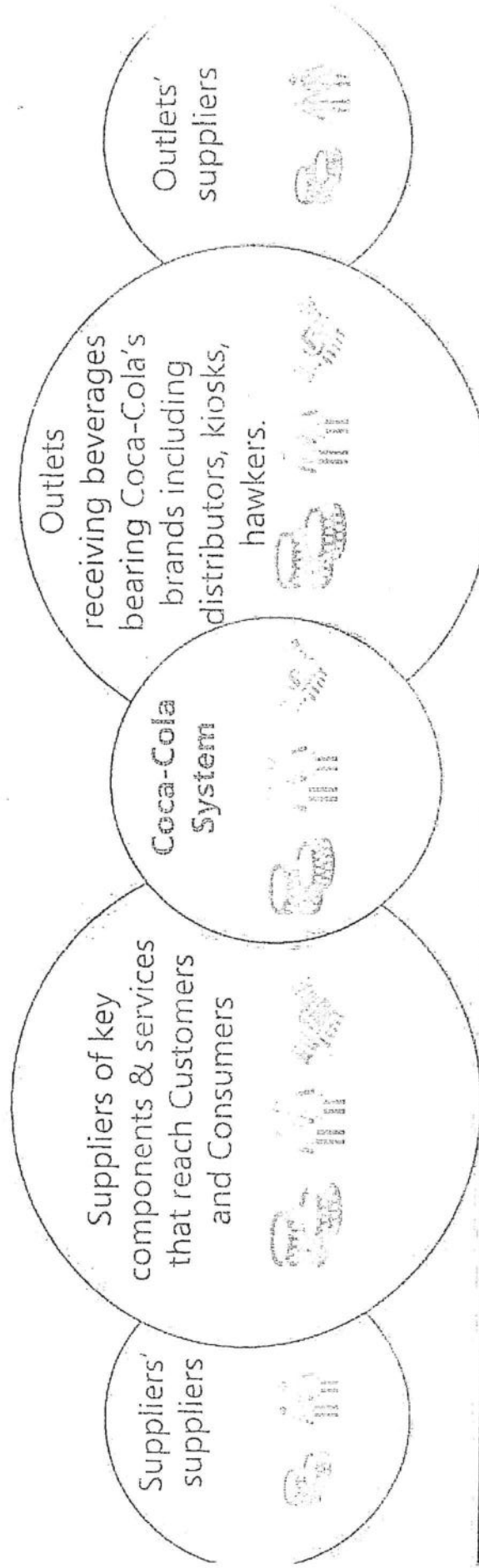


Coca-Cola Beverages Africa Kenya

Submissions on The Excise Duty (Excisable
Goods Management System EGMS)
(Amendment) Regulations 2023

Understanding the Coca-Cola System in Kenya | Direct and indirect impact of the Coca-Cola System across its value chain.

UPSTREAM THE SYSTEM DOWNSTREAM



The system supports over 36,800 jobs among local suppliers and their suppliers upstream.

The system supports distributors, retail outlets, their suppliers and recyclers downstream.

CCBA | Creation of employment opportunities across the value chain

2,200+

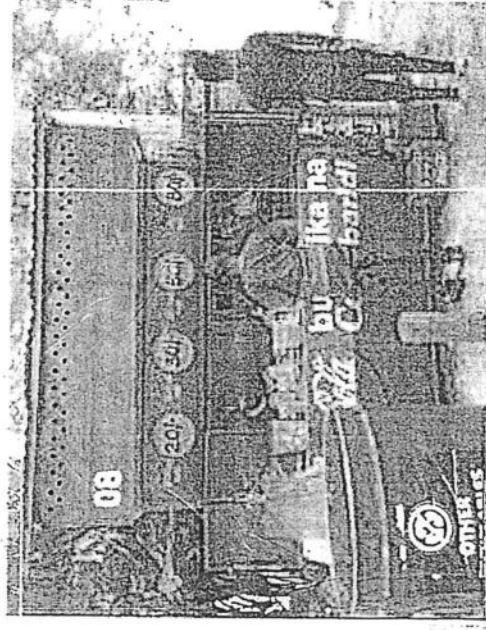
people employed directly by CCBA Kenya

CCBA Kenya supports quality employment opportunities across the value chain

- This has resulted in growth in Agriculture (upstream) and growth in the Micro, Small and Medium Size Enterprises (MSMEs) economy. (upstream and downstream)

Employment created for 350+ Distributors employment opportunities supported in the value chain

Outlets served
Over 135,000 Outlets supplied with beverages



CCBA | Invests in the community

Kerya and the Women Enterprise fund

Through the 5 by 20 programme, CCBA has enabled over 703,463 women to start sustainable businesses.

Kuza Kazi Project

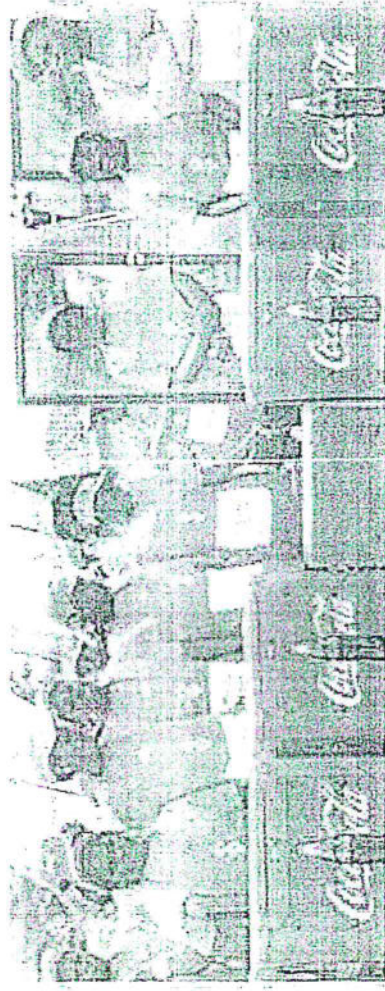
Targets to create 10,000 new jobs in the informal sector for the youth through training and access to finance.

World without waste PET Recycling

Collection and recycling initiatives have impacted over 350 youth and women groups.

In investing in the community, CCBA plays a critical role in achieving the Government's objectives of:

- growth in the Micro, Small and Medium Size Enterprises (MSMEs) Economy and
- repositioning the economy on an **inclusive and sustainable trajectory.**



The Electronic Goods Management System | Introduction



Rationale behind the Electronic Goods Management System (EGMS):

- EGMS was introduced in order to drive compliance by ensuring **tracking and traceability** of goods with the goal of combating **illicit trade**.
- From a **commercial perspective** the benefits of the application of track and trace technology include better management of supply chains, asset tracking and security concerns, all geared towards optimizing business benefits for all concerned stakeholders.
- **For regulators**, track and trace systems present an opportunity for governments to collect revenues, control and govern movement of goods across and within their countries, and protect consumers from potentially harmful goods. This is particularly important in the context of illicit and unregulated trade.

The Electronic Goods Management System | Introduction

Associated Problem of the EGMS System

- Efficiency as a maxim of taxation provides that a tax should not hinder economic activity nor alter consumption, production and investment decisions made by businesses and households.
- The principle of efficiency further provides that the tax should raise revenue needed at the lowest cost possible to the tax-payer.
- In some jurisdictions, excise stamps have been found to be counterproductive, with some governments reversing the use of the stamps.

The Electronic Goods Management System | Associated problem



Associated Problem of the EGMS System and the proposed increase:

- For companies that are **excise tax compliant**, the stamps serve effectively as a **tax on tax**. The cost may aggravate price differentials with unregulated products and incentivize illicit activity.
- The current cost of the excise stamp which is aimed at ensuring compliance and protection of the excise tax is already not efficient and any further increase in its cost, will have a negative impact including:
 - A reduction in the overall tax collection
 - Increased illicit trade driven by the high cost of compliance with excise tax
 - Reduced investment in the manufacturing sector
 - Reduced disposable income at the bottom of the pyramid
- The Government will earn more revenue if non-compliant taxpayers begin to account for excise duty which will be primarily driven by **ease of compliance**.

The EGMS Draft Regulations 2023|Proposed changes in the cost of excise stamps

Excise Stamp Fees

	Category of Excisable Goods	Excise Stamp Fee per Stamp (Kshs)
7.	Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	5 per stamp
8.	Compounded spirits of alcoholic strength exceeding 6%	5 per stamp
9.	Spirituous beverages of alcoholic strength not exceeding 6%	3 per stamp
10.	Beer, Cider, Perry, Mead, Opaque beer, and mixtures of fermented beverages with non-alcoholic beverages	3 per stamp
11.	Bottled or similarly packaged waters	0.5 per stamp
12.	Other non-alcoholic beverages, not including fruit and vegetable juices	2.2 per stamp
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.	2.2 per stamp
14.	Cosmetics and Beauty products of tariff heading Nos. 3303, 3304, 3305 and 3307	2.5 per stamp

- Non-alcoholic beverages: cost of stamp increases from 60 cents to 2.2 shillings
- Water: cost of stamp held constant at 50 cents
- Juices: cost of stamp increases from 60 cents to 2.2 shillings

Extract of the EGMS draft regulations

Proposed changes in the cost of the excise stamps | percentage increase

Product	Current stamp cost	Proposed stamp cost	% increase
Cigarettes	Shs 2.8	Shs 5.0	78.5%
Wines compounded spirits	Shs 2.8	Shs 5.0	78.5%
Beer	Shs 1.5	Shs 3.0	100%
Water	Shs 0.5	Shs 0.5	0%
Non-alcoholic beverages	Shs 0.6	Shs 2.2	266.67%
Fruit and vegetable juices	Shs 0.6	Shs 2.2	266.67%
Cosmetics and beauty products	Shs 0.6	Shs 2.5	316.67%

• Table 1 - extract of some of the excisable goods

• The 267% proposed increase on non-alcoholic beverages and juices is punitive on businesses and on the consumer.

Cost of the stamp vs excise tax payable

Excise stamp as a % of excise duty payable on non-alcoholic beverages and water

Tax	200 ml CSD	300ml CSD	1 litre juice	Water 500 ml
Proposed cost of excise stamp	2.2	2.2	2.2	0.5
Excise tax charged per bottle	1.28	1.92	14.14	3.20
Excise stamp as a % of excise duty	171%	114%	15.55%	15.6%

Excise stamp as a % of margins

Tax	200 ml CSD	300ml CSD	1 litre juice
Proposed cost of excise stamp	2.2	2.2	2.2
Margins	0.79	7.79	19.7
Excise stamp as a % of margins	278%	28%	11.16%

- The cost of the stamp which is aimed at ensuring compliance and protection of the excise tax is very high compared to the excise tax it purports to collect. (In some instances higher than the excise tax)
- The proposed cost of excise stamp as a percentage of margins is very high. **Table 2**

Cost of excise tax stamps| A review of other jurisdictions

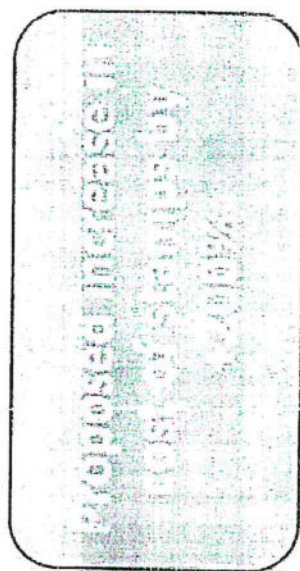
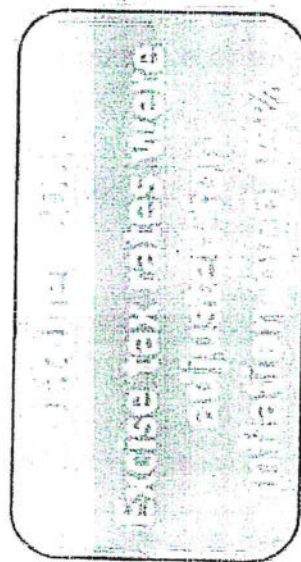
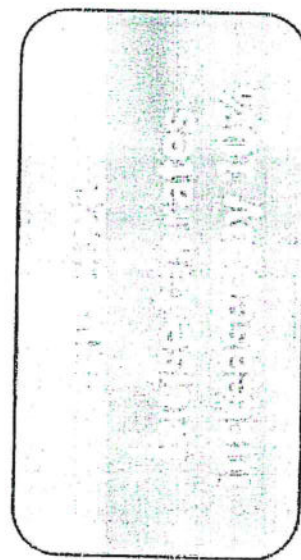
East Africa

Tax	Kenya	Tanzania	Uganda
Excise stamp cost per bottle \$	0.018	0.004	0.005
Excise duty payable per bottle (\$)	0.016	0.008	0.020
Expected % of excise stamp to excise duty payable	108.8%	55.7%	26.9%

- The cost of the stamp as a percentage of excise tax collected is highest in Kenya.
- Increasing the cost of the stamp may be a deterrent to voluntary compliance.
- Due to the increased cost, the stamps may become counterproductive.

Table 3

Assessing the impact of increasing the cost of EGMS



(see compounded impact of inflation on Table 4)

- An increase in the cost of stamps to an already strained business environment that is enduring a myriad of taxes, inflation in cost of materials and a weakening shilling will impact negatively on the manufacturing sector and the stakeholders across the value chain.

Assessing the Impact of increasing the cost of EGMS | Inflation adjustment impact

Per Litre/KShs	2015	2018	2019	2020	2021	2022	% increase 2015 to 2022
Fruit juices (Including grape must), and vegetable juices...	10.00	10.50	11.04	11.59	12.57	14.14*	41.4%
Bottled or similarly packaged waters and other non-alcoholic beverages not...	5.00	5.20	5.47	5.74	6.03	6.41	28.2%

Table 4

The impact of inflation adjustment followed by a change in the cost of stamps is costly to businesses regardless of whether the business absorbs the cost or passes it to the final consumer.

Assessing the impact of increasing the cost of EGMS

Any potential increase in the cost of the stamps will:

impact on the business and tax collection (*case study 1*)

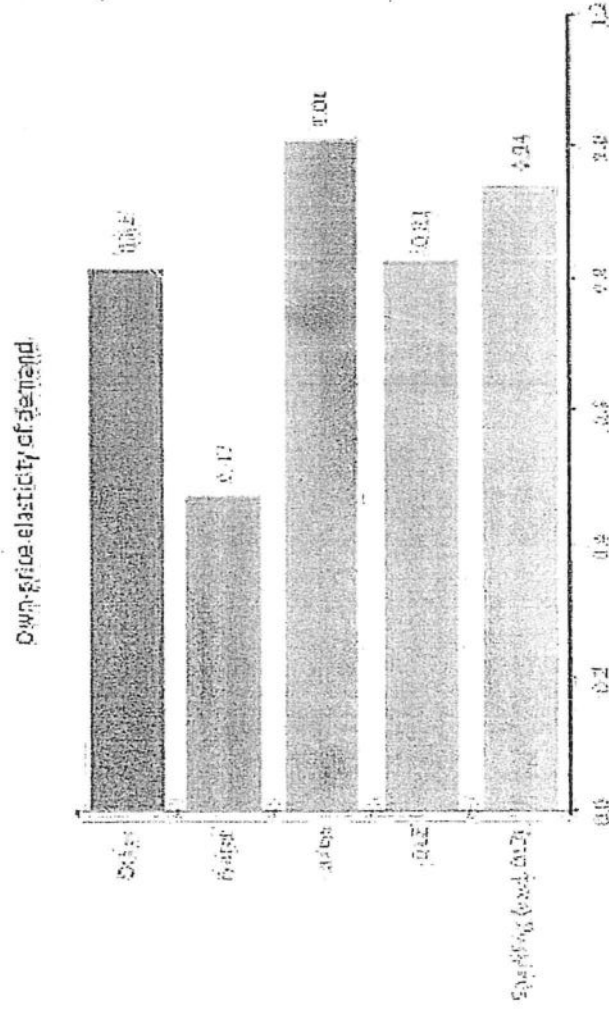
- A potential increase in the cost of stamps on juices and non-alcoholic beverages would force the business to **take up price**. Although the revenue from excise stamp collection may increase, it is forecasted that the overall tax collections (PAYE, VAT and Corporate Income tax) will **decline** resulting from the loss of sales.

impact on distributors and outlets (*case study 2*)

- An increase in the cost of the stamp will also **adversely impact** on the producer's capacity for production and distribution of excisable beverages, which will have a ripple effect on **micro and small enterprises** along the value chain.

Because price affects demand negatively | Resulting into a drop in volume of sales

Price sensitivity of beverages



Example: the own-price elasticity of demand for Sparkling in Kenya is 0.94. This means that a price increase of 1% is associated with a 0.94% reduction in demand for Sparkling.

Own price elasticity of demand

- This parameter measures the responsiveness of consumer demand to changes in the price of commodities.
- The own-price elasticity measures the percent change in quantity demanded for a good given a percent change in its consumer price.
- When consumer demand is **price sensitive**, the own-price parameter is large in absolute terms.

Decline in overall tax collection: Total Taxes Vs Excise Tax

Impact of EGMS Increase

Anticipated annualised consequence of EGMS increase		171.9%				
(selected popular beverage package size)						
• Take price: from KShs 30 to KShs 40						
• Volume of pack decreases: ~ 12%						
• Overall volume impact						
5%						
• Headcount review: -10%						
• Result: only EGMS rises while all other taxes collected decline						

CCBA NPAT	VAT	Excise	Withholding Tax	Import Duty	PAYE	EGMS	Corporation
-25.0%	-5.8%	-3.7%	-2.7%	-5.8%	-10.0%	-25.0%	

Case study 1

Reduction in revenues : Impact on distributor and retail outlet margins



FY 2023	% change
EGMS Increase	171.9%
Impact of rate increase per bottle in KES	1.6
Total impact in KES	1,189,663,863
RRP of 300ml RGB	14.3%
Volume impact	-11.9%
Trade margins	-12.07%
Overall EGMS Impact	-6.3%
NSR after EGMS	-1.3%

EGMS increase on CSDs from 60 cents to Kshs 2.2 would require the business to fund an extra Kshs 1.1 Billion (selected popular beverage package size, 300 ml RGB pack)

- Take price by 14.3% from KShs 35 to KShs 40.
- Volume of pack decreases: -12%
- Overall volume: -5%
- **Trade margins drop by 12%** from volume reduction and reduced margins.
- Distributors/retailers will experience a reduction in disposable income.

Case study 2

Assessing the impact of increasing the cost of EGMS | Impedes intended investments

Impact on the juice category

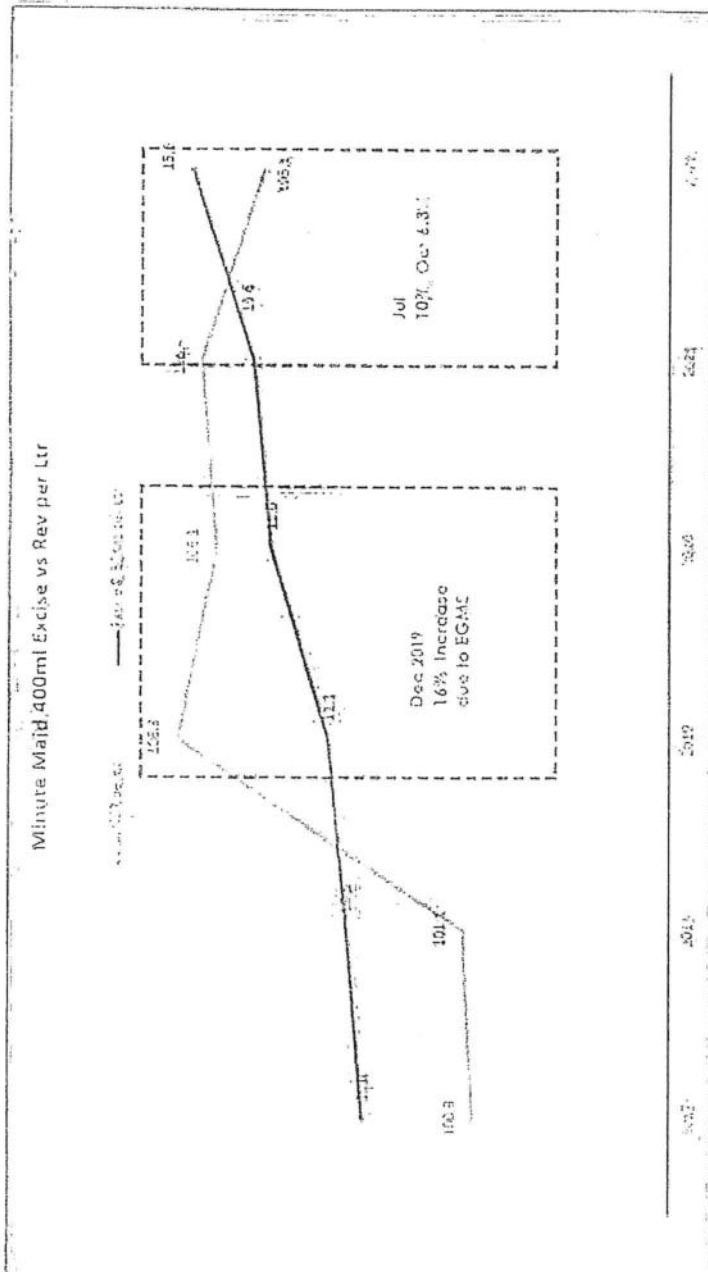
- The juice category was adjusted twice in 2022
 - through amendment of the specific rate of duty effective 1st July 2022
 - through inflation adjustment effective 1st October 2022
 - A further increase in tax payable by increasing the cost of stamps will impact on the growth in the juice category. (*case study 3*)

Over taxation of the sector

- The beverage sector already experiences a combination of stamp fees, excise tax, inflationary adjustments over and above the corporate taxes, VAT, PAYE and customs duty as well as extraordinary input cost drivers, and this weighty combination of taxes serves as an **impediment to growth**. (*case study 4*)

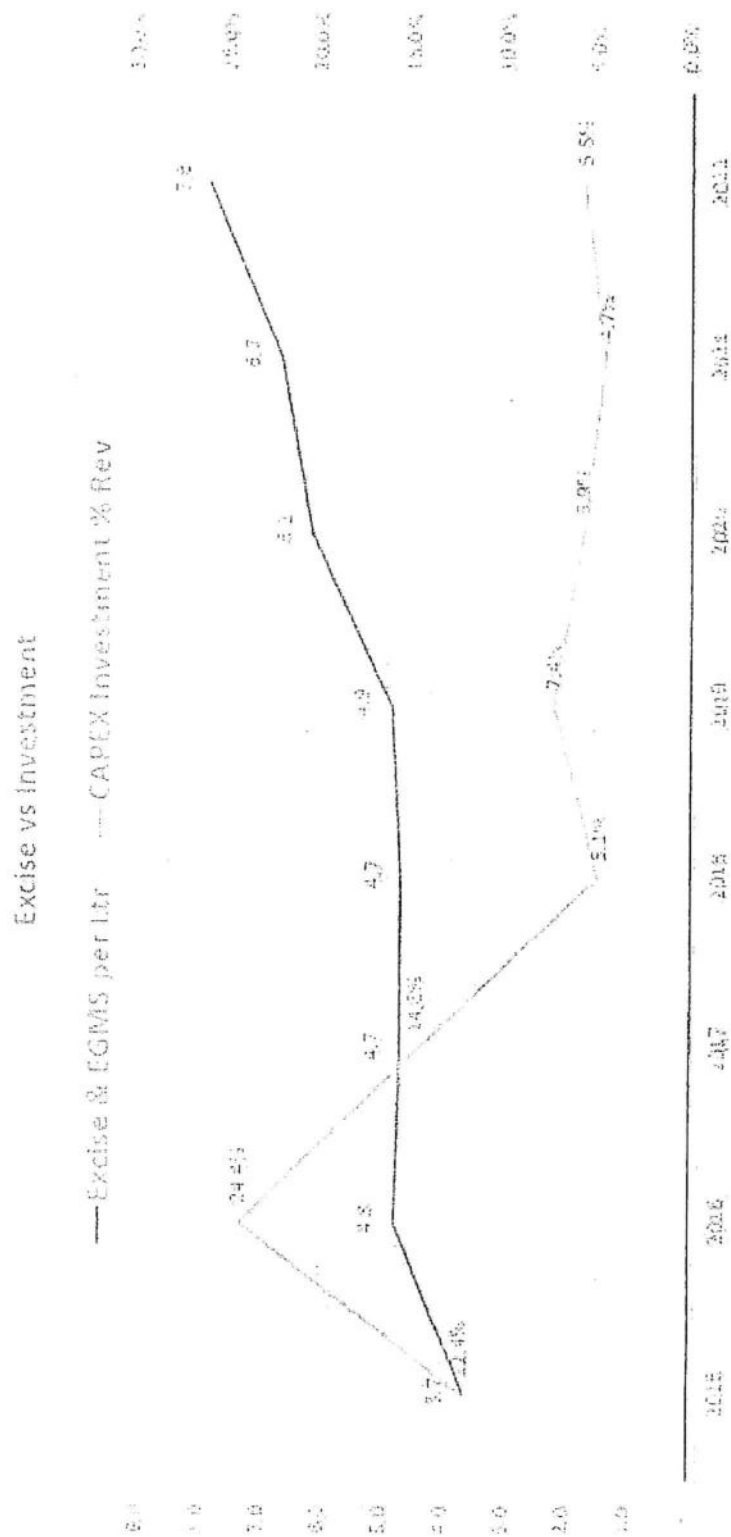
The impact of the Excise and EGMS has been exceptionally hard on the juice category with an increase of 56% since 2017 with a marginal revenue growth of 4%

- The business invested heavily in the ultra modern hot fill juice plant the only one of its kind in the Country in 2017/18
- The new plant is yet to run optimally representing minimal return on investors capital
- although there has been a steady growth in the volume performance, the **accelerated** pressure on the category will call for a price increase that might make the beverages unaffordable



Case study 3

Increasing tax pressures affect the appetite to invest, resulting in diminishing CAPEX spend



Case study 4-CAPEX spend from 2016/2022

Operation & production costs are also on the rise: a change in the cost of the stamp compounds the burden on the producer.

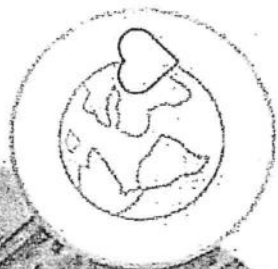
	2016	2017	2018	2019	2020	2021	2022	2022 vs 2016
Sugar/Kg	79.78	78.47	69.71	75.01	85.50	77.92	91.32	14.5%
Resin/Kg	118.99	116.63	135.59	131.03	110.15	105.52	168.49	41.6%
Co2/Kg	35.82	37.32	38.43	39.58	39.58	41.60	43.38	21.1%
Crowns/EA	0.47	0.48	0.58	0.51	0.49	0.66	0.80	70.5%
Closures/EA	0.71	0.64	0.64	0.69	0.66	0.73	0.85	19.0%
Electricity/Unit	6.18	7.15	8.21	8.61	10.66	10.40	10.96	77.3%
Diesel/Ltr	77.00	83.30	98.00	93.80	87.24	101.57	124.31	61.4%
Salaries in Bns	3.51	3.87	3.58	4.01	4.05	4.64	5.16	47.0%
CSDs Excise tax/Ltr	5.00	5.00	5.10	5.30	5.52	5.81	6.13	22.5%
EGMS in Mns	-	-	-	86.39	411.15	449.55	564.43	100.0%

case study 5

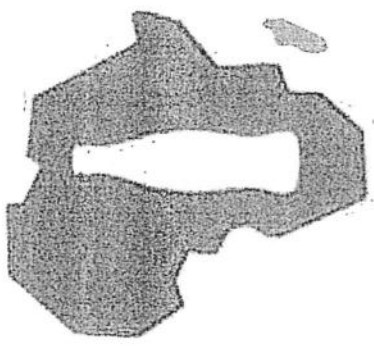
- The business has over the years had to absorb the increases in operation and production costs.
- Relentless depreciation of the Kenyan shilling is raising concern for our business.
- Our ask: Consider maintaining the current cost of the stamp.

The EGMS Draft Regulations 2023 | Our proposal

- The Government should **hold any intended increase** in the cost of stamps as it may be a deterrent to voluntary compliance. The cost of excise tax plus EGMS is extremely punitive to businesses.
- The Government should engage taxpayers and other stakeholders in the review of the place of EGMS as a tool to drive compliance, excise tax protection and in combatting illicit trade. Key areas for consideration should include:
 - What other mechanisms can the Government implement to address the issue of illicit trade?
 - How else can the Government protect excise tax without the use of the stamp?
 - How can the Government and the industry players drive voluntary compliance?
 - Can Government negotiate the terms of the excise stamps contract to reduce the cost of the stamp?



Thank you



RETAIL TRADE ASSOCIATION OF KENYA (RETRAK) POSITION PAPER ON THE EXCISE DUTY (EXCISABLE GOODS MANAGEMENT SYSTEM) (AMENDMENT) REGULATIONS, 2023

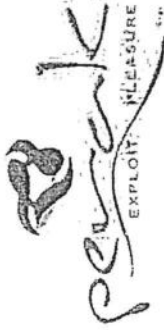
	Reference to the Regulation	Recommendation	RETRAK Position
1.	<p>Clause 1:</p> <p>1. Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes</p> <p>2. Cigarettes containing tobacco or tobacco Substitutes</p> <p>3. Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and "reconstituted tobacco"; tobacco extracts and essences.</p> <p>4. Electronic cigarettes and other nicotine delivery devices.</p> <p>5. Liquid nicotine for electronic cigarettes.</p> <p>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.</p> <p>The Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023 seeks to increase the cost of stamps from a previous KES 2.80 to KES 5.0</p>	Retain the current charges of Kshs. 2.8 per stamp.	<p>Retailers are already operating in an environment of high Inflation as evidenced by the Consumer Price Index and cannot afford any other cost increases due to low consumer purchasing power. Formal Retailers are already losing consumers who are deterred from buying from them and instead seek to buy directly either from informal sector which and/or counterfeiters. This leads to a decrease in revenues collectible by Government as many informal traders are not captured in the tax basket. This may also affect the employment numbers within the sector, as low sales require less shop attendants.</p> <p>Retailers put in a lot of effort to ensure that they source their goods from the credible sources – usually from local manufacturers. High cost of manufacturing leads to an increase in counterfeiting. Counterfeit goods compete unfairly with goods we source from legit sources, as they are significantly cheaper when sold in the informal sector.</p> <p>Increased cost of products continues to give an edge to, imported products which will continue to rule the shelves, at the expense of locally manufactured as goods.</p>
2.	<p>Bottled or similarly packaged waters.</p> <p>The Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023 seeks to increase the cost of stamps KES 1.50 to KES 0.5.</p>	Retain the current rates	<p>Water and especially drinking water is an essential commodity particularly in areas where clean drinking water is scarce. Increasing the stamp duty will increase the cost of an essential good, burdening further a very lean pocketed consumer</p>



THE RETAIL TRADE ASSOCIATION OF KENYA

3.	<p>Other non-alcoholic beverages, not including fruit and vegetable juices</p> <p>Fruit juices (including grape must), and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter.</p> <p>Cosmetics and Beauty products of tariff heading Nos. 3303, 3304, 3305 and 3307</p> <p>The Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023 seeks to increase the cost of stamps from KES 0.60 to KES 2.2</p>	Retain the current rates.	These Commodities especially cosmetics and beauty products are prone to counterfeiting and will be counterfeited if the cost has to increase arbitrarily.
5.	<p>Compounded spirits of alcoholic strength exceeding 6% (5 per Stamp); wines including fortified wines, and other alcoholic Beverages obtained by fermentation of fruits (5 per stamp); Spirituous beverages of alcoholic strength not exceeding 6% (3 per Stamp)</p> <p>Beer, cider, perry, mead, opaque beer, and mixtures of fermented beverages with non-alcoholic beverages</p>	Retain the current rates.	<p>Local alcoholic beverages will struggle to compete against local brews and illicit alcohol brewed in unsanitary conditions. This will in turn lead to the associated social problems such as underage drinking and health related risks of illicit alcohol such as blindness. Reduction of illicit alcohol has been one of the clarion calls of the Government of the day.</p> <p>Whereas Retailers comply with government indications and usually offer safe products for sale in compliance with government terms.</p>

RETRAK would also like to request KRA to engage effective Public Participation by engaging stakeholders who are affected by tax increases.



The Pubs, Entertainment & Restaurants Association of Kenya

POSITION PAPER ON THE EXCISE DUTY (EXCISABLE GOODS MANAGEMENT SYSTEM) (AMENDMENT) REGULATIONS, 2023

No.	Provision/ Reference in the Regulations	Proposal	Justification
1.	<p>Clause 5: compounded spirits of alcoholic strength exceeding 6%.</p> <p>The Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023 seeks to increase the cost of stamps from a previous KES 2.80 to KES 5.0</p>	<p><u>Objective</u></p> <p>Halt and review the proposed increase of excise stamp under the draft regulations.</p>	<p><u>Justification</u></p> <ul style="list-style-type: none"> KRA has not provided a justification for the approximately 79% arbitrarily increase in the excise stamp from KES 2.80 to 5.0 this leads to unprecedented and unexpected cost to business. A look at the initial EGMS project in 2015 shows that it was conceptualized as a self-funding project. <p>According to the SICPA contract, the Initial cost of the EGMS stamp was to pay for the stamping equipment to be installed on the Manufacturers equipment. The SICPA contract is now coming to an end which means that KRA has paid for the equipment that was being managed by SICPA. It therefore does not make any sense from a financial point of view to increase the cost of the stamp when the contract with SICPA is changing from a maintenance contract to a service contract. The expectation is that the cost of the stamps should be going down considering that the initial stamp prices catered for sourcing of the equipment from SICPA. The Public Investments Committee (PIC) 2019 investigation report shows that SICPA and KRA explained that they failed to budget for the project prior to commencing the procurement (which was in violation of Section 26 (6) of the Public Procurement and Assets Disposal Act 2005) was because the project was self-financing. If the financing period is over for the equipment,</p>

the cost should come down. Therefore, the government needs to be very transparent on the EGMS system. Our understanding is that the system should now be fully managed by KRA and not SICPA hence a reduction in cost. Any engagements with SICPA should only be on servicing and maintenance of the equipment which is the property of the Government of Kenya having been acquired using public funds (taxes)

The cost of ink and paper used for the stamps is generally known. KRA should therefore give a justification for the proposed increase.

Public participation was not conducted by KRA before they came up with the proposed excise stamp cost increments. This contravenes Article 201 of the Constitution which provides for public participation in matters of public finance; and Section 5 of the Statutory Instruments Act which provides that before a regulation-making authority makes a statutory instrument, and in particular where the proposed statutory instrument is likely to have a direct, or a substantial indirect effect on business, the regulation-making authority shall make appropriate consultations with persons who are likely to be affected by the proposed instrument. KRA did not consult persons who are likely to be affected by the proposed excise stamp increases. The Statutory Instruments Act which provides as follows:

PART II - CONSULTATIONS BEFORE MAKING STATUTORY INSTRUMENTS

5. *Consultation before making statutory instruments*
(1) *Before a regulation-making authority makes a statutory instrument, and in particular where the proposed statutory instrument is likely to—*
(a) *have a direct, or a substantial indirect effect on business; or*
(b) *restrict competition; the regulation-making authority shall make appropriate consultations with persons who are likely to be affected by the proposed instrument.*
(2) *In determining whether any consultation that was undertaken is*

		<p>appropriate, the regulation making authority shall have regard to any relevant matter, including the extent to which the consultation—</p> <p>(a) drew on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument; and</p> <p>(b) ensured that persons likely to be affected by the proposed statutory instrument had an adequate opportunity to comment on its proposed content.</p> <p>(3) Without limiting by implication, the form that consultation referred to in subsection (1) might take, the consultation shall—</p> <p>(a) involve notification, either directly or by advertisement, of bodies that, or of organizations representative of persons who, are likely to be affected by the proposed instrument; or</p> <p>(b) invite submissions to be made by a specified date or might invite participation in public hearings to be held concerning the proposed instrument.</p> <p>5A. Explanatory memorandum</p> <p>(1) Every statutory instrument shall be accompanied by an explanatory memorandum which shall contain—</p> <p>(a) a statement on the proof and demonstration that sufficient public consultation was conducted as required under Articles 10 and 118 of the Constitution;</p> <p>(b) a brief statement of all the consultations undertaken before the statutory instrument was made;</p> <p>(c) a brief statement of the way the consultation was carried out;</p> <p>(d) an outline of the results of the consultation;</p> <p>(e) a brief explanation of any changes made to the legislation as a result of the consultation.</p> <p>(2) Where no such consultations are undertaken as contemplated in subsection (1), the regulation-making authority shall explain why no such consultation was undertaken.</p> <p>(3) The explanatory memorandum shall contain such other information</p>
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in the manner specified in the Schedule and may be accompanied by the regulatory impact statement prepared for the statutory instrument.

There is a need for dialogue between Government and the Private Sector before any proposals on EGMS can be considered.

- Excise stamps have failed to prevent counterfeit products as a result of counterfeited stamps which negates the main reason for introducing the excise stamp. Therefore, it is important to phase out paper stamps in favor of digital stamps. In curbing illicit trade, the greatest issue at present is the counterfeiting of the KRA excise stamps by manufacturers in an effort to evade payment of excise duty which is high and unsustainable for businesses. We have experienced manufacturers of genuine brands counterfeiting the excise stamps. This defeats the initial objective of rolling out the EGMS system as it was intended to secure Government revenue (i.e., excise duty) and eradicate illicit trade. Instead, the system and the high excise tax has led to increased illicit trade, leading to further investments in projects such as the "Soma label App" among others that come with an additional administrative burden. With the increase in illicit trade, we can infer that there is a reduction in the expected Government revenue from excisable products that are on sale in the market. To quote the President of Kenya at the KRA Taxpayers event last year who said, "for example, we are selling 2.9 billion stamps for our excisable products while our neighbor Tanzania is selling 7.2 billion stamps, Uganda is selling 9 billion stamps. Those two economies are smaller than ours. It means we should be selling between 10 billion and 12 billion stamps but the trouble is the government is selling 2.9 billion stamps. There are people who are selling the balance which is approximately 7 billion stamps... and we should be able to collect enough money." The move by National Treasury and KRA is therefore an impediment to His Excellency's agenda of growing the economy by 20% by 2030.

		<ul style="list-style-type: none"> • Poor quality of paper stamps leads to low Operational Equipment Effectiveness (OEE) numbers, not environmentally friendly and also leads to losses of stamps which cannot be refunded by KRA - but are borne by the manufacturer. • Public health and consumer protection- excise-led high costs of goods will impact purchasing power of the citizens in turn leading to consumers resorting to purchasing counterfeits and illicit alcohol which risks lives and denies the Government the taxes they target to collect. • A further increase on the excise stamp leads to an increased financial burden and costs of production as the manufacturer absorbs the costs of the excise stamp. This notwithstanding the manufacturer incurs additional costs from having multiple authentication systems by the three agencies, Kenya Revenue Authority (KRA), the Kenya Bureau of Standards and Anti-Counterfeit Agency. This duplication of efforts was noted in the PIC investigation report of 2019 which called for the three agencies to collaborate and work on one system. • The increased costs of production makes manufacturers uncompetitive in the industry and places Kenya as an unfavorable destination for investment in terms of ease of doing business among the neighboring EAC countries. Kenya imposes the highest excise tax burden on its manufacturers of all the other EAC states. This makes Kenya an expensive investment destination. The proposed increased costs have no added benefit to the business community. • A comparison of the cost of the stamps for alcoholic products in Kenya, Uganda and Tanzania reveals that Kenya is charging the highest, with the same supplier, an indication that either Kenya negotiates poorly or there could be a major integrity issue in the management of the funds collected to manage the system
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Cost of Kenya (Current)		Kenya (Proposed)	Tanzania (Current)	Uganda (Current)
Stamps (KES)				
Spirits	2.80	5.0	2.21	3.55

<ul style="list-style-type: none"> • Increase in the cost of excise stamps leads to over taxation of manufacturers who are already paying high excise duty subject to regular increases (almost annual) and the annual inflationary adjustments. • As an alternative the increased cost of excise stamps should offset payable excise duty. • The cost of excise stamps has not been apportioned proportionately among the different excisable goods. KRA has not given a justification to the variation of excise stamp prices. The cost of an excise stamp should be equal among all excisable goods as there is no discernable difference in the stamps. • Manufacturers have continued to suffer loss occasioned from the system downtimes and delays in stamp activation and data synchronization yet the cost of the excise stamps are arbitrarily increased. • In addition to downtimes experienced from the system, manufacturers have to bear the logistical costs due to the centralized collection point for excise stamps. A further addition to the cost of excise stamp is a financial burden on the manufacturers. • The recommendations of the 2019 PIC investigation report on EGMS issues have also been ignored. We are yet to see a consolidated KEBs, KRA and ACA stamp to curb illicit trade. At present, parallel initiatives by the three 	
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Government entities are ongoing i.e., the excise stamps, the mark or quality and ISM mark by KEBs and recordation by ACA and result in duplicated efforts and a waste of public and private sector resources and time.

- Ease of Doing Business - The EGMS system is effective for the Government but not efficient for private sector as it has resulted in an increase in the cost of doing business, increased administrative burden and increase in counterfeits and illicit trade. The actual issue is enforcement, a mandate of the government, which cannot be cured by increasing the cost of the stamps.
- Essentially there has been an increase in counterfeited excise stamps with records indicating a total of 920,729 fake stamps seized between October and December 2022 i.e. in a single sample of seized products.

Fake Tax Stamps Affixed on Finished Products October - December 2022

Month 2022	in	October	November	December
No. of Fake Stamps		170,987	707,003	42,739
Total Fake Stamps Oct - Dec 2022		920,729		

This is as a result of increase in excise duty leading to a proliferation of Duty Not Paid Products which are usually smuggled along the following border towns.

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 Operator: --TJ--
 Position: 1237
 1 Operand: [
 [<0003> -0.214844]
 Font Dictionary(01815)
 Object ID: -85
 Entry: unspecified
 Error: dictionary entry missing

Ethiopia

- Moya

Uganda Border

- Port Victoria
- Sio port
- Malaba
- Lwakhakha
- Suam
- Endebess
- Lokichogio

Tanzania Border

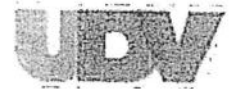
- Lunga Lunga
- Taita Taveta
- Loitoktok
- Namanga
- Isebania

Cigarettes containing tobacco or tobacco substitutes

No increase and potential future review downwards of the current rate for tobacco and nicotine products



Kenya Breweries Limited | UDV (Kenya) Limited
Subsidiaries of the EABL Group



03 February 2023

1. The Cabinet Secretary
The National Treasury and Planning
Harambee Avenue, Treasury Building
P.O. Box 30007-00100
NAIROBI, KENYA

By Email: stakeholder.engagement@kra.go.ke
& Acknowledged Delivery

2. The Commissioner General
Kenya Revenue Authority
Times Towers
NAIROBI, KENYA

Dear Sirs,

RE: THE EXCISE DUTY (EXCISABLE GOODS MANAGEMENT SYSTEM) (AMENDMENT) REGULATIONS 2023

We refer to the Public Notice dated 17 January 2023 published by the Commissioner General Kenya Revenue Authority (KRA) on behalf of the Cabinet Secretary (CS) National Treasury and Economic Planning inviting interested members of the public and stakeholders to submit their inputs and comments for consideration in the finalization of the subject regulations. Kenya Breweries Limited ("KBL") and UDV (Kenya) Limited ("UDV") (jointly "We") hereby write to submit our written inputs and comments on the subject regulations as follows:

1.0 Background

We understand and appreciate the fact that the Excise Goods Management System (EGMS) (the System) was introduced by the Government of Kenya as a means of improving excise revenue collection (to secure excise revenue) with implementation of the System having commenced more than ten years ago. We also appreciate the fact that the System sought to address the challenges that KRA was facing that impacted on revenue collection. This included:

- a) **Illicit trade:** - presence of illicit products including Duty-Not Paid and counterfeited brands at the time necessitated measures that would help curb the vice while securing Government revenue. The Excise stamps (stamps) would then assure the consumers of consumption of genuine products while at the same time Government would be able to track and trace stamped products hence secure excise revenue.

There was also widespread parallel importation of branded products on which tax was not paid. The affixation of excise stamps was considered to discourage such practices and protect genuine brand owners.

- b) **Product traceability:** - the system, we were advised, would help the Government to reconcile quantities declared by the manufacturers against the excise duty paid since the affixing of the stamp would be KRA controlled and done at the factory level before the products leave for the market.



2.0 The Draft EGMS Regulations 2023

The draft regulations propose to amend the pricing of excise stamps for alcoholic beverages and other products, a review that, if implemented, may increase the cost of the stamps by between 79% and 267%. The proposed increase in the excise stamps cost raises a number of concerns:

2.1 Impact on Production

The increase in the cost of excise stamps is adding to the rising cost of production with increase in taxes (especially excise duty), costs of fuel, electricity costs, rising wages, county governments' fees and levies among others. Implementation of EGMS came with additional costs that we have to meet in order to comply with the prevailing regulations. These include costs relating to contracting of cash in transit services for the collection and transportation of excise stamps from KRA to our premises; investing in high security safes, ICT infrastructure, uninterrupted internet supply, 24 hours CCTV surveillance; investments in capex and packaging line modifications that has impacted packaging line performance; depreciation costs among others. Compounded, we have to meet a total of above KES.20million per year in order to sustain the System and remain compliant, a cost that is separate from the cost of purchasing the stamps. It would be prudent for the Government to now lower the price of the excise stamps to allow the business time to recover from these costs and reclaim its competitive position in the region.

The proposed increase in the cost of the stamps will lead to an increase of up to six times the current cost of the printed label that we affix on the products as provided below:

Item	Cost Per Item Packaging Label	Propose Cost of the tax Stamps	More Expensive by
Beer	1.0	3.0	
Spirits	0.8	5.0	

2.2 Adverse Impact on consumer

Given the impact of this cost and the ripple impact on product packaging, the cost will be passed over to the consumers who are already struggling with high inflationary impact in the economy, which is mainly impacting the low-end economic earners. The consumer today pays 2 to 3 times for a similar product originating from our immediate neighbours Uganda and Tanzania. Inflation on alcoholic beverages has resulted to increased illicit, counterfeits, deaths etc.

In curbing illicit, the greatest challenge at present is the counterfeiting of the KRA excise stamps in an effort to evade payment of excise duty which is high and unsustainable for businesses. We have remained compliant over the years and opened ourselves for inspection by Government with our products always featuring as the most compliant in all of the benchmarking missions that the government has made to our factories and distribution channels.

Increase of illicit in the market defeats the initial objective of rolling out the EGMS system. A review from a sample of illicit seized between October and December 2022 established that a total of 920,729 alcoholic beverages had fake excise stamps. Counterfeiting of the stamp has led to additional investment by Government in such projects as the "Soma Label App" among others that come with additional administrative burden and additional spend. With increase in illicit, we can infer that there is a reduction in the expected Government revenue from excisable products that are on sale in the market (spotlighting the efficiency of Government in their enforcement).

2.3 Impact to the value chains

The industry is already reeling from an aggressive excise increases experienced in June and October 2022 which drove incremental increase in prices with a ripple impact in the value chain. This has driven a double-digit decline in industry volumes which has impacted the chain from farmers, hauliers, food chains etc. This to a large extent has an impact on the thriving illicit trade.

2.4 Management of the EGMS System by SICPA

Following from Government's assurance to the private sector during initial roll-out of the System, the equipment that SICPA has been managing is now fully owned by KRA. The contract with SICPA, if any, should therefore be moving to a maintenance/service contract for consumables only since the hardware is now fully owned by KRA. Hence our expectation is that the cost of the stamps should be going down considering that the initial stamp prices catered for sourcing of the equipment (what SICPA and KRA submitted to PIC in 2018 that the reason for failing to budget for the project prior to commencing the procurement (which was in violation of Section 26 (6) of the Public Procurement and Assets Disposal Act 2005) was because the project was self-financing.

2.5 Cost Comparison

A comparison of the cost of the stamps for alcoholic products in Kenya, Uganda and Tanzania reveals that Kenya is charging the highest, with the same supplier. We recommend that the Government borrows from the experiences of other jurisdictions on the pricing and efficiency of the excise stamps model before finalizing on any new legal framework on EGMS. Below is a cost comparison of the excise stamps with other markets:

Cost of Stamps (KES)	Kenya (Current)	Kenya (Proposed)	Tanzania (Current)	Uganda (Current)
Beer	1.50	3.0	0.96- local 1.21- imported	1.16
Spirits	2.80	5.0	2.21	3.55
Soft Drinks/juices	0.60	2.0	0.23	0.55

Most of the funds collected on these stamp costs are expatriated to Europe further creating a strain on the Kenya Shilling, further accelerating the depreciation of our currency.

3.0 Conclusion

The EGMS system is effective for Government but not efficient as it has resulted to increase in the cost of doing business, increased administrative burden and increase in counterfeits and illicit. The actual issue is enforcement, a mandate of government which cannot be cured by increasing the cost of the stamps. We therefore recommend that the Government halts on implementation of the subject regulations, conduct an impact assessment on the current model together with comparison with the experience of other jurisdictions and reduces/lowers the cost of the stamps as this has already led to an increase in the cost of compliance and rise in production and consumption of illicit products in the market. We enclose a detailed memorandum on the proposed regulations for your review and consideration.

Yours faithfully,

For: Kenya Breweries Limited and UDV (Kenya) Limited



Frida Mbugua
Head of Public Policy



The Commissioner General
Kenya Revenue Authority
P.O. Box 48240-00100
Nairobi, Kenya

Sent via email to stakeholderengagement@kra.go.ke

31 January 2023

Ref: ITX/MM/IO/KMM

Dear Sir,

Subject: Submissions on The Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023

We refer to the public notice issued by the Commissioner General ("CG") on 16 January 2023 informing the public of the provisions of the Excise Duty Act, 2015 ("the Act") which empowers the CG to make Regulations generally for the better administration of the Act.

In the said public notice, the CG informed manufacturers and importers of excisable goods of his review of the Excise Duty (Excisable Goods Management System) Regulations, 2017 ("the EGMS Regulations") and subsequent amendments made vide the Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023 ("the draft Amendment Regulations") effective 1 March 2023.

The Kenya Revenue Authority ("the KRA", "you") therefore invited interested members of the public and stakeholders to submit their views and comments for consideration in finalising the draft Amendment Regulations by 3 February 2023.

We (PricewaterhouseCoopers Limited, "PwC" or "us") are pleased to share with you comments and recommendations on the draft Amendment Regulations for your consideration.

We would be grateful for an opportunity to engage you further on our proposals or to provide additional information should this be required.

Yours faithfully,

For: PricewaterhouseCoopers Limited

Maurice Mwaniki
Associate Director

PricewaterhouseCoopers Limited, PwC Tower, Waiyaki Way/Chiromo Road, Westlands
P O Box 43963 - 00100 Nairobi, Kenya
T: +254 (20)285 5000 F: +254 (20)285 5001 www.pwc.com/ke

Directors: U Akpala S Cheruiyot J Kabochi E Kenich B Kimacia M Mugasa T Mukora A Murage F Muriu S Mutinda P Ngashu B Ngunjiri R Njoroge
S O Norbert's O Nyamongo S Okello B Okundi I Otolo K Saiti M Thoitthi G Wera (" Nigerian")

General overview of the status of the Kenyan economy

Kenya's economy continued to rebound from the pandemic in 2022 with real gross domestic product ("GDP") increasing by 6% year-on-year in the first half of 2022, driven by broad-based increases in services and industrial activities. However, the ongoing shocks, including the long drought in arid and semi-arid areas, rising inflation, and tighter global financial conditions, create challenges for Kenya to sustain its recovery.¹

Kenya's medium term growth prospects remain positive with GDP projected to grow by 5.2% on average in 2023 to 2024 notwithstanding current global and domestic shocks. The baseline assumes robust growth of credit to the private sector, continued low COVID-19 infection rates, a near term recovery in agricultural production, and high commodity prices favourable to Kenyan exports. These developments are in turn expected to catalyse private investment to support economic growth over the medium term.

The government reduced the budget deficit in fiscal year ("FY") 2021/22 from 8.2% to 6.2% through revenue measures and expenditure moderation as a result of fiscal consolidation. Total revenue increased to 17.3% of GDP in FY 2021/22 from 15.7% in FY 2020/21, reflecting the pick-up in domestic demand and a range of tax reforms as well as improvements in tax administration and the use of technology. These have yielded a reduction in tax expenditures through harmonisation of exemptions, enhanced compliance through Voluntary Tax Disclosure Program ("VTDP") for previously non/undeclared taxes, and easier access to the Kenya Revenue Authority's ("KRA") online systems.²

The above notwithstanding, it is also worth mentioning that productivity (i.e., output and new orders) declined at quicker rates, amid disruptions caused by the national election and cash flow shortages. At the same time, there was a renewed drop in employment, Purchasing activity also decreased due to weaker sales and still numerous mentions of higher fuel prices, exchange rate pressures and a greater tax burden. Looking forward, business and investors' confidence remain one of the weakest on record, amid fears that the inflation-driven downturn in the economy will continue.

Excise taxes contribute a significant proportion of revenue in Kenya. Between 1980 and 2020, excise taxes yielded an average of 3.1% of Kenya's GDP. The government's failure to meet its annual income targets through the KRA has compelled the need to explore ways to improve revenue earned through taxation. Excise duty, being a consumption tax, reaches a wider range of the population and is hard to avoid for a consumer, providing the government with an attractive target in its bid to raise additional taxes.

We note that amongst other amendments the draft Amendment Regulations are proposing an increase in the price of excise stamps for qualifying products by more than 70% other than for 'Bottled or similarly packaged waters' which have remained the same; The draft Amendment Regulations have also proposed the addition of a new category of qualifying products for the tobacco industry which will now require the affixation of excise stamps, as well as adjusting the alcoholic strength of qualifying 'Compounded spirits of alcoholic beverages' to exceeding 6% and 'Spirituos beverages' to not exceeding 6% from the current 10%.

We further discuss below the specific areas of concern that may result from the implementation of the draft Amendment Regulations.

¹ <https://documents.worldbank.org/curator/en/publications/documents/publication-detail/090294712012203001/000000121022030001/000000121022030001>

² <https://www.worldbank.org/en/news/press-release/2022/07/14/kenya-revenue-authority-reports-strong-growth-in-tax-revenue>

Draft Amendments ref.	Issue of concern	Recommendation
<ul style="list-style-type: none"> The CG has proposed under Clause 4 of the draft Amendment Regulations to amend Regulation 28(1) of the EGMS Regulations by deleting paragraph (1) and replacing it with the following new paragraph – <p><i>"(1) The excisable goods provided under the Second Schedule of the Act shall be exempted from the requirement of excise stamps."</i></p>	<p>a) Regulation 28 (1) (a) of the EGMS Regulations currently provides that: <i>[Emphasis ours]</i></p> <p><i>"(1) The following excisable goods shall be exempted from the requirement of excise stamps-</i></p> <p><i>(a) excisable goods manufactured for export, the Kenya Defence Forces, the National Police Service or delivered to a duty-free shop;</i></p> <p>We note that the draft Amendment Regulations of the above-mentioned provision and has subsequently overlooked to highlight on the applicability of excise stamps on excisable goods locally manufactured for export.</p> <p>As it stands, it is notable that the intention of the amendment of Regulation 28 (1) of the EGMS Regulations was to merely exempt the use of excise stamps on goods that are exempted from excise duty as provided for under Second Schedule to the Excise Duty Act, 2015 ("EDA").</p> <p>Nevertheless, we note that "excisable goods manufactured for exports" are not listed under the Second Schedule to the EDA. This can therefore be interpreted to mean that excisable goods locally manufactured for exports will be subject to excise stamps.</p> <p>This proposed amendment therefore contravenes with the provisions of the EDA under section 7 which provides for non-applicability of excise duty on 'excisable goods exported from Kenya under customs control' hence the amendment is unfounded in law.</p>	<p>❖ We recommend the CG to review this proposed amendment prior to the issuance of the new EGMS Regulations and provide clarity on the applicability of excise stamps on 'excisable goods manufactured for export' so as to avoid unnecessary future disputes with the impacted taxpayers and interested members of the public.</p>

<ul style="list-style-type: none"> The CG has also proposed price adjustments under Clause 5 of the draft Amendment Regulations, as outlined below: <ol style="list-style-type: none"> 1. Cigars, cheroots, cigarillos, containing tobacco or tobacco substitute - KES 5 per stamp; 2. Cigarettes containing tobacco or tobacco Substitutes - KES 5 per stamp; 3. Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and "reconstituted tobacco"; tobacco extracts and essences - KES 5 per stamp; 4. Liquid nicotine for electronic cigarettes - KES 5 per stamp; 5. 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 - KES 5 per stamp; 6. Compounded spirits of alcoholic strength 	<ol style="list-style-type: none"> a) According to the proposed amendments, the draft Regulations seek to replace the Schedule which will result in the cost of excise stamps increasing by a margin ranging from 79% to 317%. This increase in the prices of excise stamps is likely to be shifted by the impacted manufacturers and importers to final consumers in the form of increased prices of the goods adding to the recent 6.3% adjustment for inflation on specific rates that became effective in October 2022. It is therefore our view that the review of the EGMS regulations and subsequently proposing amendments with increased prices for the excise duty stamps in a period of 3 months from the previous excise duty rates adjustments is counter-intuitive and ill-timed. b) The current rates for excise stamps imposed for excisable goods listed under the First Schedule to the EGMS Regulations are already amongst the highest compared to the rates provided for the same category of excisable products in other jurisdictions across Africa and globally. It is worth noting that the increase in the fees for excise stamps results in an increase in business operating costs to the impacted manufacturers in Kenya thus resulting Kenyan products under this category becoming less competitive in the East African region and the global market at large due to increased overhead costs compared to its peers who have not made further adjustments on the fees charged on excise stamps. c) As provided under the EGMS Regulations, stamp fees are meant to support the tax administration activities in the excise sector and therefore, not a revenue raising measure. 	<ul style="list-style-type: none"> ❖ We recommend the CG to defer adjusting prices of the excise stamps to help the corporations accounting for excise duties under this category to thrive in their businesses and encourage more investments to the country. ❖ The government should also consider deferring this adjustment and focus on enhancing the capabilities of the existing excise stamps. This should form a reasonable basis upon future adjustment of the fees. ❖ Excisable products such as juices, carbonated drinks, alcoholic beverages and tobacco are price sensitive. The demand for these products is influenced by prices, income levels and consumption patterns. This therefore means that increase in the excise stamp fees for these products will result in the disruption in the demand and supply chains for these companies. <p>It is also worth noting that ongoing price hikes have eroded consumers' purchasing power significantly. Consequently, the proposed increase in prices for the excise stamps will result in price increases and lower demand for these products thereby reducing revenue collected by the government in the long run</p> <ul style="list-style-type: none"> ❖ Furthermore, we recommend the KRA to consider standardising the pricing of the excise stamps as they serve
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<p>exceeding 6% - KES 5 per stamp;</p> <p>7. Spirituous beverages of alcoholic strength not exceeding 6% - KES 3 per stamp;</p> <p>8. Beer, Cider, Perry, Mead, Opaque beer, and mixtures of fermented beverages with non-alcoholic beverages - KES 3 per stamp;</p> <p>9. Other non-alcoholic beverages, not including fruit and vegetable juices - KES 2.2 per stamp;</p> <p>10. Fruit juices (including grape must), and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter - KES 2.2 per stamp; and</p> <p>11. Cosmetics and Beauty products of tariff heading Nos. 3303, 3304, 3305 and 3307 - KES 2.5 per stamp;</p>	<p>d) The KRA proposes to increase the current prices of the excise stamps while not considering resolving the prevailing challenges encountered by the users of the excise stamps nor enhancing their functionalities/ capabilities. It is on this basis that the increase in the stamp fees is unjustifiable in terms of the unsatisfactory salient features of the existing stamps not meeting modern business requirements hence resulting in deficiencies to effective and efficient running of the production lines.</p> <p>e) It is notable that the excise stamps are meant to deter counterfeiting and enable tracking of excisable goods along the supply chain, which also provides for a mechanism through which the KRA is able to compute the excise duty due from manufacturers and importers. Our clients have observed that the current excise stamps do not have the track and trace functionality. That notwithstanding, the increase in prices for these stamps is likely to result in an increase in counterfeit and illicit trade and consequently resulting in a loss of government revenue.</p> <p>f) It is also our considered view that the differentiation pricing of the excise stamps for excisable goods is irrational. For example, the charge of varying prices for excise stamps for tobacco and nicotine products does not provide any enhanced features in terms of functionalities of the excise stamps that have been paid for with varying prices and hence this creates an impression towards unfair tax administration and further justifying higher operational costs incurred by companies operating in the tobacco industry.</p>	<p>the same purpose for all excisable products. The stamp being an excise tax administration tool, there is no plausible justification for the differentiation across categories as the actual difference in the products is reflected in the excise duties applicable under each product;</p> <p>The government should alternatively come up with measures to revive the economy at a greater pace through re-opening more business opportunities and encouraging investment in the country before increasing tax.</p> <p>The KRA could also consider reducing the cost of excise stamps to align with the East African Community ("EAC") Partner States, similar to the approach that the Tanzania Revenue Authority ("TRA") took in 2022. Following engagements between manufacturers and the TRA, requesting for a review of the excise tax stamps prices as this had a significant impact on the manufacturers' operating cost which would be passed on to the consumer.</p> <p>The TRA upon review of the request and engagements with manufacturers, the government revised the prices of the excise tax stamps by lowering the rates by between 0.5% to 11.26%.</p> <p>This reduction in prices provided much-needed relief to manufacturers by lowering the manufacturers' costs of production and consequently making their products affordable to consumers.</p>
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KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

Office of the Commissioner General

KRA/5/1002/5(8429)

26th January 2023

Ms. Wambui Mbarire
Chief Executive Officer
Retail Traders Association of Kenya
B3, South Wing, Ojijo Plaza Plums Lane, Ojijo Rd
Nairobi

Dear *CEO*

INVITATION TO STAKEHOLDER ENGAGEMENT FORUM ON EXCISE DUTY (AMENDMENT) REGULATIONS, 2023

The Kenya Revenue Authority (KRA) presents its compliments to you.

In compliance with the Statutory Instruments Act, the Commissioner General on behalf of the Cabinet Secretary - National Treasury and Economic Planning has reviewed the Excise Duty (Excisable Goods Management System) Regulations, 2017 and made the Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023 through a public notice published on Tuesday, 17th January, 2023.

In this regard, I invite you and five (5) of your members for a breakfast Stakeholder Engagement on **Wednesday, 1st February, 2023 from 8.00am at Times Tower - Convention Center on 5th Floor** to present your submissions on the regulation.

We look forward to your participation.

Yours sincerely,

FCPA Githii Mburu, MGH, CBS
COMMISSIONER GENERAL

Tulipe Ushuru, Tujitegemeel



KENYA REVENUE
AUTHORITY

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Office of the Commissioner General

KRA/5/1002/5(8429)

26th January 2023

Mr. Henry Kabogo
Chairperson
Water Bottlers Association of Kenya
Sameer Business Park, Block C3 1st Floor Mombasa Rd
Nairobi

Dear

Chairperson

**INVITATION TO STAKEHOLDER ENGAGEMENT FORUM ON EXCISE
DUTY (AMENDMENT) REGULATIONS, 2023**

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COMMISSIONER GENERAL

Tulipe Ushuru, Tujitegemee!



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Office of the Commissioner General

KRA/5/1002/5(8429)

26th January 2023

Mr. John Njogu
Chairman
Petroleum Outlet Association of Kenya
Lunga Lunga square, 2nd floor,
Nairobi

Dear *Chairman,*

INVITATION TO STAKEHOLDER ENGAGEMENT FORUM ON EXCISE DUTY (AMENDMENT) REGULATIONS, 2023

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COMMISSIONER GENERAL

Tulipe Ushuru, Tujitegemee!



KENYA REVENUE AUTHORITY

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Office of the Commissioner General

KRA/5/1002/5(8429)

26th January 2023

Ms. Wanjiku Manyara
General Manager
Petroleum Institute of East Africa
Bruce House, Standard Street, 4th Floor, South Wing
Nairobi

Dear *GM*,

INVITATION TO STAKEHOLDER ENGAGEMENT FORUM ON EXCISE DUTY (AMENDMENT) REGULATIONS, 2023

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COMMISSIONER GENERAL

Tulipe Ushuru, Tujitegemeel



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Office of the Commissioner General

KRA/5/1002/5(8429)

26th January 2023

Mr. Ben Mutai
Chairman
MSME Alliance of Kenya
Kenya Railways HQ, Off Haile Selassie Ave
Nairobi

Dear *Chairman,*

INVITATION TO STAKEHOLDER ENGAGEMENT FORUM ON EXCISE DUTY (AMENDMENT) REGULATIONS, 2023

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COMMISSIONER GENERAL

Tulipe Ushuru, Tujitegemeel



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Office of the Commissioner General

KRA/5/1002/5(8429)

26th January 2023

Mr. Eric Theuri
President
Law Society of Kenya
Lavington, Opposite Valley Arcade, Gitanga Road
P.O Box 72219-00200
Nairobi

Dear *President,*

**INVITATION TO STAKEHOLDER ENGAGEMENT FORUM ON EXCISE
DUTY (AMENDMENT) REGULATIONS, 2023**

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Tulipe Ushuru, Tujitegemee!



KENYA REVENUE AUTHORITY

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Office of the Commissioner General

KRA/5/1002/5(8429)

26th January 2023

Mr. Richard Ngatia
Chamber President
Kenya National Chamber of Commerce and Industry (KNCCI)
Heritan House, Ground Floor, Off Argwings Kodhek Road
Nairobi

Dear

Richard,

INVITATION TO STAKEHOLDER ENGAGEMENT FORUM ON EXCISE DUTY (AMENDMENT) REGULATIONS, 2023

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FCPA Githii Mburu, MGH, CBS
COMMISSIONER GENERAL

Tulipe Ushuru, Tujitagemee!



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Office of the Commissioner General

KRA/5/1002/5(8429)

26th January 2023

Mr. Roy Mwanthi

Chairman

Kenya International Freight and Warehousing Association

Nairobi Office, K.P.A ICD (Embakasi) Off Mombasa Road

Agent's Block, Ground Floor

P.O Box 57969-00200

Nairobi

Dear *Chairman,*

**INVITATION TO STAKEHOLDER ENGAGEMENT FORUM ON EXCISE
DUTY (AMENDMENT) REGULATIONS, 2023**

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Yours sincerely,

FCPA Githii Mburu, MGH, CBS
COMMISSIONER GENERAL

Tulipe Ushuru, Tujitegemee!





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Office of the Commissioner General

KRA/5/1002/5(8429)

26th January 2023

Ms. Carole Kariuki
Chief Executive Officer
Kenya Private Sector Association
Shelter - Afrique House, 5th floor Mamlaka Road
P.O. Box 3556-00100
Nairobi

Dear CEO,

**INVITATION TO STAKEHOLDER ENGAGEMENT FORUM ON EXCISE
DUTY (AMENDMENT) REGULATIONS, 2023**

The Kenya Revenue Authority (KRA) presents its compliments to you.

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We look forward to your participation.

Yours sincerely,

FCPA Githii Mburu, MGH, CBS
COMMISSIONER GENERAL

Tulipe Ushuru, Tujitegameel



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AUTHORITY

ISO 9001:2015 CERTIFIED

Office of the Commissioner General

KRA/5/1002/5(8429)

26th January 2023

Mr. Kwame Owino
Chief Executive Officer
Institute of Economic Affairs
1st Ngong Avenue, ACK Garden House, 5th Floor
P.O. Box 53989 - 00200 Nairobi
Nairobi

Dear *CEO*,

**INVITATION TO STAKEHOLDER ENGAGEMENT FORUM ON EXCISE
DUTY (AMENDMENT) REGULATIONS, 2023**

The Kenya Revenue Authority (KRA) presents its compliments to you.

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Yours sincerely,

FCPA Githii Mburu, MGH, CBS
COMMISSIONER GENERAL

Tuliye Ushuru, Tujitegemee!



KENYA REVENUE
AUTHORITY

ISO 9001:2015 CERTIFIED

Office of the Commissioner General

KRA/5/1002/5(8429)

26th January 2023

Mr. Anthony Mwangi
Chief Executive Officer
Kenya Association of Manufacturers (KAM)
15 Mwanzi Road, Opp. West Gate Mall, Westlands
Nairobi

Dear *CEO,*

**INVITATION TO STAKEHOLDER ENGAGEMENT FORUM ON EXCISE
DUTY (AMENDMENT) REGULATIONS, 2023**

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