



KENYA REVENUE AUTHORITY

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Office of the Commissioner General

KRA/5/1002/5(6064)

8th November 2021

Mr. Michael Sialai, EBS
Clerk of the National Assembly
Parliament Buildings
P. O. Box 41842-00100
Nairobi



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Dear *Michael,*

LEGAL NOTICE NO. 217 OF 2021 ON ADJUSTMENT OF EXCISE DUTY RATES FOR INFLATION IN LINE WITH SECTION 10 OF THE EXCISE DUTY ACT, 2015

Section 10 of the Excise Duty Act, 2015 (the Act) as read together with Paragraph 2(2) of the First Schedule to the Act provides for adjustment of the Excise Duty rates of items in the First Schedule to the Act to take into account inflation.

Pursuant to Section 11(2) of the Statutory Instruments Act, we hereby forward Legal Notice No.217 of 2021 on the Adjustment of Excise Duty Rates (*copy attached*), published on 2nd November 2021 together with the Explanatory Memorandum for tabling before the National Assembly.

Yours sincerely,

Githii Mburu, CBS
COMMISSIONER GENERAL

THE NATIONAL ASSEMBLY PAPERS L A I D	
DATE: 10 NOV 2021	DAY: <u>Wed AM</u>
TABLED BY:	<u>Majority Whip</u> <u>Hon. Mangoshe</u>
CLERK-AT THE-TABLE:	<u>M. Mado</u>

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CLERK'S OFFICE	
P. O. Box 41842, NAIROBI	




**EXPLANATORY MEMORANDUM TO THE EXCISE DUTY ACT, 2015:
ADJUSTMENT OF RATES FOR INFLATION**

LEGAL NOTICE NO. 217 of 2021

PART I

Name of Statutory Instrument : Adjustment of Rates for Inflation
Name of Parent Act : Excise Duty Act, No. 23 of 2015
Enacted Pursuant to : Section 10 of the Excise Duty Act, No. 23 of 2015
Name of the Ministry/Department : Kenya Revenue Authority
Gazetted on : 2nd November 2021

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DATE: 10 NOV 2021	DAY: Wed AM.
TABLED BY:	Majority Whip Hon. Barge
CLERK-AT THE-TABLE:	M. Mado

PART II

1.0 Purpose of the Statutory Instrument

- 1.1. The objective of this Memorandum is to submit the Legal Notice No. 217 of 2021 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 adjusts the specific rates of excise duty for non-petroleum products to take into account inflation in line with the requirements of the Excise Duty Act, 2015.

2.0 Legislative Context

- 2.1 The Legal Notice on Adjustment of Rates for Inflation is made pursuant to Section 10 of the Excise Duty Act, 2015. The Commissioner General, under section 10 of the Excise Duty Act, 2015 may adjust, the Excise Duty rates of products with specific rates of Excise Duty, annually, to take into account the rate of inflation, subject to the approval of the Cabinet Secretary National Treasury and Planning.
- 2.2 On 15th October 2021, the Cabinet Secretary National Treasury and Planning informed the Commissioner General to adjust excise duty rates on non-petroleum products only. The resolution to limit the inflation adjustment to non-petroleum products, was informed by the High Court decision to suspend the inflationary adjustment on specific rates of excise duty on petroleum products.



- 2.3 The inflationary adjustment is expected to be undertaken every year on 1st October.

3.0 Policy Background

- 3.1 The primary objective of the Legal Notice is to provide the legal instrument to enable the government implement the tax measures necessary for funding its economic development and growth agenda.
- 3.2 Every year the cost of goods and services increase due to the dynamics within and outside the economy. This rate of increase in prices is known as the rate of inflation.
- 3.3 The Kenya National Bureau of Statistics (KNBS) under the National Treasury and Planning is responsible for determining and publishing both the monthly and annual rate of inflation. For the year 2020/2021, the average rate of inflation was determined as **4.97%** (1st July 2020–30th June 2021).
- 3.4 Excise Duty taxes charged on the basis of percentage (ad valorem) on the value of the goods will automatically increase as the price of goods increase (in essence it compensates for the price adjustment) and hence lead to maintenance of the real value of tax.
- 3.5 However, the same is not true for specific rates of tax which is a charge per unit of measure (e.g Kshs. 200 per litre of Spirit). In this case, when the price of goods increase, the excise duty rate remains constant and hence erodes the real value of the taxes.
- 3.6 In response to this, Parliament enacted Section 10 of the Excise Duty Act and Paragraph 2 of the First Schedule to the Act. These provisions allow for adjustment of the specific rates of excise duty every year to protect the value of duty from erosion by inflation.

4.0 Consultation Outcome

- 4.1 In developing these Legal Notice, public participation was undertaken in compliance with the provisions of the Statutory Instruments Act, 2013.
- 4.2 The Kenya Revenue Authority informed the public and relevant stakeholders of the intention to review the rates in compliance with the law and sought their comments on the same in a Public Notice published on **Tuesday, the 10th August, 2021**. We received feedback from various stakeholders including: manufactures and importers of excisable goods, tax consultants and business associations.



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- 4.3 KRA also held an online meeting with stakeholders (through webex platform) on **9th, 20th and 23rd September 2021** to further review their comments .
- 4.4 The stakeholders through their submissions and meetings requested the Commissioner General for a moratorium on inflation adjustment for specific rates of excise duty in the current financial year specifically on petroleum products due to the recent increases in the prices of petroleum products.
- 4.5 It should be noted that the determination of the average inflation adjustment rates is a factual figure published by the KNBS and is available to the public. Therefore, neither the Commissioner General, nor the public have any discretion in changing the formula or the outcome of its application.
- 4.6 Please find attached a copy of Legal Notice No. 217 of 2021.

5.0 Impact

The Legal Notice provides for an increase of 4.97% on the specific rates of duty on non-petroleum excisable goods listed in the First Schedule to the Act. It is expected that this adjustment will lead to an equivalent increase in tax revenue from the specified goods and thus protect the value of duty from erosion as a result of inflation.

6.0 Monitoring and review

The Legal Notice will be implemented by the Kenya Revenue Authority and will be operational for a period of one year in accordance with the law until the next inflation adjustment is done.

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. 217 of 2021

8.0 Contact

Commissioner General,
Kenya Revenue Authority,
Times Tower Building – 30th Floor,
NAIROBI



KENYA REVENUE
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LEGAL NOTICE NO. 217

THE EXCISE DUTY ACT


(No. 23 of 2015)

ADJUSTMENT OF RATES FOR INFLATION

IN EXERCISE of the powers conferred by section 10 of the Excise Duty Act, 2015, the Commissioner-General adjusts for inflation the specific rates of duty set out in the Schedule hereto in accordance with the formula specified in Part I of the First Schedule to the Act and takes into account the average inflation rate for the 2020/2021 financial year of four decimal nine seven per centum (4.97%). Legal Notice No. 194 of 2020 is revoked.

SCHEDULE

Description	Current Rate of Excise Duty	New Rate of Excise Duty
Fruit juices (including grape must), and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter	Sh. 11.59 per litre	Sh. 12.17 per litre
Bottled or similarly packaged waters and other non-alcoholic beverages, not including fruit or vegetable juices	Sh. 5.74 per litre	Sh. 6.03 per litre
Beer, cider, perry, mead, opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 6%	Sh. 116.08 per litre	Sh. 121.85 per litre
Powdered beer	Sh. 116.08 per kg	Sh. 121.85 per kg
Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	Sh. 198.34 per litre	Sh. 208.20 per litre
Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 6%	Sh. 265.50 per litre	Sh. 278.70 per litre
Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes	Sh. 13,247.63 per kg	Sh. 13,906.04 per kg
Electronic cigarettes	Sh. 3,974.08 per unit	Sh. 4,171.59 per unit
Cartridge for use in electronic cigarettes	Sh. 2,649.74 per unit	Sh. 2,781.43 per unit
Cigarette with filters (hinge lid and soft cap)	Sh. 3,312.96 per mille	Sh. 3,477.61 per mille

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<i>Description</i>	<i>Current Rate of Excise Duty</i>	<i>New Rate of Excise Duty</i>
Cigarettes without filters (plain cigarettes)	Sh. 2,384.24 per mille	Sh. 2,502.74 per mille
Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and "reconstituted tobacco"; tobacco extracts and essences	Sh. 9,273.55 per kg	Sh. 9,734.45 per kg
Motorcycles of tariff no. 87.11 other than motorcycle ambulances and locally assembled motorcycles	Sh. 11,608.23 per unit	Sh. 12,185.16 per unit
Imported sugar confectionary of tariff heading 17.04	Sh. 35 per kg	Sh. 36.74 per kg
White chocolate, chocolate in blocks, slabs or bars of tariff nos. 1806.31.00, 1806.32.00, and 1806.90.00	Sh. 209.88 per kg	Sh. 220.31 per kg
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 and other manufactured tobacco and manufactured tobacco substitutes that have been homogenized and reconstituted tobacco, tobacco extracts and essences	Sh. 1,200 per kg	Sh. 1,259.64 per kg

Dated the 25th October, 2021.

GITHII MBURU,
Commissioner-General,
Kenya Revenue Authority.