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27/10/15



REPUBLIC OF KENYA



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NATIONAL ASSEMBLY

*By the champion
Hon. Benjamin
on Tuesday*

*Langat
27/10/2015*

ELEVENTH PARLIAMENT – THIRD SESSION

THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

REPORT ON THE CONSIDERATION OF H.E THE PRESIDENT'S MEMORANDA ON THE EXCISE DUTY BILL, 2015

CLERKS CHAMBERS
DIRECTORATE OF COMMITTEE SERVICES
PARLIAMENT BUILDINGS
NAIROBI

OCTOBER, 2015

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1. The Hon. Benjamin Langat, MP (**Chairman**)
2. The Hon. Nelson Gaichuhie, MP (**Vice Chairman**)
3. The Hon. Jones M Mlolwa, MP
4. The Hon. Anyanga, Andrew Toboso, MP
5. The Hon. Timothy M .E. Bosire, MP
6. The Hon. Ahmed Shakeel Shabbir Ahmed, MP
7. The Hon. Joash Olum, MP
8. The Hon. Dr. Oburu Oginga, MP
9. The Hon. Patrick Makau King'ola, MP
10. The Hon. Abdullswamad Sheriff, MP
11. The Hon. Sumra Irshadali, MP
12. The Hon. Ogendo Rose Nyamunga, MP
13. The Hon. Iringo Cyprian Kubai, MP
14. The Hon. Dennis Waweru, MP
15. The Hon. Tiras N. Ngahu, MP
16. The Hon. Sakaja Johnson, MP
17. The Hon. Jimmy Nuru Angwenyi, MP
18. The Hon. Ronald Tonui, MP
19. The Hon. Mary Emase, MP
20. The Hon. Joseph Limo, MP
21. The Hon. Lati Lelelit, MP
22. The Hon. Kirwa Stephen Bitok, MP
23. The Hon. Sammy Mwaita, MP
24. The Hon. Daniel E. Nanok, MP
25. The Hon. Eng. Shadrack Manga, MP
26. The Hon. Abdul Rahim Dawood, MP
27. The Hon. Sakwa John Bunyasi, MP
28. The Hon. Alfred W. Sambu, MP
29. The Hon. Sammy Koech, MP

1.3 Referral by H.E the President

On 6th October, 2015 Hon. Speaker conveyed a message from H. E the President's regarding his refusal to assent to the Excise Duty Bill, 2015. In his memorandum, the president expressed reservation the amendments passed by the House on Excise Duty Bill, 2015 on 27th August, 2015 with regard to Fruit Juices, Motor Vehicles and motor cycle other than motor cycle ambulances were not consistent with the 2015/16 fiscal framework and therefore would adversely affect revenue collection. He further expressed reservations that changing taxation structure of cigarettes from a single to four tier system was against the best practice and would make tax administration of cigarettes complex. He therefore recommended reversal of the above amendments to the original form as published.

Pursuant to Standing Order 154, the Speaker referred the memorandum to the Departmental Committee on Finance, Planning & Trade for consideration. The Speaker further asked the Committee to table its report by October 20, 2015.

1.4 Committee meetings

The Committee held two sittings during which it considered the memoranda from H.E the President.

1.5 Committee observation and recommendations

Though H.E the president had expressed reservations the amendments passed by the House on the fruit Juices, motor vehicles and the motor cycle ambulances would massively reduce government revenue collection, the Committee was of the view that the amendments passed was meant to cushion the poor against the harsh economic realities of the moment and therefore necessary. Furthermore, the expected revenue loss from the passed amendments would not significantly affect the overall fiscal framework of the Government. Therefore the Committee rejected the President's recommendations on fruit juices, motor vehicle and motor cycle other motor cycle ambulances.

On the president's reservations regarding cigarettes, the Committee concurred with the President that a four tier taxation system would be complex to administer. The Committee however proposed further amendments to the President's recommendations that will have a two tier taxation system thus simplifying the administration of the same. The Committee's recommendation would ensure that the government would realize its revenue by ensuring

higher taxation rates of cigarettes for the high-end market segment and a lower rate for the low-end market segment. The proposal is itemized in the table below:-

Proposed 2 tiers:

Item	Excise rate per Mile
Plain cigarettes or plain cigarettes and soft cap cigarettes with ex-factory price of up to Kshs.4,000	Kshs.1,500
Soft Cap cigarettes and Hinge lid cigarettes with ex-factory price exceeding Kshs.4,000	Kshs.2,500

1.6 Acknowledgement

The Committee is thankful to the offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings.

I wish to express my appreciation to the Honorable Members of the Committee who sacrificed their time to participate in the activities of the Committee and preparation of this Report.

It is therefore my pleasant duty and privilege, on behalf of the Departmental Standing Committee on Finance, Planning and Trade to table its report in the House on the consideration of H.E the President's Memoranda on the Excise Duty Bill, 2015 for consideration.

Signed..........Date.....27-10-2015.....

HON. BENJAMIN LANGAT, MP
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING &
TRADE

2.0 CONSIDERATION OF THE H.E THE PRESIDENT'S MEMORANDUM

2.1 Background Information

On 27th August, 2015, this House, in exercising its legislative functions under the Constitution, passed the Excise Duty Bill, 2015 and it was thereafter presented for assent to H.E the President in accordance with the provisions of the Constitution and Standing Orders. However, H.E the President, by way of a Memorandum, referred the Bill back to the National Assembly for consideration, pursuant to the provisions of Article (115) (b) of the Constitution.

On 6th October, 2015 the speaker conveyed the message by H. E President regarding the refusal to assent to the Excise Duty Bill, 2015 and thereafter the President's memorandum was committed to Departmental Committee on Finance, Planning & Trade. The committee was accordingly instructed to table its report by 20th October, 2015.

2.2 Memorandum on Excise Duty Bill, 2015

The President expressed reservations on part 1 of Paragraph 1 of the First Schedule of the Bill and recommended amendments to various items in this schedule relating to fruit juices, cigarettes, motor vehicles and motorcycles.

On the fruit juices: The President proposed increment of the taxation rate of "Fruit juices (including grape must), and vegetable juices, unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter from Khs 5 per litre to Khs 10 per litre as was in the original Bill. The President was of the view that the amendment passed by the house would massively reduce the government revenue was not consistent with the government fiscal framework and also the Division of Revenue Act, 2015.

After considering this proposal, the Committee noted the items under consideration were some of the basic needs that the citizens were entitled to support their livelihoods. Raising taxation on the same would make them beyond the reach of most Kenyans. The Committee therefore rejected the President's recommendations.

On the cigarettes: The President proposed a single tier taxation system to simplify administration system from the four tier system that was passed by the House. The Single tier system, as proposed by the President, was:

Cigarettes containing tobacco or tobacco substitutes	Khs.2500 per mille
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While concurring with the President’s reservations that a four tier system would be complex to administer and that a single tier system would significantly reduce the inherent administrative challenges, the Committee was of the view that the President’s proposal was discriminatory as it sought to use the same rate of taxation for both the high-end market and low-end market cigarettes.

To reduce administration challenges and also ensure equitable taxation of cigarettes, the Committee proposed further amendments to the President’s recommendation as follows:-

Item	Excise rate per Mile
Plain cigarettes or plain cigarettes and soft cap cigarettes with ex-factory price of up to Kshs.4,000	Kshs.1,500
Soft Cap cigarettes and Hinge lid cigarettes with ex-factory price exceeding Kshs.4,000	Kshs.2,500

On the Motor Vehicles of tariff heading 87.02, 87.03 and 87.04”: The President expressed reservations that the amendments passed by the House on taxation of motor vehicle were not consistent with the fiscal framework and hence would significantly reduce government revenue. significantly. The President therefore recommended increment of Khs 50,000 in both categories as itemized below:-

Motor vehicles of tariif heading 87.02, 87.03 and 87.04	Less than three years old from the date of first registration Kshs. 100,000 per unit
	Over three years old from the date of first registration Kshs. 150, 000 per unit.

While Concurring with president that the amendments passed by the House would reduce the government revenue, the Committee maintained that the expected revenue loss would not significantly affect the fiscal framework of the government. It further observed that increment of excise duty on imported vehicles will make it more expensive for the average Kenyans to import and own a car. Due to the foregoing, the Committee rejected the president's recommendations.

On the Motor Cycles: The President expressed reservations that the amendments passed by the House exempting motor cycles from excise duty would massively reduce the government revenue. He therefore proposed as itemized below:-

Motor cycles of tariff 87.11 other than motor cycles ambulances	Shs. 10,000 per unit
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The Committee rejected the president's recommendations on the grounds that excise duty exemption on motor cycle will make motor cycles cheaper to import. As result, most youth will own or afford them, operate them in gainful economic activities and pay taxes to the government.

3.0 COMMITTEE RECOMMENDATIONS

Having considered the President's memorandum, the Committee proposed the following amendments:-

- (i) Part I of Paragraph 1 of the First Schedule: *Fruit juices and corresponding rate of excise duty-*

THAT, the recommendation by H.E the President to insert a new item in Part I of Paragraph 1 of the First Schedule, relating to *Fruit juices (including grape must), and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter and corresponding rate of excise duty*, be deleted

- (ii) Part I of Paragraph 1 of the First Schedule: *Cigarettes and corresponding rate of excise duty-*

THAT, the proposed recommendation by H.E the President on Part I of Paragraph 1 of the First Schedule relating to *cigarettes and corresponding rate of excise duty* be **further** amended by deleting the proposed item and corresponding rates of excise duty and substituting therefor the following —

Plain cigarettes or plain cigarettes and soft cap cigarettes with ex-factory price of up to Kshs.4,000	Kshs.1,500 per mille
Soft Cap cigarettes and Hinge lid cigarettes with ex-factory price exceeding Kshs.4,000	Kshs.2,500 per mille

- (iii) Part I of Paragraph 1 of the First Schedule: *Motor Vehicles and corresponding rate of excise duty*-

THAT, the proposed recommendation by H.E the President to amend Part I of Paragraph 1 of the First Schedule relating to *Motor Vehicles of tariff heading 87.02, 87.03 and 87.04 and corresponding rate of excise duty* be deleted

- (iv) Part I of Paragraph 1 of the First Schedule: *Motor Cycles and corresponding rate of excise duty*-

THAT, the proposed recommendation by H.E the President to amend Part I of Paragraph 1 of the First Schedule relating to *Motor cycles of tariff 87.11 other than motor cycles and ambulances and corresponding rate of excise duty*, be deleted

MINUTES OF THE 58TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE HELD ON THURSDAY 22ND OCTOBER, 2015 IN CONTINENTAL HOUSE, COMMITTEE ROOM, 4TH FLOOR, PARLIAMENT BUILDINGS AT 10:00AM

PRESENT

1. Hon. Benjamin Langat, MP
2. Hon. Nelson Gaichuhie, MP
3. Hon. Sammy Mwaita, MP
4. Hon. Jimmy Nuru Angwenyi, MP
5. Hon. Eng. Shadrack Manga, MP
6. Hon. Anyanga Andrew Toboso, MP
7. Hon. Ronald Tonui, MP
8. Hon. Dennis Waweru, MP
9. Hon. Mary Emase, MP
10. Hon. Jones Mlolwa, MP
11. Hon. Sakwa John Bunyasi, MP
12. Hon. Timothy Bosire, MP
13. Hon. Alfred Sambu, MP
14. Hon. Dr. Oburu Oginga, MP
15. Hon. Daniel Epuyo Nanok, MP
16. Hon. Lati Lelelit, MP
17. Hon. Kubai Iringo, MP

Chairperson
Vice-Chairperson

ABSENT WITH APOLOGIES

1. Hon. Sammy Koech, MP
2. Hon. Ogendo Rose Nyamunga, MP
3. Hon. Shakeel Shabbir, MP
4. Hon. Tiras Ngahu, MP
5. Hon. Abdul Rahim Dawood, MP
6. Hon. Joash Olum, MP
7. Hon. Sumra Irshadali, MP
8. Hon. Patrick Makau King'ola, MP
9. Hon. Joseph Limo, MP
10. Hon. Sakaja Johnson, MP
11. Hon. Kirwa Stephen Bitok, MP
12. Hon. Abdullswamad Shariff, MP

IN ATTENDANCE

- | | |
|--------------------------|---|
| 1. Mr. Martin Masinde | Deputy Director Parliamentary Budget Office |
| 2. Mr. Nicodemus Maluki | Third Clerk Assistant |
| 3. Ms. Anncettah Gacheri | Research Officer |
| 4. Ms. Doreen Karani | Legal Officer |
| 5. Mr. Thomas Ogwel | Fiscal Analyst |

MIN.NO. DCF/246 /2015: PRELIMINARIES

The Chairperson called the meeting to order at 10:15am followed by a word of prayer..

MIN.NO. DCF/247 /2015: MEETING THE GOVERNOR, CENTRAL BANK OF KENYA ON THE CHALLENGES FACING THE FINANCIAL SECTOR IN THE COUNTRY.M

This agenda was deferred to a later date after the chairman informed the Members that the Governor, Central Bank of Kenya had written to the Committee requesting for rescheduling of the meeting. The Committee noted and deliberated on the Governor's apology and resolved to reschedule the meeting to either Tuesday 27th or Thursday 29th October, 2015 acknowledging that the challenges facing the Financial Sector needed to be addressed urgently. The Chairman undertook to follow up with the office of the Governor to reschedule the meeting.

MIN.NO. DCF/248/2015: CONSIDERATION OF PRESIDENTIAL MEMORANDUM ON EXCISE DUTY BILL, 2015

Mr. Masinde, Deputy Director Parliamentary Budget Office informed the Committee as follows regarding the Presidential Memorandum:

- The President invoked the provisions of section 40(5)(a) of the Public Finance Management Act 2012 thereby asserting that exclusion of fruit juices and motor cycles, and the reduction of excise duty rates on vehicles as was passed by the National Assembly will adversely affect the revenues to be collected thereby being inconsistent with the present fiscal framework.
- On the multiple rates on cigarettes as passed by the National Assembly, the President in relation to PFM Act 2012 section 40(5)(b) observed that this will make revenue collection complex.

ANALYSIS OF PERTINENT ISSUES

- a. Item on fruit juices (including grape must), and vegetables juices, unfermented and not containing added spirit whether or not containing added sugar and other sweetening matter** - The treasury proposed to have this item subjected to an excise duty at a rate of

Plain cigarettes or with cigarettes with ex-factory price of Shs.2,750 per mille	Shs.900 per mille
Soft cup cigarettes with ex-factory selling price of shs.2,751 to Shs.3,750	Shs.1,200 per mille
Soft cup cigarettes with ex-factory selling price of shs.3,751 to Shs.4,750	Shs.1,800 per mille
Hinge lid cigarettes with ex-factory selling price of more than shs.4,750	Shs.2,800 per mille

PBO's Remarks

A specific tax regime has more advantages on the tax collection's perspective. For example, it is easier to administer, easier to determine the amount of tax, over time, it is tax revenues therefrom is more predictable (enhances more accurate tax projections).

However, a single rate of shs.2500 per mille is not in tandem with the equity principle more so in the lower market group forming the majority of consumers in the cigarette industry. The heavy tax burden may result into a tax induced reductions in sales thereby stifling the intended achievement of increasing the tax revenue therefrom. If the illicit market is not eradicated, consumers may resort to contrabands and counterfeits thereby evading payment of the taxes subsequently leading to more losses of the tax revenue. Presently, a uniform hybrid excise rate is in use on cigarettes.

Historical Trend of Excise Duty on Cigarettes

- Excise duty charged on cigarettes has changed over time, signifying the change in government strategy of collecting maximum tax. A scan through various finance Acts shows that the government has consistently sent mixed signals and uncertainty in terms of the best way of taxing this commodity.
- Largely, graduated scale with four tax bands has dominated the tax regime on cigarettes over time with only excise rates being changed.
- Prior to 2003, excise tax on cigarettes was charged on ad valorem rate based on the ex-factory selling price. This system was replaced with a four-tier specific tax based on the retail selling prices.
- In 2008, the Ministry of Finance made a major structural change, introducing taxation on the basis of product and packaging characteristics.
- However, the change was reversed by Parliament in 2010. In 2011, the National Treasury proposed to Parliament a new tax structure in which the tiers were abolished and all taxes were based on a single rate of 1,200 Kenya shillings (Kshs) per mille or 35% of the retail selling price, this was enacted in 2012 and has remained in practice to date, with the latter targeted at the high-end tobacco products. The table below captures the changes of the excise duty tax regime and rates on cigarettes from 2003 to 2015 bill proposed rates are as was passed by the National Assembly.

The 2015 bill proposal borrows largely from the regime of 2010. Notable changes between the two are:

- The range between the bands vary, in 2010(range is shs.2, 500) whereas in 2015 proposal (range being shs.2, 750).
- The charges are based on Retail Selling price in 2010 whereas this is based on Ex-factory Selling price in the proposed 2015 bill.
- There excise rates proposed for the various bands have been inflated

Table showing excise duty regimes since 1997

1997		
Uniform rate of 135 percent		
2003		
Category	Retail selling price per mille	Excise Rate per mille
A	Upto shs.1500	450
B	Shs 1501 to shs.2500	650
C	Shs.250 1 to shs.3500	900
D	More than shs.3500	1400
2005		
Category	Retail selling price per mille	Excise Rate per mille
A	Upto shs.1500	495
B	Shs 1501 to shs.2500	715
C	Shs.250 1 to shs.3500	990
D	More than shs.3501	1540
2007		
Category	Retail selling price per mille	Excise Rate per mille
A	Upto shs.1500	500
B	Shs 1501 to shs.2500	800
C	Shs.250 1 to shs.3500	1200
D	More than shs.3500	2000
2008		
Category	Retail selling price per mille	Excise Rate per mille
A	Plain cigarettes or plain cigarettes with RSP of up to Shs.2,500 per mille.	Shs. 700 per mille
B	Soft cap cigarettes of 72mm or less, or soft cap cigarettes of 72mm or less with RSP of 2,501 to Shs.3,500 per mille.	Shs.1,000 per mille
C	Soft cap cigarettes of more than 72mm or soft cap cigarettes of more than 72mm with RSP of 3,501 to shs.4,500 per mille	Shs.1,500 per mille
D	Hinge lid cigarettes or hinge lid cigarettes with RSP of more than shs.4,500 per mille.	Shs.2,500 per mille

	(RSP means Retail Selling Price)	
2012		
Uniform rate of Sh.1200 per mille or 35% of retail selling price.		
2015 Bill		
Uniform rate of Cigarettes containing tobacco or tobacco substitutes Shs.2500 per mille		
2015 Bill Committee		
Category	Item	Excise Rate per mille
A	Plain cigarettes or plain cigarettes with ex-factory price of Kshs.2750.	Shs. 900 per mille
B	Soft cap cigarettes with ex-factory selling price of Kshs.2751-Kshs.4750	Shs.1,200 per mille
C	Soft cap cigarettes with ex-factory selling price of Kshs.3751-Kshs.4750	Shs.1,800 per mille
D	Hinge lid cigarettes with ex-factory selling price of more than Kshs.4750	Shs.2,800 per mille

IV. International Comparison

Tiered/graduated scale basis of charging excise tax is a common practice in the region.

Uganda

Category	Excise duty per 1000 sticks
Soft Cap	Ushs.45,000
Hinge Lid	Ushs.75,000

Tanzania

Category	Excise duty per 1000 sticks
Cigarettes without filter tip and containing domestic tobacco more than 75%	TShs.11,289
Cigarettes with filter tip and containing domestic tobacco more than 75%	TShs.26,689
Other Cigarettes not mentioned above	Tshs.48,285

V. POLICY OPTIONS

Policy options for consideration by the Committee
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Options	implications
Agree with the President's memorandum	The treasury's initial proposals in the bill on the four items are upheld as per the President's recommendations
Reject in entirety	Need to raise 2/3 in the house to uphold what was initially passed by the house
Pass the Bill with amendments	The Committee may pass the Bill with amendments to accommodate the president's concern raised in the memorandum. For example, by reducing the tiers from the proposed 4 to 2 to make revenue collection simpler as illustrated below

Proposed 2 tiers:

Item	Excise rate per mille
Plain cigarettes or plain cigarettes and soft cap cigarettes with ex-factory price of up to Kshs.4,000	Ksh. 1,500
Soft Cap cigarettes and Hinge lid cigarettes with ex-factory price exceeding Kshs.4,000	Shs.2,500

MIN.NO. DCF/249/2015: RECOMMENDATIONS

Having considered the president's memorandum, the committee proposed the following amendments:-

- (i) Part I of Paragraph 1 of the First Schedule: *Fruit juices and corresponding rate of excise duty-*

THAT, the recommendation by H.E the President to insert a new item in Part I of Paragraph 1 of the First Schedule, relating to *Fruit juices (including grape must), and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter and corresponding rate of excise duty*, be deleted

- (ii) Part I of Paragraph 1 of the First Schedule: *Cigarettes and corresponding rate of excise duty-*

THAT, the proposed recommendation by H.E the President on Part I of Paragraph 1 of the First Schedule relating to *cigarettes and corresponding rate of excise duty* be **further** amended by deleting the proposed item and corresponding rates of excise duty and substituting therefor the following —

Plain cigarettes or plain cigarettes and soft cap cigarettes with ex-factory price of up to Kshs.4,000	Kshs.1,500 per mille
Soft Cap cigarettes and Hinge lid cigarettes with ex-factory price exceeding Kshs.4,000	Kshs.2,500 per mille

(iii) Part I of Paragraph 1 of the First Schedule: *Motor Vehicles and corresponding rate of excise duty*-

THAT, the proposed recommendation by H.E the President to amend Part I of Paragraph 1 of the First Schedule relating to *Motor Vehicles of tariff heading 87.02, 87.03 and 87.04 and corresponding rate of excise duty* be deleted

(iv) Part I of Paragraph 1 of the First Schedule: *Motor Cycles and corresponding rate of excise duty*-

THAT, the proposed recommendation by H.E the President to amend Part I of Paragraph 1 of the First Schedule relating to *Motor cycles of tariff 87.11 other than motor cycles and ambulances and corresponding rate of excise duty*, be deleted

MIN.NO. DCF/250 /2015: ANY OTHER BUSINESS

- i) The Secretariat was requested to finalize compiling the Report on the Presidential Memorandum on Excise Duty Bill, 2015 for tabling before the House in afternoon at 2.30 pm the same day.
- ii) The Secretariat was asked to prepare briefs on the following areas:
 - a) The effect of Sovereign Bonds on Kenyan shilling and the application of the Funds
 - b) Provide details on total Local and Foreign borrowing by the government between 2013- 2015 financial years.
 - c) The Comparative analysis of the global currencies

MIN.NO. DCF/251 /2015: ADJOURNMENT

The Chairperson adjourned the meeting at 11.55am

Signed.....date.....

Chairperson

MINUTES OF THE 56TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE HELD ON TUESDAY 13TH OCTOBER, 2015 IN CPA ROOM, PARLIAMENT BUILDINGS AT 12:00 (NOON)

PRESENT

- | | |
|------------------------------------|-------------------------|
| 1. Hon. Benjamin Langat, MP | Chairperson |
| 2. Hon. Nelson Gaichuhie, MP | Vice-Chairperson |
| 3. Hon. Sammy Mwaita, MP | |
| 4. Hon. Jimmy NuruAngwenyi, MP | |
| 5. Hon. Ogendo Rose Nyamunga, MP | |
| 6. Hon. ShakeelShabbir, MP | |
| 7. Hon. Eng. Shadrack Manga, MP | |
| 8. Hon. Anyanga Andrew Toboso, MP | |
| 9. Hon. Ronald Tonui, MP | |
| 10. Hon. Mary Emase, MP | |
| 11. Hon. SumraIrshadali, MP | |
| 12. Hon. Patrick MakauKing'ola, MP | |
| 13. Hon. Joseph Limo, MP | |
| 14. Hon. Jones Mlolwa, MP | |
| 15. Hon. Sakwa John Bunyasi, MP | |
| 16. Hon. JoashOlum, MP | |
| 17. Hon. Timothy Bosire, MP | |
| 18. Hon. Abdul Rahim Dawood ,MP | |

ABSENT WITH APOLOGIES

1. Hon. Alfred Sambu, MP
2. Hon. Dr. Oburu Oginga, MP
3. Hon. Daniel Epuyo Nanok, MP
4. Hon. Lati Lelelit, MP
5. Hon Kubai Iringo, MP
6. Hon. Sammy Koech, MP
7. Hon. Tiras Ngahu, MP
8. Hon. Sakaja Johnson, MP
9. Hon. Kirwa Stephen Bitok, MP
10. Hon. Dennis Waweru, MP
11. Hon. Abdullswamad Shariff, MP

IN ATTENDANCE

- | | | |
|-------------------------|---|---------------------------------|
| 1. Mr. Micheal Karuru | - | Deputy Director, Legal Services |
| 2. Mr. Nicodemus Maluki | - | Third Clerk Assistant |
| 3. Mr. Fredrick Otieno | - | Third Clerk Assistant |

4. Ms. Anncettah Gacheri - Research Officer
5. Ms. Doreen Karani - Legal Officer

MIN.NO. DCF/238/2015: PRELIMINARIES

The Chairperson called the meeting to order at 12:30pm followed by a word of prayer. He further reminded Members that the Committee had following pending business:

- i) 4 bills that have already gone through first reading
 - The Public Finance Management (Amendment) Bill, 2015
 - The Tax procedures Bill, 2015
 - The Betting, lotteries and Gaming (Amendment) Bill, 2015
 - The Miscellaneous Fees and Levies Bill, 2015
- ii) 6 legislative proposals for prepublication scrutiny
 - Inclusive growth and coordination bill, 2015
 - Tobacco control (Amendment) bill, 2015
 - Parliamentary pensions (Amendment) Bill, 2015
 - 2 Banking (Amendment) Bills, 2015
 - Equalization Fund Bill, 2015
- iii) 6 petitions
 - degazettement of Legal Notice No.103(2) by Hon. Meruaki, MP
 - Privatization of Muhoroni Sugar Factory by Hon. Kemei
 - Amendment of the Constitution by Joel Kiprop
 - Images on Kenyan currency by Mr. Muchiri
 - Amendment of the Accountants of Kenya Act by Mr. Kariuki Musa
 - Operationalization of Consumer protection Act by Cofek

Considering that the Committee had considered all the above Bills and tabled a report on the Tax Procedures Bill, the Secretariat was asked to compile progress reports on the remaining Bills and attach consolidated amendments for tabling. Consolidated amendments to the above Bills will only be considered for adoption once comments on the same have been received from the Cabinet Secretary for the National Treasury in line with Article 114.

On legislative proposals, it was noted that the Committee has met with most of the sponsors and received comments the Attorney General, Kenya Law Reform Commission and Commission on Implementation of the Constitution. The Secretariat was asked to invite the remaining sponsors to brief the Committee when it next sits.

On Petition, the Committee resolved to consider them once it concludes considering Bills.

MIN.NO. DCF/239 /2015: CONSIDERATION OF PRESIDENTIAL MEMORANDUM ON EXCISE DUTY BILL, 2015

Mr. Michael Karuru, Deputy Director Legal Services, informed the Committee as follows regarding the Presidential Memorandum:

- The President had expressed reservations on part 1 of paragraph 1 of the First Schedule of the Bill and consequently recommended amendments to various items in this schedule relating to fruit juices, cigarettes, motor vehicles and motorcycles.
- Article 115 (1) offers the President a limited role in the legislation, that is; assent or referral of a Bill to Parliament for reconsideration by Parliament, noting any reservations that the President has concerning the Bill.
- The Standing Order 154 requires the National Assembly to consider the President's reservations within 21 days. The amendments by a Committee or an individual Member that have the effect of fully accommodating the presidents reservations will not attract two thirds requirement for passage and only Clauses of the Bill that have reservations will be considered.

Committee Concerns

- i) The Committee noted that the President has a limited legislative role under Article 115, however the referral of a Bill with effect of reverting it to the original format that it was presented to the house in effect raises the voting threshold for passing Bills contrary to what is contemplated in the Standing Orders.
- ii) The Legislative power of Parliament is constitutionally enshrined under article 94 (5) and its power exercised under Article 109 (1) through Bills passed by Parliament and assented by President.
- iii) Parliament's function may end up becoming so diluted that its work may grind to a halt if this limited legislative power is exploited and many more Bills referred back for reconsideration in this manner.

Committee's Resolution

The Committee resolved to make a statement on the floor of the House regarding the President's Memorandum on the Excise Duty Bill, 2015 highlighting the following:

- Due process was followed in passing the bill
- Undermining of Parliament's legislative mandate by the Executive.
- The Committee disagrees with all the President reservations.
- Seek support of all Members of Parliament in rejecting the President's recommendations

MIN.NO. DCF/240/2015: ADJOURNMENT

The Chairperson adjourned the meeting at 1.30 pm

Signed.....date.....

Chairperson



ELEVENTH PARLIAMENT - (THIRD SESSION)

THE NATIONAL ASSEMBLY

MESSAGE (NO.31 OF 2015)

REFERRAL BY H.E. THE PRESIDENT OF THE EXCISE DUTY BILL,
2015

Honourable Members,

You may recall that on August 27, 2015, the National Assembly passed the Excise Duty Bill, 2015. Thereafter, the Bill was presented for Assent to H.E. the President in accordance with the provisions of the Constitution and our Standing Orders. However, H.E. the President, by way of Memorandum, has since referred the Bill back to the National Assembly for reconsideration, pursuant to the provisions of Article 115(1)(b) of the Constitution.

Honourable Members,

H.E. the President has expressed reservations on Part 1 of Paragraph 1 of the First Schedule of the Bill. Consequently, the President has recommended amendments to various items in this schedule relating to fruit juices, cigarettes, motor vehicles and motorcycles.

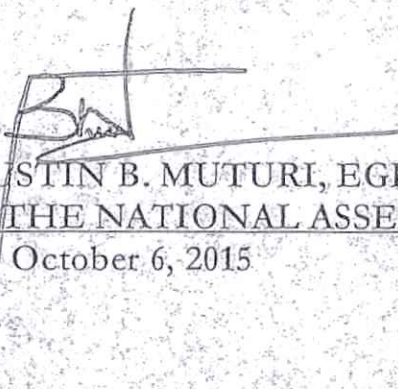
Honourable Members,

Standing Order 154 requires the National Assembly to consider the President's reservations within 21 days, therefore the Memorandum stands committed to the Departmental Committee on Finance, Planning and Trade for consideration. The Committee should table its report by October 20, 2015. In considering the Memorandum, regard will be given to the guidance given by the Speaker in a Communication delivered on July 28, 2015 concerning consideration of Presidential

Memorandum and amendments thereto, particularly my guidance, that amendments by a Committee or an individual Member that have the effect of fully accommodating the Presidential reservations will not attract two thirds requirement for passage.

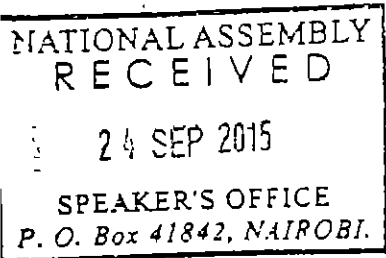
I wish to remind the House and the Committee that only clauses of the Bill that have reservations will be considered. I also direct the Clerk to circulate the memorandum from H. E. the President to all Members so that you can familiarize yourselves with its contents.

Thank you!

A handwritten signature in black ink, appearing to read 'Justin B. Muturi', is written over a horizontal line. The signature is stylized and somewhat abstract.

THE HON. JUSTIN B. MUTURI, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

October 6, 2015



THE CONSTITUTION OF KENYA

**REFUSAL TO ASSENT TO THE EXCISE DUTY
BILL, 2015**

MEMORANDUM

By His Excellency the Honourable Uhuru
Kenyatta, President and Commander-in-Chief
of the Kenya Defence Forces.

Submitted to the Speaker of the National
Assembly.

WHEREAS a Bill entitled “A Bill for An Act of
Parliament to provide for the charge, assessment and
collection of excise duty, to make administrative provisions
relating thereto, and for connected purposes”, the short title
of which is “The Excise Duty Bill, 2015”, was passed by
the National Assembly on the 27th August, 2015;

AND WHEREAS the Excise Duty Bill, 2015, was
presented to me for assent, in accordance with the
provisions of the Constitution, on the 11th September, 2015;

NOW THEREFORE, in exercise of the powers conferred
on me by Article 115 of the Constitution, I refuse to assent

to the Excise Duty Bill, 2015 for the reasons set out hereunder:

**PROPOSED AMENDMENTS TO PART I OF
PARAGRAPH I OF THE FIRST SCHEDULE:**

ITEM ON FRUIT JUICES:

The Bill proposes to delete the item on “Fruit juices (including grape must), and vegetable juices, unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter” and the corresponding rate of excise duty.

The purpose of this item was to raise revenue to finance the 2015/16 budget expenditures keeping within the provisions of section 40(5)(a) of the Public Finance Management Act, 2012. That section requires that any amount of revenue raised be consistent with the approved fiscal framework and the Division of Revenue Act. The deletion of the item will therefore adversely affect the revenues to be collected making it inconsistent with the approved fiscal framework and the provisions of the Division of Revenue Act.

RECOMMENDATION:

For the foregoing reasons, I recommend that Part I of paragraph 1 of the First Schedule be amended by inserting the said item and the corresponding rate of excise immediately before the item on "Food supplements" as follows:

Fruit juices (including grape must), and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter.	Shs. 10 per litre
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ITEMS ON CIGARETTES:

The Bill proposes to delete the item on "Cigarettes containing tobacco or tobacco substitutes" and its corresponding rate of excise duty and replace it with the following new items:

Plain cigarettes or with cigarettes with ex-factory price of Shs. 2,750 per mille	Shs. 900 per mille
Soft cup cigarettes with ex-factory selling price of Shs. 2,751 to Shs. 3,750	Shs. 1200 per mille
Soft cup cigarettes with ex-factory selling price of Shs. 3,751 to Shs. 4,750	Shs. 1800 per mille
Hinge lid cigarettes with ex-factory selling price of more than Shs. 4,750	Shs.2800 per mille

Motor vehicles of tariff heading 87.02, 87.03 and 87.04	less than three years old from the date of first registration Kshs. 100, 000 per unit Over three years old from the date of first registration Kshs. 150, 000 per unit
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As earlier stated, the provisions of section 40(5)(a) of the Public Finance Management Act, 2012, require that any amount of revenue raised be consistent with the approved fiscal framework and the Division of Revenue Act. Accordingly, the proposed change, if adopted, will have serious implications for the Exchequer in terms of reduced revenue which will affect budget expenditure already approved by the National Assembly.

RECOMMENDATION:

For the foregoing reasons, I recommend that Part I of paragraph 1 of the First Schedule be amended by deleting the item relating to “Motor vehicles of tariff heading 87.02, 87.03 and

87.04” and the corresponding rates of excise duty and substituting therefor the following:

<p>Motor vehicles of tariff heading 87.02, 87.03 and 87.04</p>	<p>Less than three years old from the date of first registration Kshs. 150, 000 per unit</p> <p>Over three years old from the date of first registration Kshs. 200, 000 per unit</p>
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ITEM ON MOTOR CYCLES:

The Bill proposes to delete the item on “Motor cycles of tariff 87.11 other than Motor cycle ambulances” and the corresponding rate of excise duty.

The purpose of this item was to raise revenue to finance the 2015/16 budget expenditures keeping within the provisions of section 40(5)(a) of the Public Finance Management Act, 2012. That section requires that any amount of revenue raised be consistent with the approved fiscal framework and the Division of Revenue Act. The deletion of the item will therefore adversely affect the revenues to be collected

making it inconsistent with the approved fiscal framework and provisions of the Division of Revenue Act.

RECOMMENDATION:

For the foregoing reasons, I recommend that Part I of paragraph 1 of the First Schedule be amended by inserting the following item and its corresponding rate of excise duty immediately before the item referring to “Plastic shopping bags”:

Motor cycles of tariff 87.11 other than motor cycles ambulances	Shs. 10,000 per unit.
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Dated the th 24th of September, 2015.



UHURU KENYATTA,
President.