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

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 ten (10) 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

approved SNA 25/7/23

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT
(SECOND SESSION)

NA. L&P.2023/COMM (078) **Tuesday, 25th July, 2023**

PAPER LAID

Hon. Speaker, I beg to lay the following **Paper** on the Table of the House, today **Tuesday, 25th July 2023: -**

REPORT OF THE COMMITTEE ON DELEGATED LEGISLATION ON ITS CONSIDERATION OF THE EXCISE DUTY (EXCISABLE GOODS MANAGEMENT SYSTEM) (AMENDMENT) REGULATIONS, 2023 (LEGAL NOTICE NO. 30 OF 2023).

(CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION)

Copies to:
The Speaker
Deputy Speaker
The Leader of the Majority Party
The Leader of the Minority Party
The Clerk
Hansard Editor
Hansard Reporters
The Press

Approved
SNA
5/7/23

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT
(SECOND SESSION)

NA. L&P.2023/COMM (075) **Wednesday, 5th July, 2023**

PAPER LAID

Hon. Speaker, I beg to lay the following **Paper** on the Table of the House, today **Wednesday, 5th July 2023: -**

REPORT OF THE COMMITTEE ON DELEGATED LEGISLATION ON ITS CONSIDERATION OF THE VALUE ADDED TAX (ELECTRONIC, INTERNET AND DIGITAL MARKET PLACE SUPPLY) REGULATIONS, 2023 (LEGAL NOTICE NO. 29 OF 2023).

(CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION)

Copies to:
The Speaker
Deputy Speaker
The Leader of the Majority Party
The Leader of the Minority Party
The Clerk
Hansard Editor
Hansard Reporters
The Press

NATIONAL ASSEMBLY
RECEIVED
05 JUL 2023
SPEAKER'S OFFICE
P. O. Box 41842, NAIROBI.

Approved
SNA
5/7/23

REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT

THE NATIONAL ASSEMBLY

(SECOND SESSION)

NOTICE OF MOTION – (CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION)

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

Hon. Speaker, I beg to give notice of the following Motion-

THAT, this House **adopts** the Report of the Committee on Delegated Legislation on its consideration of the Value Added Tax (Electronic, Internet and Digital Market Place Supply) Regulations, 2023 published as Legal Notice No. 29 of 2023, *laid on the Table of the House on Wednesday, 5th July, 2023,* and pursuant to the provisions of section 24(1) of the Universities Act, 2012, **approves** the Value Added Tax (Electronic, Internet and Digital Market Place Supply) Regulations, 2023 published as Legal Notice No. 29 of 2023.

THE HON. SAMUEL CHEPKONGA, CBS, MP
CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION
Wednesday, 5th July 2023

Approved for tabling
SNA
25/7/23

REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT- SECOND SESSION (2023)

THE NATIONAL ASSEMBLY

COMMITTEE ON DELEGATED LEGISLATION

REPORT ON THE CONSIDERATION OF EXCISE DUTY (EXCISABLE GOODS MANAGEMENT SYSTEM) (AMENDMENT) REGULATIONS, 2023 *(LN. NO. 30 OF 2023)*

THE NATIONAL ASSEMBLY
DATE: 25 JUL 2023 DAY: TUESDAY
TABLED BY: CHAIRPERSON COMMITTEE DELEGATED LEGISLATION Hon. Samuel Chepkonga
CLERK-AT THE-TABLE: Anne Shibuko

JULY, 2023

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

TABLE OF CONTENTS

ABBREVIATIONS

ABAK	Alcoholic Beverages Association of Kenya
CS	Cabinet Secretary
EGMS	Excisable Goods Management System
ICPAK	Institute of Certified Public Accounts of Kenya
KAM	Kenya Association of Manufacturers
LN	Legal Notice
NT&EP	National Treasury & Economic Planning
PFM	Public Finance Management
RMA	Regulatory Making Authority
SI	Statutory Instruments
SO	Standing Order
WABK	Water Bottlers Association

CHAIRPERSON'S FOREWORD

The Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023 are made *vide* LN. No. 30 of 2023, pursuant to powers conferred on the Cabinet Secretary for National Treasury and Economic Planning under section 45 of the Excise Duty Act, (*No. 23 of 2015*) 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 21st March, 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 outside 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 meeting with National Treasury and Economic Planning on Tuesday, the 20th June, 2023 in the Small Dining Room, Main Parliament Buildings to deliberate on the Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023.

The purpose of the Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023, LN. No. 30 of 2023 is to amend various provisions of the Excise Duty (Excisable Goods Management System), Regulations, 2017. The National Treasury informed the Committee that the amendment seeks to improve the administration of excise duty and improve compliance. According to the National Treasury, this is also meant to raise the revenue to finance the cost of excise stamps. (The purpose of these Regulations is to raise funds for the purchase of excise stamps and maintain the EGMS System in light of inflation, effects of Covid-19 containment measures disproportionately affecting sales of high-priced excisable products and depreciation of the value of the Kenya Shilling against major currencies.)

Stakeholder Consultation

The Committee was apprised that the Taskforce responsible for preparation and development of the Regulations, held targeted consultations with key stakeholders whose input were taken into account before finalization of the Regulations

The Committee was further informed that the key stakeholders were the Kenya Association of Manufacturers (KAM), the Institute of Certified Public Accountants of Kenya (ICPAK), Price Waterhouse Coopers (PWC), the Water Bottlers Association (WARK) and the Alcoholic, Beverages Association of Kenya (ABAK).

The Regulation-making authority contended and emphasised the importance of the appreciation of the fact that, consultations were targeted to the institutions, since they are the directly affected by the operationalization of the Regulations. The said institutions and public were invited to submit their input and comments *via* a public notice dated 17th January, 2023. The Authority only received comments from PwC. The Authority further held a physical meeting on the 1st of February, 2023 where member organizations operating in the excisable goods sector attended. Summarized responses together with the Task Force resolutions were attached.

Having examined the Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023 (*LN. No. 30 of 2023)* against the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Statutory Instruments Act, 2013 (*No. 23 of 2013*), the Excise Duty Act, 2012 (*No. 23 of 2015*), the Excise Duty (Excisable Goods Management) Regulations, 2017. The Committee **resolved to recommend to the House to annul in its entirety the Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023 (*L.N. No. 30 of 2023) due to inadequate public participation contrary to Articles 10 and 118 of the Constitution read together with Section 5, 5A and the Schedule to the Statutory Instruments Act, 2013, and compliance with statutory timelines as required by section 11(1) of the Statutory Instruments Act, 2013.***

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 Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023 *(LN. No. 30 of* 2023).**

THE HON. CHEPKONGA KIPRONO SAMUEL, CBS, MP.
CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION.

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 and 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
Garissa 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 Constitueny

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 Mnyazi Amina Laura, MP.
ODM
Malindi Constituency

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

Hon. Mugabe Innocent Maino, M.P.
ODM
Likuyani 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 1

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 EXCISE DUTY (EXCISABLE GOODS MANAGEMENT SYSTEM) (AMENDMENT) REGULATIONS, 2023 (NO. 30 OF 2023)

2.1 Introduction

5. The Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023 (Legal Notice No. 30 of 2023) were made pursuant to powers conferred on the Cabinet Secretary for National Treasury and Economic Planning by section 45 of the Excise Duty Act, (*No. 23 of 2015*) and is therefore 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 21st of March, 2023, received by the Clerk of National Assembly on 17th April, 2023 and tabled before the House on the 19th April, 2023, being outside 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 National Treasury and Economic Planning on Tuesday, 20th June 2023 in the Small Dining Room, Parliament Buildings to deliberate on Excise Duty (Excisable Goods Management System) (Amendment), 2023.

8. The Committee noted that the purpose of the Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023, Legal Notice No. 30 of 2023, 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 the revenue to finance the cost of excise stamps.

2.2 Summary of the Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023 (Legal Notice No. 30 of 2023)

9. **Regulation 1** is a preliminary provision which provides for the citation.
10. **Regulation 2** seeks to amend Regulation 3 of the Excise Duty (Excisable Goods Management System), Regulations, 2017 by deleting the words "except motor vehicle, manufactured in or imported in Kenya".
11. **Regulation 3** seeks to amend Regulation 6 by inserting the words "and compliance management activities in respect of excisable goods" immediately after the word "System".
12. **Regulation 4** seeks to amend Regulation 28 by deleting sub-regulation (1) and substituting therefore a new sub-regulation to the effect that goods not liable to excise duty under section 7(1) be exempted from the requirement of excise stamps.

13. **Regulation 5** seeks to amend the principal regulations by deleting the schedule and replacing it with a new schedule specifying new excise stamps rates.

2.3 Purpose of the Regulations

14. The purpose of the Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023, LN. No. 30 of 2023, is to amend various provisions of the principal Regulations to improve on the administration of excise duty as well as improve compliance. The amendment further seeks to occasion raising of the revenue to finance the cost of excise stamps.

2.4 Legislative Context

15. The Excise Duty (Excisable Goods Management System) (Amendment) Regulations, (LN. No. 30 of 2023), is made pursuant to section 45 of the Excise Duty Act 2015. The Section empowers the Cabinet Secretary for 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.

2.5 Policy Background

16. The primary objective of the Regulations 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.
17. The principal Regulations provide a legal framework for implementing the Excise Duty Act, 2015, regarding the affixation of excise stamps and the imposition of excise stamp fees on excisable goods imported into or manufactured in Kenya.
18. The schedule to the principal Regulations provides for the excise stamp fees to be charged on excise stamps for different types of excisable goods. The goods specified in the Schedule include tobacco products, wines, spirits, beer, mineral and aerated water, fruit juices, flavoured water, cosmetics, and beauty products.
19. The excise stamp fees are paid by manufacturers and importers of excisable goods to the Commissioner-General of Kenya Revenue Authority based on the number of stamps issued to them.
20. Product marking using stamps is important because they: –
    a) deter counterfeiting;
    b) facilitate tracking of excisable goods along the supply chain;
    c) enable accounting for the production of excisable goods manufactured or imported;
    d) and enable any individual to authenticate/validate the genuineness of excisable goods.
21. 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 the following three main reasons:

1. 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.

2. 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. The depreciation of Kenya shillings against the Euro. When the EGMS was rolled out, the cost of the stamps to KRA was about Kshs 1.5 per stamp. The cost of acquisition of the stamps rose from about Kshs 1.5 to about Kshs 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 Kshs 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.

22. 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.

23. Further, the amendment seeks to align various provisions of the principal regulations with provisions of the Excise Duty Act 2015, which appear to be inconsistent.

3.0 COMMITTEE OBSERVATIONS

24. Having examined the Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023 in accordance with the Constitution, the Interpretations and General Provisions Act (*Cap. 2*), the Excise Duty Act (*No.23 of 2015*), and the Statutory Instruments Act (*No. 23 of 2013*) the Committee made the following observations –

3.1 Power of Parliament to legislate

25. The Committee observed that as per the Constitution of Kenya, 2010, article 94(5) provides that no person or body, other than Parliament has the power to make provision having the force of law in Kenya except under the authority conferred by the Constitution or by legislation. Article 95 (5)(b), provides that the National Assembly exercises oversight over state organs to which article 94(6) applies limiting the delegated powers to specific purpose and objectives, authority, nature and scope and the principles and standards applicable to the law made under the authority. This therefore means that an inference of section 11 (4) of the Statutory Instruments Act, to imply that statutory instruments take effect immediately after it is published is inconsistent with articles 94(5), 94(6) and 95(5)(b) of the constitution which provides that the National Assembly, as the delegating authority has the power to oversight such authority and as such has the power to review a statutory instrument before it is applied.

3.2 Statutory Timelines

26. That the Regulations were published as LN No. 30 of 2023 on 21st March, 2023 submitted to the Clerk of the National Assembly on 17th April 2023, being eight (8) Sitting days after publication of the Regulations. Therefore, outside the statutory timelines as contemplated under section 11(1) of the Statutory Instruments Act, 2013.

3.3 Public Participation

27. The Regulation–making authority submitted a detailed Explanatory Memorandum providing for the extent of consultation that they conducted. They further demonstrated to the Committee at the meeting, the persons and stakeholders consulted and submitted attendant documentation to that effect. The Committee after seeking a number of clarifications was not 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.
28. There is attached to the Legal Notice No. 30 of 2023 an Explanatory Memorandum that details the extent of public consultation conducted by the regulation-making authority, through a public notice dated 17th January, 2023 and a physical meeting at Times Tower, on the 1st of February, 2023 for stakeholders (Manufacturers and Suppliers). There is, however, question as to the adequacy of public participation as is required under section 5A (1)(a) of the Statutory Instruments Act, 2013, as the

regulatory-making authority implied to have limited this exercise to stakeholders, that is manufacturers and importers of excisable goods without having consumers participating, who would then bear the effects of the increase in costs of the stamp duty;

3.4 Regulatory Impact Statement

29. The Committee was not satisfied with the explanation and the demonstration that a regulatory impact assessment need not to have been prepared for the statutory instrument. Section 9 (i) of the Statutory Instruments Act, (No. 23 of 2013), provides for instances where regulatory impact statements **may** be unnecessary, to include an amendment of a fee, charge or tax consistent with announced government policy. However, due to the nature and effect of the amendments to Legal Notice No. 30 of 2023, the Committee observed that a regulatory impact statement was necessary as per section 8 (2) of the Statutory Instruments Act, which requires for a regulatory impact statement be prepared where a statutory instrument is likely to have a significant impact on a particular group of people. In this instance the manufacturers, suppliers and consumers of excisable goods are likely to suffer a significant impact as the amendments translates to increase in the costs of various items of up to two hundred and sixty seven percent (267%).

4.0 COMMITTEE RECOMMENDATION

30. Having examined the **Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023** in accordance with the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Statutory Instruments Act (*No 23 of 2013*), the Excise Duty Act No. 23 of 2015, **the Committee recommends that the House annuls the Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023 (*LN. No. 30 of 2023*) in accordance with section 45 the Excise Duty Act *(No. 23 of 2015) due to inadequate public participation contrary to Articles 10 and 118 of the Constitution read together with Section 5, 5A and the Schedule to the Statutory Instruments Act, 2013, and compliance with statutory timelines as required by section 11(1) of the Statutory Instruments Act, 2013.***

Signed.. **Date**...25/7/2023....

THE HON. CHEPKONGA SAMUEL KIPRONO, CBS, MP
CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION

THE NATIONAL ASSEMBLY

DATE: 25 JUL 2023 | DAY: TUESDAY

TABLED BY: CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION HON. SAMUEL CHEPKONGA

CLERK-AT THE-TABLE: Anne Shibuko

ANNEXURES

1. **Adoption List**
2. **Committee Minutes**
3. **Legal Notice Number 30 of 2023 and the Explanatory Memorandum**

MINUTES OF THE 39TH SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON THURSDAY, 6TH 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 Mbui, CBS, M.P
3. The Hon. Jared Okello Odoyo M.P.
4. The Hon. Maj. (Rtd). Abdullahi Bashir Sheikh, MP
5. The Hon. Pauline Lenguris, M.P
6. The Hon. Gideon Kipkoech Kimaiyo, M.P.
7. The Hon. Ruku Geoffrey Kariuki Kiringa, M.P.
8. The Hon. Paul Chebor, M.P.
9. The Hon. Onchoke Charles Mamwacha. M.P
10. The Hon. Laura Amina Mnyazi, M.P.
11. The Hon. Innocent Maino Mugabe, M.P.
12. The Hon. Maj. (Rtd). Dekow Barrow Mohamed, M.P.

APOLOGIES

1. **The Hon. Robert Gichimu Githinji, M.P., Vice Chairperson**
2. The Hon. Julius Lekakeny Ole Sunkuli, EGH, EBS, MP
3. The Hon. Nicholas S. Tindi Mwale, M.P.
4. The Hon. Linet Chepkorir M.P.
5. The Hon. Joseph Kamau Munyoro, M.P.
6. The Hon. Joyce Kamene, M.P
7. The Hon. John Paul Mwirigi, M.P.
8. The Hon. Adow Kuno Yakub, M.P.
9. The Hon. Kibet Kirui Komingoi, M.P.

SECRETARIAT

1.	Ms. Esther Nginyo	-	Clerk Assistant I
2.	Mr. Brian Langwech	-	Clerk Assistant III
3.	Mr. Jacknorine Buleemi	-	Clerk Assistant III
4.	Ms. Winny Otieno	-	Clerk Assistant III
5.	Ms. Fionah Wanjiru	_	Legal Counsel II
6.	Ms. Elzy Cherop	_	Legal Counsel II
7.	Mr. Charles Ayari	-	Audio Officer
8.	Mr. Manuel Leparachao	-	Sergeant-At-Arms

AGENDA

1. Prayers
2. Preliminaries
3. Adoption of the Agenda
4. Confirmation of previous minutes
5. Matters Arising

6. **Consideration and adoption of the draft Report on Excise Duty (Excisable Goods Management) (Amendment) Regulations, 2023**
7. **Briefing by the Directorate of Legal Services on the Excise Duty (Amendment) Regulations, 2023**
8. Any Other Business; and
9. Adjournment.

MIN. DAA&OSC/CDL/258/2023 PRELIMINARIES

The Chairperson called the Meeting to order at 10.20 a.m. after which prayers were said by Hon. Onchoke Charles Mamwacha. M.P. The Chairperson then welcomed all present to the meeting.

MIN. DAA&OSC/CDL/259/2023 ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as was proposed by Hon. Maj. (Rtd). Abdullahi Bashir Sheikh, MP and seconded by Hon. Pauline Lenguris, M.P

MIN. DAA&OSC/CDL/260/2023 CONFIRMATION OF MINUTES

Minutes of the 38th sitting were confirmed to be true record of the deliberations as was proposed by Hon. Gideon Kipkoech Kimaiyo, M.P. and seconded by Hon. Onchoke Charles Mamwacha. M.P.

MIN.DAA&OSC/CDL/261/2023 MATTERS ARISING

No matter arose under this Agenda item.

MIN. DAA&OSC/CDL/262/2023 CONSIDERATION AND ADOPTION OF THE DRAFT REPORT ON EXCISE DUTY (EXCISABLE GOODS MANAGEMENT) (AMENDMENT) REGULATIONS, 2023

Ms. Fionah Wanjiru, Legal Counsel II briefed the Committee on the issues to consider before adopting the draft report on Excise Duty (Excisable Goods Management) (Amendment) Regulations, 2023 as follows;

i. Regulations were published as Legal Notice No. 30 of 2023 on 21st March, 2023 submitted to the Clerk of the National Assembly on 17th April 2023, being outside the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.

ii. There was inadequate public participation in the process of making these Regulations as the Ministry didn't show any evidence of having had a physical meeting with the general public who are the consumers. Public participation is supposed to be adequate 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.

iii. Upon deliberations, the Committee resolved that Excise Duty (Excisable Goods Management) (Amendment) Regulations, 2023 be annulled on account of submission outside the stipulated time as per the Statutory Instruments Act, 2013 and inadequate public participation as was proposed by Hon. Robert Mbui, CBS, M.P. and seconded by Hon. Maj. (Rtd). Dekow Barrow Mohamed, M.P.

MIN/DAA&OSC/CDL/263/2023 BRIEFING BY THE DIRECTORATE OF LEGAL SERVICES ON THE EXCISE DUTY (AMENDMENT) REGULATIONS, 2023

Ms. Elzy Cherop, Legal Counsel II, briefed the Committee on the Excise Duty (Amendment) Regulations, 2023 as follows,

1. The Legal Notice No. 40 of 2023 was made pursuant to the powers conferred on the Cabinet Secretary responsible for National Treasury and Economic Planning by section 45 of The Excise Duty Act (No. 23 of 2015)) hence it is a Statutory Instrument within the meaning provided for a statutory instrument under section 2 of the Statutory Instruments Act, 2013.

2. The Regulations were published in the Gazette as LN No. 40 of 2023 on 28th April 2023, received by the Clerk, National Assembly and were laid on the table of the House on 6th June, 2023 being the fourth sitting day since publication, hence within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act. The House was on short recess between 5th May and 5th June, 2023.

3. The objects and purpose of these regulations was to amend certain provisions of the Excise Duty Regulations, 2020 (hereinafter referred to as the "principal Regulations"), in order to create fairness for taxpayers and facilitate the effective administration of excise duty.

4. The Regulations amended the Principal Regulations as follows –
   a) Amendment of Regulation 2 by inserting a new definition to define "co-manufacturing;
   b) Amendment of Regulation 3 by inserting the words "where applicable" immediately after the words "commissioner may require";
   c) Amendment of Regulation 4 by deleting several clauses and introducing new paragraphs;
   d) Amendment of Regulation 12 by inserting a new sub regulation immediately after sub regulation (1);
   e) Amendment of Regulation 13 by inserting a new sub regulation immediately after sub regulation (3);
   f) Amendment of Regulation 15 by inserting a new paragraph after paragraph (a) and
   g) Amendment of Regulation 38(3) by inserting the words "the authorized regulator" immediately after the words "as an importer"
5. Upon examination of the Excise Duty (Amendment) Regulations, 2023 in line with the Constitution of Kenya 2010, the Interpretation and General Provisions Act (Cap. 2)

Laws of Kenya, the Excise Duty Act (No. 23 of 2015) and the Statutory Instruments Act (No. 23 of 2013), the following observations were made:-

a) That the Regulations were submitted to Parliament within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act (No. 23 of 2013).
b) The Regulations were made pursuant to the provisions of section 45 of the Excise Duty Act, 2015 that empowers the Cabinet Secretary responsible for the National Treasury and Planning to make regulations for the better carrying out of the provisions of the Act.
c) Pursuant to the provisions of Section 5A of the Statutory Instruments Act, 2013, there was attached to the Regulations a detailed Explanatory Memorandum which provided for the purpose of the Statutory Instrument and its legislative context. The memorandum further provided for the policy background, public consultations outcome, impact of the Statutory Instrument, non- requirement of a regulatory impact assessment and monitoring and review.
d) The Explanatory Memorandum provided a detailed justification for making the Regulations and it indicated that public consultation was conducted in accordance with the provisions of Article 10 and Article 118 and Article 201 of the Constitution of Kenya 2010.
e) The Explanatory Memorandum indicated that public consultation was undertaken. However, contrary to the provisions of section 5A of the Statutory Instruments Act, 2013 and Article 10 and 118 of the Constitution, it had not been sufficiently demonstrated by way of invitation for public consultation or attendance list or otherwise when, where and who was consulted.

6. Subject to any view by the Committee to the contrary, it was considered that the nature of the Excise Duty (Amendment) Regulations, 2023 appeared to involve issues of national importance and could have required a more elaborate public participation hence the Committee could pursuant to section 16 of the Statutory Instruments Act(2013), consider conferring with the Cabinet Secretary for the National Treasury and Economic Planning and the Kenya Revenue Authority to highlight the extent of public participation they conducted, before making its decision on the Regulations.
7. Upon deliberations, the Committee resolved to invite the Cabinet Secretary, the National Treasury and Economic Planning for a meeting on Tuesday, 25th July, 2023 to brief it on the Excise Duty (Amendment) Regulations, 2023.

MIN. DAA&OSC/CDL/264/2023 ANY OTHER BUSINESS

The Committee took note of the Public Finance Management (Equalization Fund Administration) Regulations, 2021 (LN No. 54 of 2021) which were in force, and that being a National Government Fund, its implementation was being done by the designated County Governments. The Committee resolved that the Cabinet Secretary for the National Treasury & Economic Planning appears before it to give details of the Regulations implementation status.

MIN. DAA&OSC/CDL/265/2023 ADJOURNMENT

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

SIGNED: ……………………………………………………………………………

THE HON. SAMUEL CHEPKONGA, CBS. M.P.
CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION
DATE: ……25/07/2023.……………………………………………………..

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). Dekow 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, 20232.**
   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 p**rovides for the appointment of a tax representative in accordance to section 15A of the Tax procedures Act,2015.
7. **Regulation 8 p**rovides 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 p**rovides 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 p**rovides 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 p**rovides 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 p**rovides 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 p**rovides 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 p**rovides 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/CDL/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 p**rovided for the citation of the Regulations.
2. **Regulation 2 p**rovided for the amendment of the Excise Duty (Excisable Goods Management System) Regulations, 2017in 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 Ksh.5 per stamp

2. Cigarettes containing tobacco or tobacco substitutes Ksh. 5 per stamp

3. Other Manufactured Tobacco and manufactured tobacco substitutes Ksh. 5 per Stamp

4. Electronic cigarettes and other nicotine delivery devices Ksh. 5 Per stamp

5. Liquid nicotine for electronic cigarettes 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 Ksh. 3 Per Stamp.
11. Bottled or similarly packaged water Ksh. 0.5 Per Stamp.
12. Other non -alcoholic beverages, not including fruit and vegetable juices 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 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/CDL/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: 25/07/2023

THE NATIONAL ASSEMBLY

DATE: 25 JUL 2023 DAY: TUESDAY

TABLED BY: CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION HON. Samuel Chepkonga

CLERK-AT THE-TABLE: Anne Shibuko

COMMITTEE ON DELEGATED LEGISLATION ADOPTION LIST

DATE: 25/07/2023 VENUE: SMALL DINING ROOM STARTING TIME: 10:00 AM

ENDING TIME: 12-00 NOON

AGENDA: EXCISE DUTY (EXCISABLE GOODS MANAGEMENT SYSTEM) (AMENDMENT) REGULATIONS, 2023.

	NAME	SIGNATURE
1.	**The Hon. Chepkonga Kiprono Samuel, CBS, M.P, Chairperson**	[signature]
2.	**The Hon. Githinji, Robert Gichumi, M.P. Vice-Chairperson**	
3.	The Hon. Mbui, Robert, CBS, M.P.	[signature]
4.	The Hon. Sunkuli Julius Lekakeny, EGH,EBS,MP	
5.	The Hon. Maj. (Rtd) Abdullahi Bashir Sheikh, M.P.	[signature]
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.	[signature]
11.	The Hon. Maj. (Rtd.) Dekow Barrow Mohamed, M.P.	
12.	The Hon. Munyoro, Joseph Kamau, M.P.	[signature]
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.	[signature]
17.	The Hon. Lenguris, Pauline, M.P.	
18.	The Hon. Mamwacha Onchoke Charles, M.P.	[signature]
19.	The Hon. Yakub, Adow Kuno, M.P.	
20.	The Hon. Mnyazi, Amina Laura, M.P.	

21.	The Hon. Mugabe, Innocent Maino, M.P.	

COMMITTEE CLERK: ………………………………….SIGNATURE…………………..

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

(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.

Time of supply.

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

(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.

Exemption from issuing an electronic tax invoice.

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:

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.

Claim for input tax.

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

Accounting for and payment of 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.

(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.

Amendment of returns.

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.

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 *r. 5*

EXCISE STAMP FEES

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 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	:	21st March, 2023, and Published on 14th 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 stampsis 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 statementhas 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

EN SW

Kenya Revenue Authority

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

KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

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!

KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

Office of the Commissioner General

KRA/5/1002/26(8484)

8th February 2023

Prof. Njuguna Ndung'u, CBS
The Cabinet Secretary
National Treasury &
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Treasury Building
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Yours sincerely,

FCPA Githii Mburu, MGH, CBS
COMMISSIONER GENERAL

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

Tulipe Ushuru, Tujitegemee!

CONFIDENTIAL

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, 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 stampsis 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 insyance, the proposed amendment to Regulation 28(1) was revised to incorporate exported goods in the listof 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;

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 statementhas 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.

0701670014.
0722904886.
0722958872.

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 1st March 2023:

Excise Stamp Fees

	Category of Excisable Goods	**Excise Stamp Fee per Stamp Kshs**
1.	Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes	
2.	Cigarettes containing tobacco or tobacco Substitutes	
3.	Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and	5 per stamp

		"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.

KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

INTERNAL

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 taxationis 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	Cosmetic products • 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. Non-alcoholic beverages • 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
		proposed increment stands at about 206%. No rationale has been provided for the increment. • 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. <u>Alcoholic beverages</u> • 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. <u>Tobacco</u> • 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	• 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
		to inflation adjustment. The impact of inflation adjustment has increased excise tax to about 26% on some of the products between 2018 and 2020. • 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	• 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
		• 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	• 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	• 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
		difference in the products is reflected in the excise duties applicable under each product. • 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.

Sign off:

Prepared by:

Miriam Onyango

Sign..Date 6/02/2023

Prepared by:

Elizabeth Roimen

Sign..Date 6/02/2023

Reviewed by:

Dr. Benard Kirui

Sign..Date 06/02/2023

Approved by:

for **Mr. Maurice Oray**

Sign..Date 06/02/2023

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

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
1.	PWC	Clause 4	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). We note the draft Amendment overlooked the applicability of excise stamps on excisable goods locally manufactured for export. 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"). We note that "excisable goods manufactured for exports" are not listed under the Second Schedule of the EDA. This can mean that	Review the proposed amendment before the issuance of the new EGMS Regulations and provide clarity on the applicability of excise stamps on 'excisable goods manufactured for export'.	This will avoid unnecessary future disputes with the impacted taxpayers and interested members of the public.	Proposal effected: Clause 4 was reviewed to incorporate the comment.

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.			
		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	a) 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 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.

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
			from the previous excise duty rate 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. 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) The KRA proposes to increase the current prices of the excise stamps while not considering	stamps. This should form a reasonable basis for future adjustment of the fees. b) KRA to consider standardizing the pricing of the excise stamps as they serve the same purpose for all excisable products. 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.	• 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 manufacturers' production costs and consequently making their products affordable to consumers.	

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			

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
			consequently resulting in a loss of government revenue. 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.			
	KAM		**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	Delete excise stamps on cosmetic products – kes 2.5 Retain the current rates for alcoholic beverages, non-alcoholic beverages and Tobacco.	The increase makes the product less competitive in the region.	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,

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
			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. **Non-alcoholic beverages** Finance Act 2022, inflation adjustments increased the rates of some excisable products. Adjusting the rates of excise stamps not be suitable for business. **Alcoholic** 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. **Tobacco** There is no rationale for how the increment was arrived at. In addition, the rate is higher			the comment was not incorporated in revising the legal notice.

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
			compared to the rates offered in other African countries.			
	ABAK	Clause 3	**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: • 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 tas stamp and it will be undesirous 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.

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

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
			Suspend the regulations Include multi-agency – Govt sticker			
		Clause 5	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.	Suspend the gazette notice to give time for strategic consultations between the Government and the industry on the way forward. Roll out the implementation of the Integrated product marking and authentication system (IPMAS 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.		

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
			The chocolate industry is currently overtaxed and cannot bear any further costs. The current tax to price ratio is already punitive. The unpredictable high excise rates have led to growth of illicit trade. The frequent changes in the rates provides unpredictable excise tax regime 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.			
	ICPAK		Excise stamp is highest in EAC In some instances, the stamp cost is much higher than the excise duty being collected, considering the stamp is per stock-keeping unit (SKU) 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	Review the rates of the excise stamps.	This will ensure that the rates are not too high to be counterproductive.	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

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.

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
			Illicit is there for other products but not water. It is either sold with or without an excise stamp. Discrimination – those who don't blow their plastics pay excise on bottles while those who blow are not charged excise.			
	European Business Council Kenya(EBC)		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. 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.	Withdraw the proposal	Increment will make the local companies not competitive when it comes to their product cost compared to the regional market.	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.

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
			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.			
	BAT Kenya	Clause 4	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	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.

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
			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. 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			

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
			expansion of manufacturing sector to produce goods that can compete in the world market. 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.			

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.

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
			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 to cover the specific administration cost and not to be treated as a revenue source by Governments.		stable source of government revenues through improved excise tax compliance.	
			The Proposed amendment to the Principal Regulations attempts			

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			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).			
	RETAIL TRADE ASSOCIATION OF KENYA (RETRAK)	Clause 5	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	Retain the current rates	Increasing the stamp duty will increase the cost of an essential good, burdening further a very lean pocketed consumer	

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
			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. These Commodities especially cosmetics and beauty products are prone to counterfeiting and will be counterfeited if the cost has to increase arbitrarily. 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.			
	KBL	Clause 5	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. Public participation was not conduted by KRA before they came up wth the proposed excise stamps costs increment.	Halt and review the proposed increase in excise stamps under the draft regulations Roll ou the IPMAS Rduce the cost of stamps below KSH. 1 per stamp.		

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 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.		

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
			the consumer. 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 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. 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.	Key areas for consideration should include:		
	The Pubs , Entertainment & Restaurants Association of Kenya		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.	Halt and review the proposed increase of excise stamp under the draft regulations. Roll out the implementation of the Integrated Product Marking and Authentication System		

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
			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 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 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,	(IPMAS) but first engage the Business Community on the regulatory impact and on any additional cost. 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.		

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
			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. • 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			

No.	Stakeholder	Regulation	Issues/concerns	Proposal	Justification	KRA Response
			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.			

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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

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No.	Name	Organization	Email	Sign
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16.	**Malcom Mwangi** Secretariat	Kenya Association of Manufacturers		
17.	**Paul Maina KML**	Kenafric		
18.	**Mr. Emmanuel Otieno** KEPSA policy officer	Kenya Private Sector Association		
19.	**Ms. Susan Maingi** Vice Chair Trade and Industry	Kenya Private Sector Association		
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47.	**Md. Umulkheir Abdi**	Kenya International Freight and Warehousing Association	[illegible]@gmail.com	[signature]
48.	**Mr. Noah Wamalwa** Programs Coordinator	Institute of Economic Affairs	wnoah@ieakenya.or.ke	[signature]
49.	**Mr. Maurice Mwaniki** Associate Director- Indirect Taxes	Price Water Coopers (PWC)	[illegible]@pwc.com	[signature]

KENYA REVENUE AUTHORITY

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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

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S/NO	NAME	ORGANIZATION	EMAIL	PHONE NUMBER	SIGN
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14.	Nancy Jenutai	KRA	Nancy.Jenutai@kra.go.ke	0722408302	[illegible]

Tulipe Ushuru, Tujitegemee!

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S/NO	NAME	ORGANIZATION	EMAIL	PHONE NUMBER	SIGN
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1.	Vienah Achieng	KRA	vienah.amollo@kra.go.ke	0746745189	[illegible]
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9.					
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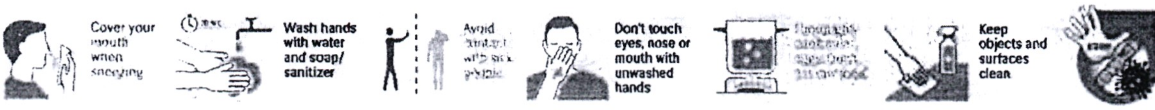
Tulipe Ushuru, Tujitegemee!



KENHA steps up crackdown on rogue cane transporters to reduce accidents

Y CHRIS MAHANDARA KNA)

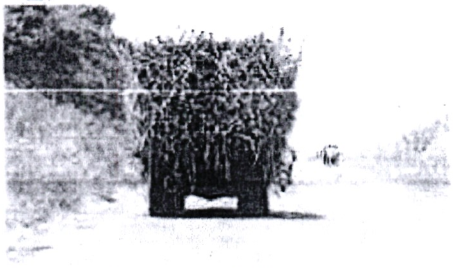
The Kenya National Highways Authority (KeNHA) as mounted a crackdown n rogue sugarcane transporters to tame rampant estruction of road infrastructure in the Nyanza reon.

This follows a sharp rise in e number of cases, among em accidents, involving garcane trucks and lorries aving a trail of destruction n the Authority's critical frastructure.

KeN Nyanza Reional tor, Eng. Julius ak'oderoh blamed the idents to the free hand en to transporters by gar millers, making it difficult for them to monitor d check on their activities n the roads while transorting cane.

"Sugar millers have outurced this service by conacting the transporters. hen we approach them n these issues, they claim at they have no control," e said.

The drivers, he said, are nd of freewheeling, espeially when approaching a y-over to gain momentum to move uphill resulting to accidents.



A tractor ferrying sugar cane. (FILE)

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.

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

Amref Programme Director in-charge of Disease Control and Infection, Dr. Bernard Langat, said Global Fund has pumped in Ksh 3 billion towards the constructions 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 oxygen plugs mainly targeting remote places like Kapedo, 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

BAT
KENYA

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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 matte. 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

Cris Achola

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:

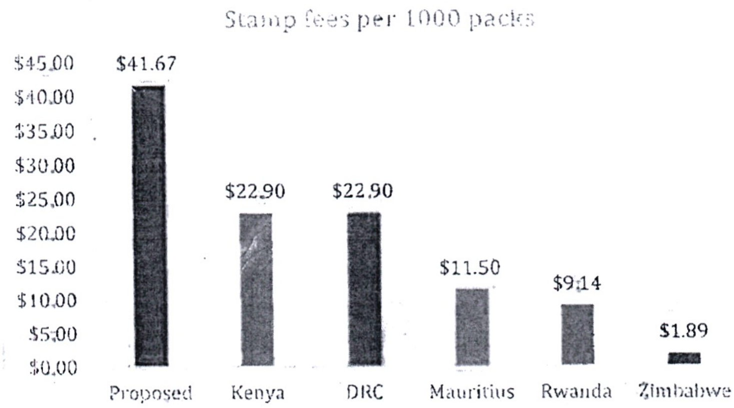
ITP Article	T&T Feature	Compliance[2]	Comments
ART. 8.3 - Unique Identifiers (UIDS)	Unique, secure and non-removable identification markings (UIDs) must be affixed to packs	✓	Tax stamps with UIDs and security features built in and cannot be removed without a mark
ART. 8.4.2 - UID Data Incorporation	Manufacture 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

	global information-sharing focal point on request through a standard electronic secure interface		economic operator, hence the product is not traceable

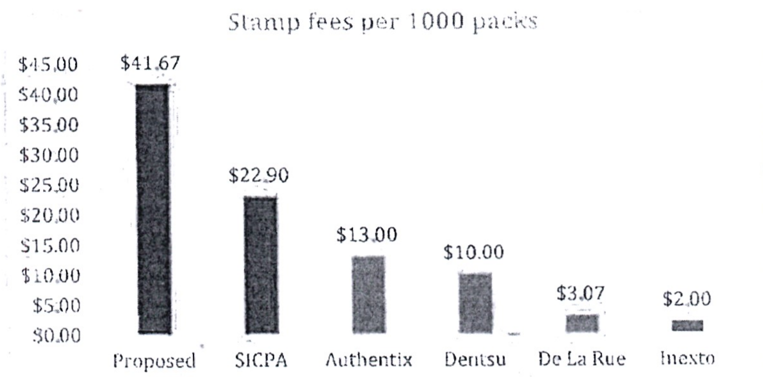
We however note that the only feature that the current stamps address is accounting for production by licensed manufacturers. Key to note is that the current paper stamps do not have a track and trace feature embedded, and as such, goods cannot be tracked along the supply chain. Further, counterfeit 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:



Source: Own

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.



Source: Own

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.

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

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,

Eric Githua
Chairperson
Alcohol Beverages Association of Kenya (ABAK)

31ST January, 2023

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

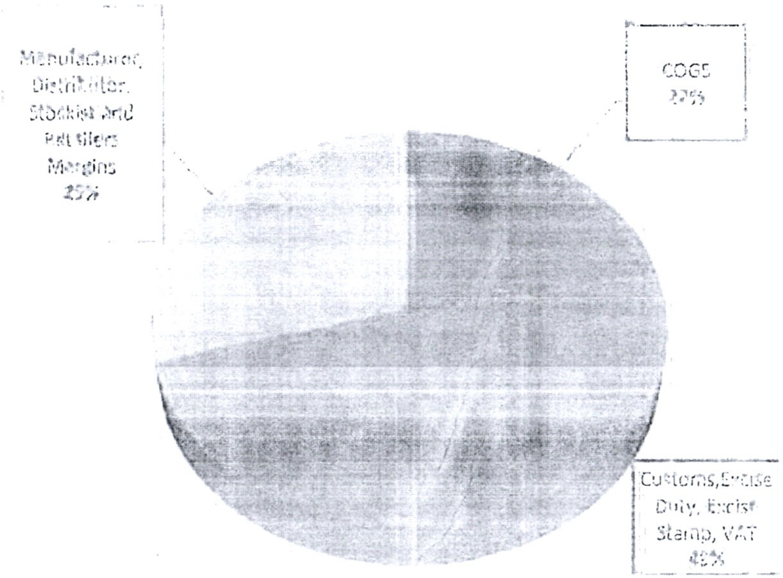
	Current clause in the regulation	Proposed Amendment	The Rationale for Change
	Clause 3 Regulation 6 of the principal Regulation is amended by inserting the words "and compliance management activities of the excise sector" immediately after the expression "System"	Delete the proposal	• The current clause reads as follows:6. *The revenue from the excise stamp fees shall be retained by the Commissioner for the financing of the System.* • 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: (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. Thus, it is only prudent for KRA not to increase the cost of compliance management to an already compliant tax payer. **Proposed solution:** • KRA to use funds generated from legal fines that are imposed to non-compliant

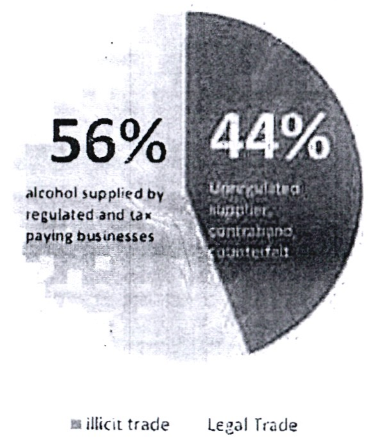
	Current clause in the regulation	Proposed Amendment	The Rationale for Change
			players to fund compliance management activities. Ie KENHA uses fines collected from overloaded vehicles to fund road repairs • Excise stamp cost should be offset by the payable excise duty
	Clause 4 Regulation 28 of the principal Regulation is amended in paragraph 1 by deleting the paragraph (1) and replacing it with the following new paragraph – (1) The excisable goods provided under the Second Schedule of the Act shall be	Amend the Proposal to read as follows: 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) The excisable goods provided under **section 7 (1)(b) and** the Second Schedule of the Act shall be exempted from the requirement of excise	Section 7(1) b of the act provides: 7. *Goods and services not liable to excise duty* *(1) Subject to this section, no excise duty shall be charged on the following—* *(b) excisable goods exported under customs control, including as stores;* • 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 undesirous 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.

<table>
<tr><th></th><th>Current clause in the regulation</th><th>Proposed Amendment</th><th>The Rationale for Change</th></tr>
<tr><td></td><td>exempted from the requirement of excise stamps.</td><td>stamps.</td><td>Proposed solution:
Export products should not be affixed with an excise stamp</td></tr>
<tr><td></td><td>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</td><td>Delete the proposals</td><td>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</td></tr>
</table>

	Current clause in the regulation	Proposed Amendment	The Rationale for Change
	of alcoholic strength exceeding 6% The regulation seeks to increase the cost of stamps from Kes.2.80 to Kes. 5.0 per stamp Clause 5(9) (10) 9. Spirituous beverages of alcoholic strength not exceeding 6% 10. Beer, Cider, Perry, Mead, Opaque beer,		**2. The Current Tax to price ratio is already punitive**  Data based on average cost of producing a 250 ml spirits bottle Source: ABAK

	Current clause in the regulation	Proposed Amendment	The Rationale for Change
	and mixtures of fermented beverages with non-alcoholic beverages The regulation seeks to increase the cost of stamps from Kes1.50 to Kes. 3.0 per stamp		3. **The unpredictable high excise rates have led to growth of illicit alcohol trade**  Source: 2018 WHO data 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.

	Current clause in the regulation	Proposed Amendment	The Rationale for Change
			4. The proposal will increase the cost of compliance and discourage further legitimate business investments into the sector. 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. 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, the cost should come down. Therefore, the government needs to be very

	Current clause in the regulation	Proposed Amendment	The Rationale for Change
			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. 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. 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. 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

<table>
<tr><th></th><th>Current clause in the regulation</th><th>Proposed Amendment</th><th>The Rationale for Change</th></tr>
<tr><td></td><td></td><td></td><td>
as there is no discernible difference in the stamps.
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.
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.
<table>
<tr><th>Cost of Stamps (KES)</th><th>Kenya (Current)</th><th>Kenya (Proposed)</th><th>Tanzania (Current)</th><th>Uganda (Current)</th></tr>
<tr><td>Beer</td><td>1.50</td><td>3.0</td><td>0.96- local
1.21-imported</td><td>1.16</td></tr>
<tr><td>Spirits</td><td>2.80</td><td>5.0</td><td>2.21</td><td>3.55</td></tr>
</table>
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
</td></tr>
</table>

	Current clause in the regulation	Proposed Amendment	The Rationale for Change
			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. **Proposed solution:** • 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

EBC KENYA | European Business Council Kenya

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.

- 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

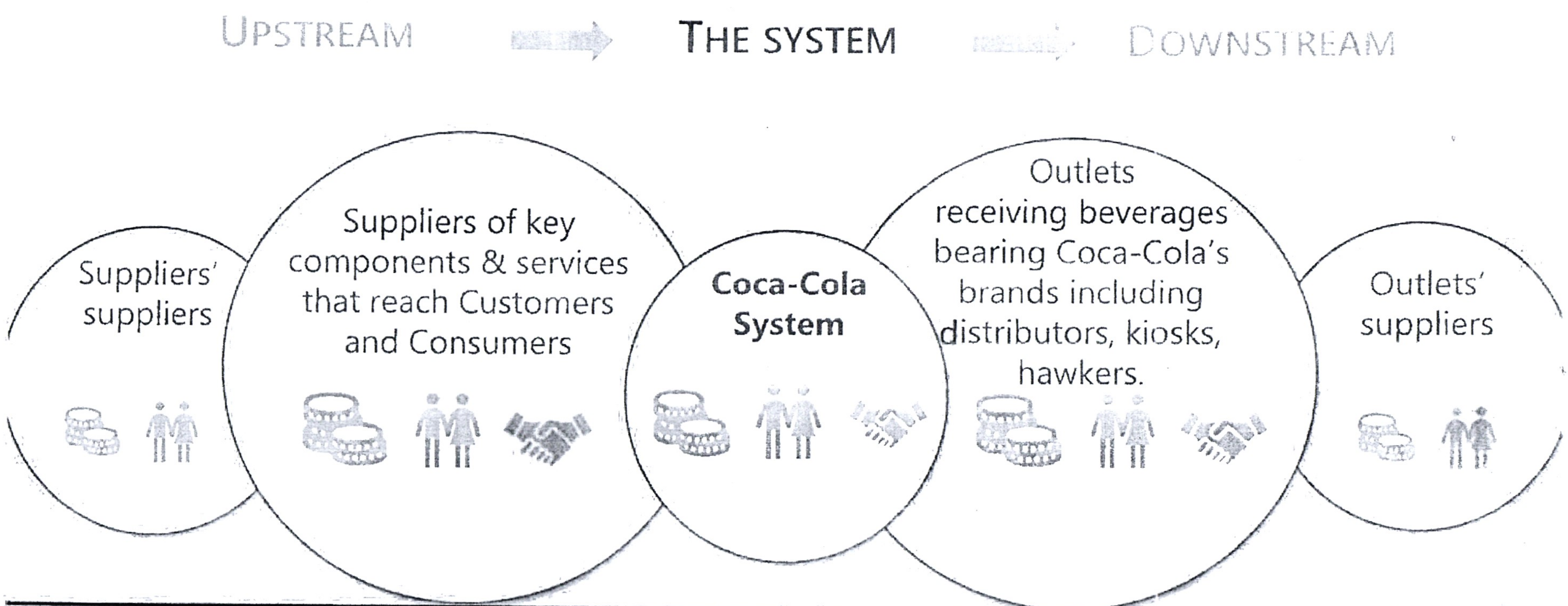
Darren J Gillen
Chairman
European Business Council in Kenya

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.



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

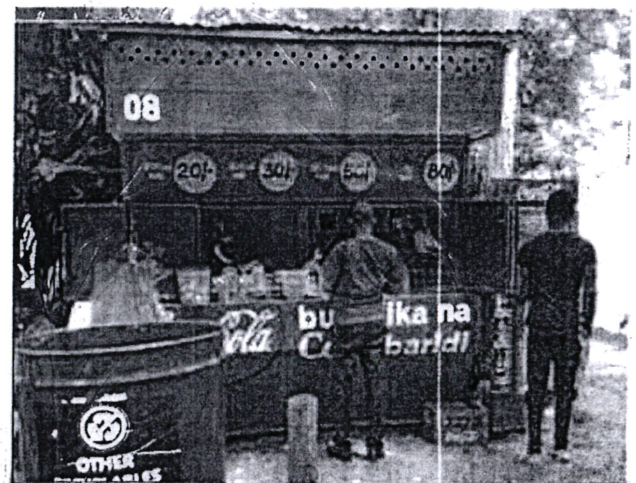
2,200+
people employed directly by CCBA Kenya

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

Outlets served
Over 135,000 Outlets supplied with beverages

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)



CCBA | Invests in the community

Kenya and the Women Enterprise fund

Through the 5 by 20 programme, CCBA has enabled over 703,403 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 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

›roposed changes in the cost of the excise stamps |percentage ncrease

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

July 2022
Excise tax rates increased by 10%

October 2022
Excise tax rates were adjusted for inflation by 6.03%

(see compounded impact of inflation on Table 4)

Proposed increase in cost of stamps by +200%

- 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.

\ssessing 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:

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

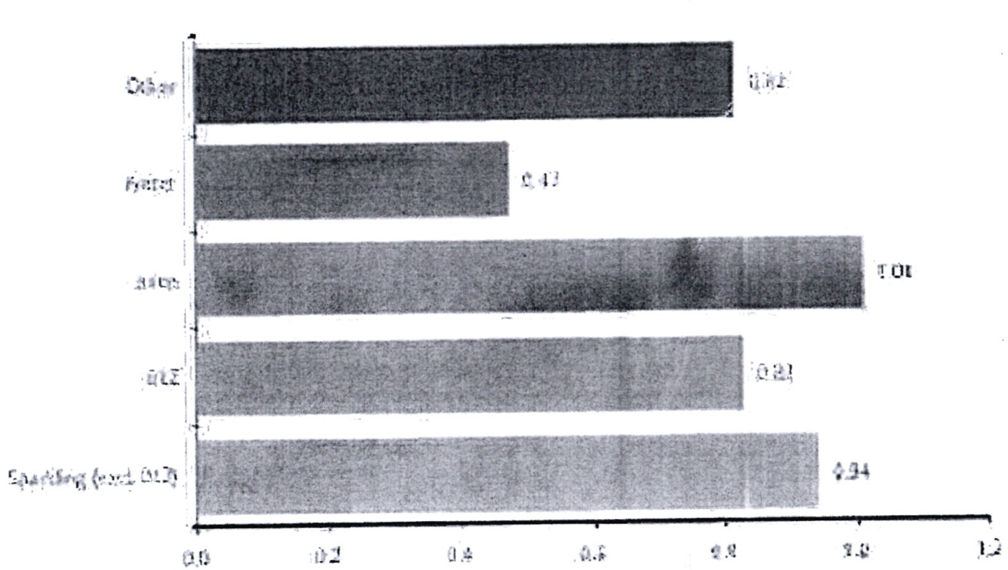
- A potential increase in the cost of stamps on juices and non-alcoholic beverages would force the business to **take up price.** Although the revenue from excise stamp collection may increase, it is forecasted that the overall tax collections (PAYE, VAT and Corporate Income tax) will **decline** resulting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

mpact 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

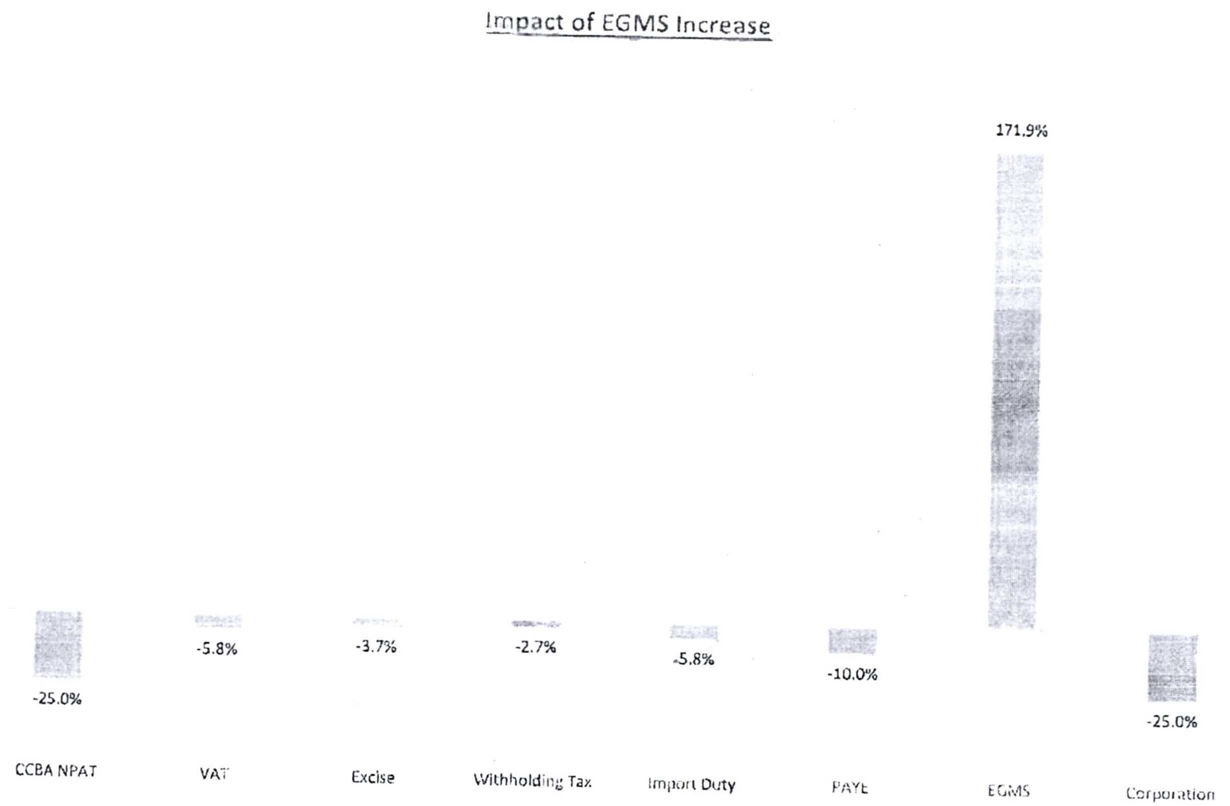


Example: the own-price elasticity of demand for Sparkling in Kenya is 0.94. This means that a price increase of 1% is associated with a 0.94% reduction in demand for Sparkling.

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**



Case study 1

Anticipated annualised consequence of EGMS increase

(selected popular beverage package size)

- Take price: from **KShs 3!** 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**

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%

Case study 2

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.

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

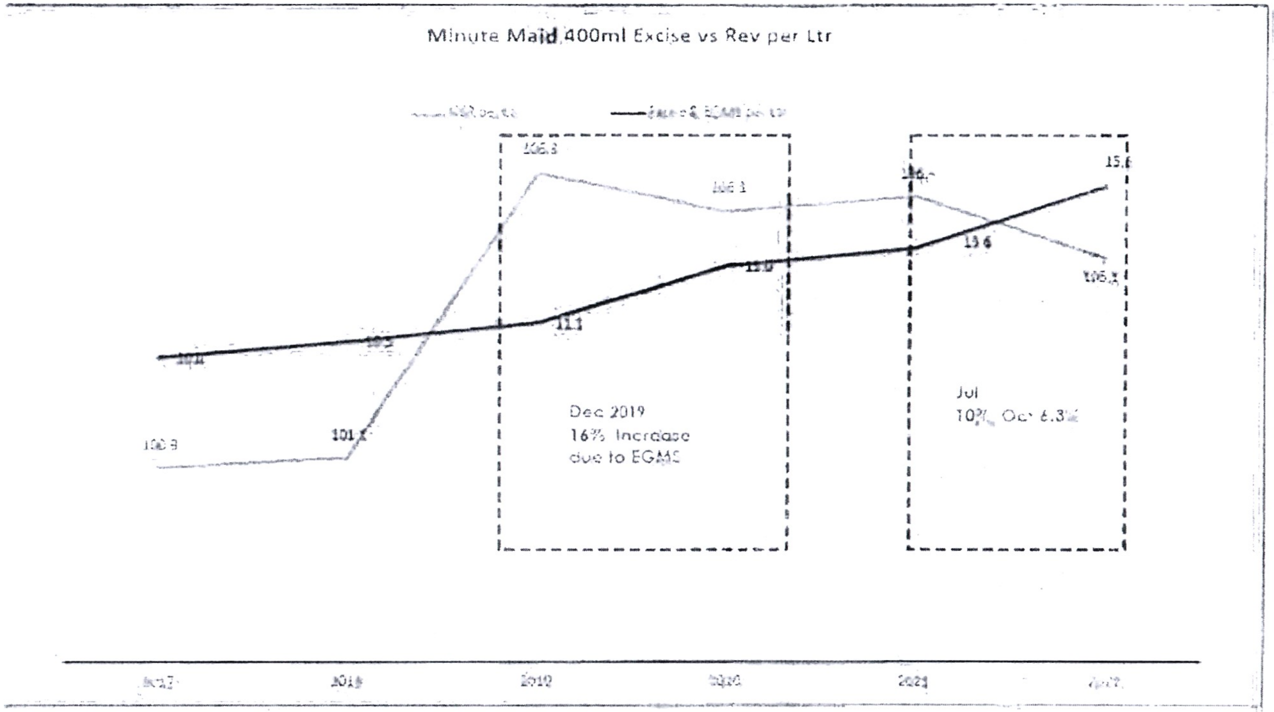
Impact on the juice category

- 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)*

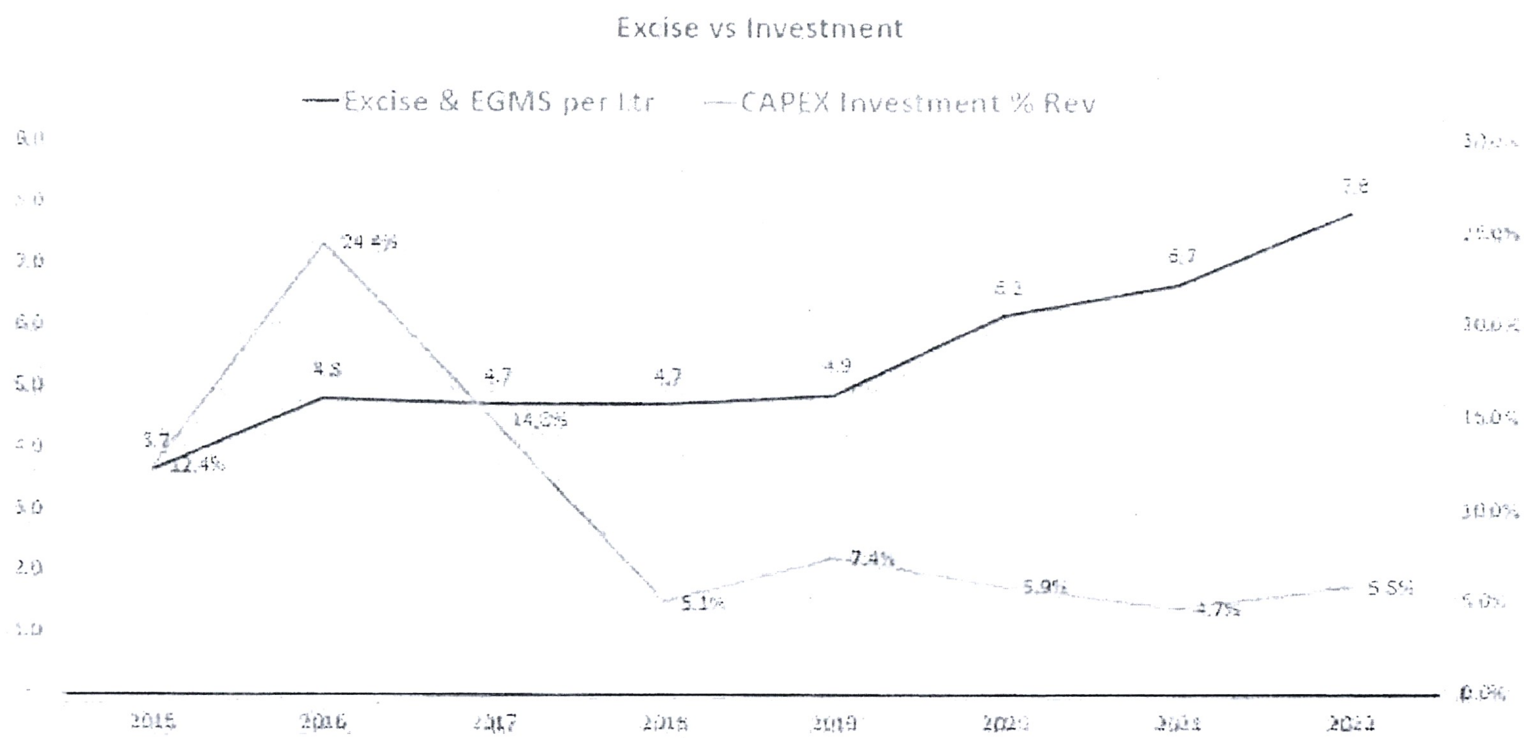
The impact of the Excise and EGMS has been exceptionally hard on the **juice category** with an increase of 56% since 2017 with a marginal revenue growth of 4%



- 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

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



Case study 4–CAPEX spend from 2016/2022

)peration & production costs are also on the rise: **a change in he 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%**
:lectricity/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

retrak
THE RETAIL TRADE ASSOCIATION OF KENYA

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.	Clause 1: 1. Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes 2. Cigarettes containing tobacco or tobacco Substitutes 3. Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and "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. 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	Retain the current charges of Kshs. 2.8 per stamp.	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. 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. 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.
2.	Bottled or similarly packaged waters. The Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023 seeks to increase the cost of stamps KES 1.50 to KES 0.5.	Retain the current rates	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

3.	Other non-alcoholic beverages, not including fruit and vegetable juices Fruit juices (including grape must), and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter. Cosmetics and Beauty products of tariff heading Nos. 3303, 3304, 3305 and 3307 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	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.	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) Beer, cider, perry, mead, opaque beer, and mixtures of fermented beverages with non-alcoholic beverages	Retain the current rates.	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. Whereas Retailers comply with government indications and usually offer safe products for sale in compliance with government terms.

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.	Clause 5: compounded spirits of alcoholic strength exceeding 6%. 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	**<u>Objective</u>** Halt and review the proposed increase of excise stamp under the draft regulations.	**<u>Justification</u>** • 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. 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,

			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*

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

			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.

			• 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

Cost of Stamps (KES)	Kenya (Current)	Kenya (Proposed)	Tanzania (Current)	Uganda (Current)
Spirits	2.80	5.0	2.21	3.55

- 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

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 in 2022	**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.

Tanzania Border
- Lunga Lunga
- Taita Taveta
- Loitoktok
- Namanga
- Isebania

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

Ethiopia
- Moya

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PDF Error:  CID font dictionary error
Operator: --TJ--
  Position: 1237
  1 Operand:
    [<0003> -0.214844]
Font Dictionary(@1815)
  Object ID: -85
  Entry: unspecified
  Error: dictionary entry missing
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Cigarettes containing tobacco or tobacco substitues	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 Panning 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	3X
Spirits	0.8	5.0	6X

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 illicits, 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 illicits in the market defeats the initial objective of rolling out the EGMS system. A review from a sample of illicits 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 illicits, 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	[illegible]	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 <u>Conclusion</u>

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 illicits. 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

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

Sent via email to stakeholder.engagement@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

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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 'Spirituous beverages' to not exceeding 6% from the current10%.

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

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1 https://documents.worldbank.org/en/publication/documents-reports/documentdetail/[illegible]

2 https://www.worldbank.org/en/news/press-release/2022/11/08/kenya-s-economic-recovery-remains-strong-although-slowed-by-drought-and-inflation

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Draft Amendments ref.	Issue of concern	Recommendation
• 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 – ***"(1) The excisable goods** provided under the Second Schedule of the Act shall be exempted from the requirement of **excise stamps."***	a) Regulation 28 (1) (a) of the EGMS Regulations currently provides that: ***[Emphasis ours]*** *"(1) The following excisable goods shall be exempted from the requirement of excise stamps-* *(a)* ***excisable goods manufactured for export****, the Kenya Defence Forces, the National Police Service or delivered to a duty-free shop;* 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. 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"). **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. 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.	❖ 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.

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• **The CG has also proposed price adjustments under Clause 5** of the draft Amendment Regulations, as outlined below: 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	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;	❖ 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. It is also worth noting that ongoing price hikes have eroded consumers' purchasin 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 ❖ Furthermore, we recommend the KRA to consider standardising the pricing of the excise stamps as they serve

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exceeding 6% - KES 5 per stamp; 7. Spirituous beverages of alcoholic strength not exceeding 6% - KES 3 per stamp; 8. Beer, Cider, Perry, Mead, Opaque beer, and mixtures of fermented beverages with non-alcoholic beverages - KES 3 per stamp; 9. Other non-alcoholic beverages, not including fruit and vegetable juices - KES 2.2 per stamp; 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 11. Cosmetics and Beauty products of tariff heading Nos. 3303, 3304, 3305 and 3307 - KES 2.5 per stamp;	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. 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. 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.	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. 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. 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. 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%. 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.

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

KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

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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FCPA Githii Mburu, MGH, CBS
COMMISSIONER GENERAL

KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

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

ISO 9001:2015 CERTIFIED

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, Tujitegemee!

KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

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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We look forward to your participation.

Yours sincerely,

FCPA Githii Mburu, MGH, CBS
COMMISSIONER GENERAL

KENYA REVENUE AUTHORITY
ISO 9001:2015 CERTIFIED

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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We look forward to your participation.

Yours sincerely,

FCPA Githii Mburu, MGH, CBS
COMMISSIONER GENERAL

KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

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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We look forward to your participation.

Yours sincerely,

FCPA Githii Mburu, MGH, CBS
COMMISSIONER GENERAL

Tulipe Ushuru, Tujitegemee!

KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

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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We look forward to your participation.

Yours sincerely,

FCPA Githii Mburu, MGH, CBS
COMMISSIONER GENERAL

KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

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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In this regard, I invite you and ten (10) 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

KENYA REVENUE 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

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We look forward to your participation.

Yours sincerely,

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COMMISSIONER GENERAL