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REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT- SECOND SESSION (2023)

THE NATIONAL ASSEMBLY

COMMITTEE ON DELEGATED LEGISLATION

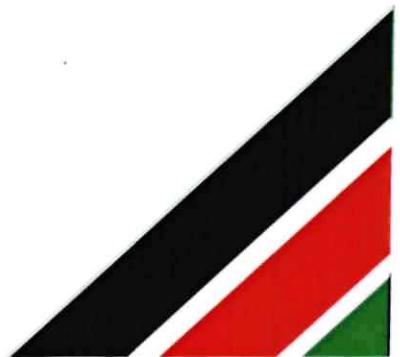
REPORT ON THE CONSIDERATION OF THE EXCISE DUTY  
(AMENDMENT) REGULATIONS, 2023

(LN. NO. 40 OF 2023)

AUGUST, 2023

 THE NATIONAL ASSEMBLY	
DATE: 01 AUG 2023	
DAY: TUESDAY	
TABLED BY:	Hon. Samuel Chepkonga, MP Chairperson, Delegated Legislat.
CLERK AT THE TABLE:	Inzofu Mwale

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



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## **ABBREVIATIONS**

<b>KRA</b>	<b>Kenya Revenue Authority</b>
<b>LN</b>	<b>Legal Notice</b>
<b>RMA</b>	<b>Regulatory Making Authority</b>
<b>SI</b>	<b>Statutory Instruments</b>
<b>SO</b>	<b>Standing Order</b>

## **CHAIRPERSON'S FOREWORD**

The Excise Duty (Amendment) Regulations, 2023 ("the Regulations") were made *vide* LN No. 40 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 as LN No. 40 of 2023 on 28<sup>th</sup> April 2023, forwarded to the Clerk of the National Assembly and laid on the table of the House on 6<sup>th</sup> June, 2023 being the fourth sitting day since publication, hence met the Statutory timelines contemplated under section 11(1) of the Statutory Instruments Act. The House was on short recess between 5<sup>th</sup> May and 5<sup>th</sup> June, 2023. They were subsequently referred to the Committee on Delegated Legislation for consideration upon resumption of the House.

The purpose of these Regulations is to amend certain provisions of the Excise Duty Regulations, 2020 by specifying activities for which the Commissioner-General of the Kenya Revenue Authority is required to register or licence and by expanding this requirement to include the importation or manufacturing of material meant for packaging of nicotine and nicotine substitutes so as to deter the supply of nicotine or nicotine substitutes to unlicensed manufacturers. In addition, the amendments are made as a result of the realisation that the current manufacturing process is automated and manual. Accordingly, the end goal of the Regulations is to create fairness for taxpayers and facilitate the effective administration of excise duty.

Pursuant to section 16 of the Statutory Instruments Act, 2013 which requires the Committee to confer with the regulation –making authorities before making its decision, the Committee held a joint meeting with National Treasury and Economic Planning and Kenya Revenue Authority on 25<sup>th</sup> July, 2023 to deliberate on the Regulations.

Having examined the Excise Duty (Amendment) Regulations, 2023, Legal Notice No. 40 of 2023 in accordance with the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Statutory Instruments Act (*No 23 of 2013*) and the Excise Duty Act (*No. 23 of 2015*), the Committee recommends that the House **APPROVES** the *Excise Duty (Amendment) Regulations, 2023, LN No 40 of 2023* for operations by the National Treasury and other relevant Ministries

I wish to 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 (Amendment) Regulations, 2023 (LN. No. 40 of 2023).**

**HON. CHEPKONGA KIPRONO SAMUEL, CBS, MP**

## **1.0 PREFACE**

### **1.1 Establishment and Mandate of the Committee**

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

## 1.2 Committee Membership

3. The Committee membership comprises –

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

UDA

Ainabkoi Constituency

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

UDA

Gichugu Constituency

### Committee Members

Hon. Mbui Robert, CBS, M.P

WDM-KENYA

Kathiani Constituency

Hon. Chebor, Paul Kibet, M.P

UDA

Rongai Constituency

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

UDA

Garrisa Township Constituency

Hon. Yakub Adow Kuno, M.P

UPIA

Bura Constituency

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

KANU

Kilgoris Constituency

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

UDM

Mandera North Constituency

Hon. Kamene Joyce, M.P

WDM-KENYA

Machakos County

Hon. Mwirigi John Paul, M.P.

UDA

Igembe South Constituency

Hon. Onchoke, Mamwacha Charles, M.P.

UPA

Bonchari Constituency

Hon. Odoyo, Jared Okello, M.P.

ODM

Nyando Constituency

Hon Kimaiyo, Gideon Kipkoech, M.P.

UDA

Keiyo South Constituency

Hon. Chepkorir Linet, M.P.

UDA

Bomet County

Hon. Komingoi, Kibet Kirui, M.P.

UDA

Bureti Constituency

Hon. Munyoro Joseph Kamau, M.P

UDA

Kigumo Constituency

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

DP

Mbeere North Constituency

Hon. Lenguris Pauline, M.P.

UDA

Samburu County

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

ODM

Butere Constituency

Hon Mnyazi Amina Laura, MP.

ODM

Malindi Constituency

Hon. Mugabe Innocent Maino, M.P.

ODM

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 I*

**Mr. Jacknorine Buleemi**  
*Clerk Assistant III*

**Ms. Winny Otieno**  
*Clerk Assistant III*

**Mr. Brian Langwech**  
*Clerk Assistant III*

**Ms Fiona Wanjiru**  
*Legal Counsel II*

**Mr. Daniel Ominde**  
*Research Officer III*

**Mrs. Sheila Chebotibin**  
*Serjeant at Arms*

**Mr. Charles Ayari**  
*Audio Officer*

## **2.0 CONSIDERATION OF THE EXCISE DUTY (AMENDMENT) REGULATIONS (LN NO. 40 OF 2023)**

### **2.1 Introduction**

5. The Excise Duty (Amendment) Regulations, 2023, (Legal Notice No. 40 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*) hence, is a statutory instrument within the meaning of section 2 of the Statutory Instruments Act (*No 23 of 2013*).
6. The Regulations were published in the Gazette as LN No. 40 of 2023 on 28<sup>th</sup> April 2023, forwarded to the Clerk, National Assembly and laid on the table of the House on 6<sup>th</sup> 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 5<sup>th</sup> May and 5<sup>th</sup> June, 2023. Thereafter, the Regulations were referred to the Committee on Delegated Legislation for consideration upon resumption of the House.
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 25<sup>th</sup> July, 2023 to deliberate on the Excise Duty (Amendment) Regulations, 2023.
8. The primary objective of the Excise Duty (Amendment) Regulations, 2023 is to amend some provisions of the Excise Duty Regulations, 2020 (the “principal Regulations”) to create fairness for taxpayers and facilitate the effective administration of excise duty. It amends certain provisions of the principal Regulations and introduces schedules on specifications of the metering, monitoring and measuring devices/systems.

### **2.2 Summary of the Excise Duty (Amendment) Regulations, 2023, Legal Notice No. 40 of 2023**

9. The objects and purpose of these regulations is to amend certain provisions of the principal Regulations, in order to create fairness for taxpayers and facilitate the effective administration of excise duty.
10. The Regulations amends the principal Regulations as follows –
  - a) Amendment of Regulation 2 by inserting a new definition to define “co-manufacturing. The introduction of the new definition of a co-manufacturer is a new concept of business in the manufacturing sector that will enable the Kenya Revenue Authority to control a business arrangement where a manufacture and a co-manufacturer are involved in manufacturing.
  - b) Amendment of Regulation 3(1) by inserting the words “where applicable” immediately after the words “commissioner may require”, in order to give the Commissioner the discretion to exclude some importers from the requirements for licensing or registration.

- c) Amendment of Regulation 4 by deleting several clauses and introducing new paragraphs. This is in order to enhance the verification of excisable goods manufactured by licensed manufacturers of nicotine products and nicotine substitutes.
- d) Amendment of Regulation 12 by inserting a new sub regulation immediately after sub regulation (1) in order to provide for control of raw materials or immediate goods used in co-manufacturing.
- e) Amendment of Regulation 13 by inserting a new sub regulation immediately after sub regulation (3) in order to provide for the storage and delivery of excisable goods used in co-manufacturing.
- f) Amendment of Regulation 15 by inserting a new paragraph after paragraph (a). This will go a long way in providing guidance on the kind of records that should be maintained by a co-manufacturer.
- g) Amendment of Regulation 38(3) by inserting the words “the authorized regulator” immediately after the words “as an importer”. The inclusion of the word ‘ as an importer’ is meant to align with the existing Energy and Petroleum Regulatory Authority Regulations on open tender system in the importation of fuel products in Kenya.

### **2.3 Legislative Context**

11. The Legal Notice on the Excise Duty (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 better carrying out of the provisions of the Excise Duty Act.

### **2.4 Policy Background**

12. The principal Regulations streamline the Excise Duty Act, 2015 with the Tax Procedure Act, 2013 and assist in interpreting and implementing the Excise Duty Act, 2015.
13. Excise duty tax is a tool to influence the consumption of certain products, generally on health or environmental protection grounds. It is also an important source of government revenue as excise of goods, including petroleum products, accounts for about 10% of total revenue.
14. The principal Regulations provided for installing, metering and measuring devices/systems in the production system to ensure that the correct quantities of excisable goods produced or transferred are measured. The Regulations, therefore, provides for specifications for metering, measurement and metering devices/systems. That is important in ensuring uniformity of such devices to prevent revenue leakages due to using inappropriate devices.
15. The principal Regulations streamline licensing and registration of persons undertaking activities requiring an excise license under the Excise Duty Act, 2015, as well as the operations of the same.

16. The principal Regulations specify activities for which registration with the Commissioner is required. The Legal Notice expands this requirement to include importing or manufacturing, packaging material for nicotine or nicotine substitute. This will deter the supply by the importer to unlicensed manufacturers of products containing nicotine or nicotine substances.
17. Further, the Regulations clarify the excise treatment of co-manufacture due to the realization that the current manufacturing process is automated and manual.

### 3.0 COMMITTEE OBSERVATIONS

18. Having examined 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 Committee made the following observations –

#### 3.1 Statutory Timelines

19. THAT the Regulations were published in the Gazette as LN No. 40 of 2023 on 28<sup>th</sup> April 2023, received by the Clerk of the National Assembly and e laid on the table of the House on 6<sup>th</sup> June, 2023 being the fourth sitting day since publication, hence within the Statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.

#### 3.2 Public Participation

20. The Explanatory Memorandum provides a detailed justification for making the Regulations and it indicates 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.

#### 3.3 Regulatory Impact Statement

21. Pursuant to the provisions of Section 5A of the Statutory Instruments Act, 2013, there is attached to the Regulations a detailed Explanatory Memorandum which provides for the purpose of the Statutory Instrument and its legislative context. The memorandum further provides for the policy background, public consultations outcome, impact of the Statutory Instrument, non- requirement of a regulatory impact assessment and monitoring and review.

### 4.0 COMMITTEE RECOMMENDATION

Having examined the Excise Duty (Amendment) Regulations, 2023, Legal Notice No. 40 of 2023 in accordance with the Constitution, the Interpretations and General Provisions Act (Cap 2), the Statutory Instruments Act (No 23 of 2013) and the Excise Duty Act (No. 23 of 2015), the Committee recommends that the House **APPROVES** the *Excise Duty (Amendment) Regulations, 2023, LN. No. 40 of 2023* for operations by the National Treasury and other relevant Ministries.

Signed.....

Date...*15<sup>th</sup> August 2023*.....

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

## **ANNEXURES**

- 1. Adoption List**
- 2. Legal Notice Number 40 of 2023 and the Explanatory Memorandum**
- 3. Committee Minutes**



NATIONAL ASSEMBLY  
 DOORS LAID  
 20 JUN 2023 TUE  
 HON. KIMANI KIHORO  
 MAJORITY LEADER  
 INZOPI  
 CLERK-AT-THE-TABLE

# THE KENYA GAZETTE

Published by Authority of the Republic of Kenya  
 (Registered as a Newspaper at the G.P.O.)

Vol. CXXV—No. 99

NAIROBI, 28th April, 2023

Price Sh. 60

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THE CABINET SECRETARY TO THE TREASURY  
(INCORPORATION) ACT

(Cap. 101)

THE KENYA PORTS AUTHORITY (VESTING) ORDER, 2023

IN EXERCISE of the powers conferred by section 3(1) of the Cabinet Secretary to the Treasury (Incorporation) Act, the Cabinet Secretary for National Treasury and Economic Planning makes the following Order—

THE KENYA PORTS AUTHORITY (VESTING) ORDER, 2023

1. This Order may be cited as the Kenya Ports Authority (Vesting) Order, 2023. Citation.

2. In this Order, unless the context otherwise requires— Interpretation.  
“commencement date” means the 16th June, 2021;

“entity” includes a natural person, company, association or other body of persons whether incorporated or unincorporated;

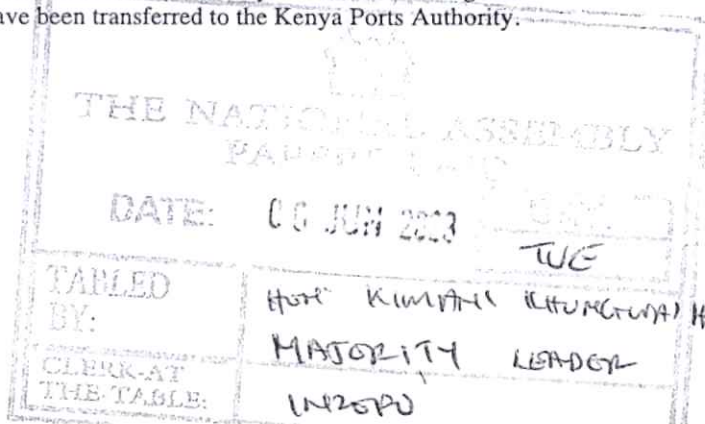
“liability” means a liability, court case, debt, charge, duty or obligation arising from past or existing project contracts or consultancies of every description and whether present or future, actual or contingent, and whether payable or to be observed or performed in Kenya or elsewhere;

“right” means any right or power, whether actual, contingent or prospective; and

“commencement date” and “vesting date” means the 16th June, 2021.

3. The functions and rights vested in the Kenya Ferry Services Limited shall, from the date of the commencement of the Asset and Business Transfer Agreement between the Kenya Ports Authority and Kenya Ferry Services Limited dated the 16th June, 2021, be deemed to have been transferred and vested in the Kenya Ports Authority with effect from the commencement date. Transfer and vesting.

4. The assets, liabilities, obligations, property, rights, securities and undertakings set out in the Schedule, and any other assets, liabilities, obligations, property, rights, securities and undertakings of the Kenya Ferry Services Limited that are found to have belonged to the Kenya Ferry Services Limited on the day before the vesting date shall be deemed to have been transferred to the Kenya Ports Authority. Presumption of transfer.



5. All existing legal or alternative dispute resolution proceedings, or application to any authority by or against the Kenya Ferry Services Limited, shall not abate, be discontinued or in any way be prejudiced by reason only of the provisions of this Order, but the same may be prosecuted or continued by or against the Kenya Ports Authority, and any judgment or award obtained by or against the Kenya Ferry Services Limited before the commencement date shall thereafter be enforceable by or against the Kenya Ports Authority.

Legal and alternative dispute resolutions proceedings.

6. The custody of any documents, goods or other property held by the Kenya Ferry Services Limited as bailee for any other person shall be transferred to the Kenya Ports Authority from the vesting date, and the rights and obligations of the Kenya Ferry Services under any contract of bailment shall be transferred or deemed to be transferred to the Kenya Ports Authority.

Documents, goods and other properties.

7. Any past or existing contracts, agreements, conveyances, deeds, leases, licences, permits, exemptions, powers of attorney, undertakings, securities and other instruments arising from or related to past or existing projects and consultancies entered into by, made with or granted or addressed to the Kenya Ferry Services Limited, whether alone or with any other person, and whether as principal or agent, shall, as from the commencement date, be binding and have full force and effect in every respect against or in favour of the Kenya Ports Authority as if the Kenya Ports Authority had been party thereto, bound thereby or entitled to the benefit therefor, and as if any reference, express or implied, to any member, officer or employee of the Kenya Ports Authority in respect of anything to be done on or after the commencement date were substituted a reference to the member, officer or employee of the Kenya Ports Authority who most nearly corresponds thereto.

Contracts, agreements, conveyances, deeds, leases, licences, permits, exemptions, powers of attorney, undertakings, securities and other instruments.

8. Any reference to an entity in any agreement or instrument entered into by the Kenya Ferry Services Limited in trust on behalf of or for the benefit of the Government of Kenya or the Cabinet Secretary, in relation to the assets specified in the Schedule, shall be deemed to be references to the Kenya Ports Authority.

References to entity to mean references to Kenya Ports Authority.

9. Any person employed by the Kenya Ferry Services Limited on or before the vesting date shall be deemed to be an employee of the Kenya Ports Authority.

Staff.

10. Nothing in this Order shall terminate, discharge or prejudicially affect the assets, liabilities, obligations, property, rights, securities and undertakings of the Kenya Ferry Services Limited solely on account of the transfer or vesting under this Order

Savings and transition.

#### SCHEDULE

S/No.	Land	Size
	MOMBASA BLOCK XXVI/1085	0.2196 Ha
	MOMBASA ISLAND BLOCK XXVI/1085	0.05 Ha
	MOMBASA ISLAND BLOCK XXVI/1012	0.05 Ha

(3A) Excisable goods in an excise stock room for the co-manufacture of goods shall be stored separately in such a manner as to facilitate the accounting for the goods therein.

7. Regulation 15 of the principal Regulations is amended in subregulation (1) by inserting the following new paragraph immediately after paragraph (a)—

(aa) in relation to locally manufactured excisable goods under a co-manufacturing agreement—

- (i) detailed records of raw materials received and removed from their premises;
- (ii) production records at every stage of the manufacturing process;
- (iii) packaging materials received and utilized in their premises;
- (iv) details of goods removed from the factory;
- (v) readings of measuring and metering devices for each co-manufacture production run; and
- (vi) sales records.

8. Regulation 38(3) of the principal Regulations is amended in paragraph (b) by inserting the words “the authorized regulator” immediately after the words “as an importer”.

Made on the 21st March, 2023.

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

S/No.	Land	Size
	MOMBASA ISLAND BLOCK XXVI/1013	0.05 Ha
	MOMBASA ISLAND BLOCK XXVI/972	0.34 Ha
	MOMBASA/MS/BLOCK 1/1762	0.2878 Ha
	MOMBASA/MS/BLOCK 1/1763	0.1876 Ha
	MOMBASA/MS/BLOCK 1/1758	0.1910 Ha
	MOMBASA/MS/BLOCK 1/1699	0.8485 Ha

## A. FERRY VESSELS

S/No.	Vessel Name	Registration No.
	MV Nyayo	IMO NUMBER 10110
	MV Harambee	IMO NUMBER 10109
	MV Kilindini	IMO NUMBER 10112
	MV Jambo	IMO NUMBER 101209/9810886
	MV Safari	IMO NUMBER 9810898
	MV Kwale	IMO NUMBER 10194/9522398
	MV Likoni	IMO NUMBER 10195/9522398

## B. MOTOR VEHICLES

S/No.	Vehicle make	Chassis No.
	Isuzu Lorry	JAAN1R66PF7104925

## C. WORKS AND BUILDINGS

S/No.	Works and buildings
1.	Peleleza HQ Building
2.	Mtongwe Pontoon Buildings
3.	Peleleza Jetty
4.	Island and mainland ramps
5.	Island security wall

Made on the 21st March, 2023.

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

## LEGAL NOTICE No. 40

## THE EXCISE DUTY ACT, 2015

(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 (AMENDMENT) REGULATIONS, 2023

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

Legal

2. The Excise Duty Regulations, 2020 (in these Regulations referred to as the "principal Regulations"), are amended in regulation 2 by inserting the following new definition in proper alphabetical sequence—

L.N. 113/2020.

"co-manufacture" means any partial process in the production of excisable goods by use of an automated production line.

3. Regulation 3 of the principal Regulations is amended in subregulation (1) by inserting the words "and where applicable" immediately after the words "Commissioner may require".

4. Regulation 4 of the principal Regulations is—

(a) amended in subregulation (1) by—

(i) deleting paragraph (a) and substituting therefor the following new paragraph—

(a) the importation or manufacture of cigarette paper or cigarette packaging materials;

(ii) by deleting paragraph (b) and substituting therefor the following new paragraph (a)—

(b) the importation of raw or unprocessed tobacco;

(iii) by deleting paragraph (c) and substituting therefor the following new paragraph—

(c) the local purchase or importation of ethanol;

(iv) by deleting paragraph (d) and substituting therefor the following new paragraph—

(d) the denaturing of spirits; and

(v) by adding the following new paragraph immediately after paragraph (d)—

(e) the importation or manufacture of packaging material for products containing nicotine or nicotine substitutes.

(b) by inserting the following new subregulation immediately after subregulation (2)—

(2A) Only an agent of a licensed importer or manufacturer of products containing nicotine or nicotine substitutes shall be registered by the Commissioner as an importer of packaging materials of products containing nicotine or nicotine products.

5. Regulation 12 of the principal Regulations is amended by inserting the following new subregulation immediately after subregulation (1)—

(1A) A co-manufacturer shall keep the raw materials or immediate goods used for the co-manufacturing separately to allow for the accounting of the materials in the factory.

6. Regulation 13 of the principal Regulations is amended by inserting the following new subregulation immediately after subregulation (3)—

(3A) Excisable goods in an excise stock room for the co-manufacture of goods shall be stored separately in such a manner as to facilitate the accounting for the goods therein.

7. Regulation 15 of the principal Regulations is amended in subregulation (1) by inserting the following new paragraph immediately after paragraph (a)—

(aa) in relation to locally manufactured excisable goods under a co-manufacturing agreement—

- (i) detailed records of raw materials received and removed from their premises;
- (ii) production records at every stage of the manufacturing process;
- (iii) packaging materials received and utilized in their premises;
- (iv) details of goods removed from the factory;
- (v) readings of measuring and metering devices for each co-manufacture production run; and
- (vi) sales records.

8. Regulation 38(3) of the principal Regulations is amended in paragraph (b) by inserting the words “the authorized regulator” immediately after the words “as an importer”.

Made on the 21st March, 2023.

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

**EXPLANATORY MEMORANDUM TO THE EXCISE DUTY  
(AMENDMENT) REGULATIONS, 2023**

**LEGAL NOTICE NO. 40 OF 2023**

**PART I**

<b>Name of Statutory Instrument</b>	: The Excise Duty (Amendment) Regulations, 2023.
<b>Name of Parent Act</b>	: Excise Duty Act 2015.
<b>Enacted Pursuant to</b>	: Section 45 of the Excise Duty Act, 2015.
<b>Name of the Ministry/Department</b>	: The National Treasury and Economic Planning.
<b>Gazetted on</b>	: 31 <sup>st</sup> March, 2023, and Published on 28 <sup>th</sup> April, 2023.

**PART II**

**1.0 Purpose of the Statutory Instrument**

- 1.1 The objective of this Memorandum is to submit Legal Notice No. 40, Kenya Gazette Supplement No. 15 of 2023, and published on in the Kenya Gazette Vol. CXXV – No. 99 of 28<sup>th</sup> April, 2023, for tabling in the National Assembly in accordance with the provisions of Section 11 of the Statutory Instruments Act, 2013.
- 1.2 The Legal Notice introduces the Excise Duty (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 (Amendment) Regulations, 2023, is made under 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 better carrying out the provisions of the Excise Duty Act.

2.2 This Legal Notice amends certain provisions of the Excise Duty Regulations, 2017, referred to herein as the principal Regulations. Further, it introduces schedules on the specifications of the metering, monitoring and measuring devices/systems.

### **3.0 Policy Background**

3.1 The primary objective of the Legal Notice is to amend some provisions of the principal Regulations and the insertion of two schedules. This is meant to create fairness for taxpayers and facilitate the effective administration of excise duty.

3.2 The principal Regulations streamline the Excise Duty Act 2015 with the Tax Procedures Act 2013 and assist in interpreting and implementing the Excise Duty Act 2015.

3.3 Excise duty tax is a tool to influence the consumption of certain products, generally on health or environmental protection grounds. It is also an important source of government revenue as excise on goods, including petroleum products, accounts for about 10% of total revenue.

3.4 The principal Regulations provide for installing metering and measuring devices/systems in the production system to ensure that the correct quantities of excisable goods produced or transferred are measured. The Legal Notice, therefore, provides for specifications for metering, measurement and metering devices/systems.

3.5 This is important to ensure uniformity of such devices to prevent revenue leakages due to using inappropriate devices.

3.6 The principal regulations streamline licencing and registration of persons undertaking activities requiring an excise license under the Excise Duty Act, 2015, as well as the operations of the same.

3.7 The principal Regulations specify activities for which registration with the Commissioner is required. This Legal Notice expands this requirement to include importing or manufacturing packaging material for nicotine or nicotine substitute. This will deter supply by the importer to unlicensed manufacturers of products containing nicotine or nicotine substitutes.

3.8 Further, the Legal Notice clarifies the excise treatment of co-manufacture due to the realization that the current manufacturing process is automated and manual.

#### **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 public members to submit comments on the draft Legal Notice on **24<sup>th</sup> January 2023** through a Public Notice.

4.3 A stakeholder engagement was held on 8th February, 2023 during which, the taxpayers requested for more time to submit their comments on the Regulations. The management granted the request and extended the period to submit comments upto 21<sup>st</sup> February 2023, to allow for adequate public participation. A public notice to this effect was issued on 14<sup>th</sup> February 2023. A second engagement was held on 21<sup>st</sup> February 2023.

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

4.5 The only comment not incorporated and for which we seek your guidance is the request by stakeholders to revoke Legal Notice No. 69 of 2011 and extend the duration within which measuring devices should be installed from six months to three years, which effectively pushes forward the effective date of these amendments by two and a half years.

#### **5.0 Impact**

5.1 The Legal Notice aims to improve tax compliance and create fairness for taxpayers.

5.2 It is not expected that the Legal Notice will directly impact revenue. However, the Legal Notice indirectly leads to revenue mobilization by improving compliance.

5.3 Section 9 of the Statutory Instrument Act 2013 provides that a regulatory impact statement need not be prepared for a proposed statutory instrument if the proposed legislation only provides for an amendment of a fee, charge, or tax consistent with announced government policy. Since the Regulations are in line with the provisions of the Excise Duty Act, 2015, a regulatory impact statement has not been prepared.

#### **6.0 Monitoring and review**

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

#### **7.0 Request to the National Assembly**

The National Assembly is invited to:

- a) Note the contents of this memorandum.
- b) Adopt Legal Notice No. 40, Kenya Gazette Supplement No. 39 of 2023.

#### **8.0 Contact**

Cabinet Secretary

The National Treasury and Economic Planning

P. O. Box 30007-00100

**NAIROBI**



**Public Notice**

**Extension of the Deadline for Submission of Comments on the Draft Excise Duty (Amendment) Regulations, 2023**

In compliance with the Statutory Instruments Act, 2013, the Commissioner General on behalf of the Cabinet Secretary, National Treasury and Economic Planning, has reviewed the Excise Duty Regulations 2017 and made the draft Excise Duty (Amendment) Regulations, 2023.

In compliance with the same Act, and on behalf of the Cabinet Secretary, the National Treasury and Economic Planning, the Commissioner General hereby extends the deadline for submission of stakeholders comments and input on the draft Excise Duty (Amendment) Regulations, 2023. These will be considered in finalizing the draft regulations. The submissions should reach The Kenya Revenue Authority on or before 21<sup>st</sup> February, 2023. The draft regulations have been posted on the KRA website, [www.kra.go.ke](http://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 3240-00100, Nairobi or by email to [stakeholder.engagement@kra.go.ke](mailto:stakeholder.engagement@kra.go.ke)

Commissioner General

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[www.kra.go.ke](http://www.kra.go.ke)

Small print text regarding KRA website and contact information.

Tullipe Ushuru, Tujitegemeel



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**TENDER NOTICE**

The Kenya Bureau of Standards (KEBS) invites sealed tenders from eligible firms for the following tender:

NO.	ITEM DESCRIPTION	TENDER NUMBER	ELIGIBILITY	CLOSING DATE
1	Framework Agreement for supply and Delivery of Laboratory Chemicals and Consumables	KEBS/T010/2022/2023	Open to All	Wednesday 1 <sup>st</sup> March 2023

Tender documents detailing the requirements may be obtained from the Procurement Office, KEBS Centre, Popo Road, Off Mombasa Road, Nairobi, on normal working days between 9.00 a.m. and 4.00 p.m. upon payment of a non-refundable fee of Ksh. 1000, or be downloaded free from KEBS website as indicated in the tender document. The amount is payable in cash or bankers' cheque. All payments shall be made to the Kenya Bureau of Standards, Nairobi.

Completed tender documents in plain sealed envelopes clearly marked 'TENDER NUMBER AND TITLE OF THE TENDER' indicated on the envelope should be addressed to:

THE MANAGING DIRECTOR  
KENYA BUREAU OF STANDARDS  
P.O. BOX 54974 - 00200  
NAIROBI

And be deposited in the Tender Box located at KEBS Centre Main Reception marked 'TENDER BOX' so as to be received as indicated above. Tender opening will be carried out immediately thereafter at the KEBS Centre Conference Room A, Adm. Block, Ground Floor.

**MANAGING DIRECTOR**

#WajibikaNaKEBS

Verify the authenticity of KEBS quality marks by use of the KEBS Official Mobile App or sending a text to 20223: SM#Permit Number/ ISM#UCR Number/ DM#Permit Number

KEBS Implements an Anti-bribery Management Policy accessible through KEBS Website [www.kebs.org](http://www.kebs.org)

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**SELF-SPONSORED (EVENING/WEEKEND) COURSES**

Kenya Institute of Mass Communication (KIMC), a Public Tertiary Media College, invites applications from interested and qualified candidates for admission into the below media courses during the:

ACADEMIC YEAR 2023/2024, MAY 2023 INTAKE

Note:

- Course Duration: Ordinary Diploma (3 Years), Upgrading Diploma (2 Years), Certificate (1 Year), Module Based Certificate (8 Modules, 1 Year) & Postgraduate Diploma (1 Year).
- Classes Time, Weekdays: Monday to Friday: 4.30 pm - 8.30pm, & Saturdays: 8.00am to 5.00pm.
- Regular Courses, ALL Regular Courses are processed through Kenya Universities and Colleges Placement Services (KUCCPS). Please, visit KUCCPS website at: [www.kuccps.ac.ke](http://www.kuccps.ac.ke) for more information.

COURSES	KCSE MEAN GRADE	MANDATORY CLUSTER SUBJECTS
<b>POSTGRADUATE STUDIES</b>		
1 Post Graduate Diploma in Mass Communication.	N/A	Bachelor's degree from a recognized University
2 Post Graduate Diploma in Film Studies.	N/A	Bachelor's degree from a recognized University
3 Post Graduate Diploma in Advertising and Corporate Branding	N/A	Bachelor's degree from a recognized University
<b>PRE-SERVICE: DIPLOMA AND CERTIFICATE COURSES</b>		
1 Diploma in Broadcast Journalism.	MEAN GRADE C	C (Plain) in English, Kiswahili, and any other two subjects.
2 Diploma in Journalism.	MEAN GRADE C	C (Plain) in English, Kiswahili, and any other two subjects.
3 Diploma in Public Relations & Creative Advertising.	MEAN GRADE C	C (Plain) in English, Kiswahili, and any other two subjects.
4 Diploma in Radio Programmes Production & Broadcasting.	MEAN GRADE C	C (Plain) in English, Kiswahili, and any other two subjects.
5 Diploma in Television Programmes Production.	MEAN GRADE C	C (Plain) in English, Kiswahili, and any other two subjects.
6 Diploma in Film/Video Programmes Production (Directing).	MEAN GRADE C	C (Plain) in English, Kiswahili, and any other two subjects.
7 Diploma in Media Technology.	MEAN GRADE C	C (Plain) in English or Kiswahili, D+ (Plus) in Math, & Physics/Physical Sciences or Chemistry.
8 Certificate in Broadcast Journalism	GRADE C-	C- (Minus) in English, Kiswahili, and any other two subjects.
9 Certificate in Radio & TV Presentation Techniques.	MEAN GRADE C-	C- (Minus) in English, Kiswahili, and any other two subjects.
10 Certificate in Film/Video Programmes Production	MEAN GRADE C-	C- (Minus) in English, Kiswahili, and any other two subjects.
11 Certificate in Media Technology.	MEAN GRADE C-	C- in English or Kiswahili, D in Math & Physics/Physical Sciences or Chemistry.
<b>DIPLOMA IN UPGRADING COURSES</b>		
1 Upgrading Diploma in Broadcast Journalism	KCSE MEAN GRADE: C - (Minus) and a KIMC Certificate or its equivalent from a recognized institution Or Module - Based Certificate in Film/Video Programme Production and six (6) months of proven Industrial Attachment (Attach a copy)	
2 Upgrading Diploma in Television Programmes Production		
3 Upgrading Diploma in Film/Video Programmes Production (Directing)		
4 Upgrading Diploma in Media Technology		
<b>COURSES OFFERED AT ELDORET CAMPUS</b>		
1 Certificate in Film/Video Programmes Production (Module Based)	MEAN GRADE D+ (PLUS).	D+ in English and Kiswahili
2 Based Certificate in Broadcast Journalism (Module Based)		
<b>DEGREE PROGRAMMES (COLLABORATION)</b>		
UNIVERSITIES	DEGREE TITLE	APPLICATION
1 University of Nairobi (UoN)	Bachelor's Degree in Broadcasting Production (Film, TV, and Radio Options)	Apply to: <a href="http://www.uonbi.ac.ke">www.uonbi.ac.ke</a>

Application:

- How to Apply: Visit our website: [www.kimc.ac.ke](http://www.kimc.ac.ke), download and fill the Application Form (KIMC/KAB/ADM 001). Submit the form to The Director KIMC, P.O. Box 42423-00100, Nairobi. Deadline: Monday, 13<sup>th</sup> March 2023. Please note that ONLY successful applicants will be contacted.
- Application Documents: Enclose the following: Certified Copies of BOTH KCPE & KCSE Results Slips/ Certificates, School Leaving Certificate, and National ID/ Birth Certificate;
- Application Fee: Pay Ksh. 1,000.00 through Paybill No: 823522 Account No: 1143244362 and indicate the MPESA Transaction Number on the space provided in the Application Form.
- For more information, please visit us at our Campus, Uhohu Rd South II, Nairobi or contact us at 0708262895

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KIMC offers Certificate and Diploma Courses in Print Journalism, Broadcast Journalism, Advertising and Public Relations, Television and Radio Programmes Production, Film Video Production, Animation, Media Technology, Telecommunications Engineering and Electronic Engineering. The Institute also offers Postgraduate Diplomas in Mass Communication and in Film Studies. The Institute also trains in collaboration with the University of Nairobi, offering B.A. degree in Broadcast Production (Radio, TV and Film options).

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# KENHA steps up crackdown on rogue cane transporters to reduce accidents

CHRIS MAHANDARA KNA

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

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



A tractor ferrying sugar cane. (FILE)

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

Sugar millers have out-reached this service by contacting the transporters. When we approach them these issues, they claim they have no control," he said.

He said, a lot of freewheeling, especially when approaching a road to gain momentum

to move uphill resulting to accidents.

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

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

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

safeguard the road network in the area.

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

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

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

"We have directed them to strap the sugarcane to

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

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

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

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

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

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

# Global fund earmarks Sh3b for construction of Oxygen piping

BY LINET WAFULA KNA

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



Dr. Bernard Langat (Left), Amref Programme Director greets Nandi County Governor Stephen Sung 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 oxy-

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

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

CONTINUED ON PAGE 16



**KENYA REVENUE AUTHORITY**

## Tender Notice

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

TENDER DESCRIPTION	ELIGIBILITY	PREBID DATE, TIME AND VENUE	CLOSING/OPENING DATE, TIME AND VENUE
KA/HC/015/2023-2023 Supply of Repetitive Air-Newsprint Exchange and Support Services for a Period of Three (3) Years. (Preliminary)	OPEN	31 <sup>st</sup> January, 2023 11:00 AM VIRTUAL	7 <sup>th</sup> February, 2023 11:00 AM TIMES TOWER
KA/HC/016/2023-2023: Supply, Delivery, Testing and Commissioning of Two (2) Distributed Control Systems for Aerial Surveillance for a Period of Three (3) Years. (Preliminary)	OPEN	1 <sup>st</sup> February, 2023 11:00 AM VIRTUAL	8 <sup>th</sup> February, 2023 11:00 AM TIMES TOWER
KA/HOS/RFP/05/2023-2023: Provision of Medical Scheme Administration Services for a Period of Three (3) Years.	OPEN	30 <sup>th</sup> January, 2023 11:00 AM VIRTUAL	8 <sup>th</sup> February, 2023 11:00 AM TIMES TOWER

Tender documents detailing the requirements of the above tenders may be obtained from the Kenya Revenue Authority website [www.kra.go.ke](http://www.kra.go.ke).


Deputy Commissioner - Supply Chain Management  
 Times Tower Building, 21st Floor,  
 P.O. Box 48240-00100 GPO,  
 Tel: +254700 012303  
 Nairobi, Kenya  
 website: [www.kra.go.ke](http://www.kra.go.ke)  
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The National Treasury and Planning



KENYA REVENUE AUTHORITY

## Public Notice

### Regulations under the Excise Duty Act, 2015

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

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

Please channel your submissions to the Commissioner General, Kenya Revenue Authority, P.O. Box 48240-00100, Nairobi or by email to [stakeholderengagement@kra.go.ke](mailto:stakeholderengagement@kra.go.ke) to be received on or before 3<sup>rd</sup> February, 2023.

**Commissioner General**  
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**Tulipe Ushuru, Tujitegeme!**

**From:** KRAStakeholder Engagement/KRA  
**To:** KRAStakeholder Engagement/KRA@KRA  
**Bcc:** alia.mohamed2003@gmail.com, watamurent@gmail.com, elizabethgathoni83@gmail.com, sarahomaya99@gmail.com, isabellea@tfg.co.za, fshiru.jwa@gmail.com, achiengomondi@yahoo.com, john.forsyth@live.co.uk, mbuthiajg@gmail.com, salifwater@gmail.com, Kurialinus175@gmail.com, maggie851984@gmail.com, kibet35.ok@gmail.com, onesmuskinyanjui2015@gmail.com, Olivia.lamenya@diageo.com, kawamuapartments@gmail.com, rajumakro@yahoo.co.uk, kossiecheren@gmail.com, aspalazzi@live.it, saulches039@gmail.com, missisdilimited@gmail.com, carolkanza@hotmail.com, abdulhiabdi78@gmail.com, aswaleh.as@gmail.com, idirisabdi18@gmail.com, deriwabxo@gmail.com, aahmed@bravafood.co.ke, abdinaser.dream@gmail.com, manow4501@gmail.com, a.ajjuka@harissint.com, axa@weetabix.com, adanmarkit@gmail.com, abdirahmanyambow3@gmail.com, awinoanne14@gmail.com, adanmaalim270@gmail.com, ablun@yahoo.com, corallimited@yahoo.com, puredrop.ke@gmail.com, yaskanad175@gmail.com, info@paramountbeverages.co.ke, mohamed.aliye@gmail.com, 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**Date:** Tuesday, February 14, 2023 04:29PM

**Subject:** PUBLIC PARTICIPATION ON THE EXCISE DUTY (AMENDMENT) REGULATIONS, 2023

Dear Esteemed Stakeholder,

Following the extension of time to submit your comments on the Excise Duty (Amendment) Regulations, 2023 we hereby invite you to a public participation on **Tuesday, 21st February 2023** at **9.00am** with the meeting link below:

<https://kra.webex.com/kra/j.php?MTID=mf67ed148b316b8f7cbd89adcd133fd16>

Meeting number:  
2361 983 2277

Password:  
myJY  
6bhZig8

Please find attached Draft Legal Notice and Public Notice.

Kindly confirm attendance to facilitate tightening of the engagement details.

Regards,

Stakeholder Engagement Unit | Marketing & Communication | Kenya Revenue Authority  
P. O. Box 48240 - GPO 00100 Nairobi | +254 (020) 499 2045 or Ext. 2045 | 254 (0711) 099 999 |  
Email: [stakeholder.engagement@kra.go.ke](mailto:stakeholder.engagement@kra.go.ke)



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

Attachments:

Excise-Duty-Amendment-Regulations-2023.pdf

Public Notice\_Extension of the Deadline for Submission of Comments on the Draft  
Excise Duty Regulations (Amendment) 2023\_132.pdf

**From:** KRAStakeholder Engagement/KRA  
**To:** KRAStakeholder Engagement/KRA@KRA  
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