



KRA indefinitely postpones implementation of EGMS on bottled water and juice

The Kenya Revenue Authority (“KRA”) has postponed the implementation of the Excisable Goods Management System (“EGMS”) on bottled water and juices that was to commence on 1 August 2018.

This was communicated to the public through a joint statement issued by the Commissioner of Domestic Taxes and the Chairman of the Water Bottlers Association of Kenya (WBAK) on 31 July 2018.

Background

The requirement to affix stamps on excisable goods was first introduced in 2013 by the then Minister for Finance, through the EGMS Regulations 2013, in accordance with Section 116B of the repealed Customs and Excise Act

Cap 472. The Regulations required that every package of excisable goods, except motor vehicle, manufactured in or imported into Kenya be affixed with an excise stamp. The EGMS Regulations also imposed the cost of acquiring the

stamps, excise stamps applicators, adjustments and adaptations of equipment and premises necessary to install the EGMS system on the manufacturers of excisable goods.





Subsequently, new EGMS Regulations were introduced *vide Legal Notice 53/2017 effective 30 March 2017*. The new regulations amended the pricing of excise stamps from a fixed price of KES 1.50 per stamp to different prices for different types of excisable goods (*Stamps on mineral water are charged at KES 0.50 and KES 0.60 on and juices*).

The KRA had scheduled to implement the EGMS in 2 phases:

Phase 1 covering spirits, wine and cigarettes was implemented in 2013 while **Phase 2** was scheduled to take effect on 1 November 2018. However, the High Court, on 12 March 2018, invalidated the EGMS Regulations 2017 on the basis that they were enacted in a manner that violated the Constitution and the Statutory Instruments Act. The High Court determined that there was inadequate public participation prior to the promulgation of LN 53 of 2017.

Subsequently, the matter was referred to the Court of Appeal which stayed the execution of the High Court judgement pending hearing and determination of the appeals before it.

The National Assembly also weighed in on the matter and on 26 July 2018 made a decision that the EGMS Regulations were null and void since they were not discussed and approved by Parliament.

The joint statement by KRA and WBAK follows extensive consultations between the KRA and various stakeholders in the water and juice industry.

Our view

The EGMS Regulations are expected to increase the operating costs and capital expenditure for water and juice manufacturers and this is likely to affect the operations of the manufacturers if not properly implemented. In our view, the EGMS Regulations will be instrumental in promoting accountability for excise duty, improving revenue collections and combating illicit trade. However, the goals of the EGMS will be better achieved where the Government and relevant stakeholders are in sync in terms of how the EGMS should be implemented.

The indefinite postponement of the EGMS implementation by the KRA is a step in the right direction that will give room

for meaningful discussions between the relevant stakeholders to ensure objectives of all stakeholders are adequately addressed.

It would be worth noting that the EGMS Regulations requires that stamps are affixed on all goods except motor vehicles. In the absence of guidelines from KRA on implementation of EGMS on other excisable goods such as cosmetics and food supplements, it would be useful for the manufacturers of these products to familiarise themselves with the Regulations and plan ahead accordingly.

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