



## Tax Alert

### Commissioner General adjusts specific excise duty rates for inflation

The Commissioner General (“CG”) of the Kenya Revenue Authority (“KRA”) has vide Gazette Notice No 164 of 2018 adjusted specific excise duty rates for inflation on certain excisable goods in accordance with Section 10 of the Excise Duty Act. The new rates will take effect on 1 August 2018.

#### Background

The Excise Duty Act, 2015 (“the Act”) came into force on 1 December 2015 repealing the Customs and Excise Duty Act, Cap 472. A key change in the Act was the change in excise duty structure from ad valorem to specific, save for food supplements, motor vehicles and cosmetics. The use of specific duty rates gives the Commissioner the opportunity to adjust the duty rates to take into account inflationary pressures and respond to changes in the economy.

Section 10 of the Act empowers the Commissioner to adjust specific duty rates annually to take into account inflation. The inflationary adjustment should be made at the beginning of every financial year and is calculated as the average rate of monthly inflation of the preceding financial year. The Finance Act 2017 had amended the period within which the adjustment should be made to 2 years to promote stability in the prices of goods but this was reversed through the Finance Bill 2018.

This is the first time inflationary adjustments are being implemented by the CG since the law took effect on 1 December 2015.

The CG has through the above mentioned Gazette Notice released a schedule of adjusted specific excise duty rates as shown in the table below:

| Description  | Current rate (KES) | Adjustment (%) | New rate (KES)   |
|--|--------------------|----------------|------------------|
| Fruit juices (including grape must), and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter | 10 per litre       | 5.00           | 10.5 per litre   |
| Waters and other non-alcoholic beverages not including fruit or vegetable juices.  | 5 per litre        | 4.00           | 5.20 per litre   |
| Beer, cider, perry, mead, opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 10%  | 100 per litre      | 5.20           | 105.20 per litre |
| Powdered beer  | 100 per kg         | 5.20           | 105.20 per kg    |
| Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits  | 150 per litre      | 5.20           | 157.80 per litre |
| Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 10%  | 200 per litre      | 5.20           | 210.40 per litre |
| Cigars, cheroots and cigarillos, containing tobacco or tobacco substitutes   | 10,000.00 per kg   | 5.20           | 10,520.00 per kg |
| Electronic cigarettes  | 3,000 per unit     | 5.20           | 3,156 per unit   |
| Cartridge for use in electronic cigarettes   | 2,000 per unit     | 5.20           | 2,104 per unit   |
| Cigarettes with filters (hinge lid and soft cap)   | 2,500 per mille    | 5.20           | 2,630 per mille  |
| Cigarettes without filters (plain cigarettes)  | 1,800 per mille    | 5.17           | 1,893 per mille  |
| Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and "reconstituted tobacco"; tobacco extracts and essences                                 | 7,000 per kg       | 5.20           | 7,364 per kg     |
| Motor cycles of tariff heading 8711 other than motor cycle ambulances and locally assembled motor cycles   | 10,000 per unit    | 5.20           | 10,520 per unit  |

### Our view

According to statistics from the Kenya National Bureau of Statistics, the average monthly rate of inflation for the last financial year ending June 2018 was **5.25%**. Paragraph 2 of the First Schedule of the Act prescribes the formula for adjusting the rates for inflation as follows:

*Current excise duty rate \* Average monthly inflation for the preceding year*

In this regard, the CG would have been expected to adjust the excise duty rates uniformly upwards by 5.25%. We however note that the adjustment factor varies across the various products with water having the lowest increment of 4% whereas alcoholic beverages, some cigarettes and motor cycles have the largest increment at 5.2%. It is therefore unclear why the adjustment factor varies across the different products.

The increase in the specific excise duty rates, will in our view generate additional revenue for the government and hopefully contribute towards plugging the budget deficit.

It would be important to note that the specific rates on petroleum products have not been adjusted through the Gazette notice, perhaps awaiting the anticipated changes in the pricing of petroleum products after the exempt status of petroleum products lapses in September 2018. Similarly, the excise duty rate on plastic shopping bags has not been adjusted following the ban on plastic bags that was effected by the National Environment Management Authority (NEMA) in August 2017.

### Way forward

We would encourage all companies that deal in excisable goods to take note of the new rates and plan their activities accordingly. We are available to assist in reviewing your current operations to ensure continued compliance.

Kindly contact your relationship manager at Deloitte who will be more than glad to offer you guidance and assistance as necessary.

Kind regards,

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