



## **Excise Duty Regulations, 2017**

Keeping you informed

The Cabinet Secretary to the National Treasury recently published the Excise Duty (Remission of Excise Duty) Regulations 2017 and The Excise Duty (Excisable Goods Management System) Regulations, 2017 through Legal Notices 51 and 52 respectively of the Kenya Gazette Supplement Number 44.

Below is our analysis of the new Regulations.

## The Excise Duty (Remission of Excise Duty) Regulations, 2017

### Illicit brews dealt a blow

The Cabinet Secretary (CS), National Treasury pursuant to *Section 7(2) of the Excise Duty Act 2015*, published new regulations on remission of excise duty on beer manufactured using agricultural produce grown in Kenya with the exception of barley. The Excise Duty (Remission of Excise Duty) Regulations 2017 replace the Customs and Excise (Remission of Excise Duty) Regulations 2013, which have been repealed.

The Regulations provide for remission of excise duty at **80%**, which aims to discourage consumption of illicit brew and promote local farmers of sorghum, millet, cassava and other agricultural produce used in the manufacture of beer.

The Regulations further stipulate conditions that should be met by local manufacturers of beer to be eligible for the excise duty remission. **The Regulations took effect on 30 March 2017.**

We provide our analysis of the new regulations in the table below:

Regulation No.	Title	The measure	Our View
<b>Regulation 2</b>	80% remission of excise duty	The CS, may on application by a manufacturer, grant excise duty remission at 80% on beer manufactured using sorghum, millet, cassava or any other agricultural produce grown in Kenya except barley.	<p>The CS has re-introduced excise duty remission at 80% after the scrapping of the 90% remission vide the Finance Act 2016 effective 9 June 2016.</p> <p>This is a welcome move in line with the Government's intention to discourage the consumption of illicit brew by making locally produced beer cheaper and more affordable to low income earners.</p> <p>In addition, this measure aims to provide a ready market for farmers of agricultural produce used in the manufacture of beer.</p> <p>The remission has been extended to cover other agricultural produce other than sorghum, millet or cassava, which were covered under the revoked Regulations.</p>
<b>Regulation 3</b>	Conditions necessary for remission	<p>The 2017 Regulations have introduced the following changes to the prerequisites that applicants of excise duty remission must adhere to:</p> <ul style="list-style-type: none"> <li>• Introduction of the requirement to have a fully installed Excisable Goods Management System (EGMS); and to meet other regulatory requirements related to manufacture and distribution of beer including public health and KEBS.</li> <li>• Reduction of the maximum price at which beer may be sold from KES 160 to KES 100;</li> <li>• Removal of the following requirements:               <ul style="list-style-type: none"> <li>– Manufacturer to have been previously producing beer for 3 years;</li> <li>– Manufacturer to have a minimum monthly excise duty yield of KES 10 million</li> </ul> </li> </ul>	<p>The reduction of the maximum price at which beer may be sold from KES 160 to KES 100 is geared towards ensuring the remission benefits granted to manufactures is extended to the consumers. This measure is further aimed at capping the price of beer to a level considered to be within reach of low-income earners.</p> <p>The change is expected to discourage the consumption of illicit brew by making the locally produced beer more affordable to the 'mwananchi'.</p> <p>Further, the qualifying conditions imposed on manufacturers under the revoked Regulations 2013, have been relaxed to bring on board more manufactures of low-end beer.</p>

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<b>Regulation 4</b>	Filing of monthly returns	Manufacturers who are granted the remission will be required to file returns with the Commissioner detailing the quantities and types of: raw material used; beer manufactured and sold.  The returns should be filed monthly or at intervals directed by the Commissioner.	The requirement to file input-output monthly returns will enable the Commissioner monitor and regulate the manufacture and sale of beer under the remission to curb against abuse of the remission; ensure adherence to the imposed conditions; and ensure the desired outcome is achieved.  Under the revoked Regulations, manufacturers were only required to provide a return covering the quantities of beer manufactured and sold.
<b>Regulation 5</b>	Penalty on provision of false or misleading information	The new Regulations have introduced the imposition of fines provided for under the Excise Duty Act or any other law on manufacturers granted remission based on false or misleading information.	Section 97(c) of the Tax Procedure Act as read together with Section 104(3) provides that a person who claims a tax relief and is not entitled will be liable to a fine not exceeding 10 million shillings or double the tax evaded whichever is higher or to imprisonment to a term not exceeding 5 years. This move is intended to discourage fraudulent applications.  The 2013 Regulations only required manufacturers granted remission based on false/misleading information to refund the remitted excise duty.

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## Excisable Goods Management System (EGMS)

The Cabinet Secretary, National Treasury has introduced new regulations for the management of the Excisable Goods Management System (EGMS) in accordance with the provisions of Section 45 of the Excise Duty Act. The new regulations will replace the Excise Duty (EGMS) Regulations 2013 and the primary objective will be to improve efficiency in the management of excisable goods by addressing the deficiencies in the EGMS Regulations 2013.

One of the key amendments is the change in the pricing of excise stamps which is expected to alleviate the inequity caused by use of fixed stamp prices across all excisable products.

The new Regulations were introduced vide Legal Notice 53 of 2017 and took effect on 30 March 2017.

We summarize below the key changes introduced in the EGMS Regulations 2017:

Regulation No.	Title	The measure	Our View
<b>Regulation 5, Schedule</b>	Change in excise stamp fees.	The pricing of excise stamps has been amended from a fixed price of KES 1.50 per stamp to different prices for different types of excisable goods.  See attached the revised prices in <b>Appendix I</b>	The CS has more than doubled the excisable goods that require to be affixed with excise stamps to facilitate monitoring of excisable goods in the market and seal revenue leakages. The excisable goods which will now require to be affixed with stamps include mineral water, fruit juices, non-alcoholic beverages and cosmetic products. Manufacturers of these products are likely to load the cost of the stamps onto the products in addition to the capital expenditure incurred in configuring the production lines to be compatible with the EGMS system.  The proposed change in pricing of excise stamps is expected to reduce the inequity caused by use of fixed prices on excisable goods required to be affixed with stamps. The Regulations have imposed a higher cost of stamps on "sin" products such as alcohol and cigarettes whose prices are more than 4 times those of the other products.
<b>Regulation 8(2)</b>	Reduction of duration to apply for excise stamps	The period within which applications for excise stamps should be submitted to the Commissioner has been reduced from 90 days to 60 days prior to manufacture or importation of excisable goods.	This change is expected to facilitate compliance by manufacturers and importers by reducing the lead time required to order the excise stamps.
<b>Regulation 9</b>	Provision of forecast on usage of excise stamps	Importers and manufacturers will be required to provide a month by month forecast of stamps they intend to use in the subsequent year. The period within which the forecast should be provided to the Commissioner has been reduced from 120 days to 60 days before manufacture or importation of the goods.	The reduction of the duration required to provide stamp usage forecast is expected to improve the ease of doing business for the manufacturers and importers of excisable goods and facilitate compliance with the regulations.

<b>Regulation 12 (1)(b)</b>	Time of affixing excise stamps	The time required to affix stamps on imported goods has been reduced from 7 days to 5 days after clearance through Customs.	This is a control measure aimed at checking against entry of goods without stamps into the market and hence seal revenue leakages.
<b>Regulation 12(2)</b>	Introduction of digital stamps	The Regulations have introduced the use of digital stamps by empowering the Commissioner to permit manufacturers to print digital stamps using indelible security ink.	This will provide importers and manufacturers with an option of using electronic stamps which is expected to address the challenges experienced by manufacturers in using physical stamps such as loss of stamps during affixation and reconciliation challenges.
<b>Regulation 13(1)</b>	Return of unused excise stamps	<p>The circumstances under which unused excise stamps should be returned to the Commissioner have been amended to include cases where there is a discrepancy between declared and verified imported goods; and exclude cases where the importers fail to import.</p> <p>Further, excise stamp fees on returned unused stamps shall be refunded within 90 days of returning the stamps where:</p> <ul style="list-style-type: none"> <li>• The manufacturer/importer stops manufacturing/importing the excisable goods;</li> <li>• There are defects in the excise stamps;</li> <li>• There is a discrepancy between the declared and verified imports of excisable goods;</li> <li>• The excise stamps have been declared out of use by the Commissioner; and</li> <li>• The excisable goods have been excluded from the requirement to be affixed with stamps.</li> </ul>	<p>Under the EGMS Regulations 2013, refund of stamp fees was not granted in instances where one ceased to manufacture or import excisable goods; or where there were defects in the excise stamps.</p> <p>The introduction of refunds on stamps returned under the said circumstances above is a welcome move that will ensure fairness in the refund of excise stamp fees.</p> <p>The increase in the refund period from 60 days to 90 days is likely to have a negative impact on the cash flows of manufactures/importers.</p>
<b>Regulation 24, EGMS Regulations 2013</b>	Repeal of the requirement to seal equipment and devices	The requirement for contractors to furnish the Commissioner and manufacturer with a list of pieces of equipment making up the EGMS system on conclusion of installation of a new production line has been revoked.	<p>There have been concerns by manufacturers in the past that granting contractors access into their factories and providing them with production line plans exposed them to intellectual property theft.</p> <p>The repeal of this requirement appears to be aimed at addressing these concerns.</p>
<b>Regulation 27(2)</b>	Marking of products and packages supplied to the National Police Service (NPS)	The Regulations have introduced the requirement by manufactures/importers to mark the material wrapping packages for goods to be supplied to the NPS.	The EGMS Regulations 2013 listed goods being supplied to privileged institutions (such as KDF and diplomatic institutions) as goods requiring to be marked. The amendment serves to include the NPS who were introduced into the list of privileged institutions via the Finance Act 2016.

<b>Regulation 28(1)</b>	Exemption from excise stamps	<p>Goods manufactured to be supplied to the NPS have now been exempted from being affixed with excise stamps.</p> <p>Further, the Commissioner may require excisable goods exempted from excise stamps to have distinct markings.</p>	<p>Previously, only goods manufactured for consumption by the Kenya Defense Forces were exempted.</p> <p>The marking requirement is a new measure which is expected to facilitate identification, authentication and traceability of excisable goods exempted from excise stamps to minimize fraudulent activities by manufactures and importers.</p>
<b>Regulation 29(2)</b>	Verification of stamps	<p>The new regulations have made it mandatory for persons engaged in distributing or retailing of excisable goods to:</p> <ul style="list-style-type: none"> <li>• Keep delivery notes, invoices or any other documents from the supplier of the excisable goods; and</li> <li>• Provide sufficient light for verification and authentication of the excise stamps;</li> </ul>	<p>The requirement to retain the documents is in line with the provisions in the other Kenyan tax laws and is geared towards facilitating future audits by the KRA.</p>
<b>Regulation 30 &amp; 35</b>	Offences	<p>The penalty imposed on specific offences listed in the Regulations has been increased from a fine of (between KES 100,000 to KES 1,500,000) to a maximum fine of KES 5,000,000. We have listed the offences in <b>Appendix II</b>.</p> <p>Further, the general penalty on offences not specified in the regulations is a maximum of KES 1,500,000 or imprisonment for a term not exceeding 3 years or both.</p>	<p>The penalty on specific offences has been increased significantly to further discourage non-compliance with the EGMS regulations.</p> <p>The minimum general penalty of KES 100,000 on general offences provided for under the revoked regulations has been deleted.</p>
<b>Regulation 31</b>	Refusal to issue excise stamps	<p>The Commissioner may refuse to issue excise stamps where the applicant has not fully accounted or paid for excise stamps issued to them or failed to fully comply with the provisions of the Excise Duty Act in relation to filing of returns and payment of excise duty.</p>	<p>This change is aimed at enforcing compliance with the excise duty laws and regulations.</p>
<b>Regulation 5</b>	Penalty on provision of false or misleading information	<p>The new Regulations have introduced the imposition of fines provided for under the Excise Duty Act or any other law on manufacturers granted remission based on false or misleading information.</p>	<p>Section 97(c) of the Tax Procedure Act as read together with Section 104(3) provides that a person who claims a tax relief and is not entitled will be liable to a fine not exceeding 10 million shillings or double the tax evaded whichever is higher or to imprisonment to a term not exceeding 5 years. This move is intended to discourage fraudulent applications.</p> <p>The 2013 Regulations only required manufacturers granted remission based on false/misleading information to refund the remitted excise duty.</p>

**Appendix I – Excise stamp fees**

Category of excisable goods	Fees per stamp (KES)
Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes; cigarettes containing tobacco or tobacco Substitutes; Other manufactured tobacco and manufactured tobacco substitutes; “homogenous” and “reconstituted tobacco”; tobacco extracts and essences	2.80
Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	2.80
Compounded spirits of alcoholic strength exceeding 10%	2.80
Spirituous beverages of alcoholic strength not exceeding 10%	1.50
Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages	1.50
Mineral water and aerated water of tariff no. 2201.10.00	0.50
Fruit juices (including grape must), and vegetable juices unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter	0.60
Sweetened or flavoured water and non-alcoholic beverages not including fruit or vegetable juices of tariff heading 2202	0.60
Cosmetics and Beauty products of tariff heading Nos. 3303, 3304, 3305 and 3307	0.60

**Appendix II – List of specific offences**

Offence	Penalty	Regulation
Print over or deface an excise stamp affixed on any excisable goods or package.		
Possession of excisable goods on which the excise stamps have not been affixed and which have not been exempted under the EGMS Regulations, 2017.		
Attempt to acquire or acquire an excise stamp without the authority of the Commissioner.		
Counterfeit, or print, make or in any way create an excise stamp without the authority of the Commissioner.	Fine not exceeding KES 5,000,000 or to imprisonment for a term not exceeding 3 years or to both.	Regulation 30(1)
Possession of an excise stamp printed, made or in any way acquired without the authority of the Commissioner.		
Possession of, convey, distribute, sell, offer for sale or by way of trade expose excisable goods without affixing excise stamps in accordance with the Regulations.		
Possession of, convey, distribute, sell, offer for sale or by way of trade expose excisable goods affixed with counterfeit excise stamps.		
Contravention of regulations related to affixation of stamps.	KES 100,000 or double the value of the excise duty payable on the excisable goods, whichever is higher.	Regulation 12(4)
Failure to maintain delivery notes, invoices or such other documents from the supplier of the excisable goods.	Double the open market value of the excisable goods or a fine of KES 100,000 whichever is higher; cancellation of licenses for repeat offenders.	Regulation 29(3)
General Penalty for which no specific penalty is provided	Fine not exceeding KES 1,500,000 or to imprisonment for a term not exceeding three years or both.	Regulation 35

## Contact Us

If you would like more information on the above two topics, please contact your **Tax Relationship Manager**.

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