

Excise Duty Regulations 2017



The National Treasury published Excise Duty regulations, specifically, “Excise Duty Remissions Regulation, 2017” and “Excisable Goods Management Regulations (EGMS), 2017”.

The subsidiary legislation seeks to streamline the Excise Duty Act with the Tax Procedures Act 2015 and will assist in interpretation and implementation of the Excise Duty Act 2015.

We summarize below the subsidiary legislations introduced in the new Regulations in order to provide clarity as tax payers seek to comply with the Excise Duty laws.

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Remission of Excise Duty Regulations

The remission regulations provide for an eighty per cent (80%) remission of Excise Duty with respect to beer made from sorghum, millet or cassava or any other agricultural produce grown in Kenya. Remission of Excise Duty for this class of beer was previously provided for in the Alcoholic and Drinks Control (Amended Act) 2015 at the rate of ninety percent (90%). However, Section 68A of the Alcoholic and Drinks Control Act, 2015 was repealed by the Finance Act 2016 rendering the Cabinet Secretary powerless in the implementation of tax policies including the remission of duty on locally manufactured drinks.

Reintroduction of the remission at a rate of 80% empowers the CS to grant remission to beer in the specified class. The regulations shall however, not apply in respect of beer made from barley. The regulations also revoke the Customs and Excise (Remission of Excise Duty) Regulations, 2013.

Conditions Necessary for Remission of Excise Duty

A manufacturer who complies with the above conditions may apply for a remission of excise duty provided that he/she:

- is tax compliant;
- has a valid excise license to produce beer
- has a fully installed Excisable Good Management System
- ensure that the beer has atleast 75% content of sorghum, millet or cassava or any other agricultural products grown in Kenya excluding sugar and barley;
- packs the beer in a pressurized container of at least 30 litres or such other container and quantity as the Cabinet Secretary may approve
- sell the beer at not more than 100 per litre
- meet other regulatory requirements related to the manufacture and distribution of beer including the requirements of public health and Kenya Bureau of Standards and
- comply with such other conditions as the Commissioner may impose

Returns

A manufacturer who has been granted remission under these Regulations shall provide to the Commissioner in the prescribed manner a detailed return of the quantities and types –

- of raw materials used;
- of beer manufactured; and
- of beer sold.

The return made shall be submitted once in each month or at such other intervals as the Commissioner may require.

Penalty

A manufacturer who is granted a remission under the regulation based on false or misleading information shall, upon demand by the Commissioner, refund the excise duty remitted in addition to any other fine that may be imposed under the Act or any other written law.

Excisable Goods Management System

The regulations govern the use of excise stamps and are made pursuant to Section 28 of the Excise Duty Act, 2015.

A key highlight to note in the new regulations is that all classes of excisable goods except motor vehicles are required to be affixed with excise stamps. The regulations also specify the various stamp fees for the different classes of excisable goods.

The coming into force of the new regulations revokes the previous Excisable Goods Management System Regulations, 2013.



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Definition of terms

The Subsidiary Legislation has introduced the following definitions;

- "compounded spirit" means a spirit that is ready for consumption as a beverage and put up for retail;
- "excise stamp" means a paper stamp, digital stamp or any mark that the Commissioner may approve for affixation or printing on excisable goods in accordance with these regulations.
- "package" means a packet, bottle or similar retail unit of excisable goods specified under these Regulations;
- "printer" means a person appointed by the Commissioner to print and supply excise stamps; and
- "System" means the Excisable Goods Management System and includes excise stamps, a track and trace system, a production accounting system, and related software and hardware.

Application for Excise Duty

A manufacturer or importer of excisable goods is required to apply to the Commissioner for excise stamps in a prescribed form at least sixty days (60) before the manufacture or importation of the excisable goods.

Payment of the excise stamp fees by a manufacturer or importer of excisable goods shall be made after the Commissioner approval of the application. Proof of importation by an importer of excisable goods maybe required by the Commissioner before issuing the importer with the excise stamps.

However, the Commissioner may, subject to any conditions that the Commissioner may impose, issue excise stamps to an importer of excisable goods before importation.



Forecast of Consumption

A manufacturer or importer of excisable goods may be required by the Commissioner to provide a forecast of atleast sixty days (60) of the quantities of excise stamps which the manufacturer or importer intends to use before the beginning in each month for the subsequent period of six months.

Affixation of Excise Stamps

Every package of excisable goods, except motor vehicles, manufactured in or imported into Kenya are required to be affixed with an excise stamp. The purpose of this being to;

- deter counterfeiting;
- facilitate tracking of the stamps and excisable goods along the supply chain;
- enable accounting for the production of excisable goods manufactured or imported; and
- facilitate any persons in the supply chain to authenticate the stamps and excisable goods.

Excise stamps are expected to be affixed on excisable goods in the following manner specified by the Commissioner:

- in case of locally manufactured goods, at the production facility immediately after packaging; or
- in the case of imported goods, at a place approved by the Commissioner within five (5) days of the clearance for importation of the goods for home use:

The Commissioner Excise stamps on imported excisable goods to be affixed at the production facility in the exporting country in accordance with such conditions as the Commissioner might specify.

In addition, the Commissioner can upon the application by the manufacturer or importer, permit digital stamps to be printed by the System on each package and in a visible place with indelible security ink to enable the authentication of, tracking and tracing of, and production accounting for excisable goods.

A person who contravenes the provisions of this regulation commits an offence and shall be liable on conviction to a penalty of KES 100,000 or double the value of the excise duty payable on the excisable goods, whichever is higher.

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Return for Unused Excise stamps

Unused excise stamp may be returned by a manufacturer or importer of excisable goods to the Commissioner when;

- the manufacturer stops manufacturing; there are defects in the excise stamp sheets or reels;
- there is a discrepancy between the declared and the verified imports of the excisable goods;
- the excise stamps have been declared out of use by the Commissioner; or
- the excisable goods have been excluded from the requirements of these Regulations.

The Commissioner shall refund to the manufacturer or the importer of excisable goods, as the case may be, the excise stamp fees paid for excise stamps within ninety days (90) of the return of the stamps.

Allowance for damaged stamps

Damaged excise stamps shall be preserved for verification by an authorised officer.

Where a manufacturer or importer of excisable goods cannot account for any excise stamps issued to him by the Commissioner, the Commissioner shall compute the excise duty and other taxes on the unaccounted for stamps based on the highest excise rate of excise duty, value and volume of excisable goods manufactured or imported by the manufacturer or importer, as the case may be.

In computing excise duty in the case of unaccounted for excise stamps, the Commissioner shall allow for wastage and damages which shall not exceed one percent of the quantity of the issued stamps.

Transfer of Excise Stamp

Transfer of excise stamps held in stock by a manufacturer or importer of excisable goods to another manufacturing or importing unit owned by the same manufacturer or importer may be allowable subject to the prior approval of the Commissioner. Transfer of excise stamps by a manufacturer or importer of excisable goods without prior approval of the Commissioner constitutes an offence.

The commissioner shall prescribe the procedure and conditions for transfer and accounting of the excise stamps.

Installation and Composition of the System

The Commissioner shall appoint a contractor to conduct installation, integration, preventive and corrective maintenance procedures of all the equipment comprising the system at the manufacturer's or importer's premises under the supervision of an authorised officer.

In the case where a new or modified system is required, the Commissioner shall notify the manufacturers or importers of excisable goods in writing at least thirty days (30) before the installation and integration of the new or modified System.

Obligations of manufacturer or importers

Manufacturers or importers of excisable goods shall be responsible for the cost of;

- excise stamps
- excise stamps applicators,
- adjustments or adaptations of their equipment and premises necessary to install and integrate the new or modified System on each production line.

The manufacturer or importer shall also be obliged to implement the following;

- report to the Commissioner on any non-operational production lines within twenty four hours.
- be responsible for the conservation and security of the System installed in the premises
- report on any operating failure or tamper of the security within twenty four hours
- declare to the Commissioner the packages and labels of brands manufactured or imported including those for export and duty free shops;
- declare to the Commissioner, at least thirty days before the start of the production of new brands of goods or any change in the graphic art of existing brands of goods and the corresponding packages and labels;
- apply to the Commissioner at least thirty days before installation or removal in case of any reactivation of inoperative production lines, deactivation of production lines, carrying out of maintenance works or relocation of production line; installation of a new production line, acquisition or sale of industrial equipment or machinery.

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Marking of Duty Free Products and services

Packages of duty free or export excisable goods specified in the Regulations are required to bear distinct markings to enable the goods to be trackable and traceable.

In addition, the Regulations make it a requirement for any material wrapping the package for wholesale purposes to have the following printed on it:

- in the case of exports, the country of final destination;
- in the case of excisable goods for consumption in Kenya, "For Use In Kenya";
- in the case of excisable goods for sale to duty-free shops, or Diplomatic shops, "Duty Free";
- in the case of excisable goods for consumption by Kenya Defence Forces, "Kenya Defence Forces" and,
- in the case of excisable goods for consumption by National Police Service, " National Police Service"

Exemption from Excise Stamp

The regulations exempts the following excisable goods from the requirement of excise stamps–

- excisable goods manufactured for export, the Kenya Defence Forces, the National Police Service or delivered to a duty free shop;
- excisable goods imported or purchased from a duty free shop by privileged persons or institutions listed in the Second Schedule to the Act; and
- excisable goods imported into Kenya as samples which shall have been exempted from import duty under the Fifth Schedule to the East African Community Customs Management Act,

Verification of Stamps

Stamps placed on excisable goods shall be verified and authenticated by a manufacturer, importer, distributor, retailer or any other person involved in the supply chain of excisable goods before admitting the goods in the manufacturer's, importer's, distributor's, retailer's or other person's premises.

Offences

The regulations provide for the following offences.

- printing over or deface an excise stamp affixed on any excisable goods or package;
- being in possession of excisable goods on which the excise stamps have not been affixed and which have not been exempted under these Regulations;
- attempting to acquire or acquire an excise stamp without the authority of the Commissioner;
- counterfeiting, or printing, making or in any way creating an excise stamp without the authority of the Commissioner;
- being found in possession of an excise stamp printed, made or in any way acquired without the authority of the Commissioner;
- being found in possession of, convey, distribute, sell, offer for sale or by way of trade expose excisable goods without affixing excise stamps in accordance with these Regulations; or
- being found in possession of, conveyance, distribution, selling, offering for sale or by way of trade expose excisable goods affixed with counterfeit excise stamps.

A person who contravenes the above provisions commits an offence and is liable upon conviction to a fine not exceeding KES 500,000 or to imprisonment for a term not exceeding three years(3) or to both.

Refusal to issue Stamps

The Commissioner may refuse to issue excise stamps to a person if that person has;

- not fully accounted for excise stamps previously issued to him or her;
- not fully paid for excise stamps previously issued to them; or

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failed to fully comply with the provisions of the Act relating to filing of returns and payment of excise duty.

Seizure of stamps, equipments and goods

The Commissioner shall seize excise stamps, equipment, vehicles or goods where;

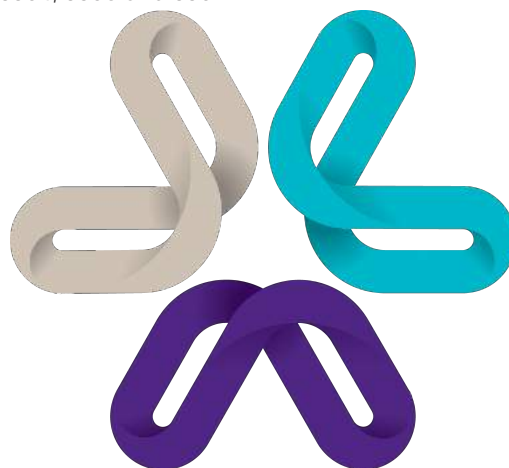
- excise stamps; have been counterfeited, which were subject to be returned to the Commissioner, were not returned; or have been found in the possession of persons other than those to whom they were supplied;
- the vehicle is used in the storage, concealment or transportation of excisable goods that have not met the requirements of these regulations;
- the equipment or plant is used in the manufacture of counterfeit excise stamps; or
- the excisable goods; bear counterfeited excise stamps, bear excise stamps affixed in a manner not consistent with guidelines prescribed by the Commissioner; or do not bear excise stamps as required in accordance with these Regulations.

Excise Stamp Fees

The excise stamp fees shall be paid to the Commissioner of Revenue by the manufacturers and importers of excisable good based on quantity of stamps issued to them and before the stamps are issued to the manufacturer or importer.

Below is a summary table that shows the category of goods and the excise stamp fees charged:

Category of excisable goods	(Fees KSh)
Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes	2.8 per stamp
Cigarettes containing tobacco or tobacco Substitutes	2.8 per stamp
Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and "reconstituted tobacco"; tobacco extracts and essences	2.8 per stamp
Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	2.8 per stamp
Compounded spirits of alcoholic strength exceeding 10%	2.8 per stamp
Spirituos beverages of alcoholic strength not exceeding 10%	1.5 per stamp
Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages	1.5 per stamp
Mineral water and aerated water of tariff no. 2201.10.00	0.5 per stamp
Fruit juices (including grape must), and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter	0.6 per stamp
Sweetened or flavoured water and non-alcoholic beverages not including fruit or vegetable juices of tariff heading 2202	0.6 per stamp
Cosmetics and Beauty products of tariff heading Nos. 3303, 3304, 3305 and 3307	0.6 per stamp



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Conclusion

The new regulations provide for clarity and harmony of the existing acts with the amendments in the Finance Bill 2017.

Of notable difference between the old Excise Goods Management System Regulations, 2013 and the new regulations is that the previous regulations did not require all excisable goods to be affixed with an excise stamp and did not provide for the specific excise stamp fees to be used. However, with the incoming regulations, all excisable goods except motor vehicles are required to be affixed with an excise stamp. This will aid in reducing counterfeit products in the market. The regulations also provide for the specific excise stamp fees to be used.

The regulations also provide for stringent measures and clear guidelines to be adhered to in the installation and maintenance of the System. The move seek to close out on any loopholes and revenue leakages in the existing Systems.

The remission regulations provide for an eighty percent remission of excise duty for locally manufactured beer made from sorghum, millet or cassava or any other agricultural produce grown in Kenya. The measures are likely to boost the agricultural sector and especially the production of sorghum, millet and cassava.

Get in touch

- Please get in touch with us to find out more about how this affects you.

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