

3. A manufacturer applying for remission under paragraph 2(1) shall—

- (a) be tax compliant;
- (b) have a valid excise license to produce beer;
- (c) have a fully installed Excisable Goods Management System;
- (d) ensure that the beer has at least seventy five per centum content of sorghum, millet or cassava or any other agricultural products grown in Kenya excluding sugar and barley;
- (e) pack the beer in a pressurized container of at least thirty litres or such other container and quantity as the Cabinet Secretary may approve;
- (f) sell the beer at not more than one hundred shillings per litre;
- (g) meet other regulatory requirements related to the manufacture and distribution of beer including the requirements of public health and Kenya Bureau of Standards; and
- (h) comply with such other conditions as the Commissioner may impose.

Conditions necessary for remission of excise duty.

4. (1) Subject to the provisions relating to returns under the Act, 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—

Returns.

- (a) of raw materials used;
- (b) of beer manufactured; and
- (c) of beer sold.

(2) A return made under paragraph (1) shall be submitted once in each month or at such other intervals as the Commissioner may require.

5. A manufacturer who is granted a remission under regulation 2(1) 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.

Penalty.

6. The Customs and Excise (Remission of Excise Duty) Regulations, 2013, are revoked.

Revocation. L.N. 103/2013.

Made on the 30th March, 2017.

HENRY ROTICH,
Cabinet Secretary for the National Treasury.

LEGAL NOTICE NO. 53

THE EXCISE DUTY ACT

(No. 23 of 2015)

THE EXCISE DUTY (EXCISABLE GOODS MANAGEMENT SYSTEM) REGULATIONS, 2017

IN EXERCISE of the powers conferred by section 45 of the Excise Duty Act, 2015, the Cabinet Secretary to the National Treasury makes the following Regulations:—

THE EXCISE DUTY (EXCISABLE GOODS MANAGEMENT SYSTEM) REGULATIONS, 2017

1. These Regulations may be cited as the Excise Duty (Excisable Goods Management System) Regulations, 2017.

Citation.

2. In these Regulations, unless the context otherwise requires—

Interpretation.

“authorised officer” means an officer authorised by the Commissioner to perform any function under these Regulations;

“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.

“importer” means a person registered as an importer by the Commissioner to import excisable goods specified under these Regulations;

“manufacturer” means a manufacturer licensed to manufacture goods specified under 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.

3. (1) Every package of excisable goods, except motor vehicles, manufactured in or imported into Kenya shall be affixed with an excise stamp

Excisable goods to be affixed with excise stamps.

(2) The Commissioner shall specify the type and the manner of affixing excise stamps.

4. Every excise stamp required to be affixed under regulation 3 shall be of such specifications as to—

Features of excise stamp.

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

5. (1) Excise stamp fees to be charged on excise stamps for each type of excisable goods shall be as specified in the Schedule hereto.

Excise stamps fee.

(2) The excise stamp fees shall be paid to the Commissioner by the manufacturers and importers of excisable good based on quantity of stamps issued to them.

(3) The excise stamp fees shall be payable before the stamps are issued to the manufacturer or importer.

6. The revenue from the excise stamp fees shall be retained by the Commissioner for the financing of the System.

Retention of revenue from excise stamp fees.

7. (1) The Commissioner shall register the importers of any excisable goods specified under these Regulations and may impose such conditions as may be necessary on the importers for the purposes of the registration.

Registration.

(2) A person shall not manufacture or import excisable goods for which an excise stamp is required to be affixed under these Regulations unless that person is licenced or registered by the Commissioner.

8. (1) A manufacturer or importer of excisable goods shall apply to the Commissioner for excise stamps in the prescribed form.

Application for excise stamps.

(2) An application for excise stamps shall be submitted to the Commissioner at least sixty days before the manufacture or importation of the excisable goods

(3) A manufacturer or importer of excisable goods shall pay the excise stamp fees on the approval of the application by the Commissioner.

(4) The Commissioner may require proof of importation by an importer of excisable goods before issuing the importer with the excise stamps.

(5) Despite the provisions of paragraph (4), the Commissioner may, subject to any conditions as the Commissioner may impose, issue excise stamps to an importer of excisable goods before importation.

9. The Commissioner may require a manufacturer or importer of excisable goods to provide, at least sixty days before the beginning of the month in which the manufacturer or importer will require the stamps, a forecast of the quantities of excise stamps which the manufacturers or importer intends to use in each month for the subsequent period of six months.

Forecast of consumption.

10. (1) Subject to the law regulating public procurement, the Commissioner shall appoint a suitable person to—

Appointments.

- (a) print and supply excise stamps;
- (b) develop and install the System; and
- (c) install any other related systems.

(2) A person appointed under paragraph (1) shall not print any excise stamps required under these Regulations unless requested by Commissioner to do so.

11. (1) The Commissioner may, where necessary and subject to such conditions as the Commissioner may impose, require the person appointed to print excise stamps to deliver the stamps directly to a manufacturer or importer of excisable goods.

Delivery of excise stamps.

(2) The person appointed to print excise stamps shall notify the Commissioner of the quantity and type of excise stamps supplied under paragraph (1) within such period as the Commissioner may require.

12. (1) Excise stamps shall be affixed on excisable goods in the manner specified by the Commissioner—

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

Place and time of affixing, declaration of excise stamps and the printing of digital stamps on excisable goods.

Provided that the Commissioner may allow 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 may specify.

(2) The Commissioner may, upon the application, 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.

(3) A manufacturer or importer of excisable goods shall declare in the System the excise stamps used immediately after affixing on the excisable goods or the package containing excisable goods.

(4) A person who contravenes the provisions of this regulation commits an offence and shall be liable on conviction to a penalty of one hundred thousand shillings or double the value of the excise duty payable on the excisable goods, whichever is higher.

13. (1) A manufacturer or an importer of excisable goods shall return the unused excise stamps to the Commissioner when—

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

Return of excise stamps.

(2) 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 of the return of the stamps.

14. (1) Damaged excise stamps shall be preserved for verification by an authorised officer.

Allowance for wastage or damage.

(2) 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.

(3) 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.

15. (1) A manufacturer or importer of excisable goods may, with the prior approval of the Commissioner, transfer excise stamps held in stock by the manufacturer or importer to another manufacturing or importing unit owned by the same manufacturer or importer.

Transfer of excise stamps.

(2) The Commissioner shall prescribe the procedure and conditions for the transfer and accounting of excise stamps.

(3) A manufacturer or importer of excisable goods who transfers excise stamps without the prior approval of the Commissioner commits an offence.

16. A manufacturer or importer of excisable goods specified in these Regulations shall facilitate the installation of the System in the manufacturer's or importer's premises used for the manufacture or storage of imports, as the case may be.

Installation of the System.

17. The System shall be composed of—

Composition of the system.

- (a) excise stamps authentication and validation equipment;
- (b) devices for identification and association of each package with an individual excise stamp;
- (c) production accounting equipment; and
- (d) devices for the control, registration, recording and transmission of data on quantities of excisable goods which have been stamped to the Commissioner.

18. (1) The installation, integration, preventive and corrective maintenance procedures of all the equipment comprising the System at the manufacturers' or importers' premises shall be done by a contractor under the supervision of an authorised officer.

Integration.

(2) For the purposes of these Regulations, "contractor" means a person appointed by the Commissioner to supply, install, integrate or maintain the System.

19. The Commissioner shall be responsible for—

Development and supervision.

- (a) defining the functional, security and fiscal control requirements to be observed by the contractor in developing the System;
- (b) supervising and monitoring the process of installing the System.

20. (1) The System shall be installed on all production lines at the manufacturer's premises corresponding to each packaging machine or labeling machine;

Installation of equipment and devices.

(2) The System for the management of imports shall be installed in the manner specified by the Commissioner.

21. (1) 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 before the installation and integration of the new or modified System and the notice shall state—

Notice of installation.

- (a) the requirements for the equipment to facilitate use of System;
- (b) the adaptive features required, on each production line;
- (c) the connectivity features and operating environment for the installation and operation of computers and other equipment comprising the System; and
- (d) the starting date of installation of the System.

(2) Manufacturers or importers of excisable goods shall be responsible for the cost of 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.

(3) Where a manufacturer or importer of excisable goods is required to carry out adjustments or provide information required by the Commissioner for the installation of the new or modified System, the manufacturer or importer shall carry out the adjustments or provide the information at least seven days before the date of the installation of the new or modified System.

22. During the installation of the System, the manufacturer or importer of excisable goods shall ensure that the production lines are in proper operating condition.

Production line to be in operating condition.

23. (1) The manufacturer or importer of excisable goods shall report to the Commissioner any non-operational production lines within twenty-four hours of the production lines becoming non-operational and the Commissioner shall secure the lines using a security seal and register the seal in the System.

Manufacturer and importer to report inoperative production lines.

(2) Manufacturer's or importers of excisable goods shall not resume operations on non-operational production lines without the authority of the Commissioner.

24. (1) A manufacturer or importer of excisable goods shall be responsible for conservation and security of the System installed in their premises.

Security of equipment.

(2) Manufacturer or importer of excisable goods shall report any operating failure or tamper of the security seals within twenty-four hours.

25. (1) The preventive or corrective maintenance of the System shall be performed by the contractor under supervision of an authorised officer.

Preventive and corrective maintenance of the system.

(2) The contractor shall provide the Commissioner a list of technicians authorised to carry out the installation or maintenance of the System.

26. A manufacturer or importer of excisable goods shall—

Advance reports of new brands, etc.

- (a) declare to the Commissioner the packages and labels of brands manufactured or imported including those for export and duty free shops;
- (b) 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;
- (c) apply to the Commissioner, at least thirty days before installation or removal, for the installation or removal of the System, as the case may be, if the manufacturer or importer—
 - (i) reactivates inoperative production lines;
 - (ii) deactivates production lines;
 - (iii) carries out maintenance works on or reallocates production lines;
 - (iv) installs new production lines; or
 - (v) acquires or sells industrial machinery or equipment.

27. (1) All packages of duty free or export excisable goods specified in these Regulations shall bear distinct markings to enable the goods to be trackable and traceable.

Marking of duty free products and packages.

(2) The material wrapping the package for wholesale purposes shall have printed on it—

- (a) in the case of exports, the country of final destination;
- (b) in the case of excisable goods for consumption in Kenya, "FOR USE IN KENYA";
- (c) in the case of excisable goods for sale to duty-free shops, or Diplomatic shops, "DUTY FREE";
- (d) in the case of excisable goods for consumption by Kenya Defence Forces, "KENYA DEFENCE FORCES" and,
- (e) in the case of excisable goods for consumption by National Police Service, "NATIONAL POLICE SERVICE"

28. (1) The following excisable goods shall be exempted from the requirement of excise stamps—

Exemption from excise stamps.

- (a) excisable goods manufactured for export, the Kenya Defence Forces, the National Police Service or delivered to a duty free shop;
- (b) excisable goods imported or purchased from a duty free shop by privileged persons or institutions listed in the Second Schedule to the Act; and
- (c) 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, 2004.

(2) The commissioner may require goods under paragraph (1) to be marked with such distinct markings as may be necessary for their identification, authentication and traceability.

29. (1) A manufacturer, importer, distributor, retailer or any other person involved in the supply chain of excisable goods, shall verify and authenticate the stamps placed on excisable goods before admitting the goods in the manufacturer's, importer's, distributor's, retailer's or other person's premises.

Verification of stamps.

(2) A person engaged in the distribution or retail of excisable goods shall—

- (a) keep delivery notes, invoices or such other documents from the supplier of the excisable goods; and
- (b) provide in that person's premises sufficient light as may be necessary for the verification or authentication of excise stamps;

(3) A person who fails to keep the documents required under paragraph (2) commits an offence and shall be liable on conviction to a penalty equal to double the open market value of the excisable goods or a fine of one hundred thousand shillings whichever is higher.

(4) The Commissioner may recommend to the relevant authority the withdrawal, cancellation or suspension of the trading license for a person convicted of repeatedly committing an offence under paragraph (2).

30. (1) A person shall not—

Offences.

- (a) print over or deface an excise stamp affixed on any excisable goods or package;
- (b) be in possession of excisable goods on which the excise stamps have not been affixed and which have not been exempted under these Regulations;
- (c) attempt to acquire or acquire an excise stamp without the authority of the Commissioner;
- (d) counterfeit, or print, make or in any way create an excise stamp without the authority of the Commissioner;
- (e) be found in possession of an excise stamp printed, made or in any way acquired without the authority of the Commissioner;
- (f) be 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
- (g) be found in possession of, convey, distribute, sell, offer for sale or by way of trade expose excisable goods affixed with counterfeit excise stamps.

(2) A person who contravenes the provisions of paragraph (1) commits an offence and is liable upon conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years or to both.

31. The Commissioner may refuse to issue excise stamps to a person if that person has—
- Refusal to issue stamps.
- (a) not fully accounted for excise stamps previously issued to him or her;
 - (b) not fully paid for excise stamps previously issued to them; or
 - (c) failed to fully comply with the provisions of the Act relating to filing of returns and payment of excise duty
32. The Commissioner shall seize excise stamps, equipment, vehicles or goods where—
- Seizure of stamps, equipment and goods.
- (a) excise stamps—
 - (i) have been counterfeited;
 - (ii) which were subject to be returned to the Commissioner, were not returned; or
 - (iii) have been found in the possession of persons other than those to whom they were supplied;
 - (b) the vehicle is used in the storage, concealment or transportation of excisable goods that have not met the requirements of these regulations;
 - (c) the equipment or plant is used in the manufacture of counterfeit excise stamps; or
 - (d) the excisable goods—
 - (i) bear counterfeited excise stamps;
 - (ii) bear excise stamps affixed in a manner not consistent with guidelines prescribed by the Commissioner; or
 - (iii) do not bear excise stamps as required in accordance with these Regulations.
33. Any excisable goods, stamps, motor vehicle and equipment which are seized under these Regulations shall be disposed of in the manner that the Commissioner may consider fit.
- Disposal of forfeited excise stamps and seized goods.
34. A person who fails to comply with the provisions of these Regulations commits an offence.
- General offence.
35. A person who commits an offence under these Regulations for which no specific penalty is provided is liable, on conviction, to a fine not exceeding one million and five-hundred thousand shillings or to imprisonment for a term not exceeding three years or to both.
- General penalty.
36. The Customs and Excise (Excisable Goods Management System) Regulations, 2013, are hereby revoked.
- Revocation of L.N. 110/2013.

SCHEDULE

r. 5

Excise Stamps Fees

<i>Category of excisable goods</i>	<i>Fees (KSh.)</i>
Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes	2.8 per stamp
Cigarettes containing tobacco or tobacco Substitutes	
Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and "reconstituted tobacco"; tobacco extracts and essences	
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

Made on the 30th March, 2017.

HENRY ROTICH,
Cabinet Secretary for the National Treasury.

LEGAL NOTICE NO. 54

THE VALUE ADDED TAX ACT

(No. 35 of 2013)

IN EXERCISE of the powers conferred by section 67 of the Valued Added Tax 2013, the Cabinet Secretary for the National Treasury makes the following Regulations:—

THE VALUE ADDED TAX REGULATIONS, 2017

PART I—PRELIMINARY

1. These Regulations may be cited as the Value Added Tax Regulations, 2017. Citation.

2. In these Regulations, unless the context otherwise requires— Interpretation.

“Act” means the Value Added Tax Act, 2013;

“arm’s length transaction” means a transaction between persons dealing with each other at arm’s length;