

EXCISE TAX PRESENTATION



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AREAS OF COVERAGE

- 1.) Introduction
- 2.) Administrative legislation
- 3.) Excisable Goods and services 2015
- 4.) Excise duty on financial institutions
- 5.) Excise licences requirements 2015
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INTRODUCTION

What is Excise Tax:

- OECD definition: A tax imposed on an act, occupation, privilege, manufacture, sale, or consumption.
- Excise taxes are **selective taxes** on the sale or use of **specific** goods and services, such as tobacco products and alcohol.
- *“Excise duty”* means a duty of excise imposed on goods manufactured in Kenya or imported into Kenya and specified in the Fifth Schedule to CAP 472;
- *“Excisable goods”* means goods manufactured in Kenya or imported into Kenya on which an excise duty is imposed under the CAP 472;
- Indirect tax

Characteristics of Excisable Goods and Services

- **Luxurious / Goods of ostentation:** luxury goods consumed out of need for display of economic class rather than as a necessity. Designed to impress or attract notice.
- **Have negative effects:** excise charged as a sin tax. Alcohol and tobacco have been found to have serious health, social and economic effect on consumers
- **Addictive / Habitual:** tobacco and alcohol and other excisable goods have addictive effect on the consumer and its consumption is driven by the need to sustain an addiction
- **They have low price elasticity:** An increase in price creates less proportionate decrease of demand
- **Limited consumption:** Not for mass consumption

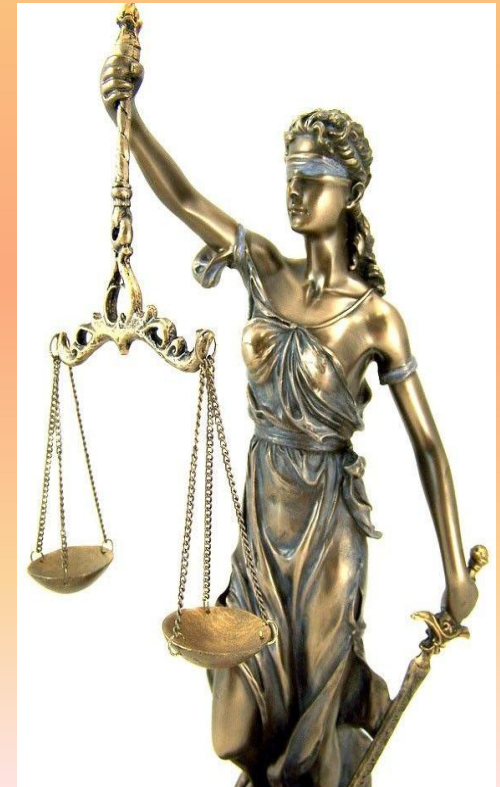
Why Levy Excise Duty

- **Revenue Source**
 - To raise more revenue for the extra healthcare and other public expenditures which will be needed as a direct or indirect result of excisable activities, such as lung cancer from smoking or road accidents resulting from drunk driving
- **Health reasons : to protect people;**
 - from harming their health by abusing substances such as tobacco and alcohol, thus making excise a kind of sumptuary tax
 - from harming themselves and others indirectly and morally by engaging in activities such as gambling thus making it a type of vice tax or sin tax
- **Reallocation of resources from the rich to the poor.**
 - Excisable goods are consumed by the rich and therefore a charge on these products is a charge on the rich
- **Environmental concerns**
 - To mitigate against harming the general environment by curbing activities contributing to pollution hence the tax on hydrocarbon oil, plastic shopping bags
- **Restitution**
 - Funds collected used for rehab and treatment of patients



What Law is used to administer Excise Duty?

- Customs & Excise Act Cap 472.
- Customs and Excise regulations
 - The Legal excise provisions provide
 - The definition of the goods to be charged excise duty
 - The administrative structure for the goods
 - The collection and accounting for the tax
 - The penalties for non compliance
 - Dispute resolution mechanism
 - The powers of the Commissioner



Other Legislations required to administer Excise duty

- Kenya Revenue Authority Act 1995 for administration and accounting
- East African Customs Management Act for Exports
- Medical Practitioners Act for exemptions
- Poisons and Drugs Act for exemptions
- The Alcoholic Drinks Control Act for the administration of alcoholic beverages
- Ministry of industrialization ...KEBS



Customs & Excise Act – CAP 472

- **Section 90-98: Licensing and obligations of the Licensee**
 - Excise Licence required
 - Application for and grant of licence.
 - Transfer of licence.
 - Power to revoke, etc., licence.
 - Effect of revocation, etc., of licence.
 - Provision of facilities for excise control.
 - License to keep books, etc.
 - Entry of premises
 - Rooms and Plant to be marked



- **Sections 99-107: Provisions Relating to the control of Manufacture of Spirit and include**

- Power of Commissioner to direct that Act and regulations shall not apply.
- Distiller's and rectifier's warehouse.
- Restriction on delivery of immature spirits.
- Restriction on carrying on of other trades by distiller/Manufacturer
- Restrictions on use of still
- Penalty for excess or deficiency in stocks of spirits.
- Denaturing of spirits.



- **Section 108-116: Provisions Relating to Manufacture of Excisable Goods Other than Spirits and include**

- Storage of excisable goods after manufacture
- Provisions relating to stock book and returns
- Deficiency or excess in stock of licensee
- Provisions relating to manufacture of tobacco
- Provisions relating to brewing book
- Notice of brewing may be required
- Provisions relating to brewing
- Provisions relating to false declaration of original gravity of beer
- Liability of beer to excise duty



- **Section 117 – 126: General provisions**

- Impositions of duty -rates
- Arrangements for bilateral relief from duty
- Variations of duty
- Effect of alteration of duty on contract for sale
- Effect of obligation to pay duty
- Recovery of duty
- Effect of alteration in classification of goods
- Time of entry for home use determines rates of duty
- Imposition of dumping duty
- Dumping and subsidy defined



- **Section 127: Valuation**

- Determination of value of imported goods in accordance with EACMA.
- Value of goods for excise duty purposes.

- **Section 128-133: Computation of Excise Duty (General)**

- Adjustments for fractions of shillings
- Duty computed on gross weight of package in certain cases
- Duty computed on reputed quantity in certain cases
- Commissioner may fix liter equivalent of other liquid measurement
- Allowance for tare
- Duty on package in certain cases



- **Sections 139-153: Exemptions, Rebates, Remissions and Refunds**

- Power of Minister to refund duties
- Rebate , Remission of excise duty
- Exemption of certain duties of goods remaining on board
- Exemption from certain duties on goods entered for exportation
- Exemption from certain duties of certain re-imports
- Exemption from certain duties of temporary imports
- Remission of certain duties on lost or destroyed goods
- Refund of certain duties to privileged institutions and personnel, etc.
- Refund of certain duties on pillaged, etc., goods and of duty paid in error.
- Rebate of certain duties on damaged goods.
- Drawback of certain duties on exportation.
- Duties to apply proportionately for refund, rebate
- Refund of excise duty on compounded spirits in bonded warehouses

Excisable Goods and Services

The List and types of Excisable goods and services are listed in the 5th Schedule as read together with Section 117 (1) (d) of the Customs and Excise Act, CAP472 Laws Of Kenya and includes the following;



- Juices (2009) - 7%
- Mineral water (2201)- Ksh.3 per liter or 5%,whichever is higher
- Soft drinks (2202)- 7%
- Other beer made from malt (2203) - Ksh.70 per litre or 40% of RSP
- Wines(2204 and 2205) - Ksh.80 per liter or 50%
- Other fermented beverages not elsewhere specified(2206) - Ksh.70 per litre or 40% of RSP (Cider, Opaque beer (e.g. Chibuku))

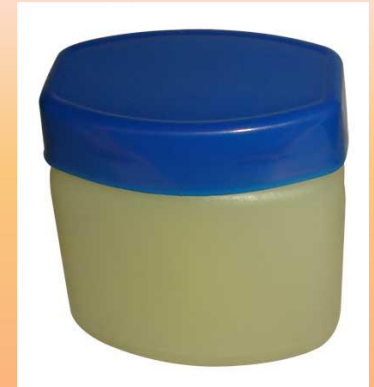


- Undenatured ethyl alcohol of an alcoholic strength by volume of $\geq 80\%$
(2207.10.00) - Ksh.120 per liter or 35%
- Denatured ethyl alcohol of any alcoholic strength (2207.90.00) Ksh.120 per liter or 35%
- Undenatured ethyl alcohol of an alcoholic strength by volume of $< 80\%$ (2208) - Ksh.120 per liter or 35%
- Ready To Drink ($< \text{or} = 10\% \text{ v/v}$) – Ksh.70 per Litre or 50 % of Excisable Value
- Cigars, Cheroots Cigarillos and cigarettes of tobacco or of tobacco substitutes (2402) - Ksh. 1,200 per Mille
- Other manufactured tobacco and manufactured tobacco substitutes (2403) -Smoking tobacco, Snuff , Tobacco extracts – 120%
- Plastic shopping bags (3923.21.00 or 3923.29.00) - 50%





- Petroleum jelly (2712.10.00) – 5 %
- Perfumes and toilet waters(3303) – 5%
- Beauty or make up preparations (3304) – 5%
- Preparations for use on the hair (3305) - 5%
- Pre shaving, shaving and after shave preparations, deodorants, bath preparations, perfumed petroleum jelly (3307) - 5%



- Mobile cellular phone services shall be charged excise duty at the rate of 10% of their excisable value.
- Other wireless telephone services shall be charged excise duty at the rate of 10% of their excisable value.



- All imported used computers of more than three years from the date of manufacture shall attract excise duty at the rate of 25%.
- Excise duty on fees charged for money transfer services by cellular phone service providers, banks, money transfers agencies and other financial service providers shall be ten percent.
- Excise duty on other fees charged by financial institutions shall be ten percent.



EXCISABLE VALUE

- **Sec. 127C (2):** The value of locally manufactured goods for purposes of levying ad valorem excise duty shall be the ex-factory selling price.
"ex-factory selling price" means the price at which goods are sold from a factory exclusive of value added tax and excise duty. (Customs and excise Act 2010)
- Section 11 of the Excise Duty Bill 2014
Sec. 11: The ex-factory selling price of excisable goods shall be –
 - (a) if the excisable goods are sold by the manufacturer, other than to a consumer, in an arm's length transaction, the price payable by the purchaser; or
 - (b) in any other case, the **open market value** of the goods at the time of removal from the manufacturer's factory.
- Ex-factory Selling Price **does not include** -
 - (a) value added tax
 - (b) cost of excise stamps
 - (c) the cost of any returnable package, box, bottle or container
- Instances where a basis of levying ad-valorem excise duty other than ex-factory selling i.e. Retail selling price. (Cigarettes and beer). ***Provided in Fifth schedule.***



Excise Return

- Excise return is submitted on or before the 20th day of the subsequent month on Form E 7 (or E7A) which is the Excise account.
- Attachments forming part of the return include;
 - Raw materials and production account
 - E4 for beers
 - E5 for tobacco
 - E6 for other goods
 - Sales schedules
 - E9: Rebate, remissions, refunds schedules (Where applicable)
 - E8 : Authority for removal of excisable goods
- In addition, for compounded spirits and wines
 - stamps usage account
 - Delivery volumes
 - Each stamp affixed on bottle of wine and spirit
 - flow meter readings for spirits
 - Production volumes

Tax points for Excisable goods

Sec. 116 : No beer may be consumed on, or removed from, a brewery or licensed premises unless duty has first been paid thereon

Sec. 134: The excise duty on spirits shall become due and shall be charged at the rate in force when the spirits liable to duty are delivered from the distillery or the distiller's warehouse

Sec. 137 (1) : The duty on locally manufactured excisable goods other than spirits shall become due and shall be charged at the rate in force when the goods liable to duty are delivered from the stock room of the licensee

Sec. 137 (2): Duty on usage of mobile cellular phone services shall be charged at the rate in force when the service is purchased by the consumer and

In all the above time of delivery of goods and/ or purchase of the service determines the rate in force at such times

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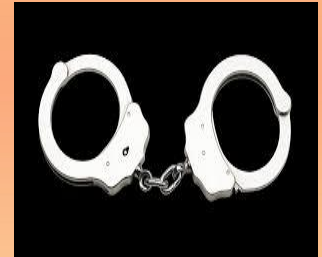
–the emphasis is on delivery from the stock room of the Licensee.

Summary of changes in Excise tax

- The law has undergone a lot of changes among which are
 - The transfer of all provisions relating to Customs to the East African Customs Management Act (EACCMA, 2004)
 - The introduction of information technology in the administration of excise duty including Electronic Cargo Tracking, Flow metres, EGMS etc
 - Introduction of excise duty on services including mobile cellular services, money transfer fees and financial services fee
 - Excise Bill 2014

Offences and penalties

- Sec 90: Manufacture of goods without a licence (Imprisonment not exceeding 3 years/ not exceeding KES.500,000 or both.)Forfeiture
- Sec. 91 (5) : Use of licensed factory to manufacture other goods/ non licensed person operating in the factory (Imprisonment not exceeding 3 years/ not exceeding KES.500,000 or both.)Forfeiture
- Sec. 94 : Upon revocation of licence (Imprisonment not exceeding 3 years/ not exceeding KES.500,000 or both.)Forfeiture
- Sec. 96 : Non filing, Late filing, Incorrect returns
 - The higher of Kshs.10,000 and 5% of un paid taxes in addition to...
- Sec 97: On entered premises (Imprisonment not exceeding 3 years/ not exceeding KES.500,000 or both.)Forfeiture
- Sec 98 : Labeling of premises
- Sec 102: Carrying on of other trade other than distillation or compounding.
- Sec 103: Having possession of a still illegally
- Sec 106: Process of denaturing spirits against regulations
- Sec 108: Usage of entered warehouse or stock room for any other purpose
- Sec 110: Failing to account for excisable goods manufactured / Stocks being in excess of what the books held say (Duty becomes due and payable, excess stock is forfeited
- Sec. 225A (1) interest @ 2% monthly compounded



- **Section 195-204: PENALTIES, FORFEITURES AND SEIZURES**

- General penalty.
- Goods liable to forfeiture.
- Vessels, etc., liable to forfeiture.
- Provisions relating to goods liable to forfeiture.
- Power to seize goods liable to forfeiture, etc.
- Procedure on seizure.
- Effect of conviction, etc., on things liable to forfeiture.
- Procedure after notice of claim.
- Provisions relating to condemnation.
- Restoration of seizures.



• Offences

- Assembling to contravene provisions of CAP472
- Attempts to commit offences.
- Offence to warn offender.
- Offence to assume character of officer.
- Master of vessel, etc., used for smuggling or evasion guilty of offence.
- Offences in respect of prohibited, restricted and uncustomed goods.
- Offence to import or export concealed goods.
- Offence to make or use false documents, false measures.
- Offence to refuse to produce documents, etc.
- Offence to interfere with customs property.
- Offences in connection with excisable goods.
- Un-customed goods found to be reported.
- Goods offered on pretence of being smuggled.
- Aiders, abettors, etc



Offences and penalties

- Sec 116b: Contravening regulations on stamp usage
- Sec 127 (7): of banks and financial institutions on foreign exchange rates
- Sec 149: Fraudulent claim of rebates (not exceeding 1M , 0.5M, or 3 times the claim, imprisonment 3 yrs) penalty Sec 153 A
- Sec 159 C : Offence on failure to comply with IT usage requirements
- Sec 195: General penalty (0.5M).

Powers of Commissioner to compound an offence (Sec. 124)

Business impact

- Global
- Indirect tax
- Compliance costs (EGMS, Resident officers, flow meters, time)
- Pricing



Thank You
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