



Excise Duty in Kenya

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What is Excise Duty?



- **Sin tax** - charged on various commodities to influence consumer behavior and discourage consumption. Primarily targeted at tobacco, alcohol and luxury goods.
- Excise Duty also used to influence reduction of global carbon footprint, influence trading policy e.g. Excise Duty on food stuff, fuels.
- Used as a measure to increase tax base e.g. Excise Duty on financial services fees, mobile money transactions etc.

Excise Duty Reforms



Year	Reform
1986	Tax Modernization Programme (TMP) Specific Excise Duty on cigarettes and beers
1992	Switch from specific to ad valorem
1994	Petroleum products from VAT to excise
1998	Standardization of rates (on cigarettes and some alcoholic products)
2001/02	Addition of cosmetics and locally assembled vehicles to excise tax basket
2003/04	<ul style="list-style-type: none">▪ Switch from ad valorem to specific for alcohol and tobacco products▪ Hybrid excise duty on domestic and imported cigarettes
2006/07	Inclusion of Jewelry in excise tax basket
2008	Affixation of excise stamps on specified goods – cigarettes, wines/spirits
2013	Introduction of EGMS system – stamps to be fixed on spirits, beer, wine, cigarettes etc.
2015/16	Introduction of excise tax on airtime and financial transactions, inflation adjustments.
2019	Introduction of Excise Duty on betting.

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Governance of Excise Duty

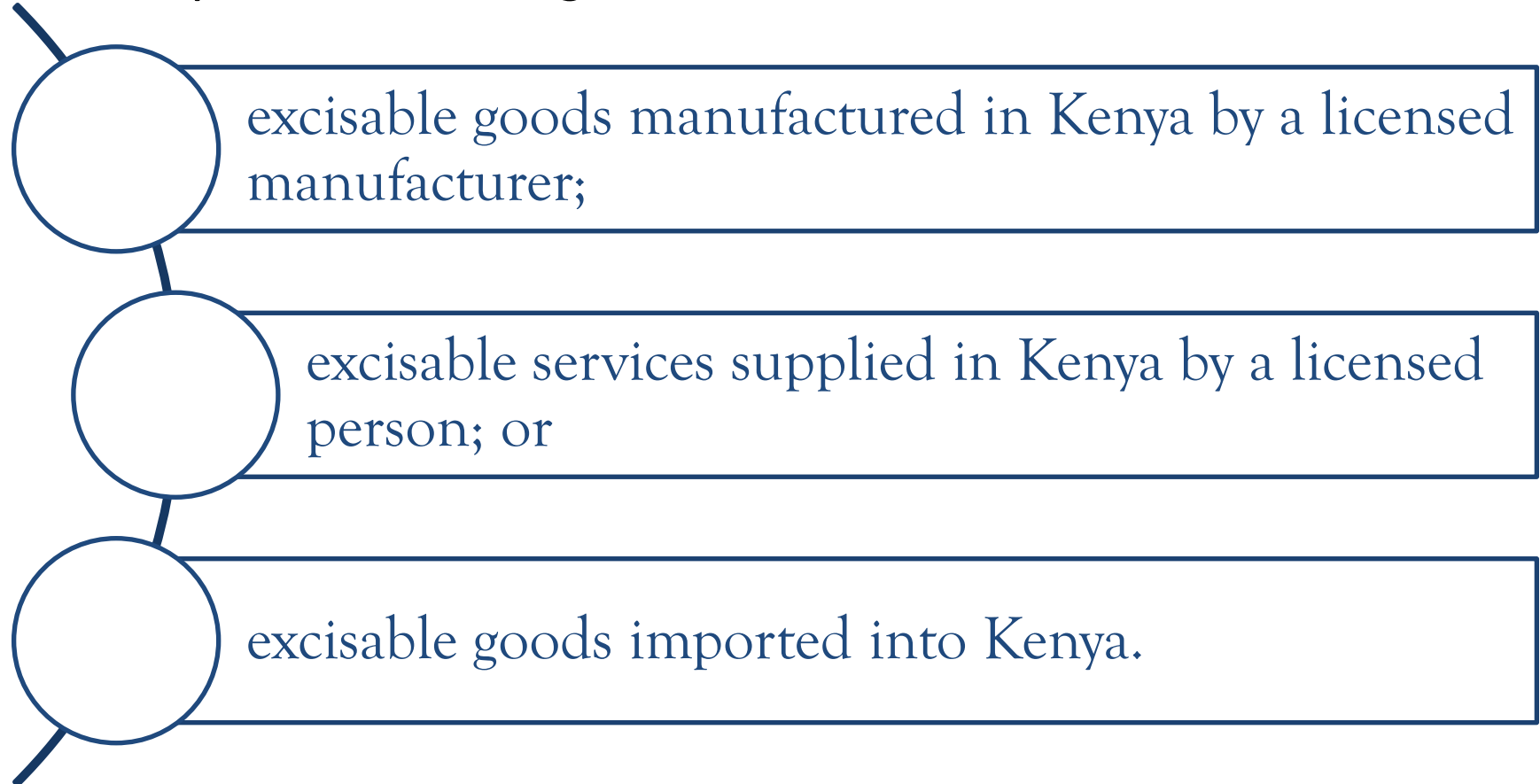


- Excise Duty is governed through the Excise Duty Act, 2015.
- Excise Duty previously governed through Customs and Excise Act, Cap 472 of the Laws of Kenya (C&E Act).
- Key driver for repeal of previous Act:
 - unreliable taxation of goods.
 - differing interpretations due to changes in transactions.
 - need for simplification of the law.
 - move administration of Excise Duty from Customs to Domestic Taxes Department.

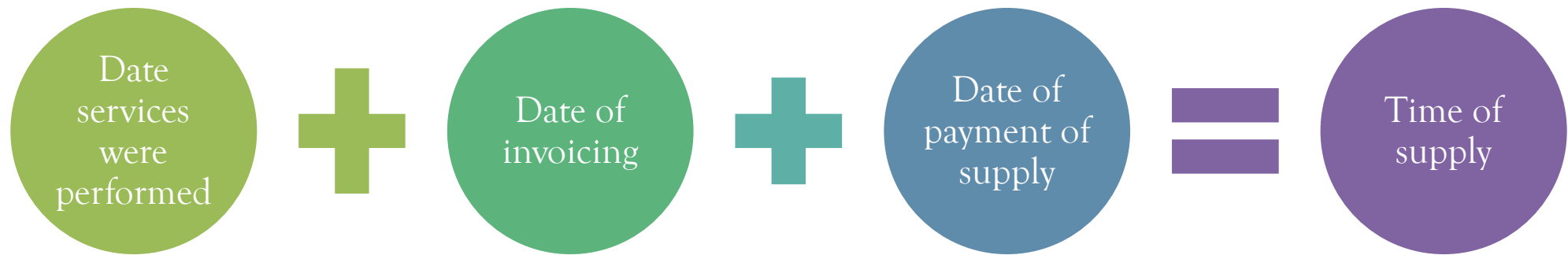
Items subject to Excise Duty



- Excise Duty shall be charged on;



Excise Duty – Time of supply



- How is Excise Duty calculated?
 - Ad- valorem (based on value).
 - Ad – quantum (based on rate).

Excise Duty – Excisable value



Goods

- Ex –factory selling price
- Excludes price of returnable containers

Services

- Fee, charge, commission payable on the service
- Needs to be at arm's length

Excise Duty – Licensing



Excise Duty is chargeable by a licensed entity e.g. those who manufacture goods, import goods, supply excisable services.

Apply for licence
through iTax.

Fill and submit
online
application.

Receive
acknowledgement
through iTax

KRA processes
application and
issues Excise
Licence

Excise Duty – Remissions, rebates and refunds



- **Remissions** – Available wholly or partially on beer or wine made from sorghum, millet, cassava grown in Kenya.
- **Refunds*** – Available on excisable goods manufactured/imported in Kenya that are subsequently destroyed/returned to buyer.
- **Refunds*** – Available to persons who have accounted for excise duty on goods/services but yet to receive payments.
- **Rebates** – available to licensed internet sellers who sell internet to a final consumer, effective 1 July 2021.

Excise Duty – Inflation adjustment



Inflation adjustment formula

$$A (1 + B)$$

Where;

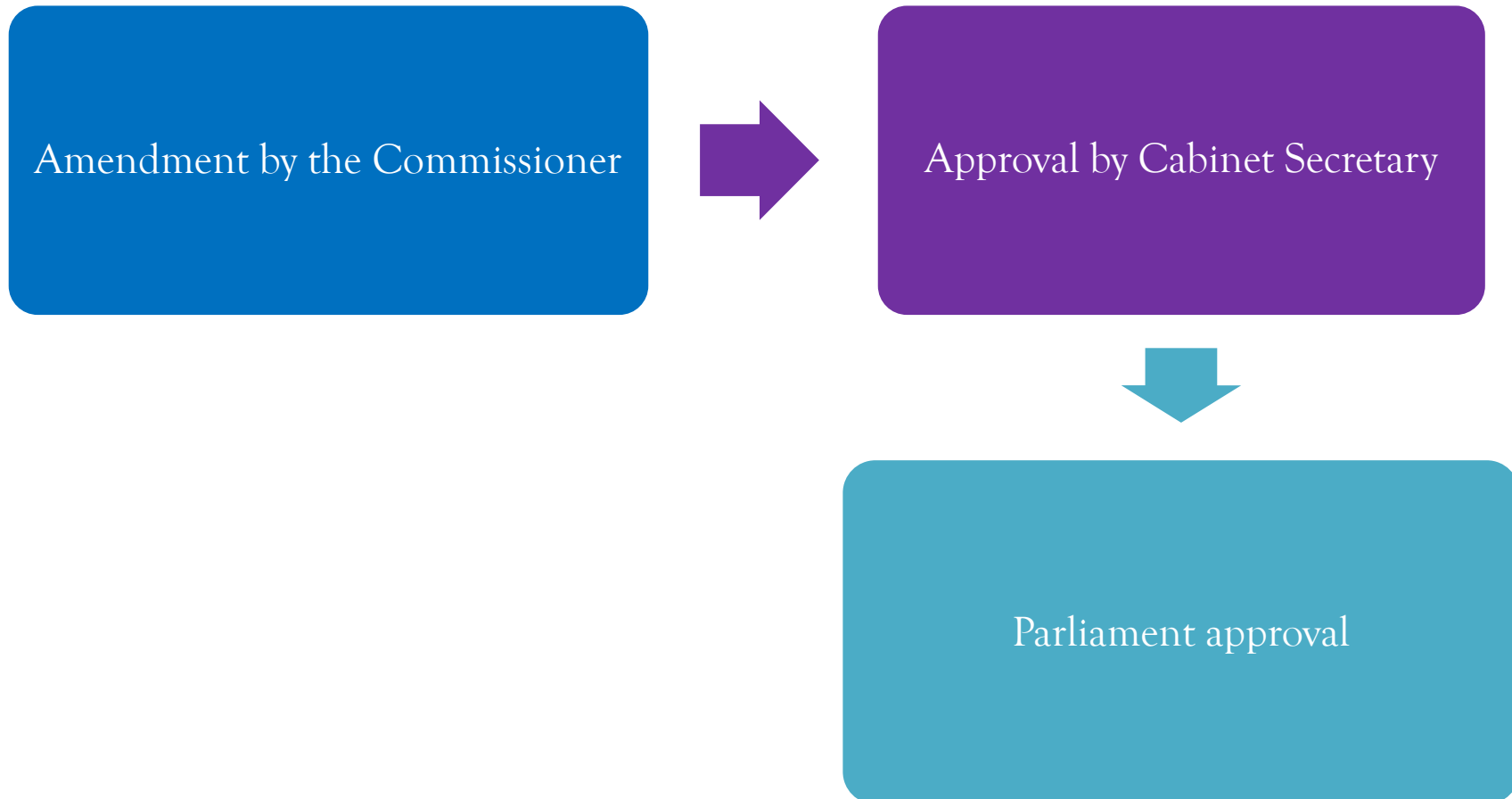
A - is the rate of excise duty on the day immediately before the adjustment day;

B - is the adjustment factor for the adjustment day, calculated as the average rate of monthly inflation of the preceding financial year.

Excise Duty – Inflation Adjustment Procedure



No approval by the CS and Parliament previously



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Inflation adjustment on specific rates of Excise Duty



Commodity	2019 (KES)	2020 (KES)
Motor spirit (gasoline) regular per 1000 litres @20 deg.C	20,509.51	21,522.68
Aviation spirit per 1000 litres	20,919.59	21,953.02
Special boiling point spirit and white spirit per 1000 litres	8,937.75	9,379.27
Other light oils and preparations per 1000 litres	8,937.75	9,379.27
Gas oil (automotive, light, amber for high speed engines)	10,835.75	11,370.99

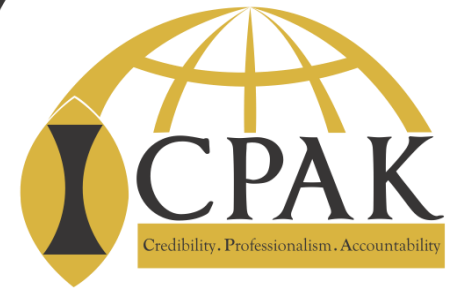
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Inflation adjustment on specific rates of Excise Duty



Commodity	2019 (KES)	2020 (KES)
Fruit juices (including grape) must and vegetable juice	11.04 per litre	11.59 per litre
Bottled water or similarly packaged waters and other non-alcoholic beverages	5.47 per litre	5.74 per litre
Powdered beer	110.62 per kg	116.08 per kg
Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes	12,624 per kg	13,247.63 per kg
Beer, cider, perry, mead, opaque beer and mixtures of fermented beverages	110.62 per litre	116.08 per litre

Excise Duty – Excise Goods Management System



EGMS – on alcoholic drinks and cigarettes implemented in 2013.

Has helped increase revenue from KES 700M to KES 5.6B annually.

Phase II (November 2019) now targets bottled water, juices, energy drinks, soda and other non-alcoholic drinks.

Helped KRA net more revenue from excisable goods in addition to tackling counterfeit goods and deterring smuggling.

Excise Duty – Penalties and Interest



- Late filing penalty – 5% of the tax due or KES 10,000 whichever is higher.
- Late payment interest – 1% per month of the tax due until the tax is paid in full.
- Failing to apply for registration, deregistration or cancellation – penalty of KES 100,000 for every month commencing from the month the person was first required to apply for registration subject to a maximum of KES 1,000,000.

Excise Duty – Key Global Trends

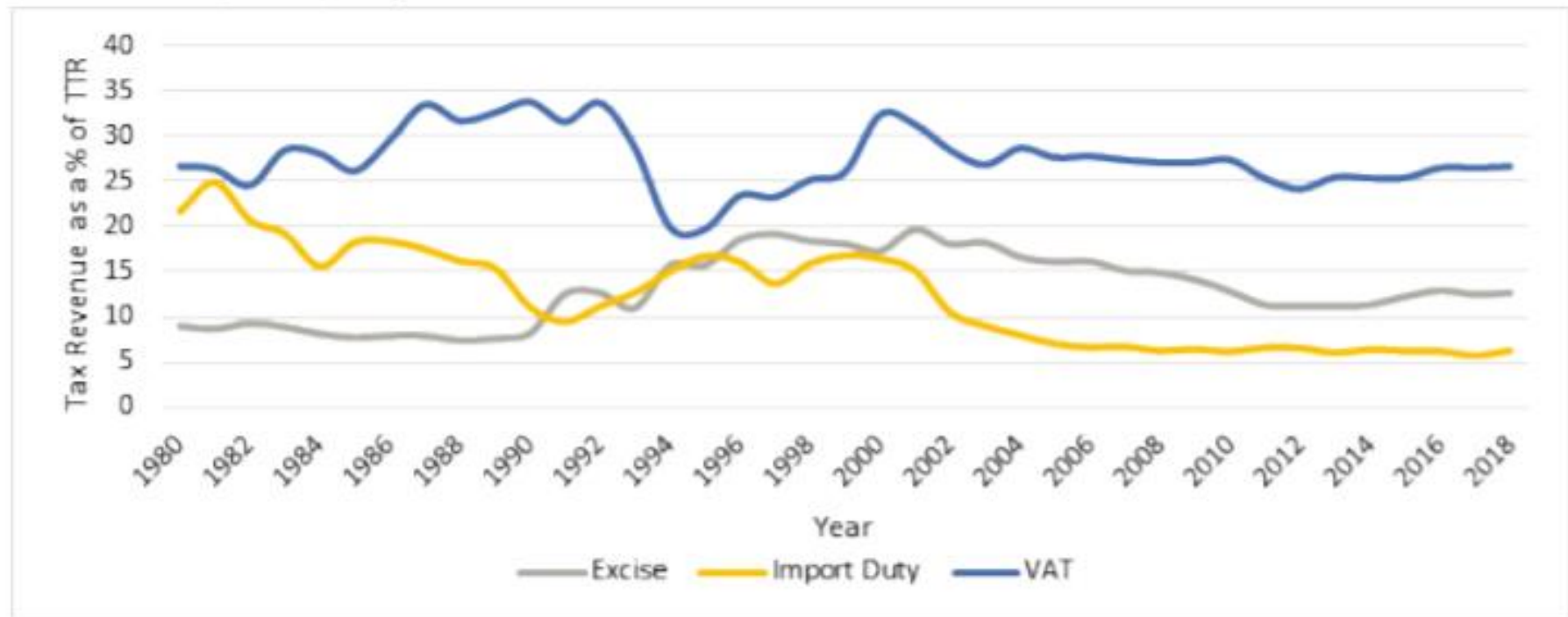


- There has been a steady decline in collection of Excise Duties globally, especially in OECD countries.
- Excise duty account between 5% and 10% of total tax revenue in majority of OECD countries.
 - 1975 - Excise duty accounted for 10.5% of total tax revenue
 - 2018 – Excise Duty contribution to total tax revenue has declined to 7.2%.
- Total tax burden levied on cigarettes is above 60% in almost all OECD countries.

Excise Duty – Contribution to total tax revenue in KE



Figure 1.1: Excise, import and VAT taxes as percentages of total tax revenue (TTR): 1980-2018



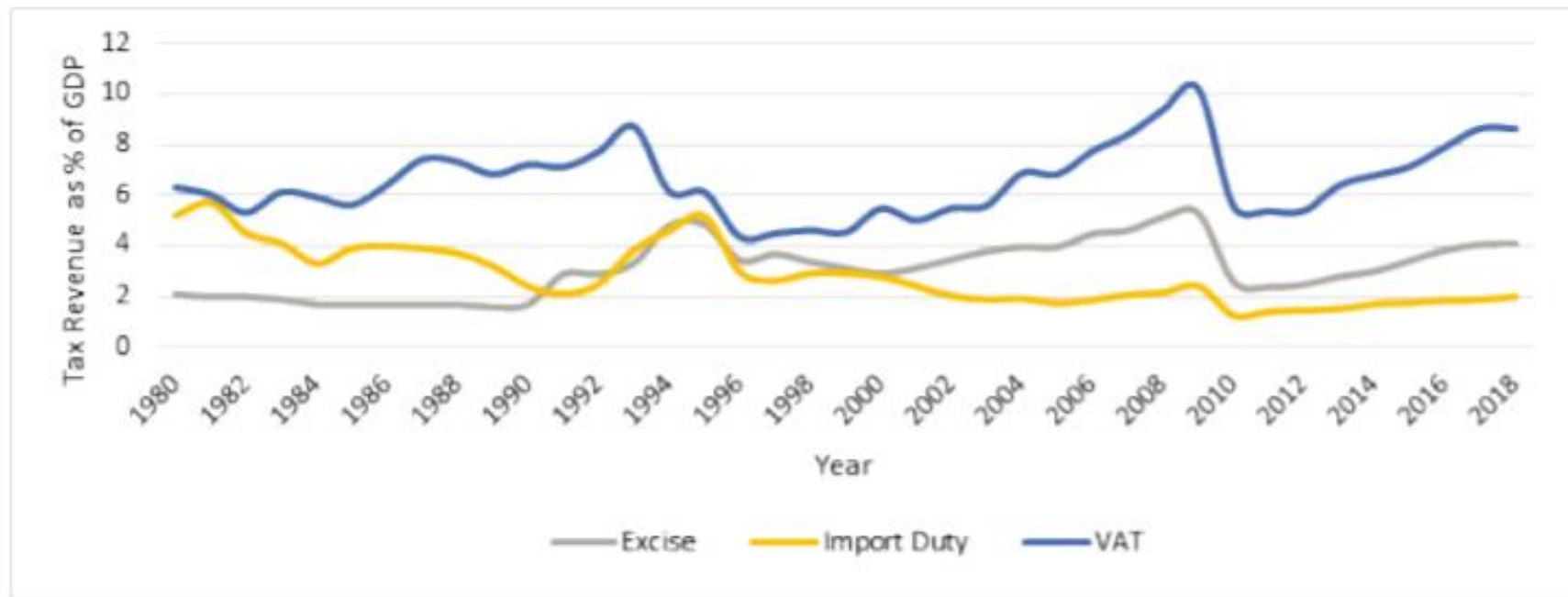
Data Source: KNBS, Economic Surveys, (Various Issues)

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Excise Duty – Contribution to GDP in KE



Figure 1.2: Excise, import and VAT taxes as percentages of GDP: 1980-2018

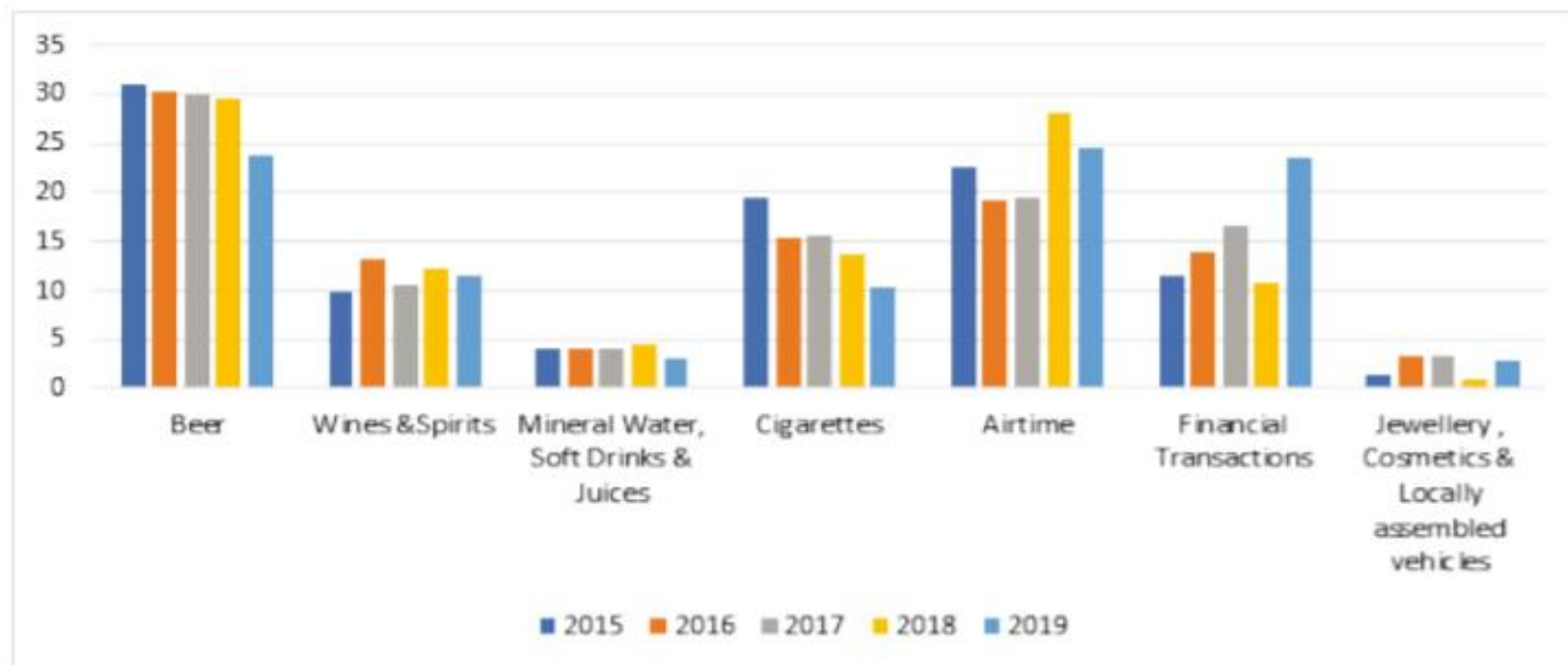


Data Source: KNBS, Economic Surveys, (Various Issues)

Excise Duty – Contribution by product/service in KE



Figure 1.3: Components of domestic excise duty revenues (%): 2015-2019

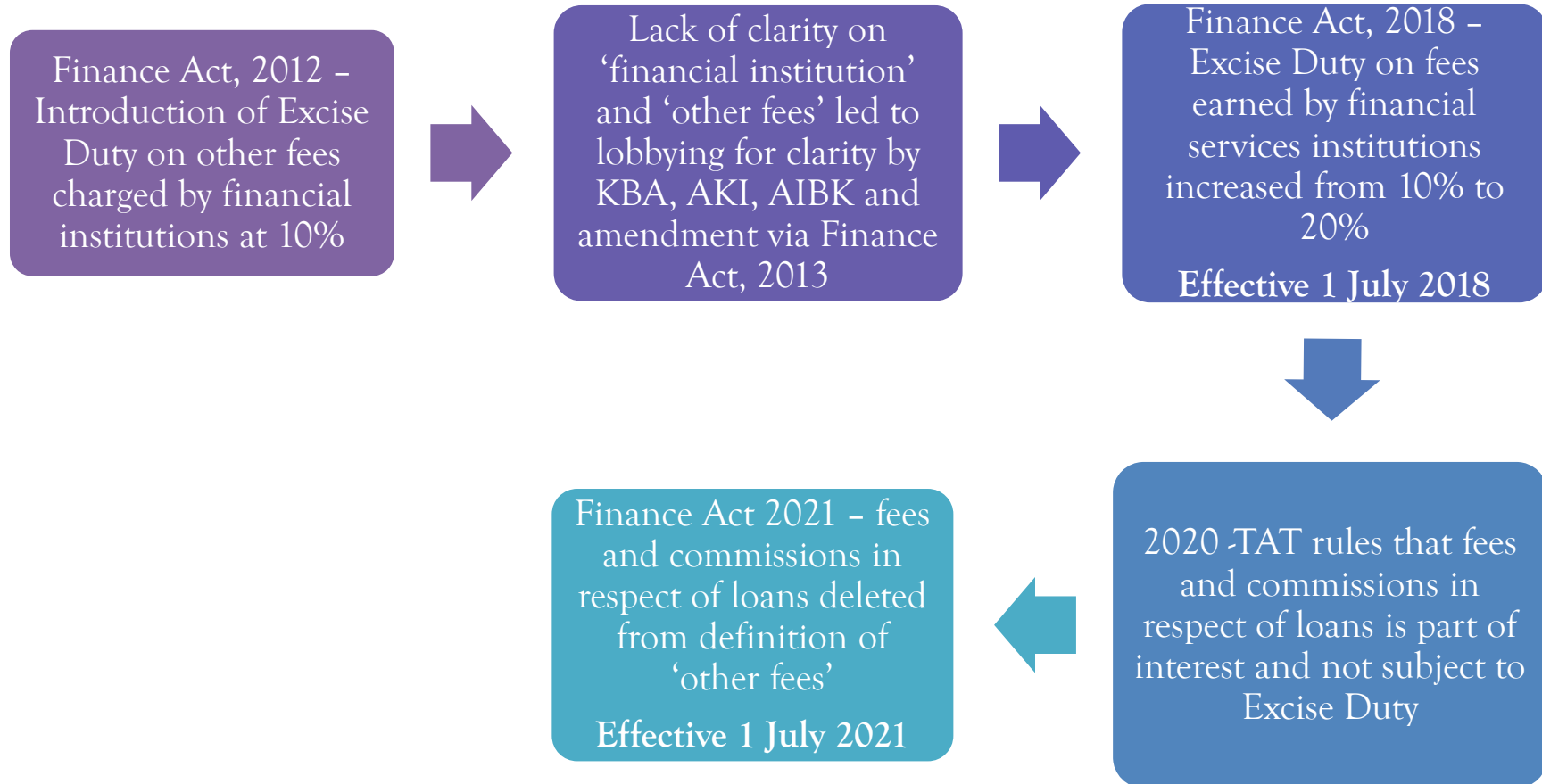


Data Source: Economic Survey 2020

Excise Duty - Controversies



Excise Duty on fees earned by financial services entities



Excise Duty – Key case law



Case	Issue	Decision
Barclays Bank of Kenya (Appellant) vs. Commissioner of Domestic Taxes (Respondent),	Excise Duty on fees and commissions earned in respect of loans	The TAT ruled that fees and commissions earned in respect of loans is considered as interest and not subject to Excise Duty. (Ruling date: 06 November 2020)

Excise Duty – Key case law



Case	Issue	Decision
Mount Kenya Bottlers Ltd, Rift Valley Bottlers Ltd, Nairobi Bottlers Ltd, Kisii Bottlers Ltd versus The Hon. Attorney General, The Kenya Revenue Authority, The Commissioner General of KRA, The Commissioner of Customs and Excise	Excise Duty on returnable containers	It was ruled that Excise Duty is not chargeable on the cost of returnable containers. (Ruling date: 19 July 2019)

Excise Duty mobilization measures



Particulars	Changes made
Excise Duty on betting, gaming, lottery, competition	<ul style="list-style-type: none">- Introduced by Finance Act 2019 at a rate of 20%- Above rate deleted by Finance Act 2020- Reintroduced by Finance Act 2021 at a rate of 7.5%
Inflation adjustment approvals	<ul style="list-style-type: none">- Additional approval by the CS and National Assembly effective 1 January 2021.- Inflation adjustment effective 1 October 2021 is 4.97%
Locally manufactured chocolate tariff Nos 1806.31.00, 1806.32.00 and 1806.90.00	Reintroduction of Excise at a rate of 209.88/kg Effective 1 January 2021.
Glass bottles imported from EAC Countries	Now exempted from Excise Duty from 1 July 2021. Previously attracted Excise Duty of 25%.

Excise Duty mobilization measures – Finance Act, 2021



Particulars	New rate	Old rate
Jewelry of tariff 7113 and Imported Jewelry of tariff 7117	10%	Nil
Products containing nicotine or nicotine substitutes intended for inhalation without combustion or oral application but excluding medicinal products approved by the Cabinet Secretary responsible for matters relating to health and other manufacture tobacco substitutes that have been homogenized and reconstituted tobacco, tobacco extracts and essences	10%	Nil
Articles of plastic of tariff heading 3923.30.00	10%	Nil
Imported pasta of tariff 1902 whether cooked or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni, couscous, whether or not prepared	20%	Nil
Imported furniture of any kind used in offices, kitchen, bedroom and other furniture of tariff number 9403	25%	Nil
Imported eggs of tariff heading 04.07	25%	Nil
Imported onions of tariff heading 07.03	25%	Nil

Excise Duty mobilization measures – Finance Act, 2021



Particulars	New rate	Old rate
Telephone and internet data services	20%	15%
Imported potatoes, potato crisps and potato chips of tariff heading 07.01	25%	Nil
Imported sugar confectionary of tariff heading 17.04 not containing cocoa	35/kg	20/99/kg

Questions & Answers



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