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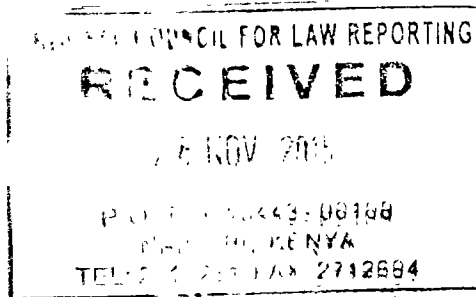
KENYA GAZETTE SUPPLEMENT

ACTS, 2015

NAIROBI, 6th November, 2015

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THE EXCISE DUTY ACT, 2015

No. 23 of 2015

Date of Assent: 6th November, 2015

Date of Commencement: By Notice

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THE EXCISE DUTY ACT, 2015

AN ACT of Parliament to provide for the charge, assessment and collection of excise duty, to make administrative provisions relating thereto, and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Excise Duty Act, 2015, and shall come into operation on such date as the Cabinet Secretary may, by notice in the Gazette, appoint, which shall not be later than three months from the date of its publication in the Gazette.

Short title and commencement.

2. In this Act, unless the context otherwise requires—

Interpretation.

“approved form” shall have the meaning assigned to it under the Tax Procedures Act, 2015;

“aircraft” means every description of conveyance by air of human beings or goods;

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

“authorised officer” means an officer authorised by the Commissioner for the purposes of this Act;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to finance;

“Commissioner” means the Commissioner-General appointed under the Kenya Revenue Authority Act;

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“denature” means to render unfit for human consumption;

“distillery” means a licensed distiller’s factory;

“duty of customs” means import duty, countervailing duty, or surtax charged under the East African Community Customs Management Act, 2004;

“ex-factory selling price” has the meaning assigned to it in section 11;

“excisable goods” means the goods specified in Part I of the First Schedule;

“excisable services” means the services specified in Part II of the First Schedule;

“excise control” has the meaning assigned to it in section 23;

“excise duty” means the excise duty imposed under this Act;

“exempt goods” means goods specified in the Second Schedule;

“export” means to take or cause to be taken from Kenya to a foreign country or to an export processing zone;

“export processing zone” has the meaning assigned to it in section 2 of the Export Processing Zones Act;

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“factory” means any premises at which a licensed manufacturer is licensed to manufacture and store excisable goods, but does not include any part of the premises through which excisable goods are sold to the public;

“import” means to bring or cause goods to be brought into Kenya from a foreign country or an export processing zone;

“importer” in relation to goods, means the person who owns the goods, or any other person who is, for the time being, in possession of or beneficially interested in the goods at the time of importation;

“international traffic”, in relation to an aircraft or vessel, means any operation of the aircraft or vessel, except as between two places in Kenya;

“international organization” shall have the meaning assigned to it under the Tax Procedures Act, 2015;

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“licence” means (a) in case of excisable services, the certificate of registration or (b) in case of excisable goods, the licence, issued under section 17;

“licensed distiller” means a distiller licensed under section 17;

“licensed manufacturer” means a person licensed under section 17 to manufacture excisable goods;

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“licensed person” means a person licensed or registered under section 17;

“manufacture” includes –

- (a) the production of excisable goods;
- (b) any intermediate or uncompleted process in the production of excisable goods; or
- (c) the distilling, rectifying, compounding, or denaturing of spirits;

“open market value” has the meaning assigned to it in section 3;

“prescribed” means prescribed in the Regulations;

“rectify” means to redistill spirits removed from a spirits receiver for the purpose of purifying or adding flavour;

“spirits” means spirits of any description and includes all liquor mixed with spirits and all mixtures and compounds or preparations made with spirits, but does not include denatured spirits;

“still” means a distilling apparatus and includes any part of a still;

“stores” means goods for use or consumption by passengers or crew on an aircraft or ship while in international traffic, and includes goods for sale on board such aircraft or vessel;

“supply”, in relation to services, has the meaning assigned to it under the Value Added Tax Act;

“tax law” shall have the meaning assigned to it under the Tax Procedures Act, 2015;

“the Regulations” means regulations made under this Act;

“time of importation” has the meaning assigned to it meaning in section 4(2);

“time of supply, in relation to excisable services, has the meaning in section 4(1);

“unexcisable goods” means goods that are not excisable goods;

“unexcised goods or services” means excisable goods or services liable for excise duty but, in respect of which, the full amount of excise duty due has not been paid;

“value added tax” means the value added tax imposed under the Value Added Tax Act, 2013;

“vessel” means every description of conveyance by water of human beings or goods.

(2) Except when the context otherwise requires, the terms “approved form”, “international organisation”, “person”, “related person”, and “tax law” have the meanings assigned to them under the Tax Procedures Act, 2015.

3. (1) The open market value of excisable goods or services at a particular time is the price that the goods or services would reasonably be expected to fetch in an arm’s length transaction at that time at the wholesale level.

Open market value

(2) If the open market value of excisable goods or services at a particular time cannot be determined under subsection (1), the open market value shall be the price which is an objective approximation of the price of the goods or services according to the Fourth Schedule of the East African Community Customs Management Act.

4. (1) The time of supply of excisable services shall be the earlier of—

Time of supply or importation

- (a) the date on which the services are performed;
- (b) the date on which the invoice for the supply of the services is issued; or
- (c) the date on which payment for the supply of the services is received, in whole or part.

(2) The time of importation of excisable goods shall be—

- (a) for excisable goods cleared for home use directly at the port of importation, or goods entered for removal to an inland station and there cleared for home use, at the time of customs clearance;

- (b) for excisable goods removed to a licensed warehouse subsequent to importation, at the time of final clearance from the warehouse for home use;
- (c) for excisable goods removed from an export processing zone for home use, at the time of removal for home use; or
- (d) in any other case, at the time the excisable goods are brought into Kenya.

PART II—LIABILITY FOR EXCISE DUTY

5. (1) Subject to this Act, a tax, to be known as excise duty, shall be charged in accordance with the provisions of this Act on –

Imposition of excise duty

- (a) excisable goods manufactured in Kenya by a licensed manufacturer;
- (b) excisable services supplied in Kenya by a licensed person; or
- (c) excisable goods imported into Kenya.

(2) Excise duty shall be charged at the rate specified in the First Schedule for the excisable goods or services in force at the time the liability arises for excise duty as determined under section 6.

- (3) The excise duty payable –
- (a) under subsection (1)(a), shall be payable by the licensed manufacturer;
 - (b) under subsection (1)(b), shall be payable by the licensed person making the supply; or
 - (c) under subsection(1)(c), shall be payable by the importer of the excisable goods.

6. (1) The liability of a licensed manufacturer for excise duty on excisable goods manufactured in Kenya shall arise at the time of removal of the goods from the manufacturer's factory.

Timing of liability for excise duty

(2) For the purposes of this Act, excisable goods that are consumed in a licensed manufacturer's factory shall be treated as removed from the factory at the time of consumption.

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(3) The liability of a licensed person for excise duty on excisable services shall arise at the time of the supply of the services.

(4) The liability of an importer for excise duty on excisable goods imported into Kenya shall arise—

- (a) for petroleum products, at the time of importation or such other time as may be specified by the Cabinet Secretary by notice in the gazette; or
- (b) for any other excisable goods, at the time of importation.

(5) A licensed person shall pay the liability for excise duty arising under subsection (1) or (3), as the case may be, in accordance with section 34.

(6) An importer shall discharge the liability for excise duty referred to in subsection (4) in accordance with section 36.

7. (1) Subject to this section, no excise duty shall be charged on the following—

Goods and services
not liable to excise
duty

- (a) exempt goods which meet the conditions set out in the Second Schedule;
- (b) excisable goods exported under customs control, including as stores;
- (c) excisable services exported from Kenya;
- (d) excisable goods that the manufacturer has destroyed, with the prior written permission of the Commissioner, under the supervision of an authorised officer prior to their removal from the factory in which they were manufactured;
- (e) denatured spirits for use in the manufacture of gasohol or as a heating fuel;
- (f) excisable goods that have been lost or destroyed by accident or other unavoidable cause—
 - (i) in the course of removal of the goods by the manufacturer from the manufacturer's factory including when loading or unloading the goods;

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- (ii) in the factory of the manufacturer in which the goods were manufactured before removal from the factory; or
- (iii) on board an aircraft or vessel prior to importation into Kenya.

(2) The Cabinet Secretary may by notice in the Gazette, grant remission of excise duty, wholly or partially, in respect of beer or wine made from sorghum, millet or cassava or any other agricultural products, (excluding barley), grown in Kenya.

(3) The Gazette notice issued under subsection (2), shall specify the products and conditions to be met for the remissions to be granted.

(4) Excisable services shall be considered to be exported from Kenya if the services are supplied from a place of business in Kenya for use or consumption outside Kenya.

(5) Subsection (4) shall apply only if the Commissioner is satisfied that the goods have not been, and shall not be consumed in Kenya.

(6) Subsection (1)(f)(i) and (ii) shall not apply if the licensed manufacturer has been compensated for the loss of the excisable goods and the compensation includes the excise duty payable on the goods, as a consequence of any of the following—

- (a) an insurance policy, indemnity, or other agreement;
- (b) a settlement; or
- (c) a judicial decision.

8. (1) The Cabinet Secretary may, by order in the Gazette, amend the First Schedule by increasing or decreasing any rate of excise duty on excisable goods or services from the date specified in the order by an amount not exceeding ten per centum of the rate set out in respect of those goods or services in the First Schedule.

(2) Nothing in subsection (1) shall empower the Cabinet Secretary to impose excise duty on any goods or services that are not excisable.

Variation of rates of
excise duty

(3) The Cabinet Secretary shall lay an order varying the rate of excise duty made under subsection (1) before the National Assembly within seven days after its publication in the Gazette.

(4) If the National Assembly passes a resolution disapproving of the variation within twenty days from the first day on which the National Assembly next sits after the variation is laid before the National Assembly, the Order shall cease to have effect from the date of the resolution.

9. (1) This section shall apply where the First Schedule specifies a rate of excise duty payable by reference to the excisable value of excisable goods or services.

Excisable value.

(2) The excisable value of excisable goods imported into Kenya shall be the sum total of the following amounts—

- (a) the customs value of the goods as determined under the East African Community Customs Management Act, whether or not any duty of customs is payable on the goods; and
- (b) the amount of duty of customs (if any) payable on the goods under the East African Community Customs Management Act, 2004.

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(3) The excisable value of excisable goods manufactured in Kenya shall be the *ex-factory* selling price of the goods, but not including—

- (a) the value added tax payable on the supply of the goods;
- (b) the cost of excise stamps, if any; or
- (c) the cost of returnable containers.

(4) Subject to subsections (5) and (6), the excisable value of excisable services shall be—

- (a) if the excisable services are supplied by a registered person in an arm's length transaction, the fee, commission, or charge payable for the services; or

- (b) in any other case, the open market value of the services.

(5) The excisable value of excisable services shall not include the value added tax, if any, payable on the supply of the services.

(6) The excisable value of excisable services specified in item 4 of Part II of the First Schedule shall not include interest or an insurance premium.

10. Despite section 8, the Commissioner shall, by notice in the Gazette, adjust the specific rate of excise duty annually to take into account inflation in accordance with the formula specified in Part II of the First Schedule.

Adjustment for inflation

11. The ex-factory selling price of excisable goods shall be—

Ex-factory selling price of excisable goods

- (a) if the excisable goods are sold by the manufacturer, other than to a purchaser 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.

12. (1) This section shall apply where the First Schedule specifies a rate of excise duty payable by reference to a quantity measured by volume or weight.

Quantity of excisable goods.

(2) If—

- (a) excisable goods are imported into Kenya, or removed from the factory of a licensed manufacturer, in a package intended for sale with, or of a kind usually sold with the goods in a sale by retail; and
- (b) the package—
- (i) is not marked or labelled with a net weight; or
- (ii) is not commonly sold as containing, or is not commonly reputed to contain, a specific quantity or weight; and

- (c) the owner of the goods is unable to satisfy the Commissioner of the correct net weight of the package,

the excisable goods shall be liable to excise duty according to the gross weight of the package and its contents.

(3) Subject to subsection (4), if—

- (a) excisable goods are imported into Kenya, or removed from the factory of a licensed manufacturer, in a package intended for sale with, or of a kind usually sold with, the goods in a sale by retail; and

(b) the package—

- (i) is marked, or labelled as containing a specific quantity of the goods; or
- (ii) is commonly sold as containing, or is commonly reputed to contain, a specific quantity of the goods,

the package shall be treated as containing not less than the specific quantity.

(4) If the package referred to in subsection (3) contains more than the specific quantity, excise duty shall be computed on the actual quantity.

(5) The Commissioner may determine and specify the allowance for tare or wastage that may be granted and the conditions under which it is granted.

13. Subject to this section, a supply of excisable services shall be deemed to be made in Kenya if the services are supplied from a place of business of the supplier in Kenya.

Place of supply of excisable services.

14. Where excise duty has been paid in respect of excisable goods imported into, or manufactured in Kenya by a licensed manufacturer and which have been used as raw materials in the manufacture of other excisable goods (hereinafter referred to as “finished goods”), the excise duty paid on the raw materials shall be offset against the excise duty payable on the finished goods.

Relief for raw materials.

PART III—LICENSING**A—Application for a Licence**

15. (1) A person shall not undertake any of the following activities unless the person is licensed or registered by the Commissioner to undertake the activity—

Activities requiring a licence.

- (a) the manufacture of excisable goods in Kenya;
- (b) the importation into Kenya of excisable goods specified by the Cabinet Secretary under section 27 as requiring an excise stamp;
- (c) the supply of excisable services;
- (d) the use of spirit to manufacture goods in Kenya that are not excisable goods; or
- (e) the carrying out of any other activity in Kenya for which the Commissioner, by notice in the Gazette, may impose a requirement for a licence.

(2) A person who manufactures excisable goods or supplies excisable services in contravention of subsection (1) shall be liable for the excise duty payable in respect of the excisable goods or services at the rate specified in the First Schedule.

(3) The excise duty payable by a person under subsection (2)—

- (a) shall be payable on demand made by the Commissioner; and
- (b) shall be in addition to any penalty or sanction imposed on the person under this Act or the Tax Procedures Act, 2015 for breach of subsection (1).

16. (1) A person who intends to undertake any of the activities specified in section 15(1) shall apply to the Commissioner for a licence for any of the activities specified section 15 (1).

Applications for a licence.

(2) An application under subsection (1) shall be—

- (a) in the prescribed form;
- (b) accompanied by the prescribed fees; and

- (c) lodged with the Commissioner in the prescribed manner.

B—Issue of Licences

17. (1) Subject to subsection (2), the Commissioner shall consider an application under section 16 and may grant or refuse to issue the applicant with a licence.

Issue of licence.

(2) The Commissioner may refuse an application under section 16 if satisfied that –

- (a) the applicant has been convicted of an offence under this Act or the Tax Procedures Act, 2015;
- (b) the applicant has been convicted of an offence involving dishonesty or fraud under any law;
- (c) the applicant –
 - (i) is or has been declared bankrupt or insolvent; or
 - (ii) is in the process of liquidation or receivership;
- (d) in the case of an application to be a manufacturer of excisable goods, the factory, plant or equipment, specified in the application is not adequate to manufacture or secure excisable goods;
- (e) the applicant has not kept proper records as required under any tax law or has otherwise failed to comply with its obligations under a tax law; or
- (f) paragraphs (a), (b), (c) or (e) apply to a person related to the applicant and the Commissioner is satisfied that the related person is reasonably expected to be involved in the conduct of the activity to which the application relates.

(3) The Commissioner may impose such terms, conditions or restrictions as the Commissioner considers appropriate in relation to a licence issued under this section.

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(4) The Commissioner shall give an applicant for a licence under section 16 written notice of the decision on the application and if the application is refused, the notice shall include reasons for the refusal.

(5) A licence shall take effect from the date specified therein by the Commissioner and shall unless earlier suspended, remain in force until cancelled under section 21.

18. (1) The license issued under section 17 shall be in the prescribed form.

Form of licence

(2) A licence issued to a manufacturer of excisable goods shall specify the following –

- (a) the class or classes of excisable goods that the manufacturer is licensed to manufacture;
- (b) the factory or factories at which the manufacturer is permitted to manufacture excisable goods.

(3) A factory specified in a licence issued under this section shall be used only for the manufacture of the class or classes of excisable goods specified in the licence.

(4) Only the person specified as the licensed manufacturer in a licence issued under this section shall manufacture excisable goods in the factory specified in the licence.

(5) A licence issued to a supplier of excisable services shall specify the excisable services offered.

19. (1) A licensed person shall display in a conspicuous place—

Obligations of licensed person

- (a) the original of the licence at the principal place of business; and
- (b) in case of excisable services, a certified copy of the licence at every other place of business.

(2) A licensed person shall notify the Commissioner, in writing—

- (a) if the licensed person ceases to carry on the activity for which the licence is issued;
- (b) if there is any change in the name, address, place of business, ownership, constitution, or

nature of the principal activity or activities carried on by the licensed person;

- (c) of any period in which the licensed person closes operations on a temporary basis; or
- (d) if, the case of a licensed manufacturer, there is any change in the factory specified in the licence, or the plant and equipment used to manufacture excisable goods.

(3) A notification under subsection (2) shall be lodged with the Commissioner –

- (a) in the case of a notification under paragraph (c) where the closure was unplanned, within seven days after the event causing the closure; or
- (b) in any other case, at least seven days prior to the event requiring notification occurs.

C—Suspension and Cancellation of Licences

20. (1) The Commissioner may suspend a licence issued under this Act if the Commissioner is satisfied that—

Suspension of
licence.

- (a) any of the matters specified in section 19(2)(a), (b), or (c) apply to the licensed person;
- (b) the licensed person has not kept proper records as required under this Act or the Tax Procedures Act, or has otherwise failed to comply with obligations under this Act;
- (c) the licensed person has breached a condition of the licence;
- (d) the licensed person has made a false or misleading statement to the Commissioner;
- (e) for a licensed manufacturer, the factory, or plant or equipment, specified in the licence is no longer adequate to manufacture or secure excisable goods.

(2) Where a licence is suspended under subsection (1), the Commissioner shall serve the licensed person with written notice of the suspension.

(3) The suspension of a licence shall take effect from the date of service of the notice under subsection (2).

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(4) A person served with a notice of suspension under subsection (2) may, by notice in writing and within fourteen days of service of the notice, or within such further time as the Commissioner may allow, appeal against the suspension.

(5) Where a licensed person lodges a notice of appeal in accordance with subsection (4), the Commissioner shall, within fourteen days after receipt of the notice, either –

- (a) accept the appeal and revoke the suspension of the licence;
- (b) provide the licensed person with written notice of the action required to be taken before the date specified in the notice to remedy the deficiencies that led to the suspension of the licence and revoke the suspension if the action is taken within the specified time; or
- (c) reject the appeal and cancel the licence under section 21.

(6) If the Commissioner fails to take action under subsection (5) within the time specified in that subsection, the suspension shall stand revoked.

21. (1) The Commissioner shall, by notice in writing, cancel the licence of a person when—

- (a) the Commissioner has received notification under section 19 (2) (a);
- (b) the person fails to appeal the suspension of the licence within the time specified in section 20(4);
- (c) the person fails to comply with a notice served on the person under section 20 (5) (b) within the time specified in the notice or within such further time as the Commissioner may allow;
- (d) the Commissioner rejects an appeal under section 20 (4); or
- (e) the Commissioner rejects an appeal against the suspension of a licence under section 20 (5) (c).

(2) The cancellation of a licence takes effect from the date specified in the notice of cancellation.

Cancellation of
licence.

(3) Any obligation or liability of a licensed person under this Act or the Tax Procedures Act, 2015 in respect of anything done or omitted to be done by the person while licensed, including the obligation to pay excise duty or to file excise duty returns, shall not be affected by cancellation of the person's licence.

22. (1) If the licence of a licensed manufacturer is suspended or cancelled—

Consequences of suspension or cancellation of licence.

- (a) the manufacturer shall—
 - (i) immediately cease to manufacture excisable goods;
 - (ii) immediately pay all excise duty on excisable goods on hand in respect of which duty is still unpaid;
 - (iii) dispose of excisable goods and materials in the manufacturer's factory in accordance with the direction of the Commissioner;
- (b) the Commissioner may—
 - (i) require the licensed manufacturer to remove excisable goods in the manufacturer's factory to another place approved by the Commissioner; and
 - (ii) take control of the manufacturer's factory and of any excisable goods at the factory as may be necessary for the protection of revenue and ensure compliance with this Act.

(2) If the licence of a person licensed to supply excisable services is cancelled, the person shall —

- (a) cease to supply the excisable services; and
- (b) pay excise duty on excisable services supplied in respect of which duty is not still unpaid.

(3) If the license of a person, other than a person to whom subsection (2) applies, is suspended or cancelled, the person shall immediately cease to undertake the activity for which the licence is issued.

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(4) The Commissioner may, by notice in writing, require a licensed person to pay such costs as may be incurred by the Commissioner as a result of the suspension or cancellation of the person's licence as specified in the notice and the costs shall be treated as tax for the purposes of the Tax Procedures Act, 2015.

23. (1) Where the Commissioner seeks to suspend, revoke, cancel or not renew a license under this Act, he or she shall give twenty-one days' notice to the licensee prior to taking the intended action, giving the grounds upon which such intended action shall be taken, and requiring the licensee to remedy any circumstances which may require to be remedied.

Commissioner to notify licensee prior to suspension, revocation, cancellation or refusal of renewal of a licence.

(2) The licensee shall, within twenty-one days of receipt of the notice, take action as required by the Commissioner.

(3) The Commissioner shall, within fourteen days, acknowledge in writing the action taken by the licensee or proceed to confirm the effect of the intended notified action.

(4) Upon receipt of such notification of confirmation of the intended action, where the licensee is dissatisfied with the decision of the Commissioner, the licensee may appeal to the Tax Appeals Tribunal within fourteen days of receipt of notification and shall serve the Commissioner with the appeal application within seven days of filing.

(5) The Tax Appeals Tribunal shall hear and determine the appeal without undue delay and its decision shall be binding on the Commissioner.

(6) Any party aggrieved by the decision of the Tax Appeals Tribunal may appeal to the High Court.

PART IV—EXCISE CONTROL

24. (1) Excisable goods stored in the factory of a licensed manufacturer shall be subject to the control of the Commissioner (referred to as "excise control").

Excisable goods under excise control.

(2) Excisable goods shall be subject to excise control until the earlier of—

- (a) the removal of the goods from the factory of a licensed manufacturer for consumption in Kenya;

- (b) the export of the goods from Kenya; or
- (c) the destruction or disposal of goods in accordance with subsection (4), or section 7 (1) (d).

(3) When goods are subject to excise control -

- (a) an authorised officer may, at any time, examine the goods; and
- (b) no person shall, except with authority of the Commissioner granted in accordance with this Act, remove the goods from a factory or otherwise interfere in any way with the goods.

(4) When goods are subject to excise control, the Commissioner may permit the owner of those goods to abandon them to the Commissioner, and on such abandonment the goods may, at the expense of the owner thereof, be destroyed or otherwise disposed of as the Commissioner may direct.

25. (1) For the purposes of ensuring proper accounting of excisable goods under excise control, a licensed manufacturer shall—

- (a) keep and maintain at the factory, metering and measuring devices, and such other equipment as may be necessary in order to enable the Commissioner to take an account of, or check by weight, gauge or measure, all excisable goods or materials in the factory;
- (b) store excisable goods in the factory in such manner as to facilitate the taking of a full account of the goods;
- (c) keep a materials account in the approved form and enter therein the particulars of all raw materials and intermediate goods received at the factory for use in manufacturing, and balance the account at the end of each month;
- (d) keep a finished goods account in the approved form and enter therein particulars of all excisable goods manufactured therein and delivered therefrom and shall balance the account at the end of each month;

Obligations of licensed manufacturer in relation to excisable goods under excise control.

- (e) ensure that excise duty is paid on any excisable goods consumed at the factory; and
- (f) comply with such other requirements as may be specified in the Regulations.

(2) For the purpose of subsection (1)(a), the Commissioner shall, by notice in the Gazette, specify the requirements of a measuring or metering device and such other equipment as may be required.

(3) The Commissioner—

- (a) may, at any time, take samples of excisable goods free of charge for such purposes of the Act as the Commissioner may deem necessary, and any such samples shall be disposed of and accounted for in such manner as the Commissioner may direct; or
- (b) may, subject to such written conditions as the Commissioner may impose, permit the owner of excisable goods to take samples which are of no commercial value without payment of the excise duty thereon.

26. (1) Subject to subsection (2), no person other than a licensed distiller or rectifier shall keep or use a still.

Keeping or use of still otherwise than by distiller or rectifier prohibited.

(2) The Commissioner may permit, subject to such conditions as the Commissioner may impose, the keeping or use of a still by a person other than a licensed distiller or rectifier when the still is —

- (a) kept by a person who makes or keeps stills solely for the purpose of sale;
- (b) kept or used for experimental, analytical, or scientific purposes; or
- (c) kept or used for the manufacture of an article other than spirits.

27. (1) A licensed manufacturer who cannot account, to the satisfaction of the Commissioner, for any quantity of excisable goods manufactured shall be deemed to have removed those goods from excise control in the month in which the discrepancy arose.

Deemed removal of excisable goods.

(2) A licensed manufacturer shall notify the Commissioner of any discrepancies between the manufacturer's actual and recorded inventory as soon as the manufacturer becomes aware of the discrepancy.

PART V—EXCISE STAMPS

28. (1) The Cabinet Secretary may in the regulations specify—

Excise stamps and other markings

- (a) the excisable goods to which excise stamps shall be affixed;
- (b) the systems for management of excise stamps and excisable goods, and
- (c) the place and time of affixing excise stamps.

(2) The Commissioner shall, by notice in at least two newspapers of national circulation, specify the types and descriptions of excise stamps to be affixed on goods specified under subsection (1).

(3) If excisable goods are manufactured for export, or for delivery to persons listed in subparagraph (2) or (3) of the Second Schedule, the goods shall be marked with such inscriptions as the Commissioner may specify to facilitate the tracking and tracing of the goods.

(4) A person shall not remove excisable goods specified in subsection (1) from the place designated for affixing stamps unless the goods have been affixed with stamps in accordance with the regulation.

(5) Notwithstanding subsection (4), the Commissioner may in exceptional circumstances, and with prior approval of the Cabinet Secretary, allow removal of excisable goods from excise control without affixing excise stamps on the goods.

PART VI—REFUNDS

29. (1) If excise duty has been paid by a person on excisable goods manufactured in, or imported into, Kenya, the Commissioner shall, on written application by the person, refund the excise duty paid if satisfied that—

Refunds.

- (a) before being consumed or used in Kenya—
 - (i) the goods have been damaged or stolen during the voyage or transportation to Kenya;
 - (ii) the goods have been damaged or destroyed while subject to excise control;

(iii) the buyer has returned the goods to the seller in accordance with the contract of sale; or

(b) the excise duty has been paid in respect of spirits that have subsequently been used by a licensed manufacturer to manufacture unexcisable goods.

(2) A licensed person may apply to the Commissioner for a refund of excise duty if the person has accounted for and paid excise duty on excisable goods or excisable services but has not received any payment from the purchaser for the goods or services, and the Commissioner may refund the excise duty if satisfied that payment for the goods or services has not been received.

(3) An application for a refund under subsection (2) may be made on the earlier of –

(a) three years from the date of the sale of the goods or services; or

(b) the purchaser becoming legally insolvent.

(4) An application for a refund under this section shall be—

(a) in the prescribed form; and

(b) lodged with the Commissioner in the prescribed manner—

(i) within twelve months from the date of payment of the duty, in the case of an application under subsection (1); or

(ii) within twelve months from the earlier date specified in subsection (3), in the case of an application under subsection (2).

(5) The amount of a refund of excise duty payable under this section shall be made in accordance with the Tax Procedures Act.

No.1 of 2005.

(6) If excise duty has been paid on the importation of excisable goods that have been subsequently exported, section 138 of the East African Community Customs Management Act, 2004 shall apply to the export.

(7) If excise duty has been refunded under subsection (5) and the licensed person has subsequently recovered the whole or part of the excise duty from the purchaser of the goods or services, the licensed person shall repay the refunded excise duty to the Commissioner to the extent that it has been recovered within thirty days of the recovery.

30. (1) Subject to this Act, when excisable goods in respect of which a refund of excise duty has been paid are subsequently disposed of, or used, in a manner inconsistent with the purpose for which the refund was granted, the goods shall be liable for the excise duty that would have been payable on the goods if the refund had not been granted.

Excisable goods subject to a refund liable for excise duty on disposal or inconsistent use.

(2) When a person who, being in possession of excisable goods in respect of which a refund of excise duty has been granted for any purpose, proposes to dispose of, or use, the goods for a purpose inconsistent with the purpose for which the refund was granted, the person shall furnish the Commissioner with the particulars of the proposed disposal or use, and shall pay the excise duty thereon.

31. (1) Subject to this Act, when excisable goods that have been exported or shipped for use as stores on an aircraft or vessel operating in international traffic are subsequently unloaded in Kenya for home use, the importer shall be liable to pay excise duty on such goods at the rate in force at the time of unloading.

Exempt excisable goods liable for excise duty on re-importation or purchase.

(2) Excisable goods imported or purchased free of excise duty shall be liable for excise duty on disposal or inconsistent use.

32. When a person imports or purchases excisable goods which are exempt from excise duty under the Second Schedule and the person subsequently disposes of, or uses, the goods in a manner inconsistent with the exemption, the person shall be liable to pay excise duty on the goods at the rate applicable to goods of that class or description at the time of disposal or inconsistent use:

Exempt excisable goods liable for excise duty on disposal or inconsistent use.

Provided that in the case of a motor vehicle, excise duty shall not be payable where in the case of a natural person, that person dies and the ownership of the motor

vehicle is transferred by way of bequest to or inheritance by another person.

PART VII—EXCISE DUTY PROCEDURE

33. The Tax Procedures Act, 2015 shall subject to this Part, apply for the purposes of the administration of this Act.

Application of Tax Procedures Act.

34. A person liable to pay excise duty under this Act shall keep such records as may be specified in this Act or the Regulations and shall retain the records for the time period, and in the manner, specified in the Tax Procedures Act.

Record keeping.

35. A licensed manufacturer or a supplier of excisable services shall submit an excise duty return, in the approved form and in the prescribed manner, for each calendar month not later than the twentieth day of the succeeding month, whether or not any excise duty is payable for that month.

Excise duty returns.

36. (1) The excise duty payable by a licensed manufacturer in respect of excisable goods removed from a manufacturer's factory during a calendar month shall be paid not later than the twentieth day of the succeeding month.

Payment of excise duty.

(2) The excise duty payable by a supplier of excisable services in respect of supplies of excisable services made by the supplier during a calendar month shall be paid not later than the twentieth day of the succeeding month.

(3) The excise duty payable by an importer in respect of the importation of excisable goods into Kenya shall be paid to the Commissioner at the time of importation.

(4) For the purpose of assessing, collecting, accounting and enforcing the payment of excise duty on the importation of goods into Kenya, the East African Community Customs Management Act, 2005 shall apply as if excise duty were customs duty.

37. (1) A licensed manufacturer shall provide such security for the payment of excise duty as the Commissioner may specify by notice in writing.

Security.

2015

(2) The Commissioner may require a person to give security for the due compliance with this Act and generally for the protection of the excise duty revenue, and pending the giving of security in relation to goods subject to excise control, the Commissioner may refuse to permit removal or exportation of the goods, or to process any declaration in relation thereto, or to license any person to do so.

(3) A person required to provide security under this section shall provide the security in accordance with the Tax Procedures Act, 2015.

PART VIII—OFFENCES AND PENALTIES

38. (1) A person who undertakes an activity referred to in section 15 (1) (a) or (b) without being licensed to do so shall be liable to a penalty equal to –

Penalty.

- (a) double the excise duty that would have been payable if the person were licensed in the case of a person to whom section 15 (1) (a) applies; or
- (b) double the amount of excise duty payable in respect of the importation of excisable goods requiring an excise stamp, in the case of a person to whom section 15(1) (b) applies.

(2) A licensed manufacturer who manufactures excisable goods in premises that are not specified on the manufacturer's licence as the factory in which the manufacturer is permitted to manufacture the goods shall be liable to a penalty equal to double the excise duty payable on those goods.

(3) If under section 27(1) has been applied to deem a licensed manufacturer to have removed excisable goods from excise control, the manufacturer shall be liable to pay a penalty equal to double the excise duty payable on those goods.

(4) The Tax Procedures Act, 2015 shall apply to penalties imposed under this section.

39. (1) Any person who contravenes the provisions of sections 17(3), 18(4), 25(1), 26(1), or 28 (4) commits an offence.

Offences relating to licensing and excise control.