

THE EXCISE DUTY BILL, 2014

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THE EXCISE DUTY BILL, 2014

A Bill for

AN ACT of Parliament to provide for the management, administration, charge, assessment, and collection of excise duties and for matters relating thereto and connected therewith

ENACTED by the Parliament of Kenya as follows –

PART I – PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Excise Duty Act, 2014, 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 publication of the Act in the Gazette.

Objects and principles.

2. (1) The objects of this Act are–

- (a) to impose excise duty to compensate the Government for the external costs that the Government has to bear caused by the production, supply, or consumption of goods or services, which costs are not reflected in the price of the goods; and
- (b) to impose excise duty on goods and services the demand for which is largely inelastic so as to raise revenue to support the Government's expenditure programs in the least distortionary way.

(2) The application of this Act shall be underpinned by the following principles –

- (a) excisable goods manufactured in, or imported into, Kenya, and excisable services supplied in Kenya, shall be subject to excise duty, unless exempt or otherwise not subject to excise duty;
- (b) excisable goods or services exported from Kenya shall not be subject to excise duty;
- (c) only persons licensed under the Act can

manufacture excisable goods or supply excisable services in Kenya.

(3) This Act, and regulations made under the Act, shall be interpreted in a way that best promotes the objects of the Act specified in subsection (1) and which is consistent with the principles specified in subsection (2).

(4) A person exercising discretion under this Act, or regulations made under the Act, shall exercise the discretion in a way that best promotes the objects of the Act specified in subsection (1) and which is consistent with the principles specified in subsection (2).

Interpretation.

3. (1) In this Act, except when the context otherwise requires –

“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;

“Certificate of Licence” means a Certificate of License issued under section 18;

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

“denature” means to render unfit for human consumption;

“distillery” means a licensed distiller’s factory;

“East African Community Customs Management Act” means the East African Community Customs Management Act, 2004;

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

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

“excisable services” means services specified in Part

II of the First Schedule;

“excise control” has the meaning in section 23;

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

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

“export” has the meaning assigned to it under the East African Community Customs Management Act;

“factory” means any premises that 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;

“importation” has the meaning assigned to it under the Value Added Tax Act;

“importer” has the meaning assigned to it under the Value Added Tax Act;

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

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

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

“licensed person” means a person licensed 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 in section 4;

“prescribed” means prescribed in 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;

“time of importation” has the meaning in section 5(2);

“time of supply, in relation to excisable services, has the meaning in section 5(1);

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

“unexcised goods or services” means excisable goods 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;

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

“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.

Open market value.

4. (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.

(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 is the price that is an objective approximation of the price the goods or services would fetch in an arm's length transaction made at that time at the wholesale level as determined by the Commissioner based on generally accepted principles of valuation.

Time of supply or importation.

5. (1) The time of supply of excisable services shall be the earlier of –

- (a) the date on which the services are performed;
- (b) the date on which the invoice for the supply is issued; or
- (c) the date on which payment for the supply 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

Imposition of excise duty.

6. (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 –

- (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 7.

(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.

Timing of liability for excise duty.

7. (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.

(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.

(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; 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 35.

(6) An importer shall pay the liability for excise duty referred to in subsection (4) in accordance with section 35.

Excise duty not payable.

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

(a) exempt goods satisfying the conditions 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) 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, in including when loading or unloading the goods;

(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) 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.

(3) Subsection (2) shall apply only if the Commissioner is satisfied that the goods have not been, and will not be, consumed in Kenya.

(4) 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.

Variation of rates of excise duty.

9. (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 twenty-five per centum of the rate set out in the First Schedule for those excisable goods or services.

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

(3) 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 was laid before the National Assembly, the order shall cease to have effect from the date the resolution is passed by the National Assembly.

(4) The Cabinet Secretary shall lay an order varying the rate of excise duty made under subsection (1) before the National Assembly without unreasonable delay.

Excisable value.

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

(2) The excisable value of excisable goods imported into Kenya shall be the sum 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;
- (b) the amount of duty of customs (if any) payable on the goods under the East African Community Customs Management Act.

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

- (a) value added tax payable on the supply of the goods;
- (b) the cost of excise stamps, if any;
- (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 III of the First Schedule shall not include interest or an insurance premium.

Ex-factory selling price of excisable goods.

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.

Quantity of excisable goods.

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

(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;
- (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 specify, in such manner as the Commissioner determines, the allowance for tare or wastage that may be granted and the conditions under which it is granted.

Place of supply of excisable services.

13. Subject to this section, a supply of excisable services is made in Kenya when the services have been supplied from a place of business of the supplier in Kenya.

Relief for raw materials.

14. When 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.

PART III – LICENSING

A- Application for a Licence

Activities requiring a licence.

15. (1) A person shall undertake the following activities only if licensed by the Commissioner to undertake the activity –

- (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 use of spirit to manufacture goods in Kenya that are not excisable goods; or
- (d) the carrying out of any other activity in Kenya for which the Commissioner, by

notice in the Gazette, may require a licence.

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

(3) Excise duty payable by a person under subsection (2) –

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

Applications for a licence.

16. (1) A person shall apply to the Commissioner for a licence if the person intends to undertake an activity specified in section 15(1).

(2) An application for a licence under subsection (1) shall be –

- (a) in the approved form;
- (b) accompanied by the prescribed licence fee; and
- (c) lodged with the Commissioner in the prescribed manner.

B – Issue of Licences

Issue of licence.

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.

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

- (a) the applicant has been convicted of an offence under this Act or the Tax Procedures Act;
- (b) the applicant has been convicted of an offence under any law involving

dishonesty or fraud;

- (c) the applicant –
 - (i) in the case of an individual, is or has been bankrupt or insolvent; or
 - (ii) in the case of any other person, is in the process of liquidation or receivership;
- (d) for an application to be a manufacturer of excisable goods the factory, or 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 a tax law or has otherwise failed to comply with its obligations under a tax law;
- (f) paragraph (a), (b), (c), or (e) applies 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.

(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 set out in the Certificate of Licence issued by the Commissioner and, subject to subsection (6), shall remain in force until cancelled under section 21.

(6) A licence shall not be in force during any period in which it is suspended under section 20.

Licence.

18. (1) The Commissioner shall issue a person granted with a licence under section 17 in the approved form.

(2) A licence issued to a licensed 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.

Obligations of licensed person.

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

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

(2) A licensed person shall notify the Commissioner, in writing, of any of the following –

- (a) if the licensed person ceases to carry on the activity for which the license is issued;
- (b) 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) any period in which the licensed person closes operations on a temporary basis;
- (d) in the case of a licensed manufacturer, any change to 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) for a notification under subsection (2)(c) in relation to a closure that 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

Suspension of licence.

20. (1) The Commissioner may suspend the licence of a person if the Commissioner is satisfied that –

- (a) any of the matters specified in section 17(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) When 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 of the suspension to the licensed person.

(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 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 of appeal, either –

- (a) accept the appeal and revoke the suspension of the licence;
- (b) provide the licensed person with written notice of the action required 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 Commission fails to take action under subsection (5) within the time specified in that subsection, the suspension shall stand revoked.

Cancellation of licence.

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 person's 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; or
- (d) the Commissioner rejects an appeal under section 20(4).

(2) The Commissioner may, by notice in writing, cancel a licence if the Commissioner is entitled to suspend the licence under section 20.

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

(4) Any obligation or liability of a licensed person under this Act or the Tax Procedures Act 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.

Consequences of suspension or cancellation of licence.

22. (1) If the licence of a licensed person is suspended or cancelled-

(a) in the case of a licensed manufacturer –

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

(b) in the case of a person licensed to supply excisable services, the person shall immediately –

- (i) cease to supply excisable services; and
- (ii) pay excise duty on excisable services supplied in respect of which duty has not yet been paid; or
- (c) in the case of any other licensed person, the person shall immediately cease to undertake the activity that the person was licensed to undertake.

(2) The Commissioner may, by written notice, require a licensed person to pay such costs 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 Part VII of the Tax Procedures Act.

PART IV – EXCISE CONTROL

Excisable goods under excise control.

23. (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”).

(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 the goods in accordance with subsection (4), or Section 8(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 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 abandonment the goods may, at the expense of the owner thereof, be destroyed or otherwise disposed of as the Commissioner may direct.

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

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

- (a) keep and maintain at the main place of business, metering and measuring devices, and such other equipment, as may be necessary in order to enable the Commissioner to take account of, or check by weight, gauge or measure, all excisable goods or materials in the factory;
- (b) store excisable goods in the main place of business in such manner so as to facilitate the taking of a full account of the goods;
- (c) keep a materials account in the approved form and enter therein particulars of all raw materials and intermediate goods received at the factory for use in manufacturing, and shall balance the account at the end of each month;
- (d) ensure that excise duty is paid on any excisable goods consumed at the main place of business; and
- (e) comply with any other requirements as specified in the Regulations.

(2) For the purpose of subsection (1)(a), the Commissioner may, by notice in the Gazette, specify the requirements of a measuring or metering device.

(3) The Commissioner –

- (a) may, at any time, take samples of excisable goods without payment of excise duty 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) subject to such written conditions as the Commissioner may impose, permit the owner of excisable goods to take samples of those goods without payment of the excise duty thereon at the times the samples are taken.

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

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

(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.

Deemed removal of excisable goods.

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

(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

Excise stamps and other markings.

27. (1) The Cabinet Secretary may make regulations specifying –

- (a) excisable goods to which excise stamps must be affixed; and
- (b) the systems for management of 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)(a) from excise control unless an excise stamp is affixed on the goods.

PART VI –REFUNDS

Refunds.

28. (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 -

- (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 approved form; and
- (b) lodged with the Commissioner in the prescribed manner within –
 - (i) for an application under subsection (1), twelve months from the date of payment of the duty; or
 - (ii) for an application under subsection (2), twelve months from the earlier date specified in subsection (3).

(5) The amount of a refund of excise duty payable under this section shall be made in accordance with section 47(3) of Tax Procedures Act.

(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 shall apply to the export.

(7) If excise duty has been refunded under subsection (3) 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.

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

29. (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.

(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.

Excisable goods liable for excise duty on re-importation.

30.(1) Subject to the 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 excise duty on the excisable goods at the rate in force at the time of unloading.

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

Excisable goods imported or purchased free of excise duty liable for duty on disposal or inconsistent use.

31. When a person imports or purchases excisable goods 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 for excise duty on the goods at the rate applicable to goods of that class or description at the time of disposal or inconsistent use.

PART VII – EXCISE DUTY PROCEDURE

Application of Tax Procedures Act.

32. The Tax Procedures Act shall apply for the purposes of the administration of this Act but subject the application of this Part.

Record-keeping.

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

Excise duty returns.

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

Payment of excise duty.

35. (1) The excise duty payable by a licensed manufacturer in respect of excisable goods removed from manufacturer's factory during a calendar month shall be paid

not later than the twentieth day after the end of the month.

(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 after the end of the 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 collecting and enforcing the payment of excise duty on the importation of goods into Kenya, the East African Community Customs Management Act shall apply as if excise duty were customs duty.

Security.

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

(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 pass any entry in relation thereto, or to licence a person.

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

PART VIII – PENALTY, OFFENCES AND FORFEITURE

Penalty.

37. (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 for a penalty equal to –

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

(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 for a penalty equal to double the excise duty payable on those goods.

(3) If section 26(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) Section 84 of the Tax Procedures Act shall apply to penalties imposed under this section.

Offences relating to
licensing and excise
control.

38. (1) Any person who contravenes the provisions of sections 18(3) or (4), 24(1), 25(1), or 26(2) commits an offence.

(2) A licensed manufacturer commits an offence if he manufactures excisable goods in premises that are not specified on the manufacturer's licence as the factory in which such manufacture is permitted.

(3) A licensed person who fails to comply with section 19(1) or (2) commits an offence.

(4) Any person who –

(a) removes excisable goods from excise control in contravention of section 23(3)(b);

(b) without authorisation, enters any place where excisable goods are stored under excise control; or

(c) is involved in the unauthorised removal, alteration, or interference with excisable goods under excise control.

Commits an offence.

(5) Any person who buys, or, without proper authority, receives or has in the person's possession, any excisable goods that have been manufactured contrary to the provisions of this Act, or which have been removed from the place where they ought to have been charged with excise duty before such duty has been charged and either paid or secured.

Offences relating to excise stamps.

39. Any person who contravenes section 27 commits an offence.

Offences relating to refunds and exemptions.

40. A person who is liable for excise duty under section 32 or 34 commits an offence.

Sanctions for offences.

41. (1) Subject to subsection (2), a person convicted of an offence under sections 38, 39, and 40 shall be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years, or to both a fine and imprisonment.

(2) Where an offence under this Part or the Tax Procedures Act has been committed in relation to excisable goods, the court may impose a fine not exceeding the higher of –

(a) the maximum fine specified for the offence; or

(b) three times the value of the excisable goods to which the offence relates.

(4) For the purposes of subsection (3), the value of excisable goods shall be determined under section 10.

Forfeiture of excisable goods.

42. (1) The following goods shall be liable to forfeiture –

(a) unexcised goods, unless the owner has made arrangements satisfactory to the Commissioner for payment of the duty, which may include the giving of security;

(b) excisable goods subject to excise control that have been moved, altered, or in any way interfered with, except with the permission of the Commissioner;

(c) excisable goods in respect of which, any person, in any matter relating to excise, makes or produces a declaration, certificate, application or other document, answer, statement or representation, that is false or incorrect in any particular;

- (d) excisable goods in respect of which a refund of excise duty has been unlawfully obtained; or
- (e) excisable goods in respect of which an offence has been committed under section 38 or 40 for contravention of section 23(3)(b) or 27.

(2) When excisable goods are liable to forfeiture under subsection (1), any package in which the goods are in, and all the contents of the package, shall also be liable to forfeiture.

PART IX – MISCELLANEOUS PROVISIONS

Tax avoidance schemes.

43. (1) Despite anything in this Act, if the Commissioner is satisfied that –

- (a) an scheme has been entered into or carried out;
- (b) a person has obtained a tax benefit in connection with the scheme; and
- (c) having regard to the substance of the scheme, it would be concluded that a person, or one of the persons, who entered into or carried out the scheme did so for the sole or dominant purpose of enabling the person referred to in paragraph (b) to obtain the tax benefit,

the Commissioner may determine the excise duty liability of the person who obtained the tax benefit as if the scheme had not been entered into or carried out.

(2) If a determination is made under subsection (1), the Commissioner shall issue an assessment giving effect to the determination.

(3) A determination under subsection (1) shall be made within five years from the last day of the month in which the excise tax duty liability arose.

(4) In this section –

“scheme” includes a course of action, and an agreement, arrangement, promise, plan, proposal, or undertaking, whether express or implied, and whether

or not legally enforceable;

“tax benefit” means any of the following –

- (a) a reduction in the liability of a person to pay excise duty, including a reduction of the liability to zero;
- (b) an entitlement to a refund of excise duty;
- (c) a postponement of a liability for the payment of excise duty;
- (d) any other advantage arising because of a delay in payment of excise duty;
- (e) anything that causes –
 - (i) excisable goods not to be excisable goods or excisable services not to be excisable services;
 - (ii) excisable goods or excisable services not to be subject to excise duty; or
 - (iii) excisable goods or excisable services to be subject to a lower rate of excise duty.

Effect on prices of imposition, abolition, or variation of excise duty.

44. (1) If, after any agreement has been entered into by a licensed person for the sale of excisable goods or supply of excisable services at a price that is expressly or implicitly inclusive of excise duty, and any alteration takes place in the amount of duty payable in respect of the goods or services before the duty becomes due, then, in the absence of express written provisions to the contrary between the parties to the agreement and despite the provisions of any other written law, the agreement shall have effect as follows –

- (a) in the case of the alteration being a the imposition of excise duty or an increased rate of excise duty, the licensed person may, after payment of the duty, whether directly or indirectly, add the difference caused by the alteration to the agreed price;

- (b) in the case of the alteration being the abolition of excise duty or a reduced rate of excise duty, the purchaser of the goods or services may, if the licensed person has not, directly or indirectly, paid the duty or has paid duty at a lower rate, deduct the difference caused by the alteration from the agreed price;
- (c) any refund or payment of increased duty resulting from the alteration not being finally adopted shall be adjusted between the parties to the agreement as the case may require.

(2) If, under any law relating to the control of prices or charges, a price is fixed, or any variation in the price is prohibited or regulated, in relation to any excisable goods or services, then, despite any provision of that law, when excise duty in relation to those goods or services is imposed or altered, the price may be varied strictly in accordance with that imposition or variation when the licensed person has, directly or indirectly, been affected by that imposition or alteration.

Regulations.

45. (1) The Cabinet Secretary may make Regulations -

- (a) prescribing any fee or charge to be levied on excisable goods imported into, or manufactured in, Kenya;
- (b) prescribing any matter required to be prescribed for the purposes of this Act; or
- (b) for the better carrying out of the provisions and administration of this Act.

(2) Regulations made under this Act may provide that any person contravening the Regulations commits an offence and shall be liable on conviction to a fine as specified in the Regulations.

Repeals and transitional provisions.

46. (1) Subject to this section, the Customs and Excise Cap 472 Act is hereby repealed.

(2) Section 117A of the Customs and Excise Act shall continue to apply until the railway development levy imposed under that section is provided for in other legislation.

(3) Despite the repeal of the Customs and Excise Act, the provisions of that Act shall remain in force for the purposes of the assessment and collection of any tax and the recovery of any penalty payable under that Act and outstanding at the date upon the commencement of this Act.

(4) Any subsidiary legislation made under the repealed Act in force at the commencement of this Act shall remain in force, so far as it is not inconsistent with this Act, until subsidiary legislation with respect to the same matter is made under this Act.

(5) When tax was due to paid or refunded under the repealed Act but was not paid or refunded, the tax shall be paid or refunded as if it were tax due to be paid or refunded under this Act.

(6) Unless a contrary intention appears, the commencement of this Act shall not -

- (a) revive anything not in force or existing at the time at which the commencement takes effect;
- (b) affect a penalty, forfeiture, or punishment incurred in respect of an offence committed against the repealed Act in force at the commencement of this Act;
- (c) affect an investigation, legal proceedings or remedy in respect of a right, privilege, obligation, liability, penalty, forfeiture or punishment, and any such investigation, legal proceedings or remedy may be instituted, continued, or enforced, and such penalty forfeiture or punishment may be imposed, as if this Act has not been passed; or
- (d) affect the employment or appointment of any person to the services of the Authority subsisting at the commencement of this Act.

(7) A person who is registered or licensed under the repealed Act shall be treated as registered under this Act unless the Commissioner provides otherwise by notice in writing to the person.

RATES OF EXCISE DUTY

1. Subject to paragraph 2, the rates of excise duty on excisable goods are as set out in the following table -

PART I

Tariff No	Goods Description	Rate of duty
2009.11.00	Frozen orange juice, unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter.	7%
2009.12.00	Orange juice not frozen, unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter, of a brix value not exceeding 20.	7%
2009.19.00	Other orange juice, unfermented and not containing added spirit whether or not containing sugar or other sweetening matter.	7%
2009.21.00	Grape fruit juice, unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter.	7%
2009.29.00	Other grape fruit juice, unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter.	7%
2009.31.00	Juice of any other single citrus fruit, unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter of a brix value not exceeding 20.	7%
2009.39.00	Other juice of any other single citrus fruit, unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter.	7%
2009.41.00	Pineapple juice, unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter, of a brix value not exceeding 20.	7%
2009.49.00	Other pineapple juice, unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter.	7%
2009.50.00	Tomato juice, unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter.	7%
2009.61.00	grape juice (including grape must), unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter, of a brix value not exceeding 20.	7%
2009.69.00	Grape juice (including grape must), unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter.	7%

2009.71.00	Apple juice, unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter, of a brix value not exceeding 20.	7%
2009.79.00	Other apple juice, unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter.	7%
2009.81.00	Juices of cranberry fruit (<i>vaccinium macrocarpo</i> , <i>vaccinium oxycoccos</i> , <i>vaccinium vitis-idaea</i>), unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter.	7%
2009.89.00	Juice of any other single fruit or vegetable, unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter – other – Juice of any other single fruit or vegetable:	7%
2009.90.00	Mixtures of Juices, unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter	7%
2106.90.91	Food supplements	7%
2106.90.99	Other food preparations not elsewhere specified or included	7%
2201.10.00	Mineral waters and aerated waters, including natural or artificial, not containing added sugar or other sweetening matter nor flavoured	Shs 3 or 5% per litre
2201.90.00	Other natural or artificial waters not containing added sugar or other sweetening matter nor flavoured, ice and snow;	Shs 3 per litre or 5%
2202.90.00	Other non alcoholic beverages	7%
2203.00.10	Stout and porter beer made from malt	Shs 70 per litre or 50%
2203.00.90	Other beer made from malt	Shs 70 per litre or 50%
2204.10.00	Sparkling wine of fresh grapes, including fortified wine obtained by distilling grape wine or grape marc	Shs 80 per litre or 50%
2204.21.00	Other wine; grape must with fermentation prevented or arrested by the addition of alcohol in containers holding 2 litres or less	Shs 80 per litre or 50%
2204.29.00	Other wine; grape must with fermentation prevented or arrested by the addition of alcohol in containers holding more than 2 litres	Shs 80 per litre or 50%
2204.30.00	Other grape must	Shs 80 per litre or 50%
2205.10.00	Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances, in containers holding 2 litres or less	Shs 80 per litre or 50%
2205.90.00	Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances in containers holding more than 2 litres	Shs 80 per litre or 50%

2206.00.10	Cider	Shs 70 per litre or 50%
2206.00.20	Opaque beer	Shs 70 per litre or 50%
2206.00.90	Other fermented beverages	Shs 70 per litre or 50%
2207.10.00	Undenatured ethyl alcohol of an alcoholic strength by volume of 80% vol or higher	Shs. 120 or 35% per litre
2207.20.10	Ethyl alcohol and other spirits, denatured, of any strength	Sh. 120 per litre or 35%
2208.20.00	Undenatured ethyl alcohol of an alcoholic strength by volume of 80% vol spirits obtained by distilling grape wine or grape marc.	Shs. 120 or 35% per litre
2208.30.00	Whiskies	Shs. 120 or 35% per litre
2208.40.00	Rum and other spirits obtained by distilling fermented sugar cane products	Shs. 120 or 35% per litre
2208.50.00	Gin and Geneva	Shs. 120 or 35% per litre
2208.60.00	Vodka	Shs. 120 or 35% per litre
2208.70.00	Liqueurs and cordials	Shs. 120 or 35% per litre
2208.90.10	Distilled Spirits (e.g., Konyagi, Uganda Waragi)	Shs. 120 or 35% per litre
2208.90.90	Other spirits and other spirituous beverages	Shs. 120 or 35% per litre
2402.10.00	Cigars, cheroots and cigarillos, containing tobacco	130%
2402.90.00	Other Cigars, cheroots and cigarillos, containing tobacco substitutes	130%
2403.11.00	Water pipe tobacco, specified in Subheading Note 1 to this chapter	130%
2403.19.00	Other smoking tobacco, whether or not containing tobacco substitutes in any proportion	130%
2403.91.00	Homogenised or reconstituted tobacco	130%
2403.99.90	Other manufactured tobacco and manufactured tobacco substitutes	130%
2709.00.10	condensates Per 1000l @ 20degC	shs. 6225.00
2710.12.10	Motor Spirit (gasoline) regular Per 1000l @ 20degC	shs. 19505.00

2710.12.20	Motor Spirit (gasoline) premium Per 1000l @ 20degC	Shs. 19895.00
2710.12.30	Aviation Spirit Per 1000l @ 20degC	Shs. 19895.00
2710.12.40	Spirit type Jet Fuel Per 1000l @ 20degC	Shs. 19895.00
2710.12.50	Special boiling point spirit and white spirit Per 1000l @ 20degC	Shs. 8500.00
2710.12.90	Other light oils and preparations Per 1000l @ 20degC	Shs. 8500.00
2710.19.10	Partly refined (including topped crude) Per 1000l @ 20degC	Shs. 1450.00
2710.19.21	Kerosene type Jet Fuel Per 1000l @ 20degC	Shs. 5755.00
2710.19.29	Other medium oils and preparations Per 1000l @ 20degC	Shs. 5300.00
2710.19.31	Gas oil (automotive, light, amber for high speed engines) Per 1000l @ 20degC	Shs. 10305.00
2710.19.32	Diesel oil (industrial heavy, black, for low speed marine and stationery engines) Per 1000l @ 20degC	Shs. 3700.00
2710.19.39	Other gas oils Per 1000l @ 20degC	Shs. 6300.00
2710.19.41	Residual fuel oils(marine, furnace and similar fuel oils) of a Kinematic viscosity of 125 centistokes Per 1000l @ 20degC	Shs. 300.00
2710.19.42	Residual fuel oils (marine, furnace and similar fuel oils) of a Kinematic viscosity of 180 centistokes Per 1000l @ 20degC	Shs. 600.00
2710.19.43	Residual fuel oils (marine, furnace and similar fuel oils) of a Kinematic viscosity of 280 centistokes Per 1000l @ 20degC	Shs. 600.00
2710.19.49	Other residual fuels oils Per 1000l @ 20degC	Shs. 600.00
2712.10.00	Petroleum jelly	5%
3303.00.10	Perfumes ad Toilet waters.	5%
3304.10.00	Lip make up preparations	5%
3304.20.00	Eye make up preparations	5%
3304.30.00	Manicure or pedicure preparations	5%
3304.91.00	Other powders, whether or not compressed	5%
3304.99.00	Other beauty or make up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations	5%
3305.10.00	Shampoos	5%
3305.20.00	Preparations for permanent waving or straightening of hair	5%
3305.30.00	Hair lacquers	5%
3305.90.00	Other preparations for the use on hair	5%
3307.10.00	Pre shave, shaving or after shave preparations	5%
3307.20.00	Personal deodorants and antiperspirants	5%
3307.30.00	Perfumed bath salts and other bath preparations	5%

3307.49.00	Other preparations for perfuming or deodorizing rooms, including odoriferous preparations use during religious rites	5%
3307.90.00	Depilatories and other perfumed, cosmetic or toilet preparations, not elsewhere specified or included	5%
8702.10.19	assembled four wheel drive motor Vehicles for the transport of ten persons, including the driver (diesel or semi diesel)	20%
8702.10.22	assembled motor Vehicles for the transport of not more than 15 persons(diesel or semi diesel)	20%
8702.10.29	assembled motor Vehicles for the transport more than 15 but not exceeding 25 persons, (diesel or semi diesel)	20%
8702.90.19	assembled four wheel drive motor Vehicles for the transport of ten persons, including the driver	20%
8702.90.29	assembled four wheel drive motor Vehicles for the transport of ten persons, (including the driver) but not exceeding 25 persons	20%
8703.10.00	vehicles specially designed for travelling on snow; golf cars and similar vehicles	20%
8703.21.90	assembled passenger motor vehicles, with spark ignition internal combustion reciprocating piston engine, of a cylinder capacity not exceeding 1000cc	20%
8703.22.90	assembled passenger motor vehicles, with spark ignition internal combustion reciprocating piston engine, of a cylinder capacity exceeding 1000cc but not exceeding 1500 cc	20%
8703.23.90	assembled passenger motor vehicles, with spark ignition internal combustion reciprocating piston engine, of a cylinder capacity exceeding 1500cc but not exceeding 3000 cc	20%
8703.24.90	assembled passenger motor vehicles, with spark ignition internal combustion reciprocating piston engine, of a cylinder capacity exceeding 3000 cc	20%
8703.31.90	assembled passenger motor vehicles, with compression ignition internal combustion piston engine (diesel or semi diesel) of a cylinder capacity not exceeding 1500 cc	20%
8703.32.90	assembled passenger motor vehicles, with compression ignition internal combustion piston engine (diesel or semi diesel) of a cylinder capacity exceeding 1500cc but not exceeding 2500 cc	20%
8703.33.90	assembled passenger motor vehicles, with compression ignition internal combustion piston engine (diesel or semi diesel) of a cylinder capacity exceeding 2500cc.	20%
8703.90.90	Other assembled motor vehicles for the transport of persons	20%

PART II

Description	Rate of Excise Duty
Cigarettes	Sh. 1200 per mille or 35% of retail selling price.

PART III

1. Mobile cellular phone services shall be charged excise duty at the rate of 10% of their excisable value.
2. Other wireless telephone services shall be charged excise duty at the rate of 10% of their excisable value.
3. All imported used computers of more than three years from the date of manufacture shall attract excise duty at the rate of 25%.
4. Plastic shopping bags shall be charged excise duty at the rate of 50% of their excisable value.
5. Excise duty on pre-mixed alcoholic beverages of tariff No.2208.90.90 (e.g. Ready to Drink) of strength not exceeding 10 percent by volume of alcohol shall be Shs.70 per litre or 50% whichever is higher.
6. 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.
7. Excise duty on other fees charged by financial institutions shall be ten percent.

2. (1) The specific rates of excise duty on excisable goods specified in this schedule shall be indexed twice yearly in accordance with this paragraph.

(2) If the indexation factor for an indexation day is greater than 1, each rate of excise duty specified in column 2 of the table in paragraph 1 shall be replaced by the rate of excise duty computed by reference to the following formula –

$$A \times B$$

where –

A is the rate of excise duty on the day immediately before the indexation day; and

B is the indexation factor for the indexation day.

(3) The indexation factor for an indexation day is the number computed by reference to the following formula –

$$C/D$$

C is the indexation number for the most recently competed quarter before the indexation day; and

D is the indexation number for the quarter immediately before the commencement date.

PART IV – INTERPRETATION

In this Schedule –

“beer” includes ale, porter, and any other description of beer and any liquor, including beer substitute, which is produced as a result of the alcoholic fermentation of an extract derived from barley, malt, a cereal grain, starch or saccharine matter and hops or hops substitute, in potable water with other substitute ingredients and which contains more than two per centum of proof spirit, but does not include –

- (a) any beer brewed by any person for personal consumption and which is not offered for sale; or
- (b) any kind of beer that, by order of the Cabinet Secretary, is excluded from the provisions of this Act;

“cigar” means a cigar, cheroot or cigarillo prepared from tobacco;

“cigarette” means -

- (a) rolls of tobacco capable of being smoked as they are and which are not cigars or cigarillos;
- (b) rolls of tobacco which, by simple non-industrial handling, are inserted into cigarette-paper tubes; or
- (c) rolls of tobacco that, by simple non-industrial handling, are wrapped in cigarette paper;

“cigarillos” means

- (a) rolls of tobacco made entirely of natural tobacco; or
- (b) rolls of tobacco with an outer wrapper of natural tobacco;

“financial institution” means –

- (a) a person licensed under –
 - (i) the Banking Act;
 - (ii) the Insurance Act;
 - (iii) the Central Bank of Kenya Act; or
 - (iv) the Micro Finance Act, 2006;
- (b) a Sacco society registered under the Sacco Societies Act, 2008; or

(c) the Kenya Post Office Savings Bank established the Kenya Post Office Savings Bank Act;

“other fees” include any fees, charges or commissions charged by financial institutions, but does not include interest.

“indexation day” means 1st February and 1st August of every year;

“indexation number”, in relation to a quarter, means the consumer price indexation number published by Kenya National Bureau of Statistics for the quarter;

“proof” means a standard of strength of distilled alcoholic liquors (or of vinegar);

“proof spirit” means spirit that at a temperature of 10.55 degrees Centigrade weighs 12/13th of an equal volume of distilled water at the same temperature;

“quarter” means the period of three months ending on 31st March, 30th June, 30th September, and 31st December of every year;

“wine” means a liquor of a strength not exceeding 50 degrees of proof that is made from fruit and sugar or from fruit and sugar mixed with any other material and which has undergone a process of fermentation and includes mead.

SECOND SCHEDULE

EXEMPT EXCISABLE GOODS

1. The following excisable goods are exempt from excise duty but only when purchased before clearance through Customs or removal from excise control –

- (1) Excisable goods that are bona fide stores for a ship or aircraft, being goods for use or consumption by passengers or crew of the ship or aircraft while on board and while the ship is in international traffic, and in such quantities as approved by the Commissioner.
- (2) Excisable goods imported into Kenya or purchased in Kenya by a diplomatic or consular mission, or by a diplomat or consul, or a member of the diplomat or consul's family forming part of the diplomat or consul's household in Kenya to the extent provided for under the Privileges and Immunities Act, (Cap. 179).
- (3) Excisable goods imported into Kenya or purchased in Kenya by a foreign government, international organisation, or aid agency to the extent provided for under an international agreement or the Privileges and Immunities Act, 1970.
- (4) A motor vehicles that is specifically designed for use by disabled or physically handicapped persons.

In this second schedule "International agreement" means an agreement between the Government of Kenya and a foreign government, international organization, or aid agency for the provision of financial, technical, humanitarian, or administrative assistance to the Government of Kenya.

MEMORANDUM OF OBJECTS AND REASONS

The main objective of this Bill is to consolidate the provisions on the imposition and collection of excise duty into a separate law. This is necessitated by the enactment of the East African Customs Management Act into which were incorporated the provisions on customs duty then in force under the Customs and Excise Act (Chapter 472 of the laws of Kenya). These provisions were consequently repealed, leaving only the provisions relating to excise duty.

This bill completes the process of the repeal of that Act.

The enactment of this Bill shall not occasion any additional expenditure of public funds.

Dated the 2014