



KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

Office of the Commissioner General

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16/07/19*

Ref: KRA/5/1002/5(735)

15th July, 2019

Mr. Michael R. Sialai, EBS
Clerk of National Assembly
Parliament Building
NAIROBI



Dear *Mr Sialai,*

LEGAL NOTICE NO. 109 OF 2019 ON ADJUSTMENT OF EXCISE DUTY RATES FOR INFLATION INLINE WITH SECTION 10 OF THE EXCISE DUTY ACT, 2015

Attached please find Gazette Notice No.109 and a detailed memorandum touching on the Adjustment of the Excise Duty Rates published on 9th July 2019 under section 10 of the Excise Duty Act, 2015.

Section 10 of the Excise Duty Act, 2015 as read together with Paragraph 2(2) of the First Schedule to the Act provides for adjustment of the Excise Duty rates of items in the First Schedule to the Act to take into account inflation.

Pursuant of section 11(2) of the Statutory Instrument Act, we hereby forward the above captioned documents for tabling before the National Assembly.

The following annexures are provided in support of our request:

1. "Appendix 1" - Public Notice on Inflation Adjustment on Excise Duty Rates
2. "Appendix 2" - Summary of stakeholder engagements conducted
3. "Appendix 3" - Attendance record for stakeholder engagements conducted to fulfill public participation requirements.

We would appreciate expedited approval of the instrument by the Committee on Delegated Legislation.

Yours *Sincerely,*

Mr. Githii Mburu
COMMISSIONER GENERAL

Tabled

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Tulipe Ushuru, Tujitegeme!



SPECIAL ISSUE

Kenya Gazette Supplement No. 116

(Legislative Supplement No. 34)

LEGAL NOTICE NO. 109

THE EXCISE DUTY ACT

(No. 23 of 2015)

ADJUSTMENT OF RATES FOR INFLATION

IN EXERCISE of the powers conferred by section 10 of the Excise Duty Act, 2015, the Commissioner-General adjusts for inflation the specific rates of duty set out in the Schedule hereto in accordance with the formula specified in Part I of the First Schedule to the Act with effect from the 1st July, 2019 and takes into account the average inflation rate for the 2018/2019 financial year of five decimal one five per centum (5.15%).

SCHEDULE

<i>Tariff No.</i>	<i>Tariff Description</i>	<i>Current Rate of Excise Duty (KSh.)</i>	<i>New Rate of Excise Duty (KSh.)</i>
2709.00.10	Condensates per 1000 litres @ 20 deg. C	6,225.00	6,545.59
2710.12.10	Motor spirit (gasoline) regular per 1000 litres @ 20 deg. C	19,505.00	20,509.51
2710.12.20	Motor spirit (gasoline) premium per 1000 litres @ 20 deg. C	19,895.00	20,919.59
2710.12.30	Aviation spirit per 1000 litres @ 20 deg. C	19,895.00	20,919.59
2710.12.40	Spirit type jet fuel per 100 litres @ 20 deg. C	19,895.00	20,919.59
2710.12.50	Special boiling point spirit and white spirit per 1000 litres @ 20 deg. C	8,500.00	8,937.75
2710.12.90	Other light oils and preparations per 1000 litres @ 20 deg. C	8,500.00	8,937.75
2710.19.10	Partly refined (including topped crude) per 1000 litres @ 20 deg. C	1,450.00	1,524.68
2710.19.21	Kerosene type jet fuel per 1000 litres @ 20 deg. C	5,755.00	6,051.38
2710.19.22	Illuminating kerosene	10,305	10,835.70
2710.19.29	Other medium oils and preparations per 1000 litres @ 20 deg. C	5,300.00	5,572.95
2710.19.31	Gas oil (automotive, light, amber for high speed engines) per 1000 litres @ 20 deg. C	10,305.00	10,835.71

<i>Tariff No.</i>	<i>Tariff Description</i>	<i>Current Rate of Excise Duty (KSh.)</i>	<i>New Rate of Excise Duty (KSh.)</i>
2710 19 32	Diesel oil (industrial heavy, black, for low speed marine and stationery engines) per 1000 litres @ 20 deg. C	3,700 00	3,890.55
2710 19 39	Other gas oils per 1000 litres @ 20 deg C	6,300 00	6,624.45
2710 19 41	Residual fuel oils (marine, furnace and similar fuel oils) of a kinematic viscosity of 125 centistokes per 1000 litres @ 20 deg C	300	315 45
2710.19 42	Residual fuel oils (marine, furnace and similar fuel oils) of a kinematic viscosity of 180 centistokes per 1000 litres @ 20 deg C	600	630 9
2710 19 43	Residual fuel oils (marine, furnace and similar fuel oils) of a kinematic viscosity of 280 centistokes per 1000 litres @ 20 deg C	600	630 9
2710 19 49	Other residual fuels oils per 1000 litres @ 20 deg C	600	630 9

<i>Description</i>	<i>Current Rate of Excise Duty</i>	<i>New Rate of Excise Duty</i>
Fruit juices (including grape must), and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter	Shs. 10.50 per litre	Shs. 11 04 per litre
Bottled or similarly packaged waters and other non-alcoholic beverages, not including fruit or vegetable juices	Shs. 5.20 per litre	Shs 5.47 per litre
Beer, cider, perry, mead, opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 10%	Shs 105.20 per litre	Shs. 110 62 per litre

<i>Description</i>	<i>Current Rate of Excise Duty</i>	<i>New Rate of Excise Duty</i>
Powdered beer	Shs. 105.20 per kg	Shs. 110.62 per kg
Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	Shs. 157.80 per litre	Shs. 165.93 per litre
Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 10%	Shs. 210.40 per litre	Shs. 221.24 per litre
Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes	Shs. 10,520 per kg	Shs. 11,061.78 per kg
Electronic cigarettes	Shs. 3,156 per unit	Shs. 3,318.53 per unit
Cartridge for use in electronic cigarettes	Shs. 2,104 per unit	Shs. 2,212.36 per unit
Cigarette with filters (hinge lid and soft cap)	Shs. 2,630 per mille	Shs. 2,765.45 per mille
Cigarettes without filters (plain cigarettes)	Shs. 1,893 per mille	Shs. 1,990.49 per mille
Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and "reconstituted tobacco"; tobacco extracts and essences	Shs. 7,364 per kg	Shs. 7,743.25 per kg
Motor cycles of tariff no. 87.11 other than motor cycle ambulances and locally assembled motor cycles	Shs. 10,520 per unit	Shs. 11,061.78 per unit
Sugar confectionery (including white chocolate) of tariff heading 17.04; chocolate in blocks, slabs or bars of tariff Nos. 1806.31.00, 1806.32.00, 1806.90.00	Shs. 20 per kg	Shs. 21.03 per kg

Dated the 1st July, 2019.

GITHII MBURU,
Commissioner-General,
Kenya Revenue Authority.

LEGAL NOTICE NO 109 OF 9th JULY 2019

MEMORANDUM TO THE NATIONAL ASSEMBLY ON THE EXCISE DUTY RATES ADJUSTMENT FOR INFLATION

Objective of the Memorandum

The objective of this Memorandum is to submit the Legal Notice No 109 of 2019 for tabling in the National Assembly in accordance with the provisions of Section 11(2) of the Statutory Instruments Act.

Background of the Legal Notice

Section 10 of the Excise Duty Act, 2015 empowers the Commissioner General of the Kenya Revenue Authority to make adjustments on the specific excise duty rates in accordance with the formula that is specified in part one of the First Schedule of the Act.

Objective of the Legal Notice


The primary objective of the Legal Notice is to provide the legal instrument to enable the government implement the tax measures necessary for funding its economic development and growth agenda.

Every year the cost of goods and services increase due to the dynamics within and outside the economy. This rate of increase in prices is known as the rate of inflation.

In Kenya, the National Bureau of Statistics under the National Treasury is responsible for determining and publishing both the monthly and annual rate of inflation. For the year 2018/2019, the average rate of inflation was determined as **5.15%** (July 2018– 30th June 2019).

Excise Duty taxes charged on the basis of percentage (ad valorem) on the value of the goods will automatically increase as the price of goods increase (in essence it compensates for the price adjustment) and hence lead to maintenance of the real value of tax. The same is not true for specific rates of tax which is a charge per unit of measure (e.g Kshs. 200 per litre of Spirit). In this case, when the price of goods increase, the excise duty rate remains constant and hence erodes the real value of the taxes.

In response to this, the Parliament enacted Section 10 of the Excise Duty Act and Paragraph 2 of the First Schedule to the Act. These provisions provide for adjustment of the rates at the beginning of the financial year ~~to protect the value of duty from erosion~~ by inflation.

 THE NATIONAL ASSEMBLY PAPERS LAJD	
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Financial implications

The Legal Notice provides for an increase of **5.15%** on the specific rates of duty on excisable goods listed in the First Schedule to the Act. It is expected that this adjustment will lead to an equivalent increase in tax revenue from the specified goods.

Public Consultation

The Kenya Revenue Authority informed the relevant stakeholders of the intention to review the rates in compliance with the law and sought their comments on the same in a Public Notice published on Tuesday, the 18th June 2019(*Copy attached*) and held subsequent meetings with stakeholders at Times Tower on Friday, 28th June 2019 (*see attached copies of the attendance register and the stakeholders' comments*). Further engagement of stakeholders will be conducted for purposes of implementation of the Legal Notice.

It also important to note that the determination of the average inflation adjustment rates is a factual figure published by the Kenya National Bureau of Statistics and is available to the public. Therefore, neither the Commissioner General, nor the public have any discretion in changing the formula or the outcome of its application.

Request to the National Assembly

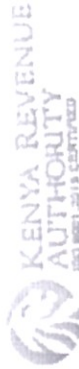
The National Assembly is invited to:

- a) Note the contents of this memorandum.
- b) Adopt Legal Notice No. 109 of 2019

GITHII MBURU

COMMISSIONER GENERAL-KENYA REVENUE AUTHORITY

SPONSORED CONTENT



Public Notice

Inflation Adjustment on Excise Duty Rates

The Commissioner General is required under the Excise Duty Act, 2015 to adjust for inflation the rates of excise duty on all products that have a specific rate of excise duty, annually.

Kenya Revenue Authority would like to inform manufacturers and importers of excisable goods falling under the above category and members of the public that the Commissioner General will adjust the rates of excise duty using the average inflation rate for the financial year 2018/2019, as determined by the Kenya National Bureau of Statistics. The adjusted rates will be effective from 1st July 2019.

In compliance with statutory provisions, Kenya Revenue Authority invites interested members of the public and stakeholders to submit their views on the excise inflation adjustment, addressed to the Commissioner General, Kenya Revenue Authority, P.O Box 46240-00100, Nairobi or emailed to stakeholder@kra.go.ke to be received on or before Monday, 24th June 2019.

Commissioner General

Kenya Revenue Authority is a public corporation established under the Kenya Revenue Authority Act, 2015. It is a body corporate with legal personality, separate from the Government of Kenya. It is a public institution and its activities are financed through the levies and duties imposed on goods and services imported into Kenya and on goods and services supplied within Kenya. It is a public institution and its activities are financed through the levies and duties imposed on goods and services imported into Kenya and on goods and services supplied within Kenya.



Public Notice

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SUMMARY OF PUBLIC PARTICIPATION MEETING TO DISCUSS INFLATION ADJUSTMENT ON EXCISE DUTY RATES HELD ON 28TH JUNE 2019 AT TIMES TOWER, NAIROBI

No	Name of Organisation	Issue/Proposal	Observations	KRA Response
1	Kenya Association of manufacturers	Effective date should not be 1 st July, 2019	Given that the average inflation rate for fiscal year 2018/2019 has not been released by KNBS and can only derive a provisional average inflation rate based on headline inflation rates from July 2018 to May 2019	<p>The average inflation rate for the fiscal year 2018/2019 is released by KNBS by the end of June, 2019.</p> <p>Challenges related to these timelines are noted and as such, it has been proposed under the current Finance Bill, to change the adjustment date from 1st July to 1st October to address these overlaps.</p> <p>KRA has proposed to the Attorney General to have the dates streamlined so that pump prices are not affected.</p>
2		KAM proposes that inflation adjustment be done in December, 2019 instead of 1 st July, 2019.	On 20 th December 2018, KRA published a Legal Notice No. 239 providing 5.2% as inflation adjustment factor. To provide policy stability, any change should be after one year, in this case December, 2019	The current law does not empower the Commissioner General to change the adjustment date. This can only be done through an amendment to the law.
3		The inflation factor should not be adjusted upwards.	KAM argues that the real economy is not growing and at this time, we need to	The excise duty rates are adjusted based on the average rate of monthly inflation for

			cushion consumers and actually accelerate consumption.	the preceding financial year. This adjustment reflects a fair representation of the inflation in the general economy.
4		The Notice period was too short considering that stakeholder engagement and public participation as envisaged in law could not have been actualized.	There is need to provide sufficient time for stakeholder engagement.	This is noted. The Finance Bill has proposed to move the adjustment date from 1 st July to 1 st October. In future, this will provide sufficient time for public participation and engagement.
6		KAM would appreciate clarification on whether 15% increase of excise duty for cigarettes, wines and spirits is inclusive of the inflation adjustment rate or not.	This guidance is necessary to ensure that there is clarity on what the proposed 15% increment is based on.	The proposed increase of 15% in the Finance Bill, 2019 has taken into account the inflation adjustment for the FY 2019/2020.
7		Do away with the proposed increase of the excise duty rate by 15% as proposed by the Cabinet Secretary- National treasury.	Illicit trade is prevalent among these products- cigarettes, wines and spirits, an increase in the tax burden will further motivate the illicit trade and penalize genuine manufacturers affected by the vice. This will further reduce tax proceeds from Excise Tax.	The proposed 15% increase is in the Finance Bill, 2019. Engagements on the same are still ongoing and KAM is advised to forward their comments on this issue to Parliament. KRA clarified that in singling out the products for excise, the CS was avoiding an increase that was completely outside the expectation. The three products were picked using a scientific formula that would not significantly have a negative impact.
8	Kenya Breweries Limited /UDV (Kenya) Limited	Hold/ reduction of inflation adjustment on beer excise rate.	(a) 5.2% inflation adjustment on bottled beer will lead to 2.6 % decline in excise revenue collection.	Although it is noted that increasing tax rates motivate illicit trade, KRA together with the multi-agency team are



			<p>(b) Movement of consumers from bottled beer to spirits and value beer due to increase tax-burden leading to erosion of government revenue.</p> <p>(c) Increase in contraband bottled beer</p> <p>(d) Negative impact on the value chain due to an inflation led increase on beer excise rate.</p>	<p>undertaking several measures to address illicit issues trade and the government continues to enhance its efforts to fight illicit trade on these and other products.</p> <p>It should also be noted that the inflation adjustment is being effected on all products that have a specific rate of excise duty and therefore the motivation to switch to alternative products like spirits may not arise.</p>
9		Increase excise rate on spirits by 8% and not 15% as announced in the budget speech.	Justification as in 8 above.	The proposed 15% increase is contained in the Finance Bill, 2019. Engagements on the same are still ongoing and KBL is advised to forward their comments on this issue to Parliament.
10	British American Tobacco Kenya	BAT opposes the proposed 15% increment that has been proposed through the Finance Bill, 2019 but instead implement predictable, steady and timely annual inflationary based excise adjustments across all excisable goods, effective 1 st July, 2019.	The proposed increase of 15% effectively raised the cost of a packet of 20 cigarettes by Ksh 8 to Ksh 61 per packet. This will result in a higher incentive for traders in both locally produced and smuggled illicit cigarettes and accelerated decline in government revenues.	The proposed 15% increase is contained in the Finance Bill, 2019. Engagements on the same are still ongoing and BAT is advised to forward their comments on this issue to Parliament.
11		Revert to the single tier specific excise structure which will be applied to filtered cigarettes post the 2019/2020 inflation adjustment at the base rate of	The proposal will result in a sustained 9% increase in government revenue from the cigarette industry over the next 5 years.	This is a proposal to amend the Excise Duty Act, 2015 and not an inflation adjustment issue. BAT is therefore advised to forward this proposal to parliament during the ongoing consultations on the Finance Bill, 2019

		Ksh. 2630 per mille for any excise increase in 2019.		
12		Increase and sustain enforcement measures against illicit trade.	Illicit trade costs the government at least Ksh 2.5 billion in revenues annually.	<p>KRA together with the multiagency team is undertaking several measures to address illicit trade on these products. The efforts to fight illicit trade are being enhanced by the Government and the enforcement measures shall be sustained.</p> <p>KRA welcomed suggestions on how to jointly undertake gap analysis to curb illicit trade through evidence-based operations.</p>



MEETING TO DISCUSS INFLATION ADJUSTMENT ON EXCISE DUTY RATES

FRIDAY 28th JUNE, 2019
 30th FLOOR BOARDROOM, TIMES TOWERS
 REGISTRATION FORM

No.	Name of Person	Name of Organization	Mobile No	Email	Signature
1.	David Murithy	EABL	0724110787	David.M.Murithy@eabl.co.ke	
2.	Zach Muniyi	EABL	0724298185	Zach.muniyi@eabl.co.ke	
3.	Eric Kinyiti	EABL	072235514	Eric.Kinyiti@eabl.co.ke	
4.	SIDNEY WAFULA	BAT KENYA	072142535	sidney_wafula@bat.com	
5.	TASHIANYA CHOLA	BAT KENYA	0708811452	tashanya_chola@bat.com	
6.	Rebecca Wanjohi	KAM	0725110366	rebecca.wanjohi@kam.co.ke	
7.	Job Wanjohi	KAM	0721256674	job.wanjohi@kam.co.ke	
8.	Aurine Mwinzi	KAM	0728962885	aurine.mwinzi@kam.co.ke	
9.	Ezra Terer	EPRA	0720308108	ezra.terer@epra.go.ke	
10.					



MEETING TO DISCUSS INFLATION ADJUSTMENT ON EXCISE DUTY RATES

FRIDAY 28th JUNE, 2019
 30th FLOOR BOARDROOM, TIMES TOWERS
 REGISTRATION FORM

No.	Name of Person	Name of Organization	Mobile No	Email	Signature
1.	JULIAN KENDO	KRA - SEEN	0735533500	julian.kendo@kra.go.ke	JKK
2.	Hadi Abdullah	KRA	072368444	hadi.abdullah@kra.go.ke	[Signature]
3.	Caxton Ngeyo	—	0229888438	Caxtonngeyo@kra.go.ke	[Signature]
4.	Fred Ndeleva	—	0725329417	fred.ndelewa@kra.go.ke	[Signature]
5.	Dulhan Nzoro	KRA	0722436222	dulhan.nzoro@kra.go.ke	[Signature]
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