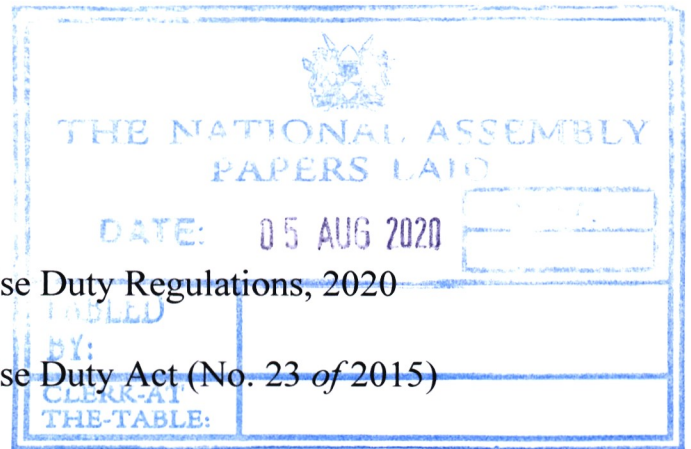


**EXPLANATORY MEMORANDUM TO THE EXCISE DUTY
REGULATIONS, 2020**

LEGAL NOTICE NO 113 of 2020



Name of the Statutory Instrument: The Excise Duty Regulations, 2020

Name of the Parent Act: The Excise Duty Act (No. 23 of 2015)

Enacted Pursuant to: Section 45 of the Excise Duty Act, 2015

Name of the Ministry/Department: The National Treasury and Planning

Gazetted on: 17th July, 2020

PART II

1. Purpose of the Statutory instrument

To Regulations are meant to support implementation of the Excise Duty Act, 2015 by providing procedural and administrative guidance in the implementation of the Excise Duty Act, 2015.

2. Policy Background

The **Excise Duty Act** was enacted in 2015 and repealed the **Customs and Excise Act, CAP 472**. The Act provides for the charge, assessment and collection of excise duty.

Although the Customs and Excise Act was repealed, **Section 46** of the **Excise Duty Act, 2015** provided for a transitional clause that allowed the Regulations made under the Customs and Excise Act to continued being applied until new regulations are made

under the new law.

KRA has been relying on the **Customs and Excise Regulations**, pursuant to the provisions of Section 46, **to implement the Excise Duty Act, 2015**. The Customs and Excise Regulations contained some provisions that were rendered redundant by the Excise Duty Act, 2015 and some that were inconsistent with the new Act.

The new Regulations have been enacted in line with the provisions of Excise Duty Act, 2015 and also ensures that they address emerging challenges as well as embrace innovation and support businesses in line with the with spirit of the Excise Duty Act, 2015.

3. Highlights of the Regulations

The Regulations provide guidance on various procedural and administrative issues which include:

- (a) the manner and procedure for application of excise licenses and fees applicable.
- (b) procedures relating to excise controls to seal loopholes of tax evasion and reduce illicit trade in excisable goods.
- (c) systems for management of product accounting of excisable goods
- (d) procedures relating to excise duty security bonds.
- (e) procedures relating to controls applicable during manufacture and exportation of excisable goods such as alcoholic beverages and tobacco products.
- (f) procedures relating to controls on processing excise duty exemptions, offsets and refunds, and
- (g) procedures relating to seizure of excisable goods.

4. Public Participation

During the processing of the Regulations, adequate public participation was carried out. A public notice was issued on **11th July 2019** calling for comments on the Regulations from key players in the excise sector such as manufacturers and importers of excisable goods, professional accountants, audit firms, members of the business community and general public. In addition, a public participation forum was held on **7th November 2019** to discuss the draft Regulations with stakeholders.

A lot of feedback was received from various stakeholders including, manufactures and importers, professional accountants, audit firms, members of the business community and general public.

The feedback revealed that the stakeholders were in support of the proposed Regulations and also proposed some amendments to the draft regulations. The comments given during the public participation process were incorporated into the final draft to the extent possible.

5. Impact

In support of the ease of doing business initiatives in the country, the Regulations have simplified excise licensing processes and controls during manufacturing of excisable goods. The Regulations have also maintained the licensing fees that were provided under the repealed Customs and Excise Regulations to facilitate taxpayers obtain licenses

Further Regulations, are expected to enhance revenue collection as well as reduce illicit trade in excisable goods by sealing loopholes of tax evasion, simplifying and clarifying excise processes and encouraging more taxpayers to obtain excise licenses and trade legally.

6. Monitoring and review

The Regulations will be implemented by the Kenya Revenue Authority and will be reviewed from time to time on need basis to assess the effectiveness.

7. Contact

The Cabinet Secretary for The National Treasury and Planning

The National Treasury and Planning
29th July, 2020



**KENYA REVENUE
AUTHORITY**
ISO 9001:2015 CERTIFIED

Ref: KRA/M&CD/08/6

1st November 2019

Ms. Nancy Muhoya
Regional Chief Executive Officer
Ernst & Young LLP - Kenya
P.O. Box 44286 - 00100
Nairobi.

Dear Ms. Muhoya,

**INVITATION FOR A MEETING ON THE PROPOSED EXCISE DUTY
REGULATIONS**

Following our public notice date 11th July, 2019 on Excise Duty regulations, the Kenya Revenue Authority would like to invite the Ernst & Young LLP - Kenya for a meeting on Thursday, 7th November 2019, to deliberate on the same regulations. The meeting will be held at Times Tower, 5th floor, from 9.am

We kindly request you to confirm attendance by Wednesday, 6th November 2019 through email stakeholderengagement@kra.go.ke or contact us on 020 2812045.

We thank you and look forward to your participation, as well as that of the Ernst & Young LLP – Kenya representatives.

Yours Sincerely,

Grace Wandera
Deputy Commissioner, Marketing & Communication



**KENYA REVENUE
AUTHORITY**
ISO 9001:2015 CERTIFIED

Ref: KRA/M&CD/o8/6

1st November 2019

Mr. Mathew Bird
Managing Director
Alliance One Tobacco (K) Ltd
P.O. Box 4721 - 01002
Thika.

Dear Mr. Bird,

**INVITATION FOR A MEETING ON THE PROPOSED EXCISE DUTY
REGULATIONS**

Following our public notice date 11th July, 2019 on Excise Duty regulations, the Kenya Revenue Authority would like to invite the Alliance One Tobacco (K) Ltd for a meeting on Thursday, 7th November 2019, to deliberate on the same regulations. The meeting will be held at Times Tower, 5th floor, from 9.am

We kindly request you to confirm attendance by Wednesday, 6th November 2019 through email stakeholder.engagement@kra.go.ke or contact us on 020 2812045.

We thank you and look forward to your participation, as well as that of the AOT Kenya representatives.

Yours Sincerely,

Grace Wandera
Deputy Commissioner, Marketing & Communication



**KENYA REVENUE
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ISO 9001:2015 CERTIFIED

Ref: KRA/M&CD/08/6

1st November 2019

Ms. Wanjiku Manyara
Chief Executive Officer
Petroleum Institute of East Africa
Bruce House, Standard Street,
Nairobi.

Dear Ms. Manyara,

**INVITATION FOR A MEETING ON THE PROPOSED EXCISE DUTY
REGULATIONS**

Following our public notice date 11th July, 2019 on Excise Duty regulations, the Kenya Revenue Authority would like to invite the Petroleum Institute of East Africa for a meeting on Thursday, 7th November 2019, to deliberate on the same regulations. The meeting will be held at Times Tower, 5th floor, from 9.am

We kindly request you to confirm attendance by Wednesday, 6th November 2019 through email stakeholder engagement@kra.go.ke or contact us on 020 2812045.

We thank you and look forward to your participation, as well as that of the PIEA members.

Yours Sincerely,

Grace Wandera

Deputy Commissioner, Marketing & Communication



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Ref: KRA/M&CD/08/6

1st November 2019

Mr. Henry Kabogo
Chairperson
Water Bottlers Association of Kenya
Westlands, 21 Avenue,
Nairobi.

Dear Mr. Kabogo,

**INVITATION FOR A MEETING ON THE PROPOSED EXCISE DUTY
REGULATIONS**

Following our public notice date 11th July, 2019 on Excise Duty regulations, the Kenya Revenue Authority would like to invite the Water Bottlers Association of Kenya for a meeting on Thursday, 7th November 2019, to deliberate on the same regulations. The meeting will be held at Times Tower, 5th floor, from 9.am

We kindly request you to confirm attendance by Wednesday, 6th November 2019 through email stakeholder_engagement@kra.go.ke or contact us on 020 2812045.

We thank you and look forward to your participation, as well as that of the WBAK members.

Yours Sincerely,

Grace Wandera.

Grace Wandera
Deputy Commissioner, Marketing & Communication



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Ref: KRA/M&CD/08/6

1st November 2019

Mr. Gordon Mutugi
Chairman
Alcoholic Beverages Association of Kenya
P.O.Box 59826-00100,
Nairobi.

Dear Mr. Mutugi,

**INVITATION FOR A MEETING ON THE PROPOSED EXCISE DUTY
REGULATIONS**

Following our public notice date 11th July, 2019 on Excise Duty regulations, the Kenya Revenue Authority would like to invite the Alcoholic Beverages Association of Kenya for a meeting on Thursday, 7th November 2019, to deliberate on the same regulations. The meeting will be held at Times Tower, 5th floor, from 9.am

We kindly request you to confirm attendance by Wednesday, 6th November 2019 through email stakeholderengagement@kra.go.ke or contact us on 020 2812045.

We thank you and look forward to your participation, as well as that of the ABAK members.

Yours Sincerely,

Grace Wandera
Deputy Commissioner, Marketing & Communication



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Ref: KRA/M&CD/o8/6

1st November 2019

Ms. Beverley Spencer-Obatoyinbo
Managing Director
British American Tobacco East & Central Africa - Kenya
PO Box 30000-00100,
Nairobi.

Dear Ms. Spencer,

**INVITATION FOR A MEETING ON THE PROPOSED EXCISE DUTY
REGULATIONS**

Following our public notice date 11th July, 2019 on Excise Duty regulations, the Kenya Revenue Authority would like to invite the British American Tobacco East & Central Africa – Kenya for a meeting on Thursday, 7th November 2019, to deliberate on the same regulations. The meeting will be held at Times Tower, 5th floor, from 9.am

We kindly request you to confirm attendance by Wednesday, 6th November 2019 through email stakeholder.engagement@kra.go.ke or contact us on 020 2812045.

We thank you and look forward to your participation, as well as that of the BAT representatives.

Yours Sincerely,

Grace Wandera
Deputy Commissioner, Marketing & Communication



**KENYA REVENUE
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Ref: KRA/M&CD/o8/6

1st November 2019

Mr. Pavel Robert Oimeke
Director General
Energy & Petroleum Regulatory Authority
P.O Box 42681-00100,
Nairobi.

Dear Mr. Oimeke,

**INVITATION FOR A MEETING ON THE PROPOSED EXCISE DUTY
REGULATIONS**

Following our public notice date 11th July, 2019 on Excise Duty regulations, the Kenya Revenue Authority would like to invite the Energy & Petroleum Regulatory Authority for a meeting on Thursday, 7th November 2019, to deliberate on the same regulations. The meeting will be held at Times Tower, 5th floor, from 9.am

We kindly request you to confirm attendance by Wednesday, 6th November 2019 through email stakeholderengagement@kra.go.ke or contact us on 020 2812045.

We thank you and look forward to your participation, as well as that of the EPRA representatives.

Yours Sincerely,

Grace Wandera
Deputy Commissioner, Marketing & Communication



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AUTHORITY**
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Ref: KRA/M&CD/08/6

1st November 2019

Mrs. Jane W. Karuku
Managing Director
Kenya Breweries Ltd – UDV
P.O BOX 30161 00100
Nairobi.

Dear Mrs. Karuku,

**INVITATION FOR A MEETING ON THE PROPOSED EXCISE DUTY
REGULATIONS**

Following our public notice date 11th July, 2019 on Excise Duty regulations, the Kenya Revenue Authority would like to invite the Kenya Breweries Ltd for a meeting on Thursday, 7th November 2019, to deliberate on the same regulations. The meeting will be held at Times Tower, 5th floor, from 9.am

We kindly request you to confirm attendance by Wednesday, 6th November 2019 through email stakeholderengagement@kra.go.ke or contact us on 020 2812045.

We thank you and look forward to your participation, as well as that of the KBL representatives.

Yours Sincerely,

Grace Wandera






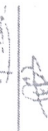









Deputy Commissioner, Marketing & Communication

Public Participation Fora for Proposed Tax Regulations

The Excise Duty Regulations, 2019

DATE: 7TH NOVEMBER, 2019 TIME: 9:00AM

VENUE: TIMES TOWER 5TH FLOOR CONVENTION CENTER

NAME	ORGANISATION	EMAIL ADDRESS	PHONE NUMBER	SIGN
1. Jackson Ongubo	Tstal PLC	stefkion-ongubo@tstak.co.ke	0727702810	
2. Genesis Digo	Vivo Energy	genesis.digo@vivoenergy.co.ke	0722749920	
3. Billy Tsimba	BAT Kenya	billy.tsimba@bat.co.ke	0722681903	
4. James Mutua	Delmonte	delmonte@delmonte.co.ke	0722681903	
5. Lee Njiru	Ken WTD	lee.njiru@kenwtd.co.ke	0721435550	
6. William Njiru	KIDA	william.njiru@kida.co.ke	0723536724	
7. Daniel Njiru	Shah	daniel.njiru@shah.co.ke	0722619403	
8. Felix Odhiambo	CIWK Consulting	felix.odhiambo@ciwk.co.ke	0707647682	
9. Nicholas Njiru	Siftan	nicholas.njiru@siftan.co.ke	0732783220	
10. Martin Njiru	Phit Energy Ltd	martin.njiru@phitenergy.co.ke	0710471412	
11. Austin	UREPA	austin@urepa.co.ke	0720714053	
12. Eunice Sirego	URETEPA	eunice.sirego@uretepa.co.ke	0727613341	
13. Waldon Kang'at	URETEPA	waldon.kang'at@uretepa.co.ke	0722333566	
14. Mathani Kimani	PWC	mathani.kimani@pwc.co.ke	0729551820	
15. Sam Paul Ondu	Delmonte	spaul@delmonte.co.ke	071192681	



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Public Participation Fora for Proposed Tax Regulations

The Excise Duty Regulations, 2019

DATE: 7TH NOVEMBER, 2019 TIME: 9:00AM

VENUE: TIMES TOWER 5TH FLOOR CONVENTION CENTER

	NAME	ORGANISATION	EMAIL ADDRESS	PHONE NUMBER	SIGN
1.	Hadjiah Nanyumo	ENI	Hadjiah.Nanyumo@kenya.gov.ke	0739872195	
2.	ALAN NG'ANG'A	CT	alan.ng'ang'a@kenya.gov.ke	07122527509	
3.	Job Mwilu Muriuki	KAM	jobmuriuki@kam.co.ke	0721286679	
4.	Saunder Tera	Kenetic Insulin	saunders@keneticinsulin.com	0721802170	
5.	Angeli MUAUHI	MBAAK	ANGELI.MUAUHI@MBAAK.KE	0736351173	
6.	John & Emma	KEA	john@orange-kenya.co.ke	0722899576	
7.	Ruven A Ataraka	KRA	ruven.ataraka@kra.go.ke	07295859795	
8.	Lucas GATHITHA	IBT	lucas.gathitha@ibtkenya.com	0731454851	
9.	Nathan MURRAY	Repat	nathanmurray@repat-kenya.com	072232323	
10.	Dimple Shah	CSLAD	dimple@csce-governance.com	075212000	
11.	Zach Mungu	EABL	Zach.Mungu@eabl.com	0732921945	
12.	Mwajala Sichele	II	sichele.mwajala@dirgo.com	0728591158	
13.	Patience NDIYU	BNT	Patience.ndiyu@bnt.com	0728601176	
14.	PETER MUDINA	MTIK	Peter.mudina@mtik.co.ke	0722711945	
15.	Peter Muthengi	Mutenge ASS	Muthengip@ga.hoo.com	0722527509	



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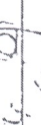

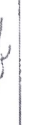

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Public Participation Fora for Proposed Tax Regulations

The Excise Duty Regulations, 2019

DATE: 7TH NOVEMBER, 2019 TIME: 9:00AM

VENUE: TIMES TOWER 5TH FLOOR CONVENTION CENTER

NAME	ORGANISATION	EMAIL ADDRESS	PHONE NUMBER	SIGN
1. NATHASHAN GACHAU	MASTKAMIND TOBACCO	Ngachau@MastkamindKenya.co.ke	0722742279	
2. DANIEL MURUGO	PETRO OIL	daniel.murug@petro-oil.com	0721423108	
3. KOMAL SHAH	CSL LTD	komal.shah@gmail.com	0759212016	
4. IAN OGWANGI	Deltaset	Iandogw@gmail.com	0747463685	
5. JOYCE NJIRI	Kenilkebil	joyce.njiri@kenilkebil.co.ke	0722391402	
6. LINDA KUMARI	MAJI KASILI	lindakumari@maji-kasili.com	0723667242	
7. DAVIES SIMUYI	NPS	davies.simuyi@nps.com	0721907957	
8. NANCY KAGAI	National Exporters Association	nancy.kagai@neca.co.ke	0705571108	
9. JABARETH MUMAMBA	DELTA SET LTD	jabareth.mumamba@gmail.com	0722687621	
10. HARRIS KATIKI	SIM DROPS	harris.katiki@simdrops.com	0722119581	
11. VANCE WABERA	RETRAK	vance.wabera@retrak.co.ke	0716719082	
12. NIOJIGE NGANI	ALPHA BRAND	niojige.ngani@alpha-brand.com	0701455141	
13. PUDANCE CHIROCH	QUESTWORKS	pudance.chiroch@gmail.com	0727379386	
14. GUY UYONGI	Uyongitank	guy.uyongi@uyongitank.com	07275211	
15. FASHES MWA	KIP	fashes.mwa@kip.co.ke	0710551692	





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Public Participation Fora for Proposed Tax Regulations The Excise Duty Regulations, 2019

DATE: 7TH NOVEMBER, 2019 TIME: 9:00AM

VENUE: TIMES TOWER 5TH FLOOR CONVENTION CENTER

	NAME	ORGANISATION	EMAIL ADDRESS	PHONE NUMBER	SIGN
1.	<i>Toscah Mwangi</i>	<i>KISA</i>		<i>0720200954</i>	
2.	<i>Clara Mwangi</i>	<i>KISA</i>		<i>0721789471</i>	
3.					
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Public Participation Forums

Public Participation Forums for Proposed Tax Regulations

PUBLIC NOTICES 06/11/2019

Following the publication of various draft regulations for public and stakeholder comments, Kenya Revenue Authority is inviting all relevant stakeholders to public participation forums to discuss the proposed regulations.

The forums target tax professionals, manufacturers and importers of excisable products, suppliers of vatable products and members of the public. The engagements will be held as per the schedule below:

REGULATIONS	VENUE	DATE	TIME
The Excise Duty Regulations, 2019	Times Tower, 5th Floor Convention Centre Thursday,	7th November 2019	9:00 am – 12:00 noon
The Value Added Tax (Electronic Tax Invoice) Regulations, 2019	Times Tower, 5th Floor Convention Centre	7th November 2019	2:00 pm – 4:30 pm
The Tax Procedures (Alternative Dispute Resolution) Regulations, 2019	Times Tower, 5th Floor Convention Centre	Friday, 8th November 2019	9:00 am – 12:00 noon

For confirmation of attendance, kindly email: stakeholder.engagement@kra.go.ke or please call our Contact Centre on Tel: (0)204999999; 0711099999 or Email:

<https://www.kra.go.ke/en/media-center/public-notice/656-public-participation-forums-for-proposed-tax-regulations>



[BACK TO BLOG](#)

Draft Excise Duty Regulations 2019

PUBLIC NOTICES 11 07 2019

Kenya Revenue Authority would like to inform members of the public, manufacturers and importers of excisable goods that Draft Excise Duty regulations, 2019 have been developed and currently hosted on the Kenya Revenue Authority website (<https://kra.go.ke/images/publications/The-Excise-Duty-Regulations-2019-Draft.pdf>)

In order to ensure wide consultation and public participation as stipulated in the Constitution of Kenya, 2010, Kenya Revenue Authority invites institutions, organisations, individuals and the public to submit their views and comments on these draft regulations.

The views and comments should be addressed in writing to the Commissioner General, Kenya Revenue Authority, P.O Box 48240-00100, Nairobi or emailed to stakeholder.engagement@kra.go.ke to be received on or before Monday, 26th August 2019 to facilitate the review and finalisation of the Regulations

For clarification please call our Contact Centre on

Tel: (0) 20 4 999 999; 0711 099 999 or Email: callcentre@kra.go.ke

Commissioner General

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SUMMARY OF STAKEHOLDER COMMENTS ON EXCISE DUTY REGULATION 2019

WATER BOTTLERS ASSOCIATION OF KENYA (WBAK)					
S/NO	Regulation	Issue	Recommendation	Justification	KRA Comments
1.	Regulation 3: Application for license or registration to manufacture or import excisable goods, supply excisable services, users of excisable goods	<p>The phrase "the documents that the Commissioner may require".</p> <p>The use of this phrase does not standardize the application process for all manufacturers of excisable goods and may be subject to perceptions of discrimination.</p> <p>The regulation does not specify the validity period of the licenses.</p>	<p>1.Delete then clearly outline the documents required</p> <p>2.Specify the length of the validity of the license. This allows the manufacturers to forecast and plan.</p>	<p>This will bring about standardization in the application process in order to promote uniformity and ensure that there is no discrimination.</p>	<p>The Commissioner gives the flexibility to ask for any document.</p> <p>The documents may vary from industry player to another since the regulations are meant to govern the application of licenses or registration for all manufacturers.</p> <p>The length of validity of time is already provided for in the main law. The license runs perpetually unless it is revoked by the Commissioner.</p>
2.	Regulation 6: Requirement to provide remote view of the factory	<p>The regulation requires installation of a system that gives a remote view of the factory and allows unfettered access to the Commissioner to the data collected.</p> <p>The provision is an invasive incursion into the rights to privacy.</p> <p>The regulation does not specify the kind of system to be used and the corresponding</p>	<p>Specify the system and give the cost of the same.</p>	<p>Provides certainty of knowing what form the system will take and the cost of such a system.</p>	<p>The system may vary from one industry sector to another and from one factory to another and hence the type and areas of installation will be determined on case by case basis.</p> <p>The required system does</p>



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	cost implication.			not invade on the taxpayer's rights since it will only be installed on the licensed excise premises which, under the main law, is under the Authority of the Commissioner.
3.	Regulation 8: Marking of premises and pipes. The regulation involves the marking of premises with the words, "EXCISE PREMISES". This implies a segregation of functions on the factory floor of a licensee. This may require an overhaul of the factory floor which may require substantial amount of resources. There is also rigidity with regard to the placement of vessels and utensils since this is at the discretion of the Commissioner. This is likely to stifle creativity.	No proposal given.	No justification.	The kind of marking required under this regulation will be marked on the main entrance and does not affect the factory floor. The marking makes it easier for authorized agencies to identify the location of the licensed premises.
4.	Regulation 9: Automation of production. The regulation empowers the Commissioner to make automation of a production process a necessary feature of the licensee. The regulation is vague on when the automation may be done. Further, it does not specify which industry would be targeted. This requirement for automation may disadvantage members, majority of whom have small scale operations.	Delete the requirement for automation	Protect the licensee against the high cost of the system.	This is not a new requirement. Most of the excise manufacturers have already automated their processes. This is also in line with public health standards that aims at reducing human intervention in the production process which compromises the hygiene of the products.



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5.	Regulation 10: Metering and measuring devices.	The regulation empowers the Commissioner to specify the requirements of a measuring or metering device and any other equipment that may be required. The device is supposed to quantify quantities of raw material, intermediate goods and finished products. These categories of goods are not available in a water packaging process. The water bottled and the cleansing agent are one and the same. The process further involve backwash. Measuring and metering may not take into account these aspects.	The devices to be used for metering and measuring to be agreed upon with the industry players.	Brings about standardization in the application process in order to promote uniformity.	The specific measuring and metering devices will be specified for each sector after consultations with the relevant sector players and government agencies.
KENYA BREWERIES LIMITED-UDV					
S/NO	Regulation	Issue	Recommendation	Justification	KRA Comments
1.	Regulation 2: Interpretations	Use of the word "Corn" in the definition of "wort".	Delete "corn" and replace it with "sorghum/millet cassava".	A variety of complex starch sources can be used to make "wort".	This is noted and can be included.
2.	Regulation 3: Application for license or registration to manufacture or import excisable goods, supply excisable services, users of excisable goods.	Regulation 3 (1)(b)(i)-the use of the phrase "the documents that the Commissioner may require" in Regulation 3 (1)(b)(i). Regulation 3 (1)(b)(ii)- an application for approval of the processes, appliances, stills, vats, vessels, utensils, pipes and fittings for use by the applicant. It is not clear what regulation 3(1)(b)(ii) means for equipment purchased in future.	Delete the regulation 3(1)(b)(i). Provide additional details on 3 (1)(b)(ii).	It is vague and subject to abuse, risk of being in perpetual application mode.	The documents that the commissioner may require may differ from one industry to another and from one taxpayer to another. Therefore, it is not possible to list all the documents. This regulation applies only during the application process and therefore equipment purchased in the future will be reported to the Commissioner in



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					accordance with the main law
3.	Regulation 4: Registration of importers of Cigarette paper, cigarette packaging materials, raw or unprocessed tobacco and ethanol.	Regulation 4(1): The regulation requires persons dealing in: importation of cigarette paper or cigarette packaging materials; importation of raw or unprocessed tobacco; and importation of ethanol to be registered by the Commissioner. However, it leaves out other excisable products such as denatured spirits, petroleum products, concentrates for manufacture of soft drinks, raw material for cosmetics etc.	Add other excisable products such as denatured spirits, petroleum products, concentrates for manufacture of soft drinks, raw material for cosmetics etc under regulation 4(1).	This will make the regulation comprehensive.	This restriction targets products that are high risk products and not raw materials for all excisable goods. In the case of tobacco products, this is in line with the Framework Convention on Tobacco Control which Kenya has ratified.
		Regulation 4(4) requires an application for registration to be done in the prescribed form and accompanied by the documents that the Commissioner may require. However, the form number has not been specified. In addition, the accompanying documents have not been specified.	Specify the form number under regulation 4(4)(a). Prescribe the documents required in 4(4)(b) to prevent ambiguity	It is vague and subject to abuse.	The documents that the commissioner may require may differ from one industry to another and from one taxpayer to another. Therefore, it is not possible to list all the documents that the Commissioner may require.
4.	Regulation 6: Requirement to provide remote view of the factory	Regulation 6 (1) requires installation of a system that gives a remote view of the factory and allows unfettered access to the Commissioner to the data collected. It does clarify if the system proposed is an addition to EGMS.	Clarify if the proposed system.	Regulations 6(1) should in line with Article 31 of the Constitution in the absence of data privacy laws in Kenya. The provision is not anchored in the Excise Duty Act 2015.	This requirement is provided for under Section 28 of the Excise Duty Act. This provision only covers the licensed excise factory which is under the authority of the



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<p>5. Regulation 7: Suspension and cancellation of a license or registration</p>	<p>Regulation 6 (1)(a) provides that The Commissioner may suspend the license where a person has been found in possession of unexcised goods or services. "Unexcised goods or services" has not been defined.</p>	<p>Define "unexcised goods or services".</p>	<p>To bring clarity.</p>	<p>Commissioner and therefore does not invade the taxpayer's privacy. The definition of unexcised goods is provided for under the Excise Duty Act, 2015.</p>
<p>6.</p>	<p>Regulation 8(1)(a)(i) requires marking of premises with the words, "EXCISE PREMISES" at the principal entrance and such other prominent place. It would be right for the marking to be in "any place where excisable goods are processed or stored".</p>	<p>Change the word "prominent place" to "any place where excisable goods are processed or stored".</p>	<p>No justification given.</p>	<p>There was no justification provided for the proposal.</p>
<p>7. Regulation 10- Metering and measuring devices</p>	<p>This regulation empowers the Commissioner to specify the requirements of a measuring or metering device and any other equipment that may be required. No issue raised.</p>	<p>Replace "in Oil Colors" in regulation 8(d)&8(g)(i) with "permanent markings". Delete 8(g) since it is a repetition of 8(c), (d) and (e)</p>	<p>Oil color may be prohibited in certain food industries for safety/quality reasons. Painting pipes envisages a small operation. Large operations may have too many and complex pipes to start painting</p>	<p>This is not a new requirement. It is already provided for in the current Customs and Excise Regulations. Marking of pipes is critical for purposes of tracing movement of various raw materials used to manufacture excisable goods. This is noted</p>



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			schedules to the excise duty regulations. Add the phrase "is practical and as" in regulation 10(3) after the phrase "in such places in the production line as".		No justification given.	
8.	Regulation 11-Marking of products, containers and packages	The regulation requires all packages of excisable goods to bear distinct markings to enable the goods to be trackable and traceable. 11(2)(b) requires each package or container and material wrapping the package for wholesale purposes to have printed on in the case of excisable goods for consumption in Kenya "FOR USE IN KENYA". No issue raised	Change 11(2) (a) from "the country of final destination" to "for EXPORTS"	No justification given.	The country of final destination is necessary as it enables tracking and tracing of products meant for different markets.	
9.	Regulation 12: Control of raw materials	Regulation 12 provides that (1) Raw Materials used for manufacture of excisable goods shall be entered into a secure room or storage facility and stored in a manner to allow taking of full account of the materials therein. Sub paragraph (2) requires the removal of the raw materials with the approval of the Commissioner. The regulation seems not to be restricted to raw materials on which excise duty has not been paid or those subject to excise duty remission.	Delete regulations 12(1) and (2)	The regulations ultra vires and should be applied specifically to raw materials on which excise duty has not been paid or those subject excise duty remission	The approval required under Regulation 12 (2) is only where the raw materials are used for a purpose other than manufacture of excisable goods in the licensed premises.	
10.	Regulation 14: Excisable goods for export, exemption etc.	14(2) The regulation reads, "a licensed person shall be responsible for declaration and transportation of excisable goods destined for export or under remission.	Change regulations 14(2) to read "a licensed person shall be responsible for the exportation of excisable goods and provide	The current clause limits manufacturers in terms of the scope of incoterms to use, which stifles trade	This clause does not limit the scope of incoterms as it only requires a licensed person who intends to	



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		<p>exemption or refund".</p> <p>The clause limits manufacturers in terms of the scope of use, which stifles trade and Kenya's competitiveness</p>	<p>the proof of exportation, i.e Certificate of Export under remission, exemption or refund."</p>	<p>and Kenya's competitiveness</p>	<p>export to take responsibility for transportation and exportation of their goods. This is in line with Section 7 of the Excise Duty Act</p>
11.	Regulation 15: Provisions relating to records	<p>Regulation 15(2)(a) requires the records "printed typed or written thereon indelibly and legibly, and every alteration in the form or document made prior to its acceptance shall be made in such manner as to leave the error as well as the alteration legible; and every such alteration shall be initialled and dated by the person making it";</p> <p>The provision from ".....and every alteration...." seeks to address administrative concerns using legislative means.</p>	<p>Delete the following phrase in Section 2(a) ".....and every alteration in the form or document made prior to its acceptance shall be made in such manner as to leave the error as well as the alteration legible; and every such alteration shall be initialled and dated by the person making it".</p>	<p>The deleted portion seeks to address administrative concerns using legislative means</p>	<p>This may require some wider discussions</p>
12.	Regulation 16-Declaration of brands	<p>16. (1) A licensee is required not to bottle or pack any excisable goods for sale unless a declaration has been made to the Commissioner in the prescribed format and the approval given.</p>	<p>Specify the prescribed format of the application, including electronic form, to be together with the sample.</p>	<p>This would authenticate electronic application.</p>	<p>Prescribed format has been addressed under the Tax Procedures Act to electronic format.</p>
13.	Regulation 17-Production accounting system Section 28 of the Excise Duty Act, 2015	<p>Regulation 17(1) provides that "the Commissioner may require a manufacturer or importer of excisable goods to facilitate installation of a production accounting system".</p> <p>The installation of the system shall require additional capital investment on the part of</p>	<p>What happens to the EGMS regulations once these regulations come into effect? We propose to harmonize part IV of this regulations with the current EGMS regulations.</p> <p>Insert new regulation after item 4 to indicate that, "the licensed importer or</p>	<p>Avoid inconsistency. duplication and confusion in the regulations.</p> <p>Capital investment require adequate time to</p>	<p>Regulation 63(2) (b) has provided a period of one year to comply with any new conditions required under these regulations.</p> <p>Section 19 of the Excise Duty Act addresses reporting of closure of the factory while the</p>



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		<p>ISO 9001:2015 CERTIFIED</p> <p>the licensee.</p> <p>No additional justification given.</p>	<p><i>manufacture of excisable goods and service should be given ample time to implement the system requirements provided by the Commissioner."</i></p> <p><i>Delete 4(a) & (b) replace with section 19 of the Excise Duty Act 2015.</i></p> <p>Insert new regulation 7 stating "KRA or the government shall be responsible for the cost of excise stamps applicators, adjustments or adaptations of their equipment. The manufacturer or importer shall provide the premises necessary to install and integrate the new or modified System on each production line".</p>	<p>source for capital and implement.</p> <p><i>The proposal is line with the anchor legislation</i></p> <p>Not all production lines can run 24 hours. This depends on production scheduling and market demand.</p> <p>The cost of securing government revenue and enhance anti-illicit measures should be borne by the government.</p>	<p>Clause 17 (4) address the period a production line becomes inoperative and hence Section 19 cannot replace Clause 17(4).</p>
14.	Regulation 18: Bond security, EBS	<p>The regulation requires a licensee to provide security in Form EBS for the purpose of securing Excise duty payable on excisable goods or compliance with any requirements. The current bond guarantees of 3 years need to be increased.</p>	<p>Define the bond guarantee cycle to be valid for 5 years with the option of the KRA to review where concerns are raised.</p>	<p>Improve policy predictability, reduce administrative cost and business disruption.</p>	<p>Noted</p>
15.	Regulation 20: Enforcement of the bond	<p>Regulation 20(1) empowers the Commissioner to require the person who has given security to pay the amount of the</p>	<p>Align with Section 51 of the Tax Procedures Act 2015.</p>	<p>Create consistency with the substantive law on Tax procedures.</p>	<p>Section 51 of the Tax Procedures Act provides for Objection of a tax</p>

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		security within fourteen days of the notice where the conditions of a bond have not been complied with. On failure to comply with the notice, the Commissioner may enforce payment of the security as though it were excise duty due and unpaid. The procedure and timeliness under this regulation is not in line with section 51 of the Tax Procedures Act 2015.			decision. Clause 20 (1) provides for enforcement of a security bond in line with Section 37 of the Excise Duty Act, 2015 and hence the two are not related.
16.	Regulation 21: Cancellation of the Bond	The regulation provides for the cancellation of any bond given by way of security in a manner as the Commissioner may specify and accompanied with evidence of compliance. The regulation does not specify the process i.e. Prescribed form accompanying documents and process.	Specify the process i.e. prescribed form accompanying documents and process.	Provides clarity and transparency in the cancellation process.	Noted
17.	Regulation 41: Interpretation and application to denatured spirits and fermented liquor	The regulation specifies that regulations 37 and 38 apply to denatured spirits and to any fermented liquor. Disposal of equipment has been covered under Regulation 3(1)(ii) and Section 19(2) of the Excise Duty Act 2015.	Delete the regulation.	Covered in Regulation 3(1)(ii) and Section 19(2) of the Excise Duty Act 2015.	Noted
18.	Regulation 54: Computation of excise duty on use of raw materials	The regulation provides the methods used to determine the excise duty payable by a licensed manufacturer including the use of conversion formula for converting raw materials into finished excisable goods based on industry benchmarks: However, the industry benchmark has not been defined.	Need for KRA to define the industry benchmarks beforehand, commit to updating them regularly and guarantee confidentiality. This proposal maybe complex to implement due to the diverse nature of alcoholic beverages.	No justification given	industry benchmarks already exists for several industries and where there is none, the same shall be defined beforehand.

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19.	Regulation 55: Refund of Excise Duty	<p>The regulation provides that where the owner of any goods wishes to return them to the seller, he must notify the Commissioner and submit provide evidence that the goods are not in accordance with the contract of sale or that the goods were damaged before they were delivered out of the factory.</p> <p>The practicality of this regulation may be difficult due to the timelines of ex-trade leakers.</p> <p>In addition 55(1)(a)(i), is not clear how expired products will be treated</p>	No proposal given.	No justification given	If the goods are expired and are returned to the seller in accordance with the contract of sale, they shall be treated in the same manner and therefore there is no gap in the law.
20.	Regulation 57: Exemption from excise duty	<p>Regulation 57 on exemption from excise duty.</p> <p>No issue is raised</p>	<p>Add the phrase "manufacturer/licensee becoming aware of the" in regulation 57(1)(a) after the phrase "..... within twenty-four hours of the....."</p> <p>Add the phrase "of manufacturer/licensee becoming aware of the loss" in regulation 57(1)(c) after the phrase "..... within twenty-four hours of the....."</p> <p>Add the word "consignee" after the word "licensee" in regulation 57(2)(b).</p> <p>Add "shall" in place of "may" in regulation 62(1).</p>	No justification given	Noted
21.	Regulation 62: Forfeiture of goods and materials and withdrawal of trading license.	<p>Regulation 62 on forfeiture of goods and materials and withdrawal of trading license.</p>	<p>Add "shall" in place of "may" in regulation 62(1).</p>		Noted



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S/NO	Regulation	Issue	Recommendation	Justification	KRA Comments
1.	Regulation 4: Registration of importers of cigarette	Regulation 4(1) requires persons dealing in: importation of cigarette paper or cigarette packaging materials; importation of raw or unprocessed tobacco; and importation of ethanol to be registered by the Commissioner. Regulation 4(2) provides that "ONLY" persons licensed as manufacturers of tobacco products shall be registered as importers of items. The tobacco manufacturing supply and value chains have many players who are at liberty to supply various inputs required to manufacture tobacco products. Currently there are many legitimate businesses that solely deal in providing inputs to manufacturers of tobacco but do not engage in the manufacture of tobacco products as defined in the Regulations.	Delete Regulation 4(2).	These businesses will be locked out of business due to the mere fact that they do not engage in the manufacture of tobacco products.	This requires some wider discussions.
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1.	Regulation 3: Application for license or registration to manufacture or import excisable goods, supply excisable services, users of excisable goods.	Regulation 3(1) provides that "Where a person makes an application to be licensed or registered under section 16, the application shall be- a) In the approved form; b) Accompanied by- i) the documents that the Commissioner may require;"	The documents that the Commissioner may require should be specified.	This will ensure that there is certainty and fairness in the licensing or registration process.	The documents that the commissioner may require may differ from one industry to another and from one taxpayer to another. Therefore, it is not possible to list all the documents that the Commissioner may require.



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	<p>If the Commissioner has discretionally power to request for documents that may not relate to requirements specified under item (ii) to (vii), the licensing or registration process may be biased.</p>			<p>This requires some wider discussions.</p>
<p>2. Regulation 4: Registration of importers of Cigarette paper, cigarette packaging materials, raw or unprocessed tobacco and ethanol.</p>	<p>Regulation 4(1) requires persons dealing in: importation of cigarette paper or cigarette packaging materials; importation of raw or unprocessed tobacco; and importation of ethanol to be registered by the Commissioner. Regulation 4(2) provides that "ONLY" persons licensed as manufacturers of tobacco products shall be registered as importers of items. Regulation 4(3) provides that "ONLY persons a) Licensed as manufacturers of alcoholic beverages; or b) Registered as users of spirit to manufacture UNEXCISABLE goods shall be registered as importers of ethanol".</p> <p>The manufacturing supply and value chains have many players who are at liberty to supply the manufacturers inputs for the manufacture of finished goods. Currently there are legitimate businesses who deal in providing packaging materials to tobacco manufacturers. Others have semi processing plants and import raw or unmanufactured tobacco which they semi process and export</p>	<p>Regulation 4(1) should be deleted or aligned with the Excise Duty Act. Regulation 4(2) and 4(3) should be deleted.</p>	<p>Regulations 4 (2) and 4 (3) will get such business taxpayers out of business and Government will also lose.</p>	



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for making tobacco products.

3.	Regulation 4: Registration of importers of Cigarette paper, cigarette packaging materials, raw or unprocessed tobacco and ethanol.	<p>In addition to the above, it is not clear what kind of registration Regulation 4(1) is referring to.</p> <p>Regulation 4(4) provides that "an application for registration under this regulation shall be-</p> <ul style="list-style-type: none"> a) in the prescribed form; and b) accompanied by the documents that the Commissioner may require. <p>If the Commissioner has discretionary power to request for any documents the registration process may be biased.</p>	The documents that the Commissioner may require should be specified.	This will ensure that there is certainty and fairness in the registration process.	The documents that the commissioner may require may differ from one industry to another and from one taxpayer to another. Therefore, it is not possible to list all the documents that the Commissioner may require.
4.	Regulation 13: Storage and delivery of excisable goods after manufacture	<p>Regulation 13 provides for the proper storage of excisable goods in an "excise stock room" after the process of manufacture is completed.</p> <p>As per the Section 6(1) of the Excise Duty Act, 2015, "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". In this respect, the proposed excise stock room controls will apply after the excise duty payable has been determined (the tax point).</p> <p>Furthermore, it will be assumed since duty is payable after goods are removed from the factory there is no legal basis for KRA to have control at the point of goods being placed into the EXCISE STOCK room.</p>	<p>Before the Regulation 13 come into force, Section 6(1) of the Excise Duty Act, 2015, should be amended to read:</p> <p><i>"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 excise stock room"</i>.</p> <p>More provisions to clarify what a stock room is and its functions should be included in the Excise Duty Act, 2015</p>	This will align Regulation 13 with the Excise Duty Act, 2015 and make the Regulation relevant.	This is not a new requirement. This is the practice as provided under the current Customs and Excise Regulation. The proposal is to ensure proper accountability of what has been removed from the factory. This does not change the tax point of excise duty on manufactured goods.

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<p>5. Regulation 12: Control of Raw Materials</p>	<p>Regulation 12 provides that (1) Raw Materials used for manufacture of excisable goods shall be entered into a secure room or storage facility and stored in a manner to allow taking of full account of the materials therein. Sub paragraph (2) requires the removal of the raw materials with the approval of the Commissioner.</p> <p>The KRA excise control being extended to the raw materials where in many cases they have other uses will give too much administrative work to manufacturers.</p> <p>Furthermore: requiring an excisable goods manufacturer to dedicate the factory, the stock room and the raw materials store to control by KRA and the rooms being specific for the excisable goods and raw materials is an administrative burden not only feasibly but also financially.</p> <p>Requiring that removal of raw materials is approved by the Commissioner will further delay manufacturing processes.</p> <p>Furthermore, it is not clear if approvals come through specific approval forms, a letter or an entry lodged to the KRA excise team.</p>	<p>Delete regulation 12</p>	<p>Smooth operations of manufacturers Reduced costs and delays in productions. Reduced bureaucracy during approvals by the Commissioner.</p>	<p>This is not a new requirement. This is the practice as provided under the current Customs and Excise Regulation. Commissioner's approval to remove raw materials is only required where the raw materials are used for a purpose other than manufacturing in the licensed premises.</p>
<p>6. Regulation 17: Production accounting system</p>	<p>Regulation 17(1) provides that the Commissioner may require a manufacturer or importer of excisable goods to facilitate installation of a production accounting system.</p> <p>The importer DOES NOT need to install an</p>	<p>Rephrase Regulation 17 (1) to read as follows: "The Commissioner may require a manufacturer of excisable goods to facilitate installation of a production accounting</p>	<p>Not provided</p>	<p>Noted</p>



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accounting system since they will only be importing and NOT producing.

7.	Regulation 45: Release of petroleum oils	<p>Regulation 45(2) provides that "where refined petroleum oils are released by customs from the premises of Kenya Petroleum Oil Refineries Limited, all the taxes and levies thereon shall be paid by the respective importers upon such release.</p> <p>Provided that no tax shall remain unpaid for more than ten (10) five days after petroleum oils are transferred to the owners by the Kenya Petroleum Oil Refineries Limited.</p> <p>The "five" does not serve any purpose.</p>	<p>Under Sub-regulation 2, the word "five" appearing immediately after "ten (10)" should be deleted.</p>	May be a typo	Noted
8.	<p>Regulation 46: Transit of petroleum oils.</p> <p>Regulation 47: Accounting for petroleum oils</p>	<p>Regulations 46 & 47 provide for the treatment and accounting of petroleum oils in transit.</p> <p>When goods are entered under a Transit regime in Kenya, the importer/consignee on the customs documentation is expected to be based outside Kenya. Imposing the above Regulations under the domestic Excise Duty Act may not be practical or enforceable.</p>	<p>Regulation 46 & 47 should be deleted. Such regulations should be enforced through EACCMA as opposed to Excise Duty Act.</p>	This will eliminate trade barriers and ease the enforcement of laws in Kenya.	Petroleum goods are excisable and in order to protect excise duty these controls are necessary. EACCMA is a regional law and may not provide country specific controls.
9.	<p>Regulation 53: Payment of excise duty.</p> <p>a) a licensee to pay excise duty liable before-</p> <p>i) excisable goods are removed from the factory: or</p>	<p>Regulation 54 provides that "where a licensee has defaulted payment of excise duty consistently for more than one tax period Commissioner may require-</p>	<p>Sub regulation a(i) should be aligned with the recommendation to change the tax point from the factory to the stockroom.</p> <p>Sub regulation (b) should be aligned with the TPA which specifies who have the obligation to pay tax other than</p>	This will ensure that there is fairness and clarity in the application of the law.	Noted



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		<p>ii) services are supplied. b) that <i>excise duty be paid by other persons or agents other than the licensee.</i></p>	the registered taxpayer.			
10.	Regulation 53: Computation of excise duty on use of raw materials	<p>The regulation provides the methods used to determine the excise duty payable by a licensed manufacturer. The intention of this Regulation is not clear since the Excise Duty Act, 2015 does not provide for computation of excise duty on use of raw materials. EGMS system is supposed to give a level of comfort on quantities produced together with the requirement for production accounting system. Implementing the above provision which is subject to a lot of discretionary powers will lead to abuse.</p>	<p>The regulation should be scrapped. Or, the intention of this regulation should be clearly aligned with the Excise Duty Act, 2015</p>	<p>This will ensure that there is fairness and clarity in the application of the law</p>	<p>This regulation provides for computation of excise duty where a manufacturer cannot account for raw materials used.</p>	
11.	Regulation 62(1): Forfeiture of goods and materials and withdrawal of trading license.	<p>Regulation 62(1) provides that "Any goods or materials, in respect of which an offence has been committed in relation to these regulations, shall may in addition to any penalty imposed, be forfeited to the Commissioner". The word "shall" appearing immediately before "may" appear to be typo.</p>	<p>Regulation 62(1) should be amended to read: "Any goods or materials, in respect of which an offence has been committed in relation to these regulations, may in addition to any penalty imposed, be forfeited to the Commissioner".</p>	<p>This will enhance clarity in the interpretation of the Regulation.</p>	<p>Noted</p>	
	Regulation 63(2): Repeal Transitional provisions	<p>Regulation 63(2), "any person who is registered or licensed under the repealed regulations shall be - a) deemed to be registered or Licensed</p>	<p>Sub-regulation 63(2)(b) should be amended to read: "allowed a period of one year or such longer period, not exceeding twenty-four months as</p>	<p>To allow licensed manufacturers for the additional time that may be required to install additional automation</p>	<p>Noted</p>	



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	<p>under these regulations:</p> <p>b) allowed a period not exceeding one year to comply with any additional requirements introduced under these regulations.</p> <p>The implementation of some of the new regulations may require lengthy consultation and investment by the affected manufacturers hence one year may not be adequate for full compliance.</p>	<p><i>the Commissioner may allow to comply with any additional requirements introduced under these regulations".</i></p>	<p>system for excise duty compliance.</p>		
Mathew Wambua of KAM					
S/NO	Regulation	Issue	Recommendation	Justification	KRA Comments
			No specific concern or proposal raised except for high cost of doing business		



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