

TAX & EXCHANGE CONTROL ALERT

24 OCTOBER 2022



CLIFFE DEKKER HOFMEYR

INCORPORATING
KIETI LAW LLP, KENYA

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KENYA

Recent increase in excise duty rates

The Excise Duty Act of 2015 (Act) introduced specific excise duty rates for goods with the aim of simplifying the excise tax regime. As a result of the specific excise duty rates, there was a risk that the rates may lag behind the rate of increases in the prices of goods. To counter this risk, the Act introduced a mechanism for annual adjustments of the specific excise duty rates to capture annual inflation. The Act empowers the Kenya Revenue Authority (KRA), through the Cabinet Secretary of the National Treasury, to adjust the excise duty rates by not more than 10%, subject to National Assembly approval.



FOR MORE
INSIGHT INTO
OUR EXPERTISE
AND SERVICES

KENYA

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On 1 September 2022, the KRA published a notice informing the public of proposed adjustments for inflation to excise duty rates of certain goods. Members of the public were invited to submit their views on the proposed adjustments before they could be gazetted into law. The goods that were to be subject to the proposed inflation adjustment and the proposed new rate of excise duty can be seen [here](#).

Following the public participation, on 3 October 2022, KRA gazetted Legal Notice No. 176 prescribing the adjusted excise duty rates with effect from the 1 October 2022. The legal notice setting out the affected goods can be found [here](#).

We note that in the gazetted Legal Notice No. 176, certain items, particularly petroleum products,

that had been proposed for inflation adjustment in the notice published on 1 September 2022 have been excluded. These include goods such as condensates, motor spirit (gasoline) regular, motor spirit (gasoline) premium, aviation spirit, spirit type jet fuel, special boiling point spirit and white spirit, light oils and preparations, partly refined (including topped crude), kerosene type jet fuel, illuminating kerosene, gas oil (automotive, light, amber for high-speed engines), diesel oil (industrial heavy, black, for low-speed marine and stationery engines) and residual fuel oils.

The exclusion of petroleum products is an indication that while the KRA remains aggressive in its quest to raise more revenue for the Government, the Government is conscious of not burdening the public with excessive taxes on petroleum products.

2022 RESULTS

CHAMBERS GLOBAL 2018 - 2021 ranked our Tax & Exchange Control practice in Band 1: Tax.

Emil Brincker ranked by **CHAMBERS GLOBAL 2003 - 2022** in Band 1: Tax.

Gerhard Badenhorst was awarded an individual spotlight table ranking in **CHAMBERS GLOBAL 2022** for tax: indirect tax. **CHAMBERS GLOBAL 2009-2021** ranked him in Band 1 for tax: indirect tax.

Mark Linington ranked by **CHAMBERS GLOBAL 2017 - 2022** in Band 1: Tax: Consultants.

Ludwig Smith ranked by **CHAMBERS GLOBAL 2017 - 2022** in Band 3: Tax.

Stephan Spamer ranked by **Chambers Global 2019-2022** in Band 3: Tax.



KENYA

Recent increase in excise duty rates

CONTINUED

The Commissioner General of the KRA stated in a press release that the KRA had opted to exempt petroleum products from the inflation adjustment because of the current high prices of petroleum products. It is, however, not clear how the Commissioner exercised the power to exempt petroleum products from the inflationary adjustment when the power to exempt only comes into force on 1 January 2023, as provided for in the Finance Act of 2022.

In the past, some attempts at adjusting excise duty rates for inflation have been nullified because of insufficient public participation. However, it appears that for the recent inflation adjustment, sufficient time was allocated for public participation, and we anticipate that the Commissioner General of the KRA undertook the requisite steps before gazetting the excise duty inflation adjustments.

We will continue to monitor developments, but should you have any questions, please reach out us.

ALEX KANYI AND PETER MUTEMA

The LEGAL 500
EMEA
2022 RESULTS

The Legal 500 EMEA 2022 recommended our **Tax & Exchange Control practice** in **Tier 2** for tax.

The Legal 500 EMEA 2022 recommended **Emil Brincker** as a leading individual for tax.

The Legal 500 EMEA 2022 recommended **Mark Linington, Ludwig Smith, Gerhard Bardenhorst, Stephan Spamer, Howmera Parak** and **Jermone Brink** for tax.

2021 WINNERS OF M&A DEAL FLOW 2021

2021

1st by M&A Deal Flow.
2nd by General Corporate Finance Deal Flow.
2nd by BEE Deal Value.
3rd by General Corporate Finance Deal Flow.
3rd by BEE Deal Flow.
4th by M&A Deal Value.

2020

1st by M&A Deal Flow.
1st by BEE Deal Flow.
1st by BEE Deal Value.
2nd by General Corporate Finance Deal Flow.
2nd by General Corporate Finance Deal Value.
3rd by M&A Deal Value.
Catalyst Private Equity Deal of the Year.

2019

M&A Legal DealMakers of the Decade by Deal Flow: 2010-2019.
1st by BEE M&A Deal Flow.
1st by General Corporate Finance Deal Flow.
2nd by M&A Deal Value.
2nd by M&A Deal Flow.

2018

1st by M&A Deal Flow.
1st by M&A Deal Value.
2nd by General Corporate Finance Deal Flow.
1st by BEE M&A Deal Value.
2nd by BEE M&A Deal Flow.
Lead legal advisers on the Private Equity Deal of the Year.

DealMakers



OUR TEAM

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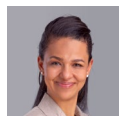
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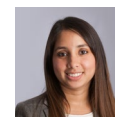
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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

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