

TAX & EXCHANGE CONTROL

ALERT

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CLIFFE DEKKER HOFMEYR

INCORPORATING
KIETI LAW LLP, KENYA



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Anticipated increase in the price of excise duty stamps as the KRA calls for comments on the Draft Excise Duty Regulations

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During the 2022 tax season a lot more taxpayers were automatically assessed for their taxable income by SARS. The auto-assessment system was introduced by SARS a few years ago in order to, amongst other things, make filing of income tax returns by individuals easier.

A so-called auto-assessment is generated on the basis that all the income that accrued to or was received by an individual taxpayer during a particular tax year, is reflected in third-party data provided to SARS by, for example, banks, fund administrators, insurers, medical aid schemes and employers. From a more technical legal point of view, it appears that SARS' legal basis for the issuing of an auto-assessment is section 95 of the Tax Administration Act 28 of 2011 (TAA), which states that SARS may make an original assessment based in whole or partly on an estimate, if a taxpayer does not submit a return.

It is important to note that the auto-assessment generated may only be objected or appealed against if there is compliance with section 95 of the TAA. Read together, sections 95(5) and (6) of the TAA state that only if a taxpayer has requested SARS to issue a reduced assessment within 40 business days of the date of the estimated assessment (auto assessment), and SARS decides not to make a reduced assessment, can the objection or appeal be lodged. As such, in the auto assessment context, SARS' stated intention before the start of the tax season was that once an auto assessment was issued and the taxpayer was notified of it, the taxpayer would be given 40 business days from the date of the issuing of the assessment to verify its correctness and make any changes, if necessary.

It is therefore critical for taxpayers who receive auto assessments to verify the correctness of the assessment as soon as possible after receiving notification thereof.



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The period of 40 business days can be extended and the taxpayer's request must comprise the submission of a full and true return or relevant material. SARS will exercise its discretion to grant an extension only if there are "reasonable grounds" that exist for an extension to be granted..

Failing to submit a return that is due or failing to submit one on time constitutes "non-compliance" as contemplated in section 210(2) of the TAA. In terms of section 210(1) of the TAA, if SARS is satisfied that non-compliance exists, it must impose the appropriate penalty in accordance with the table in section 211 of the TAA.

The penalty that is imposed by SARS will depend on the assessed loss or the taxable income of the taxpayer for the preceding year and works on a sliding scale. Therefore, a taxpayer can find themselves paying anything from R250 upwards per month for at least 35 months for failing to submit their tax return on time.

Therefore, if you are a provisional taxpayer, make sure you do not miss the deadline of 23 January 2023 to submit your return, and prevent the imposition of penalties completely because SARS is handing out those bills like it's Christmas in July!

Puleng Mothabeng and Louis Botha

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.



Cliffe Dekker Hofmeyr

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In a bid to meet its ambitious revenue targets, the Kenya Revenue Authority (KRA) has reviewed the Excise Duty (Excisable Goods Management System) (Amendment) Regulations 2017 and published the Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023 (Regulations).

The Regulations propose lifting some of the existing exemptions on excise stamp fees, widening the scope of use of the excise stamp fees collected by the Commissioner General, and revising the existing stamp fees for specified excisable goods. Members of the public and stakeholders are invited to submit their comments for consideration by 3 February 2023. The KRA anticipates that the Regulations will take effect from 1 March 2023.

Extension of the scope of goods subject to excise stamp fees

Regulation 3 has been amended to require every package of excisable goods manufactured or imported into Kenya and listed in the second schedule to be affixed with an excise stamp. The newly listed goods in the schedule include electronic cigarettes and other nicotine delivery devices, liquid nicotine for electronic

cigarettes, and products containing nicotine or nicotine substitutes intended for inhalation without combustion or oral application but excluding approved medicinal products. The excise stamp fee for such products is KES 5 per stamp.

Additionally, the Regulations will now require all bottled or packaged water to be affixed with an excise stamp of KES 0.5 per stamp. Previously, the excise stamp fee applied only to mineral water and aerated water under tariff 2201.10.00, although the KRA collected excise stamp fees from bottled and packaged water regardless.



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Increase in excise stamp fees

In the table below we have outlined a summary of the category of excisable goods, the excise stamp fee previously levied and the proposed change.

CATEGORY OF EXCISABLE GOODS	EXCISE STAMP FEE		
	Previous rate	Proposed rate	% Increase
Cigarettes, cigars, cheroots, cigarillos containing tobacco or tobacco substitutes, and tobacco or tobacco substitutes	2.8	5	78.6%
Wines, fortified wines, and alcoholic beverages obtained by fermentation of fruits	2.8	5	78.6%
Compounded spirits exceeding 6% alcoholic strength	2.8	5	78,6%
Spirit beverages exceeding 6% alcoholic strength	1.5	3	100%
Beer, cider, perry, mead opaque beer, and mixtures of fermented beverages with non-alcoholic beverages	1.5	3	100%

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CATEGORY OF EXCISABLE GOODS	EXCISE STAMP FEE		
	Previous rate	Proposed rate	% Increase
Fruit and vegetable juices, unfermented and not containing added spirit	0.6	2.2	266.7%
Cosmetic and beauty products of tariff heading numbers 3303, 3304, 3305, 3307	0.6	2.5	316.7%
Mineral water and aerated water of tariff No 2201.10.00 (now referred to as bottled or similarly packaged waters)	0.5	0.5	0%
Electronic cigarettes and other nicotine delivery devices, liquid nicotine for electronic cigarettes, and products containing nicotine or nicotine substitutes intended for inhalation without combustion or oral application but excluding approved medicinal products (new)	NA	5	-

KENYA

Anticipated increase in the price of excise duty stamps as the KRA calls for comments on the Draft Excise Duty Regulations

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Management of excise stamp revenue

The Regulations have proposed amendments to allow the KRA to utilise the revenue collected from the excise stamps to finance compliance management activities of the excise sector. Currently, the KRA can only use the revenue to maintain the Excisable Goods Management System.

Conclusion

Importers and producers of the affected excisable goods are likely to pass on the increased fees for excise stamps to consumers. The KRA should therefore be keen to consider comments from stakeholders and the public.

The next step after the KRA has considered stakeholders' comments is for National Treasury to present them to a parliamentary committee to review and scrutinize them within

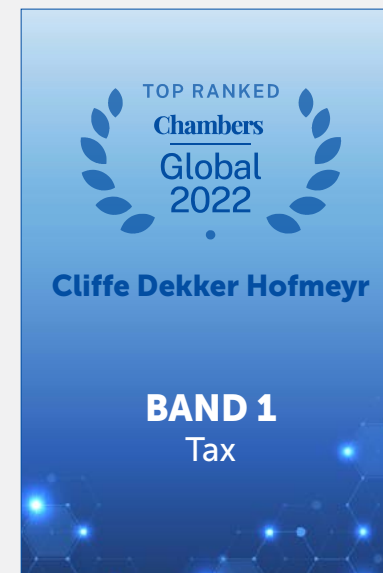
28 sitting days. The Regulations will then be tabled in Parliament where a resolution will be passed on whether to approve or reject the amendments.

In the spirit of public participation, members of the public are encouraged to submit their comments and inputs for consideration before 3 February 2023. The Excise Duty (Excisable Goods Management System (Amendment) Regulations 2023 are set to commence on 1 March 2023. Comments can be made directly to the KRA through the email provided in the notice available [here](#).

Alternatively, send your comments to CDH using alex.kanyi@cdhlegal.com by 27 January 2023 and the firm will consolidate and share the comments with the KRA.

You can find the proposed Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023 [here](#).

Alex Kanyi and Ndinda Munyaka



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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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