

Paper heard  
By the Hon. Sunkuli  
Julius, Member of  
Committee on Wed  
5/7/2023 (PM)  
5/7/23

Approved for tabling  
SNA  
5/7/23




REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT- SECOND SESSION (2023)

THE NATIONAL ASSEMBLY

COMMITTEE ON DELEGATED LEGISLATION

REPORT ON THE CONSIDERATION OF THE VALUE ADDED TAX  
(ELECTRONIC, INTERNET AND DIGITAL MARKETPLACE SUPPLY)  
REGULATIONS, 2023  
(LEGAL NOTICE NO. 29 OF 2023)

 THE NATIONAL ASSEMBLY PAPER Tabled	
DATE: 05 JUL 2023	DAY: Wednesday
TABLED BY: JULY, 2023	Hon. Julius Sunkuli (Member, Delegated Legislation Committee)
CLERK-AT-THE-TABLE:	Modo

*The Directorate of Audit, Appropriations & Other Select Committees*  
The National Assembly  
Parliament Buildings  
**NAIROBI.**



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## **ABBREVIATIONS**

<b>KRA</b>	<b>Kenya Revenue Authority</b>
<b>LN</b>	<b>Legal Notice</b>
<b>RMA</b>	<b>Regulatory Making Authority</b>
<b>SI</b>	<b>Statutory Instruments</b>
<b>SO</b>	<b>Standing Order</b>
<b>VAT</b>	<b>Value Added Tax</b>

## CHAIRPERSON'S FOREWORD

The Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023 ("the Regulations") are made *vide* LN No. 29 of 2023, pursuant to powers conferred on the Cabinet Secretary for National Treasury and Economic Planning under section 67(1) of the Value Added Tax Act, (No. 35 of 2013) hence, is a statutory instrument within the meaning of section 2 of the Statutory Instruments Act (No 23 of 2013).

The Regulations were published in the Gazette on 14<sup>th</sup> April, 2023, and received by the Clerk of National Assembly on 17<sup>th</sup> April, 2023 and were tabled before the House on the 19<sup>th</sup> April, 2023, being within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act. They were subsequently referred to the Committee on Delegated Legislation for consideration.

Pursuant to section 16 of the Statutory Instruments Act, 2013 which requires the Committee to confer with the Regulation –making authorities before making its decision, the Committee held a joint meeting with National Treasury and Economic Planning and Kenya Revenue Authority the 20<sup>th</sup> of June, 2023 within Parliament Buildings to deliberate on Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023.

### Public Participation

Articles 10 and 118 of the Constitution require a mandatory conduct of Public Participation by all Regulation making Authorities before publication of a statutory instrument. The National Treasury and Economic Planning through the Kenya Revenue Authority, invited stakeholders and members of the Public to submit their comments on the draft Legal Notice on 24<sup>th</sup> January, 2023 through a public notice, in compliance with the provisions of section 5 of the Statutory Instruments Act, 2013 and Article 201(a) of the constitution. The Stakeholders were required to submit their comments by 7<sup>th</sup> February, 2023.

The Kenya Revenue Authority invited Stakeholders and industry players for a meeting on 8<sup>th</sup> February, 2023 to discuss comments received.

Stakeholder submissions were reviewed and their feedback incorporated, where appropriate, to improve the Regulations.

Having examined the Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023 (LN. No. 29 of 2023) against the Constitution, the Interpretations and General Provisions Act (Cap 2), the Statutory Instruments Act, 2013 (No. 23 of 2013), the Value Added Tax Act (No. 67 of 2013), The Committee **resolved to recommend to the House to approve partly the Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023(L.N. No. 29 of 2023) subject to the regulation-making authority publishing a corrigendum to rectify the errors relating to offences under Regulation 14.**

I wish to most sincerely thank the Speaker and the Office of the Clerk of the National Assembly for the invaluable support accorded to the Committee in the discharge of its mandate.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to Standing Order 210 (4) (b) it is my pleasure and duty to present to the House, the Committee's **Report on the Consideration of the Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023**(*LN. No. 29 of 2023*).

**HON. CHEPKONGA KIPRONO SAMUEL, CBS, MP.**

## 1.0 PREFACE

### 1.1 Establishment and Mandate of the Committee

1. The Select Committee on Delegated Legislation is established pursuant to *Standing Order No. 210* and is mandated to consider statutory instruments submitted to Parliament for consideration. The Committee is expected to consider in respect of any statutory instrument, whether it is in accord with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws.
2. During the scrutiny, the Committee is guided by the principles of good governance, rule of law considers whether the instrument-
  - a) is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws;
  - b) infringes on fundamental rights and freedoms of the public;
  - c) contains a matter which in the option of the Committee should more properly be dealt with in an Act of the Parliament;
  - d) contains imposition of taxation;
  - e) directly or indirectly bars the jurisdiction of the court;
  - f) gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;
  - g) it involves expenditure from the consolidated fund or other public revenues;
  - h) is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;
  - i) appears to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which it is made;
  - j) appears to have had unjustifiable delay in its publication or laying before Parliament;
  - k) makes rights, liberties or obligations unduly dependent upon non-renewable decisions;
  - l) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
  - m) inappropriately delegates legislative powers;
  - n) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
  - o) appears for any reason to infringe on the rule of law;
  - p) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
  - q) Accords to any other reason that the Committee considers fit to examine.

## 1.2 Committee Membership

3. The Committee membership comprises –

Hon. Chepkonga Kiprono Samuel, CBS, M.P. (Chairperson)

Ainabkoi Constituency

UDA

Hon. Githinji Robert Gichimu, M.P. (Vice Chairperson)

Gichugu Constituency

UDA

### COMMITTEE MEMBERS

Hon. Mbui Robert, CBS, M.P

WDM-KENYA

Kathiani Constituency

Rongai Constituency

Hon. Yakub Adow Kuno, M.P

UPIA

Hon. Maj (Rtd) Dekow Barrow Mohamed,

M.P

UDA

Garrisa Township Constituency

Bura Constituency

Hon. (Maj) (Rtd) Abdullahi, Bashir Sheikh  
,M.P.

UDM

Hon. Julius Lekakeny Ole Sunkuli, EGH,

EBS, M.P.

KANU

Kilgoris Constituency

Mandera North Constituency

Hon. Mwirigi John Paul, M.P.

UDA

Hon. Kamene Joyce, M.P

WDM-KENYA

Machakos County

Igembe South Constituency

Hon. Odoyo, Jared Okello, M.P.

ODM

Hon. Onchoke, Mamwacha Charles, M.P.

UPA

Bonchari Constituency

Nyando Constituency

Hon. Chepkorir Linet, M.P.

UDA

Hon Kimaiyo, Gideon Kipkoech, M.P.

UDA

Keiyo South Constituency

Bomet County

Hon. Munyoro Joseph Kamau, M.P

UDA

Hon. Komingoi, Kibet Kirui, M.P.

UDA

Bureti Constituency

Kigumo Constituency

Hon. Ruku, Geoffrey Kariuki Kiringa,  
M.P.

DP

Hon. Chebor, Paul Kibet, M.P

UDA



**Mbeere North Constituency**

Hon. Lenguris Pauline, M.P.

UDA

**Samburu County**

Hon. Mwale, Nicholas S. Tindi M.P.

ODM

**Butere Constituency**

Hon Mnyazi Amina Laura, MP.

ODM

**Malindi Constituency**

Hon. Mugabe Innocent Maino, M.P.

ODM

**Lukuyani Constituency**

**1.3 COMMITTEE SECRETARIAT**

4. The secretariat facilitating the Committee comprises –

**Ms. Esther Nginyo**  
*Clerk Assistant I (Team Leader)*

Mr. Dima Dima  
*Principal Legal Counsel I*

Mr. Jacknorine Buleemi  
*Clerk Assistant III*

Ms. Winny Otieno  
*Clerk Assistant III*

Mr. Brian Langwech  
*Clerk Assistant III*

Ms Fiona Wanjiru  
*Legal Counsel II*

Mr. Daniel Ominde  
*Research Officer III*

Mrs. Sheila Chebotibin  
*Serjeant at Arms*

Mr. Charles Ayari  
*Audio Officer*

## **2.0 CONSIDERATION OF THE VALUE ADDED TAX (ELECTRONIC, INTERNET AND DIGITAL MARKETPLACE SUPPLY) REGULATIONS (LEGAL NOTICE NO. 29 OF 2023)**

### **2.1 Introduction**

5. The Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023, (Legal Notice No. 29 of 2023) were made pursuant to powers conferred on the Cabinet Secretary for National Treasury and Economic Planning by section 67(1) of the Value Added Tax Act, (*No. 35 of 2013*) hence, is a statutory instrument within the meaning of section 2 of the Statutory Instruments Act (*No 23 of 2013*).
6. The Regulations were published in the Gazette on 14<sup>th</sup> April, 2023 and received by the Clerk of National Assembly on 17<sup>th</sup> April, 2023 and tabled before the House on the 19<sup>th</sup> of April, 2023, being within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act. They were subsequently referred to the Committee on Delegated Legislation for consideration.
7. Pursuant to section 16 of the Statutory Instruments Act, 2013 which requires the Committee to confer with the regulation-making authorities before making its decision, the Committee held a meeting with the Kenya Revenue Authority on 20<sup>th</sup> June, 2023 within Parliament Buildings to deliberate on the Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations 2023.
8. The primary objective of the Value Added Tax (Electronic, Internet and Digital Marketplace Supply) 2023 is to provide the legal framework to enable the government implement the tax measures necessary for financing its economic Development Agenda.
9. The increase in the use of digital space has opened up the Kenyan Market to the outside World allowing Non-Residents to supply digital presence in the country. The import of this is that, such supplies are not chargeable to Value Added Tax (VAT) a situation which has disadvantaged local suppliers who offer similar digital services since they charge and account for VAT on such supplies.
10. This necessitated the amendment of the VAT Act to ensure non-resident suppliers, who account for a large percentage of the digital marketplace in Kenya, to register and account for VAT on supplies made in Kenya.
11. This Legal notice seeks to revoke the Legal Notice No. 190 of 2020 in order to align the Regulations with the changing business models and to correct numbering errors in the Legal Notice No. 190 of 2020.

**2.2 Summary of the Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023, Legal Notice No. 29 of 2023**

12. **Regulations 1 and 2** provides for the Citation and Interpretation of the Regulations.
13. **Regulation 3** provides for Electronic, Internet or digital market supplies which includes;
- a) Downloadable digital content,
  - b) Subscription based media,
  - c) Over the top services,
  - d) Software programs
  - e) Electronic data management
  - f) Music and Games,
  - g) Search Engines and automated help desk services,
  - h) Online Education programs,
  - i) Digital content for listening, viewing or playing on any audio, visual or digital media,
  - j) Ticketing services for events, theatre, restaurants and similar services,
  - k) Services to link the supplier to the recipient including transport hailing platforms,
  - l) Electronic services specified under section 8(3),
  - m) Sales, licensing,
  - n) Facilitation of online payment for exchange, transfer of digital assets excluding services exempted under the Act.
  - o) Any other services provided through an electronic, internet and digital marketplace that is not exempted under the Act.
14. **Regulation 4** provides that the Tax shall apply to taxable electronic, internet or digital marketplace supply made in Kenya.
15. **Regulation 5** provides for a simplified tax registration framework that shall be done within 30 days after the date of making taxable supply in accordance with section 34 if -
- a) The supplies are made by a person from an export country to a recipient in Kenya,
  - b) The person is conducting business in Kenya in accordance to section 8(2) and
  - c) Any of the following circumstances apply-
    - i. The recipient of the supply is in Kenya,
    - ii. The payment for services is made to the supplier in the export country from a bank registered under the Banking Act, or
    - iii. The payment of services that is made to the supplier in the export country is authorized in Kenya
16. **Regulation 6** provides that registration shall be made through an online registration form provided by the commissioner. The Registration shall be accompanied by the following information-
- a) The name of the business including the trading names,
  - b) The name of the contact person responsible for tax matters
  - c) The postal address or registered address of the business and the contact person,
  - d) The telephone number and email, address of the contact person,

- e) The website or uniform resource locator of the applicant through which business is conducted,
  - f) The national tax identifier number issued to the applicant in the applicant's jurisdiction,
  - g) The certificate of Registration or incorporation issued to the applicant in the country where the applicant's business is registered or incorporated and
  - h) Any other information that the commission may require.
17. **Regulation 7** provides for the appointment of a tax representative in accordance to section 15A of the Tax procedures Act,2015.
  18. **Regulation 8** provides that an Electronic, internet or digital marketplace shall be deemed to have made in Kenya where the recipient of the supply is in Kenya.
  19. **Regulation 9** provides that the time that an Electronic, internet or digital marketplace supply is made in Kenya shall be earlier of-
    - a) A date on which the payment for the supply is received in whole or in part; or
    - b) The date on which the invoice or receipt of the supply is issued
  20. **Regulation 10** provides for exemptions to suppliers who makes an electronic, internet or digital marketplace supply from an export country that is registered under the Regulations shall not be required to issue an electronic tax invoice.
  21. **Regulation 11** provides that a deduction of input tax by a supplier shall not be allowed for transactions relating to an electronic, internet or digital marketplace supply.
  22. **Regulation 12** provides that a tax in respect of an electronic, internet or digital marketplace supply made to a recipient in Kenya shall be paid by the supplier or the tax representative of the supplier.
  23. **Regulation 14** provides that a person who fails to comply with the provisions of these Regulations Commits an offence and shall be liable to penalties prescribed under the Act or Tax Procedures Act, 2015.
  24. **Regulation 15** provides for the revocation of the Value Added Tax (Digital Market Supply) Regulations, 2020.

### 2.3 Purpose of the Regulations

25. The purpose of this Statutory Instrument is to guide the taxation of transactions undertaken through the Electronic, Internet and Digital marketplace supply, platforms which has been necessitated by the rapid change in technology thereby changing the way people conduct businesses.
26. The increase in use of digital space has opened up the Kenyan Market to the outside world allowing nonresidents to apply digital services to Kenyan Consumers with ought necessarily having physical presence in the country thus escaping from being charged VAT.
27. This situation has therefore disadvantaged local suppliers who offer similar digital services since they are charged and account for VAT on supplies.
28. To allow equity and fairness, the VAT Act was amended in the year 2020 to require non-residents suppliers, who account for a large percentage of the digital marketplace in Kenya, to register and account for VAT supplies made in Kenya.
29. It is expected that this Regulations once approved will enhance compliance with VAT Act by suppliers in the digital marketplace, internet and electronic platforms and thus enhance equity and compliance in administration of the Value Added Tax.

## 2.4 Legislative Context

30. The Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations 2023 is made pursuant to section 5(8) as read with section 67 of the Value Added Tax Act, 2013. The section empowers the Cabinet Secretary for the National Treasury and Economic planning to provide mechanisms for collection of Value Added tax on supplies made through a digital marketplace.

## 2.5 Policy Background

31. The legal Notice revokes the Legal Notice No. 190 of 2020 on the Value added Tax (Digital Marketplace Supply) Regulations, 2020 to correct the numbering errors in Legal Notice No.190.
32. The primary objective of this Legal notice therefore is to provide the Legal framework to enable the government implement the tax measures necessary for financing its economic development agenda.
33. Technology is quickly changing the way people are conducting businesses thus an increase in the use of digital space which has opened up the Kenyan Market to the outside world allowing non- residents to supply digital services to Kenyan consumers without the necessity of having a physical presence in the Country. The import of this is that, such supplies are not chargeable to VAT.
34. This situation has therefore disadvantaged local suppliers who offer similar digital services since they are charged and account for VAT on supplies
35. To allow equity and fairness, the VAT Act was amended in the year 2020 to require non-residents suppliers, who account for a large percentage of the digital marketplace in Kenya, to register and account for VAT supplies made in Kenya.
36. The Legal Notice Revokes the Legal Notice No. 190 of 2020 in order to align the Regulations with the changing business models and to correct numbering errors in Legal Notice No. 190 of 2020.

## 3.0 COMMITTEE OBSERVATIONS

37. Having examined the Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023 are in accordance with the Constitution, the Interpretations and General Provisions Act (*Cap. 2*), the Value Added Tax Act, (*No. 35 of 2013*), and the Statutory Instruments Act (*No. 23 of 2013*) the Committee made the following observations –

### 3.1 Statutory Timelines

38. THAT the Regulations were published as LN No. 29 of 2023 on 14<sup>th</sup> April, 2023 submitted to the Clerk of the National Assembly on 17<sup>th</sup> April, 2023, being within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.

### 3.2 Public Participation

39. The Regulation Making Authority submitted a detailed explanatory memorandum providing for the extent of consultation that they conducted. The Committee after seeking a number of clarifications was satisfied with the level of public participation as contemplated under Articles 10 and 118 of the Constitution and sections 5, 5A, and

the Schedule to the Statutory Instruments Act, 2013 read together with Standing Order 210 of the National Assembly Standing Orders.

### 3.3 Regulatory Impact Statement

40. It is expected that this Regulation will lead to compliance by suppliers in the digital market place and thus enhance equity in the administration of taxes.


### 4.0 COMMITTEE RECOMMENDATION

Having examined the Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023, Legal Notice No. 29 of 2023 in accordance with the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Statutory Instruments Act (*No 23 of 2013*), the Value Added Tax Act, (*No. 35 of 2013*), the Committee recommends that the House approves the Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023, LN. No. 29 of 2023 *subject to the Regulation making authority publishing a corrigendum to rectify the error in the provision on offences under Regulation 14.*

Signed.....

Date.....

THE HON. CHEPKONGA SAMUEL KIPRONO, CBS, MP  
(CHAIRPERSON)

 THE NATIONAL ASSEMBLY PARLIAMENTARY BUILDING	
DATE: 05 JUL 2023	
DAY: Wednesday	
TABLED BY:	Hon. Julius Sunkuli (Member, Delegated legislation committee)
CLERK-AT-THE-TABLE:	Mado

## ANNEXURES

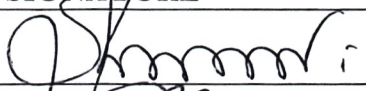

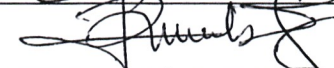



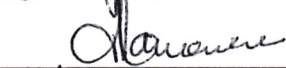
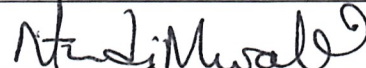
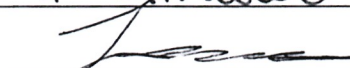

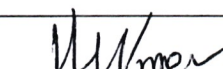




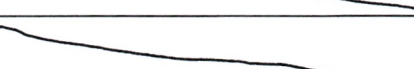
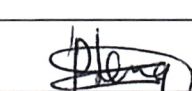
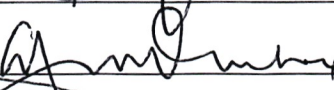

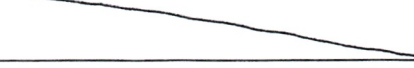
1. Adoption List
2. Legal Notice Number 29 of 2023 and the Explanatory Memorandum
3. Committee Minutes

**COMMITTEE ON DELEGATED LEGISLATION ADOPTION LIST**

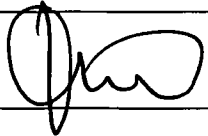
DATE: 04/08/2023

VENUE: SMALL BINJA STARTING TIME: 10:00AM

AGENDA: VALUE ADDED TAX (ELECTRONIC, INTERNET AND DIGITAL MARKETPLACE SUPPLY CREGAL NOTICE NO. 29 of 2023) REGULATIONS, 2023

	NAME	SIGNATURE
1.	The Hon. Chepkonga Kiprono Samuel, CBS, M.P, Chairperson	
2.	The Hon. Githinji, Robert Gichumi, M.P. Vice-Chairperson	
3.	The Hon. Mbui, Robert, CBS, M.P.	
4.	The Hon. Sunkuli Julius Lekakeny, EGH,EBS,MP	
5.	The Hon. Maj. (Rtd) Abdullahi Bashir Sheikh, M.P.	
6.	The Hon. Mwirigi, John Paul, M.P.	
7.	The Hon. Kamene, Joyce, M.P.	
8.	The Hon. Mwale, Nicholas S. Tindi, M.P.	
9.	The Hon. Odoyo, Jared Okello, M.P.	
10.	The Hon. Komingoi, Kibet Kirui, M.P.	
11.	The Hon. Maj. (Rtd.) Dekow Barrow Mohamed, M.P.	
12.	The Hon. Munyoro, Joseph Kamau, M.P.	
13.	The Hon, Kimaiyo, Gideon Kipkoech, M.P.	
14.	The Hon. Ruku, Geoffrey Kariuki Kiringa, M.P.	
15.	The Hon. Chepkorir, Linet, M.P.	
16.	The Hon. Chebor, Paul, M.P.	
17.	The Hon. Lenguris, Pauline, M.P.	
18.	The Hon. Mamwacha Onchoke Charles, M.P.	
19.	The Hon. Yakub, Adow Kuno, M.P.	
20.	The Hon. Mnyazi, Amina Laura, M.P.	



21.	The Hon. Mugabe, Innocent Maino, M.P.	
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COMMITTEE CLERK: .....SIGNATURE.....

DIRECTOR, DAA&OSC: .....SIGNATURE.....

**MINUTES OF THE 35<sup>TH</sup> SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON TUESDAY, 20<sup>TH</sup> JUNE, 2023 IN THE SMALL DINING, NEW WING, MAIN PARLIAMENT BUILDING AT 10:00 AM.**

**PRESENT**

1. The Hon Samuel Kiprono Chepkonga, CBS, M.P. Chairperson
2. The Hon. Robert Gichimu Githinji, M.P., Vice Chairperson
3. The Hon. Robert Mbui, CBS, M.P
4. The Hon. Julius Lekakeny Ole Sunkuli, EGH, EBS, MP
5. The Hon. Nicholas S. Tindi Mwale, M.P.
6. The Hon. John Paul Mwirigi, M.P.
7. The Hon. Jared Okello Odoyo M.P.
8. The Hon. Innocent Maino Mugabe, M.P.
9. The Hon. Maj. (Rtd). Dekow Barrow Mohamed, M.P
10. The Hon. Ruku Geoffrey Kariuki Kiringa, M.P.
11. The Hon. Joseph Kamau Munyoro, M.P.
12. The Hon. Pauline Lenguris, M.P
13. The Hon. Linet Chepkorir M.P.
14. The Hon. Paul Chebor, M.P.

**APOLOGIES**

1. The Hon. Joyce Kamene, M.P.
2. The Hon. Gideon Kipkoech Kimaiyo, M.P.
3. The Hon. Maj. (Rtd). Abdullahi Bashir Sheikh, MP
4. The Hon. Onchoke Charles Mamwacha. M.P.
5. The Hon. Laura Amina Mnyazi, M.P.
6. The Hon. Adow Kuno Yakub, M.P.
7. The Hon. Kibet Kirui Komingoi, M.P.

**SECRETARIAT**

- |                           |   |                           |
|---------------------------|---|---------------------------|
| 1. Ms. Esther Nginyo      | - | Clerk Assistant I         |
| 2. Mr. Wilson Dima Dima   | - | Principal Legal Counsel I |
| 3. Mr. Brian Langwech     | - | Clerk Assistant III       |
| 4. Ms. Winny Otieno       | - | Clerk Assistant III       |
| 5. Mr. Jacknorine Buleemi | - | Clerk Assistant III       |
| 6. Mr. Daniel Ominde      | - | Research Officer III      |
| 7. Ms. Fiona Wanjiru      | - | Legal Counsel II          |
| 8. Mr. Samuel Leparachao  | - | Serjeant-At-Arms.         |
| 9. Mr. Charles Ayari      | - | Audio Officer             |

**IN ATTENDANCE**

**KENYA REVENUE AUTHORITY**

1. Ms. Rispah Simiyu - Ag. Commissioner General
2. Mr. Mohamed Omar - Commissioner
3. Mr. Maurice Oray - Deputy Commissioner

4. Ms. Josphine Mogure - CM-SIRM
5. Ms. Sharon Kirai - Parliamentary Liaison Officer

#### AGENDA

1. Prayers
2. Preliminaries
3. Adoption of the Agenda
4. Confirmation of minutes
5. Matters arising
6. **Briefing by the Cabinet Secretary National Treasury and Economic Planning on the following Regulations;**
  - i. **The Value Added Tax (Electronic Internet and Digital Marketplace Supply) Regulations, 2023.**
  - ii. **The Excise Duty (Excisable Goods Management) (Amendment) Regulations, 2023, 2023**
  - iii. **Adoption of the Public Finance Management (National Pecac Support Operations Fund) Regulations, 2023.**
7. Any Other Business; and
8. Adjournment

MIN. DAA&OSC/CDL/226/2023

#### PRELIMINARIES

The Chairperson called the Meeting to order at 10:30 a.m. He welcomed all present to the meeting after which he prayed followed by a round of introduction.

MIN. DAA&OSC/CDL/227/2023

#### ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as was proposed by the Hon. Jared Okello MP and seconded by the Hon. Pauline Lenguris, M.P.

MIN. DAA&OSC/CDL/228/2023

#### CONFIRMATION OF MINUTES

Minutes of the 32<sup>nd</sup> Sitting held on Tuesday, 13<sup>th</sup> June, 2023, were confirmed as true records of the deliberations as proposed by the Hon. Innocent Maino Mugabe, M.P. and seconded by the Hon. Ruku Geoffrey Kariuki Kiringa, M.P.

MIN. DAA&OSC/CDL/229/2023

#### CONSIDERATION OF THE VALUE ADDED TAX (ELECTRONIC, INTERNET AND DIGITAL MARKETPLACESUPPLY) REGULATION, 2023.LEGAL NOTICE NO.29

Ms. Rispah Simiyu, Ag. Commissioner General, KRA, briefed the Committee on The Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023 as follows, that;

1. **Regulations 1 and 2** provides for the Citation and Interpretation of the Regulations.
2. **Regulation 3** provides for electronic, Internet or digital market supplies which includes;
  - a) Downloadable digital content,
  - b) Subscription based media,

- c) Over the top services,
- d) Software programmes
- e) Electronic data management
- f) Music and Games,
- g) Search Engines and automated help desk services,
- h) Online Education programmes,
- i) Digital content for listening, viewing or playing on any audio, visual or digital media,
- j) Ticketing services for events, theatre, restaurants and similar services,
- k) Services to link the supplier to the recipient including transport hailing platforms,
- l) Electronic services specified under section 8(3),
- m) Sales, licensing,
- n) Facilitation of online payment for exchange, transfer of digital assets excluding services exempted under the Act.
- o) Any other services provided through an electronic, internet and digital marketplace that is not exempted under the Act.

3. **Regulation 4** provides that the Tax shall apply to taxable electronic, internet or digital marketplace supply made in Kenya.

4. **Regulation 5** provides for a simplified tax registration framework that shall be done within 30 days after the date of making taxable supply in accordance with section 34 if -

- a) The supplies are made by a person from an export country to a recipient in Kenya,
- b) The person is conducting business in Kenya in accordance to section 8(2) and
- c) Any of the following circumstances apply-
  - i. The recipient of the supply is in Kenya,
  - ii. The payment for services is made to the supplier in the export country from a bank registered under the banking Act, or
  - iii. The payment of services that is made to the supplier in the export country is authorized in Kenya

5. **Regulation 6** provides that registration shall be made through an online registration form provided by the commissioner. The Registration shall be accompanied by the following information-

- a) The name of the business including the trading names,
- b) The name of the contact person responsible for tax matters,
- c) The postal address or registered address of the business and the contact person,
- d) The telephone number and email, address of the contact person,
- e) The website or uniform resource locator of the applicant through which business is conducted,
- f) The national tax identifier number issued to the applicant in the applicants' jurisdiction,
- g) The certificate of Registration or incorporation issued to the applicant in the country where the applicants' business is registered or incorporated and
- h) Any other information that the commission may require.

6. **Regulation 7** provides for the appointment of a tax representative in accordance to section 15A of the Tax procedures Act,2015.

7. **Regulation 8** provides that an electronic, internet or digital marketplace shall be deemed to have made in Kenya where the recipient of the supply is in Kenya.

8. **Regulation 9** provides that the time that an Electronic, internet or digital marketplace supply is made in Kenya shall be earlier of-
  - a) A date on which the payment for the supply is received in whole or in part; or
  - b) The date on which the invoice or receipt of the supply is issued
9. **Regulation 10** provides for exemptions to suppliers who makes an electronic, internet or digital marketplace supply from an export country who is registered under the Regulations shall not be required to issue an electronic tax invoice.
10. **Regulation 11** provides that a deduction of input tax by a supplier shall not be allowed for transactions relating to an electronic, internet or digital marketplace supply.
11. **Regulation 12** provides that a tax in respect of an electronic, internet or digital marketplace supply made to a recipient in Kenya shall be paid by the supplier or the tax representative of the supplier.
12. **Regulation 13** provides for any amendment to a return submitted in accordance with these Regulations shall be made in accordance with section 31 of the Tax Procedures Act,2015.
13. **Regulation 14** provides that a person who fails to comply with the provisions of these Regulations Commits an offence and shall be liable to penalties prescribed under the Act or Tax Procedures Act, 2015.
14. **Regulation 15** provides for the revocation of the Value Added Tax (Digital Market Supply) Regulations, 2020.
15. The Committee sought clarification on Regulation 14 on the penalties. The Commission needed to be specific on which they based the penalties. The Regulations provided for penalties in the Value Added Tax Act and Tax Procedures Act.
16. The Committee noted that the Regulations were published on 21<sup>st</sup> March, 2023 and submitted to the National Assembly on 18<sup>th</sup> April, 2023, which was outside the timelines provided for in Section 11 of the Statutory Instruments Act, 2013 of seven si.

MIN. DAA&OSC/CDL/230/2023

**CONSIDERATION OF THE EXCISE DUTY  
(EXCISABLE GOODS MANAGEMENT  
SYSTEM (AMMENDMENT)  
REGULATION, 2023.  
LEGAL NOTICE. NO 30**

Ms. Rispah Simiyu, Ag. Commissioner General KRA, briefed the Committee on The Excise Duty (Excisable goods Management System) (Amendment) Regulations,2023 as follows, that;

1. **Regulation 1** provided for the citation of the Regulations.
2. **Regulation 2** provided for the amendment of the Excise Duty (Excisable Goods Management System) Regulations, 2017in Regulation 3 in the he Excise Duty (Excisable Goods Management System) (Amendment) Regulations,2023 by deleting the words “except motor vehicles, manufactured in or imported into Kenya”
3. **Regulation 3** provided for the amendment of the Principal Regulation in Regulation 6 by inserting the words “and compliance management activities in respect of excisable goods” immediately after the word “system”.
4. **Regulation 4** provided for the amendment of in Regulation 28 by deleting sub Regulation (1) and substituting therefore with the following new sub regulations-

(1) Goods not liable to excise duty under section 7(1) shall be exempted from the requirements of excise stamps.

5. Regulation 5 provided for the deletion of the schedule and replacing it with;

1. Cigars, charoots, cigarillos, containing tobacco or tobacco substitutes stamp	Ksh.5 per stamp
2. Cigarettes containing tobacco or tobacco substitutes stamp	Ksh. 5 per stamp
3. Other Manufactured Tobacco and manufactured tobacco substitutes Stamp	Ksh. 5 per Stamp
4. Electronic cigarettes and other nicotine delivery devices stamp	Ksh. 5 Per stamp
5. Liquid nicotine for electronic cigarettes stamp	Ksh. 5 per stamp
6. Products containing nicotine intended for inhalation without combustion or oral application	Ksh. 5 Per Stamp.
7. Wine including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	Ksh. 5 Per Stamp.
8. Compounded spirits of alcoholic strength exceeding 6%	Ksh. 3 Per Stamp.
9. Spirituous beverages of alcoholic strength not exceeding 6% Stamp.	Ksh. 3 Per Stamp.
10. Beers, cider, perry mead opaque beer mixtures of fermented beverages with non-alcoholic beverages Stamp.	Ksh. 3 Per Stamp.
11. Bottled or similarly packaged water Stamp.	Ksh. 0.5 Per Stamp.
12. Other non -alcoholic beverages, not including fruit and vegetable juices Stamp.	Ksh. 2.2 Per Stamp.
13. Fruit juices (including grape must) and vegetable juices, fermented and not containing added spirits, whether or not containing added sugar or other sweetening matter Stamp.	Ksh. 2.2 Per Stamp.
14. Cosmetics and beauty products of tariff heading 3303,3304,3305 and 3307.	

6. The Committee observed that an international company was involved in the production of the stamp duties which the country was buying at higher cost than the value that was being paid for such stamps. This in effect had led to high pending bills for the part of the government to the supplier of the stamps. There was need to consider having a local supplier upon expiry of the contract.

7. The increment on the pricing of the stamp duty on commodities such as cigarette, alcoholic and beauty products was making the country less competitive with the neighbouring countries. This had attracted influx of cheaper products from the neighbouring country. Ag. Commissioner General noted that the influx of alcoholic

beverages from the neighbouring countries was as a result of cheaper cost of raw materials such as ethanol in the manufacturing of the alcoholic beverages.

8. The Soma Label Application had been infiltrated by counterfeit stamps hence encouraging sale of counterfeit products in the market. In their response, the Ag. Commissioner General indicated that the Application security features had been enhanced to ensure that duplication of stamps was detected.

MIN. DAA&OSC/CDL/231/2023

ADOPTION OF THE REPORT ON THE  
PUBLIC FINANCE MANAGEMENT  
(NATIONAL SUPPORT OPERATIONS  
FUND)  
REGULATIONS, 2023.

The Committee considered and adopted the Report on the Public Finance Management (National Peace Support Operations Fund) Regulations, 2023 as proposed by the Hon. Innocent Maino Mugabe, M.P and seconded by The Hon. Ruku Geoffrey Kariuki Kiringa, M.P. with the following recommendation, that:

Having examined the Public Finance Management (National Peace Support Operations Fund) Regulations, 2023 in accordance with the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Statutory Instruments Act (*No 23 of 2013*), the Public Finance Act, the Committee recommends that the House approves the Public Finance Management (National Peace Support Operations Fund) Regulations, 2023 (*LN. No. 58 of 2023*) in accordance with section 24(4) the Public Finance Management Act (*No. 18 of 2012*).

MIN. DAA&OSC/CDL/232/2023 ANY OTHER BUSINESS

There was no business under this agenda item.

MIN. DAA&OSC/CDL/233/2023 ADJOURNMENT

There being no other business, the meeting was adjourned at Thirty Minutes past Twelve O'clock.

SIGNED:  .....

THE HON. SAMUEL CHEPKONGA, CBS. M.P.  
CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION

DATE: 27/06/2023 .....

**MINUTES OF THE 38<sup>TH</sup> SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON TUESDAY, 4<sup>TH</sup> JULY, 2023 AT THE SMALL DINING, NEW WING, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.**

**PRESENT**

1. The Hon Samuel Kiprono Chepkonga, CBS, M.P., Chairperson
2. The Hon. Robert Gichimu Githinji, M.P., Vice Chairperson
3. The Hon. Robert Mbui, CBS, M.P
4. The Hon. Nicholas S. Tindi Mwale, M.P.
5. The Hon. Julius Lekakeny Ole Sunkuli, EGH, EBS, MP
6. The Hon. Jared Okello Odoyo M.P.
7. The Hon. Joyce Kamene, M.P
8. The Hon. Gideon Kipkoech Kimaiyo, M.P.
9. The Hon. Maj. (Rtd). Dekow Barrow Mohamed, M.P.
10. The Hon. Pauline Lenguris, M.P
11. The Hon. Onchoke Charles Mamwacha. M.P
12. The Hon. Joseph Kamau Munyoro, M.P.
13. The Hon. John Paul Mwirigi, M.P.
14. The Hon. Innocent Maino Mugabe, M.P.

**APOLOGIES**

1. The Hon. Linet Chepkorir M.P.
2. The Hon. Ruku Geoffrey Kariuki Kiringa, M.P.
3. The Hon. Laura Amina Mnyazi, M.P.
4. The Hon. Maj. (Rtd). Abdullahi Bashir Sheikh, MP
5. The Hon. Paul Chebor, M.P.
6. The Hon. Kibet Kirui Komingoi, M.P.
7. The Hon. Adow Kuno Yakub, M.P.

**SECRETARIAT**

- |                           |   |                           |
|---------------------------|---|---------------------------|
| 1. Ms. Esther Nginyo      | - | Clerk Assistant I         |
| 2. Mr. Wilson Dima Dima   | - | Principal Legal Counsel I |
| 3. Mr. Brian Langwech     | - | Clerk Assistant III       |
| 4. Mr. Jacknorine Buleemi | - | Clerk Assistant III       |
| 5. Ms. Winny Otieno       | - | Clerk Assistant III       |
| 6. Mr. Charles Ayari      | - | Audio Officer             |
| 7. Ms. Fiona Wanjiru      | - | Legal Counsel II          |
| 8. Ms. Sheila Chebotibin  | - | Sergeant-at Arms          |
| 9. Mr. Manuel Leparachao  | - | Sergeant-at-Arms          |

**IN ATTENDANCE**

**MINISTRY OF MINING, BLUE ECONOMY AND MARITIME AFFAIRS**

- |                            |   |                     |
|----------------------------|---|---------------------|
| 1. Hon Salim Mvurya, E.G.H | - | Cabinet Secretary   |
| 2. Mr. Elijah G. Mwangi    | - | Principal Secretary |



- |                          |   |                              |
|--------------------------|---|------------------------------|
| 3. Ms. Linet Bunei       | - | Senior State Counsel         |
| 4. Mr. Edward Omuro      | - | Manager, Voi Gemstone Centre |
| 5. Mr. Rodgers Chimega   | - | Chief Advisor to the Cs      |
| 6. Ms. Patricia C. Mabil | - | Senior State Counsel         |
| 7. Mr. Muhia Kagwi       | - | PA, PS Mining                |

## **AGENDA**

1. Prayers
2. Preliminaries
3. Adoption of the Agenda
4. Confirmation of minutes
5. Matters arising
6. **Briefing by the Cabinet Secretary Ministry of Mining, Blue Economy and Maritime Affairs on the Mining (Gemstone identification and Value Addition) (Fees) Regulations, 2023.**
7. **Consideration of Reports on The Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023 Legal Notice No. 29 of 2023.**
8. Any Other Business; and
9. Adjournment.

### **MIN. DAA&OSC/CDL/250/2023**

### **PRELIMINARIES**

The Chairperson called the Meeting to order at 10.20 a.m. after which prayers were said. The Chairperson then welcomed all present to the meeting followed with a round of introductions.

### **MIN. DAA&OSC/CDL/251/2023**

### **ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted as was proposed by the Hon. Julius Lekakeny Ole Sunkuli, EGH, EBS, MP and seconded by the Hon. Onchoke Charles Mamwacha. M.P

### **MIN. DAA&OSC/CDL/252/2023**

### **CONFIRMATION OF MINUTES**

Minutes of the 36<sup>th</sup> Sitting held on Tuesday, 27<sup>th</sup> June, 2023 were confirmed as true records of the deliberations as proposed by the Hon. Sunkuli Julius Lekakeny, EGH, EBS, MP and seconded by the Hon. Pauline Lenguris, M.P

Minutes of the 37<sup>th</sup> Sitting held on Thursday, 29<sup>th</sup> June, 2023 were confirmed as true records of the deliberations as proposed by the Hon. Sunkuli Julius Lekakeny, EGH, EBS, MP and seconded by the Hon. Onchoke Charles Mamwacha. MP.

### **MIN. DAA&OSC/CDL/253/2023**

### **MATTERS ARISING**

No matter arose under this Agenda item.

### **MIN. DAA&OSC/CDL/254/2023**

### **BRIEFING BY THE CABINET SECRETARY, MINISTRY OF MINING, BLUE ECONOMY AND MARITIME AFFAIRS ON THE MINING**

**(GEMSTONE IDENTIFICATION AND VALUE ADDITION) (FEES), 2023. LEGAL NOTICE NO. 75 OF 2023**

The Hon. Salim Mvurya, Cabinet Secretary, Ministry of Mining, Blue Economy and Maritime Affairs briefed the Committee on the on the Mining(Gemstone Identification and Value Addition)(Fees) Regulations, 2023.as follows; That

1. The Ministry of Mining, Blue Economy and Maritime Affairs has three (3) State departments under it namely;
  - i. State Department for Mining,
  - ii. State Department for Blue Economy and Fisheries and
  - iii. State Department for Shipping and Maritime Affairs.
2. There are 970 mineral occurrences in Kenya which fall under the State Department for Mining. The Ministry through the State Department for Mining was working on decentralized laboratory services to revamp the mining sector.
3. The Ministry was also working on a framework to create cooperative societies to take care of Artisanal mining in the country. This would ensure effective training to artisan as well as enable effective provision of the required equipment to this sector thereby ensuring effective mining. The launch of online license application would also ensure effective monitoring of mining activities in the country.
4. The Mining (Gemstone Identification and Value Addition) (Fees) Regulations, 2023 seeks to;
  - a) Provide the fees payable for services provided at the Voi Gemstone Identification and Value Addition Centre as respectively specified by the person under or for the purpose of the Act and ;
  - b) Provide guidance that a person who requests for a service to be rendered at the Gemstone Identification and Value Addition Centre or the person for whose benefit the service is provided, shall pay fees as specified in the Regulations.
5. **Regulation 1** provides for Citation.
6. **Regulation 2** provides for the application of the Regulations which shall be gemstone identification and value addition at the Voi Gemstone Centre.
7. **Regulation 3** provides for the fees chargeable at the value addition center as set out in the schedule as follows;

Services	Description	Fees in Kes.
Identification	Identification certificate. Gives complete lab report on the	500

	Gemstone Characteristics				
Sawing	Reduction per piece		100		
Faceting	Category 1	0.1ct-0.5ct	0.5ct-2.0ct	3.0ct-4.0ct	Above 4ct
	1. Corundum 2. Tsavorite 3. Tanzanite 4. Spinel 5. Emerald 6. Zircon 7. Demantoid 8. Alexandrite	500 Kes per piece	500 Kes per piece	100 Kes per piece	2500 Kes per piece
	Category	0.1ct-0.9ct	1.0ct-3.0ct	4.0ct and above	Special stones >.5.0ct
	1. Aquamarine 2. Tourmaline 3. Rhodolite 4. Pyrope 5. Quartz 6. Spessartite 7. Malaya-garnet 8. Iolite 9. Hessonite 10. Change colour garnet	300 Kes per piece	300 Kes per piece	500 Kes per piece	2500 Kes per piece
Tumbling	Bulk material for beadwork, cabochon materials in kilograms	Kes 2500 per kg			

Gabbing	Cabochoon material using cabbings Machine per piece	Kes 500 per piece
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8. Upon deliberations, the Committee observed that the Regulations did not clearly provide for definitions of terms used i.e., Gabbling, Tumbling, faceting and Sawing. There was therefore need to capture definitions of terms used in the Regulations.
9. The Committee also sought to be enlightened on illegal mining and the measures the Ministry was putting in place to curb the menace. In his response, the Cabinet Secretary pointed out that illegal mining had been fueled by a Moratorium that had been put in place in 2019 debarring issuance of mining permits. To cushion the sector, the Ministry was set to lift the Moratorium on the issuance of mining licenses upon instituting the requisite reforms in the sector.
10. Further, the Committee noted that the Regulations were region specific and were limiting testing of minerals for other regions not covered by the Regulations. The Committee therefore recommended that the Regulations should be left open by omitting the "Voi Gemstone" part.
11. The Committee also noted that there was lack of evidence to show that effective public participation was carried out during the Regulation making process. Section 5 of the Statutory Instruments Act requires regulatory making bodies to conduct effective public participation during the process but this did not reflect in the Explanatory Memorandum.
12. The Committee also noted that a regulatory impact statement was missing and this was against the requirements of section 6 of the Statutory Instruments Act (No. 23 of 2013) which requires a regulatory making body to provide an impact statement on Regulations that are likely to impose significant costs on the community or part of the community.
13. The Committee consequently resolved that there was need for the Ministry to address the following issues: conducting adequate public participation; conducting assessment on the impact of the Regulations on the community; and addressing drafting gaps such as definitions of terms among others, and then resubmit the revised Regulations to the National Assembly within two weeks' time from the date of the meeting.

MIN/DAA&OSC/CDL/255/2023

CONSIDERATION AND ADOPTION  
OF THE REPORT ON THE VALUE  
ADDED TAX (ELECTRONIC,

**INTERNET AND MARKETPLACE  
SUPPLY) REGULATIONS, 2023.**

The Committee considered the report on the Value Added Tax(Electronic, Internet and Marketplace Supply) Regulations, 2023. and adopted it as was proposed by the Hon. Julius Lekakeny Ole Sunkuli, EGH, EBS, MP and seconded by the Hon. Pauline Lenguris, M.P with the following recommendation, that:

Having examined the Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023, Legal Notice No. 29 of 2023 in accordance with the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Statutory Instruments Act (*No 23 of 2013*), **the Value Added Tax Act, (No. 35 of 2013)**, the Committee recommends that the House approves the Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023, LN. No. 29 of 2023 *subject to the Regulation making authority publishing a corrigendum to rectify the error in the provision on offences under Regulation 14.*

**MIN. DAA&OSC/CDL/256/2023 ANY OTHER BUSINESS**

There was no deliberations under this agenda

**MIN. DAA&OSC/CDL/257/2023 ADJOURNMENT**

There being no other business, the meeting was adjourned at Twenty Minutes past Twelve O'clock.

SIGNED: ..........

**THE HON. SAMUEL CHEPKONGA, CBS. M.P.  
CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION**

DATE: 31.07.2023 .....



REPUBLIC OF KENYA  
THE NATIONAL TREASURY AND ECONOMIC PLANNING

Telegraphic Address: 22921  
Finance – Nairobi  
Fax No. 315779  
Telephone: 2252299

THE NATIONAL TREASURY  
P O BOX 30007 – 00100  
NAIROBI  
KENYA

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*18/04/23*

Ref. ZZ/TS/GP/30/2023

*For tabling*  
*18/04/23*

14<sup>th</sup> April, 2023

Mr. Samuel Njoroge  
Clerk of the National Assembly  
Parliament Building  
NAIROBI

NATIONAL ASSEMBLY  
RECEIVED  
17 APR 2023  
CLERK'S OFFICE  
P. O. Box 41842, NAIROBI

RE: LEGAL NOTICE NO. 29 OF 2023 ON THE VALUE ADDED TAX (ELECTRONIC, INTERNET AND DIGITAL MARKETPLACE SUPPLY) REGULATIONS, 2023, AND LEGAL NOTICE NO. 30 OF 2023 ON THE EXCISE DUTY (EXCISABLE GOODS MANAGEMENT) (AMENDMENT) REGULATIONS, 2023

The above-mentioned two Regulations were Gazetted on 21<sup>st</sup> March, 2023 through Kenya Gazette Supplement No. 33, Legislative Supplement No. 12. The Legal Notices were thereafter published in the Kenya Gazette Vol. CXXV – No. 86 of 14<sup>th</sup> April, 2023.

In compliance with section 11 of the Statutory Instruments Act, I hereby submit the above-mentioned Legal Notices on the Regulations, Explanatory Memoranda and evidence of public participation on the same for tabling in the National Assembly.

*Samson P. Wangusi*  
SAMSON P. WANGUSI, OGW  
PRINCIPAL ADMINISTRATIVE SECRETARY  
FOR: PRINCIPAL SECRETARY/THE NATIONAL TREASURY

NATIONAL ASSEMBLY  
RECEIVED  
17 APR 2023  
DEPUTY CLERK  
P.O. Box 41842 - 00100, NAIROBI

Encl.

Copy to: Cabinet Secretary/The National Treasury and Economic Planning  
Principal Secretary/The National Treasury

**FCCA, CS Rispah Simiyu (Mrs.) Advocate, EBS**  
Ag. Commissioner General  
Kenya Revenue Authority  
**NAIROBI**

(Legislative Supplement No. 12)

LEGAL NOTICE NO. 29

THE VALUE ADDED TAX ACT, 2013

(No. 35 of 2013)

THE VALUE ADDED TAX (ELECTRONIC, INTERNET AND  
DIGITAL MARKETPLACE SUPPLY) REGULATIONS, 2023

ARRANGEMENT OF REGULATIONS

*Regulation*

- 1—Citation
- 2—interpretation
- 3—Electronic, internet or digital marketplace supplies
- 4—Application of tax
- 5—Simplified tax registration framework
- 6—Registration
- 7—Appointment of tax representative
- 8—Place of supply
- 9—Time of supply
- 10—Exemption from issuing an electronic tax invoice
- 11—Claim for input tax
- 12—Accounting for and payment of tax
- 13—Amendment of returns
- 14—Penalties
- 15—Revocation

THE NATIONAL ASSEMBLY  
DATE: 19 APR 2023 Wednesday  
Hon. Owen Baya, Deputy Leader  
of the Majority Party  
Modo

TABLED  
BY  
CLERK AT  
THE TABLE

THE NATIONAL ASSEMBLY  
DATE: 19 APR 2023



## THE VALUE ADDED TAX ACT, 2013

(No. 35 of 2013)

## THE VALUE ADDED TAX (ELECTRONIC, INTERNET AND DIGITAL MARKETPLACE SUPPLY) REGULATIONS, 2023

IN EXERCISE of the powers conferred by section 67 of the Value Added Tax Act, 2013, the Cabinet Secretary for the National Treasury and Economic Planning makes the following Regulations—

## THE VALUE ADDED TAX (ELECTRONIC, INTERNET AND DIGITAL MARKETPLACE SUPPLY) REGULATIONS, 2023

1. These Regulations may be cited as the Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023.

Citation.

2. In these Regulations, unless the context otherwise requires—

Interpretation.

“electronic, internet or digital marketplace supply” means the supply made over the internet, an electronic network or any digital marketplace;

“export country” means any country, other than Kenya, and includes any place which is not situated in Kenya;

“intermediary” means a person who facilitates the supply of an electronic, internet or digital marketplace supply and who is responsible for issuing invoices or collecting payments in respect of the supply;

“recipient”, in relation to any supply of an electronic, internet or digital marketplace supply, means the person to whom the supply is made; and

“tax period” means a calendar month.

3. For the purposes of these Regulations, a taxable electronic, internet or digital marketplace supply includes—

Electronic, internet or digital marketplace supplies.

- (a) downloadable digital content including downloadable mobile applications, eBooks and films;
- (b) subscription-based media including news magazines and journals;
- (c) over-the-top services including streaming television shows, films, music, podcasts and any form of digital content;
- (d) software programmes including software, drivers, website filters and firewalls;
- (e) electronic data management including website hosting,

- (g) search engines and automated helpdesk services including customisable search engine services;
- (h) ticketing services for events, theatres, restaurants and similar services;
- (i) online education programmes including distance teaching programmes through pre-recorded media, eLearning, education webcasts, webinars, online courses and training but excluding education services exempted under the First Schedule to the Act;
- (j) digital content for listening, viewing or playing on any audio, visual or digital media;
- (k) services that link the supplier to the recipient including transport hailing platforms;
- (l) electronic services specified under section 8(3);
- (m) sales, licensing, or any other form of monetizing data generated from users' activities;
- (n) facilitation of online payment for, exchange or transfer of digital assets excluding services exempted under the Act; and
- (o) any other service provided through an electronic, internet and digital marketplace that is not exempt under the Act.

4. Tax shall apply to a taxable electronic, internet or digital marketplace supply made in Kenya.

Application of tax.

5. (1) A person supplying a taxable electronic, internet or digital marketplace supply specified in regulation 3 shall register for tax in Kenya within thirty days after the date of making taxable supply in accordance with section 34 if—

Simplified tax registration framework.

- (a) the supplies are made by a person from an export country to a recipient in Kenya;
- (b) the person is conducting business in Kenya in accordance with section 8(2); and
- (c) any of the following circumstances apply—
  - (i) the recipient of the supply is in Kenya;
  - (ii) the payment for the services is made to the supplier in the export country from a bank registered under the Banking Act; or
  - (iii) the payment for services that is made to the supplier in the export country is authorised in Kenya.

6. (1) An application for registration under regulation 5(1) shall be made through an online registration form prescribed by the Commissioner. Registration.

(2) An application under subregulation (1) shall be accompanied by the following information—

- (a) the name of the business including its trading name;
- (b) the name of the contact person responsible for tax matters;
- (c) the postal address or registered address of the business and its contact person;
- (d) the telephone number and email address of the contact person;
- (e) the website or uniform resource locator of the applicant through which business is conducted;
- (f) the national tax identification number issued to the applicant in the applicant's jurisdiction;
- (g) the certificate of incorporation or registration issued to the applicant in the country where the applicant's business is registered or incorporated; and
- (h) any other information that the Commissioner may require.

(3) The Commissioner may require an applicant under subregulation (1) to submit additional documents that may be necessary to substantiate the information provided in the application.

(4) Upon registration, the Commissioner shall issue the applicant with a personal identification number in accordance with the Tax Procedures Act, 2015, for the purpose of filing returns and payment of tax.

(5) A person registered under this regulation who ceases to make taxable electronic, internet and digital marketplace supplies in Kenya shall apply to the Commissioner for deregistration in accordance with section 36 of the Act.

7. Where a person from an export country making an electronic, internet or digital marketplace supply to a recipient in Kenya elects not to register in accordance with regulation 6, that person shall appoint a tax representative in accordance with section 15A of the Tax Procedures Act, 2015. Appointment of tax representative.

8. (1) An electronic, internet or digital marketplace supply shall be deemed to have been made in Kenya where the recipient of the supply is in Kenya. Place of supply.

- (a) whether the payment proxy, including credit card or debit card information and bank account details of the recipient, is in Kenya;
- (b) whether the residence proxy, including the billing or home address, is in Kenya; or
- (c) whether the access proxy, including internet address or mobile country code of the subscriber identification module card of the recipient, is in Kenya.

Time of supply.

9. The time that an electronic, internet or digital marketplace supply is made in Kenya shall be the earlier of—

- (a) the date on which the payment for the supply is received in whole or in part; or
- (b) the date on which the invoice or receipt of the supply is issued.

10. (1) A supplier who makes an electronic, internet or digital marketplace supply from an export country who is registered under these Regulations shall not be required to issue an electronic tax invoice:

Exemption from issuing an electronic tax invoice.

Provided that the supplier shall issue an invoice or receipt showing the value of the supply, the tax deducted thereon and the personal identification number of the customer.

(2) The invoice or receipt issued under subregulation (1) shall be deemed to be a tax invoice.

11. A deduction of input tax by a supplier shall not be allowed for transactions relating to an electronic, internet or digital marketplace supply.

Claim for input tax.

12. (1) The tax in respect of an electronic, internet or digital marketplace supply made to a recipient in Kenya shall be paid by the supplier or the tax representative of the supplier.

Accounting for and payment of tax.

(2) A registered person shall submit a return in the prescribed form and remit the tax due in each tax period to the Commissioner on or before the twentieth day of the month following the end of the tax period.

(3) Where an intermediary makes an electronic, internet or digital marketplace supply on behalf of another person, the intermediary shall be required to charge and account for the tax on the supply whether such other person is registered for tax or not.

13. (1) Any amendment to a return submitted in accordance with these Regulations shall be made in accordance with section 31 of the Tax Procedures Act, 2015.

Amendment of returns.

favour of the person who overpaid and offset against the tax payable in the subsequent tax period.

14. A person who fails to comply with the provisions of these Regulations commits an offence and shall be liable to the penalties prescribed under the Act or Tax Procedures Act, 2015. Penalties.

15. The Value Added Tax (Digital Market Supply) Regulations, 2020, are revoked. Revocation.  
L.N. 190/2020.

Made on the 15th March, 2023.

NJUGUNA NDUNG’U,  
*Cabinet Secretary for the  
National Treasury and Economic Planning.*

LEGAL NOTICE NO. 30

THE EXCISE DUTY ACT

(No. 23 of 2015)

THE EXCISE DUTY (EXCISABLE GOODS MANAGEMENT SYSTEM) (AMENDMENT) REGULATIONS, 2023

IN EXERCISE of the powers conferred by section 45 of the Excise Duty Act, 2015, the cabinet Secretary for the National Treasury and Economic Planning makes the following Regulations—

THE EXCISE DUTY (EXCISABLE GOODS MANAGEMENT SYSTEM) (AMENDMENT) REGULATIONS, 2023

1. These Regulations may be cited as the Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023. Citation.

2. The Excise Duty (Excisable Goods Management System) Regulations, 2017 (in these Regulations referred to as the “principal Regulations”), are amended in regulation 3 by deleting the words “except motor vehicles, manufactured in or imported into Kenya”. L.N. 53/2017.

3. The principal Regulations are amended in regulation 6 by inserting the words “and compliance management activities in respect of excisable goods” immediately after the word “System”.

4. The principal Regulations are amended in regulation 28 by deleting subregulation (1) and substituting therefor the following new subregulation—

(1) Goods not liable to excise duty under section 7(1) shall be exempted from the requirement of excise stamps.

5. The principal Regulations are amended by deleting the Schedule and replacing it with the following new Schedule—

SCHEDULE

EXCISE STAMP FEES

r. 5

No.	Category of excisable goods	Fees KSh.
2.	Cigarettes containing tobacco or tobacco substitutes	5 per stamp
3.	Other manufactured tobacco and manufactured tobacco substitutes; homogenous" and "reconstituted" tobacco; tobacco extracts and essences	5 per stamp
4.	Electronic cigarettes and other nicotine delivery devices	5 per stamp
5.	Liquid nicotine for electronic cigarettes	5 per stamp
6.	Products containing nicotine or nicotine substitutes intended for inhalation without combustion or oral application but excluding medicinal products approved by the Cabinet Secretary responsible for matters relating to health	5 per stamp
7.	Wines, including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	5 per stamp
8.	Compounded spirits of alcoholic strength exceeding 6%	3 per stamp
9.	Spiritous beverages of alcoholic strength not exceeding 6%	3 per stamp
10.	Beer, cider, perry, mead, opaque beer and mixtures of fermented beverages with non-alcoholic beverages	3 per stamp
11.	Bottled or similarly packaged waters	0.5 per stamp
12.	Other non-alcoholic beverages, not including fruit and vegetable juices	2.2 per stamp
13.	Fruit juices (including grape must) and vegetable juices, fermented and not containing added spirit, whether or not containing added sugar or other sweetening matter	2.2 per stamp
14.	Cosmetics and beauty products of tariff heading 3303, 3304, 3305 and 3307	2.5 per stamp

Dated the 10th March, 2023.

NJUGUNA NDUNG'U,  
Cabinet Secretary for the  
National Treasury and Economic Planning.

**EXPLANATORY MEMORANDUM TO THE VALUE ADDED TAX  
(ELECTRONIC, INTERNET AND DIGITAL MARKETPLACE  
SUPPLY) REGULATIONS 2023**

**LEGAL NOTICE NO. 29, KENYA GAZETTE SUPPLEMENT NO. 33  
OF 2023, KENYA GAZETTE VOL. CXXV – NO. 86 OF 14<sup>TH</sup> APRIL,  
2023**

**PART I**

<b>Name of Statutory Instrument</b>	: The Value Added Tax (Electronic, Internet & Digital Marketplace Supply) Regulations 2023.
<b>Name of Parent Act</b>	: Value Added Tax Act 2013.
<b>Enacted Pursuant to</b>	: Section 5(8) as read with section 67 of the Value Added Tax Act, 2013.
<b>Name of the Ministry/Department</b>	: The National Treasury and Economic Planning.
<b>Gazetted on</b>	: 21 <sup>st</sup> March, 2023 and Published on 14 <sup>th</sup> April, 2023.

**PART II**

**1.0 Purpose of the Statutory Instrument**

1.1 The objective of this Memorandum is to submit the Legal Notice No. 29, Kenya Gazette Supplement No. 33 of 2023, and published in the Kenya Gazette Vol. CXXV – No. 86 of 14<sup>th</sup> April, 2023, for tabling in the National Assembly in accordance with the provisions of Section 11 of the Statutory Instruments Act, 2013.

1.2 The Legal Notice introduces the Value Added Tax (Electronic, Internet & Digital Marketplace Supply) Regulations 2023 which revokes the Value added Tax (Digital Marketplace Supply) Regulations, 2020.

**2.0 Legislative Context**

2.1 The Legal Notice on the Value Added Tax (Electronic, Internet & Digital Marketplace Supply) Regulations 2023 is made pursuant to Section 5(8) as read with section 67 of the Value Added Tax Act, 2013. The Section empowers the Cabinet Secretary for the National Treasury

and Economic Planning to make regulations to provide mechanism for collection of Value added Tax on supplies made through a digital marketplace.

### **3.0 Policy Background**

- 3.1 This Legal Notice revokes the Legal Notice No. 190 of 2020 on the Value added Tax (Digital Marketplace Supply) Regulations, 2020 to correct numbering errors in Legal Notice No. 190.
- 3.2 The primary objective of this Legal Notice therefore is to provide the legal framework to enable the government implement the tax measures necessary for financing its economic development agenda.
- 3.3 Technology is quickly changing the way people conduct business, a departure from the way of doing things a few years ago.
- 3.4 This increase in the use of digital space has opened up the Kenyan market to the outside world allowing non-residents to supply digital services to Kenyan consumers without the necessity of having physical presence in the country. The import of this is that, such supplies are not chargeable to Value Added Tax (VAT).
- 3.5 This situation has disadvantaged local suppliers who offer similar digital services since they charge and account for VAT on such supplies.
- 3.6 To allow equity and fairness, the VAT Act was amended to require non-resident suppliers, who account for a large percentage of the digital marketplace in Kenya, to register and account for VAT on supplies made in Kenya.
- 3.7 This Legal Notice revokes the Legal Notice No. 190 of 2020 in order to align the regulations with the changing business models and to correct numbering errors in the Legal Notice No. 190 of 2020.

### **4.0 Public Consultation Outcome**

- 4.1 In developing this Legal Notice, public participation was undertaken in compliance with the provisions of Section 5 of the Statutory Instruments Act, 2013 and Article 201 (a) of the Constitution.
- 4.2 The National Treasury and Economic Planning, through the Kenya Revenue Authority, invited stakeholders and members of the public to submit their comments on the draft Legal Notice on 24<sup>th</sup> January



2023, through a Public Notice. The stakeholders were required to submit their comments by 7<sup>th</sup> February 2023.

- 4.3 The Kenya Revenue Authority invited stakeholders and industry players for a meeting on 8<sup>th</sup> February 2023 to discuss comments received. This stakeholder engagement was conducted online on **8<sup>th</sup> February, 2023** to allow the stakeholders provide context on their submissions. This is in line with the provisions of the Constitution on public participation.
- 4.4 Stakeholders' submissions were reviewed and their feedback incorporated, where appropriate, to improve the regulations.

## **5.0 Impact**

- 5.1 The Legal Notice provides for collection of VAT on supplies made through a digital marketplace. It is expected that this regulation will lead to compliance by suppliers in the digital marketplace and thus enhance equity in administration of taxes.

## **6.0 Monitoring and review**

The Legal Notice will be implemented by the Kenya Revenue Authority and will be effective from the date of publication in the Gazette.

## **7.0 Request to the National Assembly**

The National Assembly is invited to:

- a) Note the contents of this memorandum.
- b) Adopt Legal Notice No. 29, Kenya Gazette Supplement No. 33 of 2023.

## **8.0 Contact**

Cabinet Secretary  
The National Treasury and Economic Planning  
P. O. Box 30007-00100  
**NAIROBI**

**EXPLANATORY MEMORANDUM TO THE THE EXCISE DUTY  
(EXCISABLE GOODS MANAGEMENT SYSTEM) (AMENDMENT)  
REGULATIONS, 2023**

**LEGAL NOTICE NO. 30, KENYA GAZETTE SUPPLEMENT NO. 33  
OF 2023, KENYA GAZETTE VOL. CXXV – NO. 86 OF 14<sup>TH</sup> APRIL,  
2023**

**PART I**

<b>Name of Statutory Instrument</b>	: Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023.
<b>Name of Parent Act</b>	: Excise Duty Act, 2015.
<b>Enacted Pursuant to</b>	: Section 45 of the Excise Duty Act, 2015.
<b>Name of the Ministry/Department</b>	: The National Treasury and Economic Planning.
<b>Gazetted on</b>	: 21 <sup>st</sup> March, 2023, and Published on 14 <sup>th</sup> April, 2023.

**PART II**

**1.0 Purpose of the Statutory Instrument**

- 1.1 The objective of this Memorandum is to submit Legal Notice No. 30 Kenya Gazette Supplement No. 33 of 2023, and published in the Kenya Gazette Vol. CXXV – No. 86 of 14<sup>th</sup> April, 2023, for tabling in the National Assembly in accordance with the provisions of Section 11 of the Statutory Instruments Act, 2013.
- 1.2 The Legal Notice implements the Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023, in line with the requirements of the Excise Duty Act 2015.

**2.0 Legislative Context**

- 2.1 The Legal Notice on the Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023, is made pursuant to Section 45 of the Excise Duty Act 2015. The Section empowers the Cabinet Secretary for the National Treasury and Economic Planning to make regulations for the better carrying out of the provisions of the Act,

particularly the prescription of any fee or charge to be levied on excisable goods imported into, or manufactured in, Kenya.

2.2 This Legal Notice amends specific provisions of the Excise Duty (Excisable Goods Management System) Regulations, 2017, referred to herein as the principal Regulations.

### **3.0 Policy Background**

3.1 The primary objective of the Legal Notice is to amend various provisions of the principal Regulations. This will improve the administration of excise duty and improve compliance. This is also meant to raise revenue to finance the cost of excise stamps.

3.2 The principal Regulations provide a legal framework for implementing the Excise Duty Act 2015 legislation regarding the affixation of excise stamps and the imposition of excise stamp fees on excisable goods imported into or manufactured in Kenya.

3.3 The Schedule to the principal Regulations provides the excise stamp fees to be charged on excise stamps for different types of excisable goods. The goods included in the Schedule include tobacco products, wines, spirits, beer, mineral and aerated water, fruit juices, flavoured water, cosmetics, and beauty products.

3.4 The excise stamp fees are paid to the Commissioner by manufacturers and importers of excisable goods based on the number of stamps issued to them.

3.5 Product marking using stamps is important because they :- deter counterfeiting; facilitate tracking of excisable goods along the supply chain; enable accounting for the production of excisable goods manufactured or imported; and enable any individual to authenticate/validate the genuineness of excisable goods.

3.6 The prices of excise stamps have remained constant since 2017. This is despite the increasing inflation as well as the depreciation of the Kenyan shilling against major currencies such as the Euro, over time. As a result, the money collected from the sale of stamps to manufacturers and importers has not been adequate to finance the system for three main reasons:

- 3.7 **First, the shift in product volume mix in favour of low-priced products.** The 2017 pricing model had been designed so that high-price products, mainly alcoholic products, cross-subsidize low-priced non-alcoholic products with the anticipation that the volumes sold for spirits, tobacco and wines (high-priced products) would compensate for the gap arising from the deficit of non-alcoholic volumes (low-priced products). However, since the roll-out of stamps for low-priced products in November 2019, the volumes for low-priced products significantly exceeded those of high-priced products. The non-alcoholic beverage stamps account for about 70% of the total volumes of stamps, while spirits, tobacco and wines account for 18% of the stamps. Beer volumes are about 12% of the total stamps.
- 3.8 **Second, the Covid-19 containment measures** in 2020 disproportionately affected sales of high-priced excisable products due to the closure of bars and restaurants, whereas the sales of low-priced products were largely unaffected by the pandemic. As a result, the volumes of the high-priced products could not compensate for the deficit from the low-priced products and hence widening the EGMS funding deficit.
- 3.9 **Third, the depreciation of Kenya shillings against the Euro.** When the EGMS was rolled out, the cost of the stamps to KRA was about Ksh 1.5 per stamp. The cost of acquisition of the stamps rose from about Ksh 1.5 to about Ksh 1.8 per stamp as of June, 2022. This was due to the depreciation of the Kenyan shillings against the Euro, which as of June 2022, was about Ksh 136 from Kshs 100.55 in 2015, against the Euro. As a result of all these factors, the government has accumulated a deficit of about Kshs 4.5 billion.
- 3.10 Thus, the review of the pricing model of the excise stamps is necessary to enable full recovery of the cost of the system, settlement of accumulated debts and ensure the system's sustainability in the long term.
- 3.11 Further, the Legal Notice aligns various provisions of the principal regulations with provisions of the Excise Duty Act 2015, which appear to be inconsistent.

#### **4.0 Public Consultation Outcome**

- 4.1 In developing this Legal Notice, public participation was undertaken in compliance with the provisions of Section 5 of the Statutory Instruments Act, 2013 and Article 201 (a) of the Constitution.
- 4.2 Through the Kenya Revenue Authority, the National Treasury and Economic Planning invited stakeholders and members of public to submit their comments on the draft Legal Notice on *17<sup>th</sup> January, 2023* through a Public Notice.
- 4.3 The Authority received comments only from PwC. Further, stakeholders were invited for a physical meeting at the Times Tower, 5<sup>th</sup> Floor Auditorium on *1<sup>st</sup> February, 2023* to ventilate on their submissions. This is in line with the provisions of the Constitution on public participation. Member organizations operating in the Excisable goods sector, such as the Institute of Certified Public Accountants of Kenya (ICPAK), the Kenya Association of Manufacturers (KAM) and the Water Bottlers Association (WABK), and the Alcoholic Beverages Association of Kenya (ABAK) attended the engagement.
- 4.4 Stakeholders' submissions were reviewed, and their feedback were incorporated into the draft Legal Notice, where appropriate, to improve the regulations. For instance, the proposed amendment to Regulation 28(1) was revised to incorporate exported goods in the list of goods exempt from affixation of stamps.

#### **5.0 Impact**

- 5.1 The Legal Notice revises the fees to be charged on the excise stamps. It is expected that sufficient revenues will be generated to meet the cost of excise stamps.
- 5.2 It is expected that the additional revenue collected will be used to offset the cost of producing the excise stamps, the accumulated debts as well as the maintenance of the system.
- 5.3 Section 9 of the Statutory Instrument Act 2013 provides that a regulatory impact statement need not be prepared for a proposed statutory instrument if the proposed legislation only provides for an amendment of a fee, charge, or tax consistent with announced government policy. Since the Regulations are in line with the

provisions of the Excise Duty Act, 2015, a regulatory impact statement has not been prepared.

#### **6.0 Monitoring and review**

The Legal Notice will be implemented by the Kenya Revenue Authority and will be operational from the date of publication in the Kenya Gazette.

#### **7.0 Request to the National Assembly**

The National Assembly is invited to:

- a) Note the contents of this Memorandum.
- b) Adopt Legal Notice No. 30, Gazette Supplement No. 33 of 2023.

#### **8.0 Contact**

Cabinet Secretary

The National Treasury and Economic Planning

P. O. Box 30007-00100

**NAIROBI**