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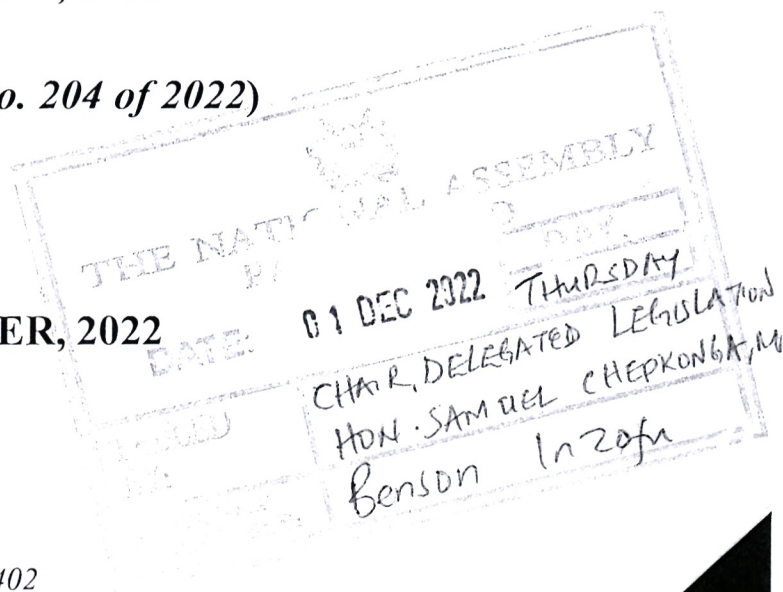
THIRTEENTH PARLIAMENT- FIRST SESSION

COMMITTEE ON DELEGATED LEGISLATION

REPORT ON THE CONSIDERATION OF LEGAL NOTICE No. 204 ON ADJUSTMENT OF RATES OF EXCISE DUTY FOR INFLATION, 2022

(Legal Notice No. 204 of 2022)

DECEMBER, 2022



*Directorate of Committee Services
The National Assembly,
Parliament Buildings, Continental House, Room 402
NAIROBI*

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ABBREVIATIONS

CS	Cabinet Secretary
KRA	Kenya Revenue Authority
LN	Legal Notice
MSMEs	Micro, Small & Medium Enterprises
SI Act	Statutory Instruments Act
SI	Statutory Instruments
SO	Standing Order

CHAIRPERSON'S FOREWORD

The Legal Notice on Adjustment of Rates of Excise Duty for Inflation, made pursuant to the Excise Duty Act(*No. 23 of 2015*) was published in the Gazette as L.N No. 204 of 2022 on the 28th October, 2022 and was tabled in the National Assembly on the 10th November, 2022, being within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act. The Legal Notice was issued in accordance with Section 10 of the Excise Duty Act which empowers the Commissioner General of the Kenya Revenue Authority to make adjustment on the specific rate of excise duty contained in the First Schedule, after **every two years**, using the formula specified in Part I of the First Schedule, with effect from the 1st October, 2022.

The Committee scrutinized the Legal Notice on Adjustment of Rates of Excise Duty for Inflation,2022 in accordance with the Constitution, the Interpretations and General Provisions Act (Cap 2 Laws of Kenya), the Excise Duty Act (*No. 23 of 2015*), and the Statutory Instruments Act (*No. 23 of 2013*) and made various observations which informed the decision to approve in entirety, the submitted instrument.

The Committee wishes to express its gratitude to the Speaker for the support accorded to the Committee in the discharge of its mandate. The Committee also wishes to record its appreciation to the Office of the Clerk of the National Assembly and the supporting Directorates for providing the necessary technical support to the Committee.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to Standing Order 210 (4), it is my pleasure and duty to present to the House the Committee's Report on the Consideration of the Legal Notice on Adjustment of Rates of Excise Duty for Inflation,2022, made pursuant to Section 10 of the Excise Duty Act, 2015.

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 accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws.
2. The Committee is mandated to consider in respect of any statutory instrument, whether it: -
 - a) is in accordance with the provision 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 –

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

Ainapko Constituency

UDA

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

Gichugu Constituency

UDA

COMMITTEE MEMBERS

The Hon. Mbui Robert, M.P.

Kathiani Constituency

WDM - Kenya

Bomet County

UDA

The Hon. Rai Samwel Gonzi, M.P.

Kinango Constituency

PAA

The Hon. Munyoro Joseph Kamau, M.P.

Kigumo Constituency

UDA Party

The Hon. Sunkuli Julius Lekakeny, M.P.

Kilgoris Constituency

KANU

The Hon. Kipkoech Gideon Kimaiyo, M.P.

Keiyo South Constituency

UDA

The Hon. Mwirigi John Paul, M.P.

Igembe South Constituency

UDA

The Hon. Ruku Geoffrey Ruku, M.P.

Mbcere North Constituency

DP

The Hon. Kamene Joyce, M.P.

Machakos County1.

WDM -Kenya

The Hon. Komingoi Kibet Kirui, M.P.

Bureti Constituency

UDA

The Hon. Odoyo Jared Okello, M.P.

Nyando Constituency

ODM

The Hon. Chebor Paul, M.P.

Rongai Constituency

UDA

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

Butere Constituency

ODM

The Hon. Lenguris Pauline, M.P.

Samburu County

UDA

The Hon. Chepkorir Linet, M.P.

Bomet Central Constituency

Jubilee Party

The Hon. Mamwancha Onchoke Charles,
M.P.

Bonchari Constituency

UPA

The Hon. Linet Chepkorir, M.P.

The Hon. Yakub Adow Kuno, M.P.

Bura Constituency

UPIA

The Hon. Mnyazi Laura Amina, M.P.

Malindi Constituency

ODM

The Hon. Abdullahi Bashir Sheikh, M.P.

Mandera North Constituency

JUBILEE PARTY

The Hon. Mugabe Innocent Maino, M.P.

Lugari Constituency

ODM

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

Mr. Jacknorine Bulecmi
Clerk Assistant III

Ms. Winny Otieno
Clerk Assistant III

Mr. Brian Langwech
Clerk Assistant III

Mrs. Sheila Cherobotim
Serjeant at Arms

Mr. Charles Ayari
Audio Officer

2.0 CONSIDERATION OF THE INSTRUMENT

2.1 Introduction and Background Information

5. The Legal Notice on Adjustment of Rates of Excise Duty for Inflation, 2022 (*LN. No. 204 of 2022*) was made pursuant to powers conferred on the Commissioner General of the Kenya Revenue Authority by section 10 of the Excise Duty Act (*No. 23 of 2015*) hence is a statutory instrument within the meaning of section 2 of the Statutory Instruments Act (*No 23 of 2013*) and was therefore properly before the Committee.
6. The Legal Notice was published in the Gazette on 28th October, 2022 and was received for tabling before the House on Thursday 10th November, 2022 being within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.

2.2 Scrutiny of the Instrument

7. In considering the Legal Notice No 204 of 2022 on adjustment of rates for inflation, the Committee was guided by the Constitution, the Interpretations and General Provisions Act (*Cap 2*) Laws of Kenya, the, Excise Duty Act (No. 23 of 2015), and the Statutory Instruments Act (*No 23 of 2013*).
8. Section 8 of the Excise Duty Act (*No. 23 of 2015*), which commenced on the 1st day of December, 2015 allows the Cabinet Secretary (*on his own discretion or if he deems it necessary*) to amend the First Schedule to the Act but the Cabinet Secretary does, he must, -
 - (a) only increase or decrease by an amount not exceeding 10% of the rate specified in the Act (Schedule);
 - (b) the increase or decrease must be published as an Order (Statutory Instrument) (S.I) in the gazette and can only take effect from the date he specifies in the gazette notice (Order);
 - (c) not impose excise duty on goods or services that are not excisable;
 - (d) must cause the Order to be laid before the National Assembly Legal Notice (LN) within seven days after its publication in the gazette;
9. It further provides that if the National Assembly passes a resolution disapproving of the variation within twenty days from the first day on which the House next sits after the variation has been laid, the Order ceases to have effect.

10. However, Section 10 of the Excise Duty Act (*No.23 of 2015*) **compels** the Commissioner General of the Kenya Revenue Authority by notice in the gazette to adjust the specific rates of exercise duty **every year** to take into account inflation. The formula to be used in the adjustment of the rate is specified in Part 1 of the first Schedule to the Act.
11. The Act commenced on the 1st day of December, 2015 and the Commissioner General of Kenya Revenue Authority is required by law to adjust the specific rates of exercise duty **every year**.

Article 259(5) (c) of the Constitution provides that in calculating time between two events for any purpose under the constitution, if the time is expressed ...as years , the period of time ends at the beginning of the date of the relevant year that corresponds to the date on which the period began.

12. Section 10 of the Excise Duty Act contemplates that the adjustment should be done on **all excisable goods specified in the Schedule. Legal Notice No. 204 includes all excisable goods specified in the Schedule as listed** and adjustments have also been made on goods specified in the table.

2.3 Expected Benefit of the Adjustment of Inflation Rate

13. The Committee noted that the **Legal Notice** provides for an increase of 6.3 per cent on the specific excise duty rates on excisable goods listed in the schedule, excluding petroleum products, liquid nicotine for electronic cigarettes, and imported ready-to-use SIM cards.
14. The expected revenue from inflation adjustment is Kshs 5.2 billion from goods whose excise duty rates were adjusted for inflation.
15. Section 9 of the Statutory Instruments 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 fee, charge, or tax consistent with announced government policy. Since the inflation adjustment is done in line with the Excise Duty Act 2015, a regulatory impact statement is unnecessary.
16. The Committee noted that, the adjustment will positively impact on government activities by enhancing the financial capacity to provide public services and reducing reliance on

more expensive loans and tax burdens for the tax-paying public. It will also result in a nominal price increase, better services and improved infrastructure and business environment.

3.0 COMMITTEE OBSERVATIONS

17. Following comprehensive scrutiny of the Legal Notice, the Committee made the following observations –

18. THAT, the main objective of the Legal Notice No. 204 of 2022 was to actualize the specified inflation adjustment of specific rate of excise duty using a formula. Using the inflation rate of 6.3%, the formula was applied accurately on the items contained in the schedule to the Legal Notice. **The Legal Notice included all excisable goods specified in the Schedule and their adjustments. This is in line with Section 10 of the Excise Duty Act.**

19. THAT, Legal Notice No. 204 of 2022 revoked Legal Notice No. 176 of 2022 published on 3rd October, 2022 on the same subject matter.

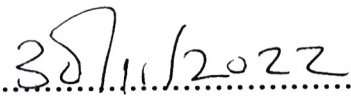
20. THAT, upon approval of the Regulations, there would be generation of additional Kshs. 5.2 billion from the goods whose excise duty rates would be adjusted for inflation excluding petroleum products, liquid nicotine for cigarettes and imported ready to use SIM cards which were made excisable through the Finance Act, 2022.

21. THAT, Kenya Revenue Authority needs to come up with more innovations to expand the tax base that captures more MSMEs and SMEs as this will increase its tax collection.

4.0 RECOMMENDATION

22. , Pursuant to section 15 (1) of the Statutory Instruments Act, read together with section 10(3) and (4) of the Excise Duty Act (*No. 23 of 2015*) and Standing Order 210 (4) (b), the Committee recommends to the House to approve in entirety the **Adjustment of Rates of Excise Duty for Inflation Regulations, 2022**, on the basis of the aforementioned reasons.

Signed.....

Date.....

HON. CHEPKONGA KIPRONO SAMUEL, CBS, MP
CHAIRPERSON

ANNEXURES

- a) Committee Minutes
- b) Adoption List

- c) Copy of Legal Notice 204, (Adjustments of Rates For Inflation) Regulations 2022,
Under The Excise Duty Act (No. 23 Of 2015)

MINUTES OF THE 7th SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON THURSDAY, 24th NOVEMBER, 2022, IN THE SMALL DINING ROOM, 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. John Paul Mwirigi, M.P.
4. The Hon. Gideon Kimaiyo Kipkoech, M.P.
5. The Hon. Paul Chebor, M.P.
6. The Hon. Ruku Geoffrey Kariuki Kiringa, M.P.
7. The Hon. Abdullahi Bashir Sheikh, M.

APOLOGIES

1. The Hon. Joyce Kamene, M.P.
2. The Hon. Linet Chepkorir M.P.
3. The Hon. Robert Mbui, M.P
4. The Hon. Samuel Gonzi Rai, M.P.
5. The Hon. Sunkuli Julius Lekakeny, MP
6. The Hon. Jared Okello Odoyo M.P
7. The Hon. Nicholas S. Tindi Mwale, M.P.
8. The Hon. Charles Onchoke Mamwacha.M.P
9. The Hon. Innocent Maino Mugabe, M.P.
10. The Hon. Adow Kuno Yakub, M.P.
11. The Hon. Joseph Kamau Munyoro, M.P.
12. The Hon. Laura Amina Mnyazi, M.P.
13. The Hon. Pauline Lenguris, M.P.
14. The Hon. Kibet Kirui Kimingoi, M.P.

IN ATTENDANCE

THE NATIONAL ASSEMBLY.

- | | | |
|---------------------------|---|-------------------------|
| 1. Ms. Esther Nginyo | - | Clerk Assistant I |
| 2. Mr. Wilson Dima Dima | - | Principal Legal Counsel |
| 3. Mr. Brian Langwech | - | Clerk Assistant III |
| 4. Ms. Winny Otieno | - | Clerk Assistant III |
| 5. Mr. Jacknorine Bulemi | - | Clerk Assistant III |
| 6. Geoffrey Kwatembera | - | Media Relations Officer |
| 7. Mrs. Sheila Chebotibin | - | Serjeant-At-Arms. |
| 8. Mr. Charles Ayari | - | Audio Officer |

NATIONAL TRASURY AND ECONOMIC PLANNING

1. FCPA Julius Muia, PhD - Principal Secretary
2. John Karani - Chairman Kenya Institute of Supplies Management.
3. Miriam Kakenya - Office of the Attorney General

KENYA REVENUE AUTHORITY

1. Dr. Mohamed Omar -Commissioner, KRA.
2. Mr. Maurice Oray - Deputy Commissioner, KRA
3. Sharon Kirai -Parliamentary Liaison Officer, KRA

AGENDA

1. Prayers;
2. Preliminaries;
3. Adoption of the Agenda;
4. Confirmation of previous minutes;
5. Matters arising;
6. Briefing on;
 - i. The Supplies Practitioners Management (Council Election) Regulations, 2022. (Legal Notice 94/2022)
 - ii. The Public Finance Management (Public Investment) Regulations, 2022. (Legal Notice 54/2022)
 - iii. Adjustment of Rates of Excise Duty for Inflation Regulations, 2022 and the Explanatory Memorandum. (Legal Notice 176/2022)
 - iv. Adjustment of Rates of Export Levy for Inflation Regulations, 2022 (Legal Notice 177/2022)
 - v. The Statutory Instruments Act, (Exemption from expiry) Regulations, 2022 By the Clerk of the National Assembly
 - vi. Statutory Instruments (Exemption from Expiry) Regulations, 2022 By the Attorney General
7. Any Other Business; and
8. Adjournment.

MIN. DAA&OSC/CDL/038/2022

PRELIMINARIES

The Chairperson called the Meeting to order at 11:00 a.m. after which prayers were said. The Chairperson then welcomed all present to the meeting, followed by a round of introduction.

MIN. DAA&OSC/CDL/039/2022

ADOPTION OF THE AGENDA

The Members adopted the agenda of the meeting as was proposed by Hon. Paul Chebor, M.P. and seconded by Hon. Gideon Kimaiyo Kipkoech, M.P.

MIN. DAA&OSC/CDL/040/2022

BRIEFING ON THE SUPPLIES PRACTITIONERS MANAGEMENT (COUNCIL ELECTION)

**REGULATIONS, 2022. (LEGAL
NOTICE 94 OF 2022)**

Dr. Julius Muia, Principal Secretary, Ministry of Treasury and Economic Planning briefed the Committee on the **Supplies Practitioners Management (Council Election) Regulations, 2022. (Legal Notice 94 of 2022)** as follows, that:

1. **Supplies Practitioners Management (Council Election) Regulations, 2022. (Legal Notice 94 of 2022)** was made by the Cabinet Secretary for National Treasury and Economic Planning and were published in the Gazette as Legal Notice No. 94 of 2022.
2. The Regulations were received on 09th September 2022 by the Clerk of the National Assembly and thereafter tabled on Friday, 04th October 2022 in accordance with section 11(1) of the Statutory Instruments Act requiring tabling of the statutory instrument within seven (7) sitting days after publication.
3. The scope of the Regulations consists of: Preliminary provisions in Part I, Institutional Framework in Part II, Conduct of Elections in Part III and Election offences in Part IV.
4. The Regulations provide for;
 - i. The Procedure for the Election of the Chairperson of the Council and the six members of the Council.
 - ii. Appointment of the Electoral body by the Council. IEBC had been approved by the Council as the Electoral body and an acceptance letter from IEBC availed.
 - iii. Establishment of The Election Dispute Resolution Committee (EDRC) which comprised of;
 - a) 1 person nominated by the National Centre for International Arbitration- Chairperson.
 - b) 3 Members of the Institute nominated by the Council
 - c) An Advocate of the High Court of Kenya
 - d) Corporation Secretary of the Institute, who shall be an ex officio member.
 - e) Role of the EDRC- Resolving disputes arising from conduct of the Elections.
5. The Regulation also takes into consideration the dates for elections, eligibility to vote, the mode of voting (Electronic), qualification for nomination, verification of nomination forms, election offences and penalties for election offences.
6. The National Treasury, through Kenya Institute of Supplies Management noted that they had benchmarked with other Bodies like ICPAK and IHRM which had successfully procured the electoral materials and their decision to undertake the Procurement was done on this basis.
7. The Committee deliberated on the aforementioned Regulations and **Approved** to them as published in the *gazette*.

MIN. DAA&OSC/CDL/041/2022

**BRIEFING ON THE PUBLIC FINANCE
MANAGEMENT (PUBLIC INVESTMENT)
REGULATIONS, 2022.
(LEGAL NOTICE 54/2022)**

Dr. Julius Muia, Principal Secretary, The National Treasury and Economic Planning briefed the Committee on the **Public Finance Management (Public Investment) Regulations, 2022. (Legal Notice 54/2022)** as follows, that:

1. **Public Finance Management (Public Investment) Regulations, 2022. (Legal Notice 54/2022)** were made by the Cabinet Secretary, National Treasury and Economic Planning and were published in the Gazette as Legal Notice No. 54 of 2022.
2. The Regulations were received on 05th May, 2022 by the Clerk of the National Assembly and thereafter tabled on 10th May, 2022 in accordance with section 11(1) of the Statutory Instruments Act requiring tabling of the statutory instrument within seven (7) sitting days after publication.
3. The Regulations provide for:
 - a) **Regulation 3 & 4:** outlines the Objects and Purposes of the Regulations.
 - b) **Regulation 5:** provides for the scope of the Regulations.
 - c) **Regulation 6:** provides for the role of Parliament and County Assemblies in the process which shall be-
 - i) To provide oversight over the budgeting process and appropriate budget estimates of revenue and expenditure as provided by the PFM Act; and
 - ii) To ensure that appropriation for public investments is only for prioritized pipelined projects.
 - d) **Regulation 7:** provide for the Cabinet and County Executive committee as follows-
 - i) Provide strategic leadership and interventions in public investment processes;
 - ii) Issue policies required for proper, efficient and effective public investment processes; and
 - iii) Provide necessary approvals in respect of public investment process, where required.
 - e) **Regulation 8 :** provide for the role of the Cabinet Secretary of the line Ministry or County Executive Committee Member of the County department and the responsibilities of the National Treasury :-
 - i) Provide strategic leadership and interventions during implementation of public investments;
 - ii) Provide necessary approvals for projects emanating from State or County Corporations.
 - f) **Regulation 14:** Provides for the establishment of Project Committee. An accounting Officer in the National Government or its Entity shall establish a Project Committee comprising of appropriate officers as follows —
 - i) Head of Directorate or a Department, who shall be the Chairperson;
 - ii) An officer from Finance Department;
 - iii) A maximum of four members appointed on ad hoc basis based on their technical knowledge and depending on the project to be implemented;

- iv) One officer from any Department of the National Government Ministries Departments and Agencies; and
- v) Head of planning or his or her representative, who shall be the secretariat.

g) Regulation 15: Provides for establishment of county project committees –

An accounting officer in a County Government or its entity shall establish a project committee comprising of the following-

- i) Head of the Directorate or a Department, who shall be the chairperson;
- ii) One Officer from the Finance Department;
- iii) A maximum of four members appointed on ad hoc basis on their technical knowledge and depending on the project being implemented;
- iv) One member from any department of a County Government Departments and agencies; and
- v) The head of planning or his or her representative, who shall be the secretariat.

h) Regulation 16: Provides for the functions of the project committees. This comprises as follows:-

- i) To review project concept notes and make recommendations to the accounting officer for decision making within thirty days;
- ii) To review project pre-feasibility and feasibility studies and make recommendations to accounting officer for decision making within thirty days;
- iii) To identify potential project risks and propose mitigating measures for those risks not covered in the project concept note, pre-feasibility or feasibility studies;
- iv) To prioritize projects based on the National Government Ministries, Departments and agencies or County Government Departments and Agencies strategic Plan, Medium Term Plan, and National and County development plans;
- v) To recommend the mode of project financing
- vi) Ensure projects are aligned to the National development Plans.

i) Regulation 22 - 23: provides for the implementation, monitoring, evaluation and reporting mechanism.

j) Regulation 24 - 26: provides for the project closure, sustainability and ex-post evaluation

k) Regulation 29: provides for the Public Investment Management Information System. The Public Investment Management Department at the National Treasury shall be responsible for designing and maintaining an efficient, effective and reliable Public Investment Management Information System. The Public Investment Management Information System shall automate the public investment management processes and shall be used for managing the whole project cycle.

l) The scope of these Regulations shall apply to:

- a) National and County Governments and their entities, including Commissions, independent offices, and state organs when planning and Implementing Public Investments.
- b) Public Investment projects whether wholly or partially funded through public Finances irrespective of source

- c) Projects considered for implementation through Public Private Partnership arrangements , in so far as the Regulations are not in Contradiction with the provisions of the Public Private Partnership Act, 2021
- d) Security projects or a class of security projects under classified procurement as provided for under section 90 of the Public Procurement and Asset Disposal Act,2015 except where expressly included, or if the Cabinet Secretary so directs.

3.3.The Committee deliberated on the aforementioned Regulations and Approved to them as published in the gazette.

MIN. DAA&OSC/CDL/042/2022

**BRIEFING ON ADJUSTMENT OF
RATES OF EXCISE DUTY FOR
INFLATION REGULATIONS, 2022
AND THE EXPLANATORY
MEMORANDUM. (LEGAL
NOTICE176 OF 2022)**

Mr. Maurice Oray, Deputy Commissioner, Kenya Revenue Authority informed the Committee that **Adjustment of Rates of Excise Duty for Inflation Regulations, 2022 and the Explanatory Memorandum. (Legal Notice 176/2022)** had been revoked by **Adjustment of Rates of Excise Duty for Inflation Regulations, 2022 and the Explanatory Memorandum. (Legal Notice 204/2022)**. He further briefed it as follows, that:

1. The **Adjustment of Rates of Excise Duty for Inflation Regulations, 2022 (Legal Notice 204/2022)** was published in the Gazette on 3rd October, 2022, and received by the Clerk of National Assembly on 14th October, 2022 and was tabled before the House on 1st November, 2022, being within the statutory timelines as contemplated under section 11(1) of the Statutory Instruments Act.
2. The **Adjustment of Rates of Excise Duty for Inflation Regulations, 2022 (Legal Notice 204/2022)** were made by KRA to;
 - i. Provide for adjustments for inflation and part I of the First Schedule of the Excise Duty Act on Rates of Excise Duty.
 - ii. The specific rate is imposed on the basis of weight, volume capacity, or any other physical unit of measurement other than its value. The commission noted that the average inflation rate for the year 2021/2022 was 6.3%, and therefore the affected goods were to be subjected to the rate upon National Assembly approval.
 - iii. It was further noted that the approval of the Regulations would lead to a generation of Ksh. 5.2 billion from the goods whose excise duty rates were adjusted for inflation excluding petroleum products, liquid nicotine for electronic cigar rates and imported ready to use SIM cards which were made excisable through the Finance Act 2022.
3. Upon deliberation on the aforementioned Regulations, the Committee resolved to recommend to the House to **Approve** the Legal Notice No. 204 of 2022 as published in the gazette.

**ADJUSTMENT OF RATES OF
EXPORT LEVY FOR
INFLATION REGULATIONS,
2022) (LEGAL NOTICE 177 OF
2022)**

Mr. Maurice Oray, Deputy Commissioner, Kenya Revenue Authority informed the Committee that **Adjustment of Rates of Adjustment of Rates of Export Levy for Inflation Regulations, 2022 (Legal Notice 177/2022)** had been revoked by **Adjustment of Rates of Export Levy for Inflation Regulations, 2022 (Legal Notice 177/2022)**(**Legal Notice 203/2022**). He further briefed it as follows, that:

1. The Legal Notice was published in the Gazette on 3rd of October, 2022, received by the Clerk of National Assembly on 14th October, 2022 and was tabled before the House on 1st November, 2022, being within the statutory timelines as contemplated under section 11(1) of the Statutory Instruments Act.
2. The **Adjustment of Rates of Export Levy for Inflation Regulations, 2022 (Legal Notice 203/2022)** provides for;
 - i. The miscellaneous Fees and levies specific rate is imposed on the basis of weight, volume capacity, or any other physical unit of measurement other than its value. The commission noted that the average inflation rate for the year 2021/2022 was 6.3%, and therefore the affected goods were to be subjected to the rate upon National Assembly approval.
 - ii. The main purpose of this inflation adjustment is to ensure elasticity of tax revenue when the economy grows.
 - iii. The Approval for the Regulation would lead to generation of additional Ksh. 18.16Million from the goods whose miscellaneous fees and levy duty rates were adjusted for inflation excluding iron ores and concentrates including roasted iron pyrites.
3. The Committee however urged the Commission to expand its tax base to capture MSMEs as this will increase its tax collection.
4. Upon deliberation on the aforementioned Regulations, the Committee resolved to recommend to the House to **Approve** the Legal Notice No. 203 of 2022 as published in the gazette.

MIN. DAA&OSC/CDL/044/2022

BRIEFING OD THE DRAFT STATUTORY INSTRUMENTS (EXEMPTION FROM EXPIRY) REGULATIONS, 2022 BY THE CLERK OF THE NATIONAL ASSEMBLY.

The Committee considered and approved for publication the Draft Statutory Instruments (Exemption from Expiry) Regulations, 2022 from the office of the Clerk of the National Assembly seeking for extension of the following Statutory Instruments that are set to automatically expire on 23rd January 2023:

- a) Parliamentary Service (Constituency Offices) Regulations, 2005 (L.N 77 of 2005)
- b) Parliamentary Services (Centre for Parliamentary Studies and Training) regulations, 2013 (L.N 95 of 2011)
- c) The Public Finance (Parliamentary Mortgage (Staff) Scheme Fund) Regulations, 2013 (L.N 18 of 2013)
- d) The Public Finance Management (Parliamentary Car Loan (Staff) Scheme Fund) Regulations, 2013 (L.N 19 of 2013)
- e) Parliamentary Services (Offices of Members of Parliament) Regulations, 2013 (L.N 65 of 2013)
- f) The Public Finance Management (Parliamentary Mortgage (Members) Scheme Fund) Regulations, 2013 (L.N 67 of 2013)
- g) The Public Finance Management (Parliamentary Car Loan (Members) Scheme Fund) Regulations, 2013 (L.N 68 of 2013)

Having examined the aforementioned Letter, The Committee directed that the Regulatory making body be requested to present a Regulation seeking for the extension pursuant to section 21 of the Statutory Instruments Act (No. 23 of 2013).

MIN. DAA&OSC/CDL/045/2022

BRIEFING ON THE DRAFT STATUTORY INSTRUMENTS (EXEMPTION FROM EXPIRY) REGULATIONS, 2022 BY THE ATTORNEY-GENERAL.

The Committee considered and approved for publication the Draft Statutory Instruments (Exemption from Expiry) Regulations, 2022 from the office of the Attorney General seeking for extension of 1,764 Statutory Instruments that are set to automatically expire on 23rd January 2023 pursuant to section 21 of the Statutory Instruments Act (No. 23 of 2013)

MIN. DAA&OSC/CDL/046/2022

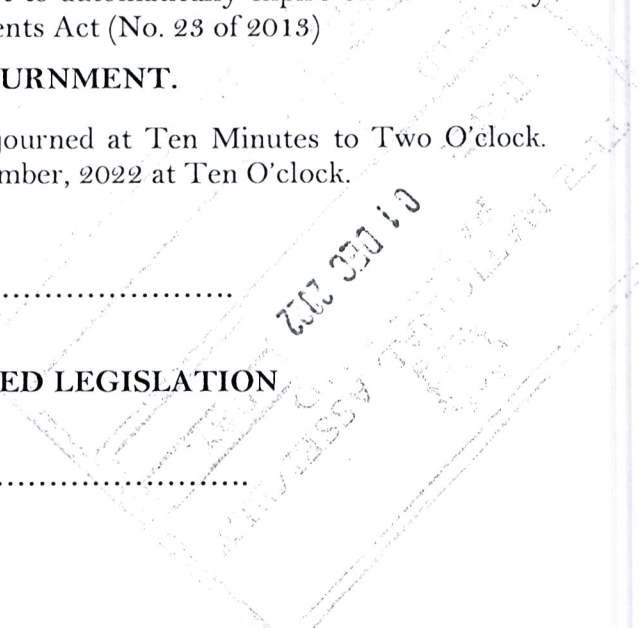
ADJOURNMENT.

There being no other business, the meeting was adjourned at Ten Minutes to Two O'clock. The next meeting will be held on Tuesday, 29th November, 2022 at Ten O'clock.

SIGNED: 

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

DATE: 30/11/2022





**EXPLANATORY MEMORANDUM TO THE EXCISE DUTY ACT:
ADJUSTMENT OF RATES FOR INFLATION**

LEGAL NOTICE NO. 204

PART I

Name of Statutory Instrument : Adjustment of Rates For Inflation
Name of Parent Act : Excise Duty Act, No. 23 of 2015
Enacted Pursuant to : Section 10 of the Excise Duty Act, No.
23 of 2015
Name of the : Kenya Revenue Authority
Ministry/Department
Gazetted on : 28th October 2022

PART II

1.0 Purpose of the Statutory Instrument

- 1.1 The objective of this Memorandum is to submit the Legal Notice No. 204 of 2022 for tabling in the National Assembly under Section 11 of the Statutory Instruments Act, 2013.
- 1.2 The Legal Notice adjusts the specific excise duty rates to account for inflation in line with the requirements of the Excise Duty Act, 2015.

2.0 Legislative Context

- 2.1 The Legal Notice on Adjustment of Rates for Inflation is made under Section 10 of the Excise Duty Act, 2015. The Commissioner General is required under this section to adjust the Excise Duty rates of products with specific rates of Excise Duty. This is done annually to take into account the inflation rate, subject to the approval of the Cabinet Secretary of National Treasury and Planning.
- 2.2 The Commissioner General received approval from the Cabinet Secretary, National Treasury, and Planning to adjust excise duty rates



on non-petroleum products on 6th September 2022. The decision to exclude petroleum products from inflation adjustment was informed by the fact that the global oil prices are currently very high, which has necessitated the National Treasury to continue subsidizing the pump prices to keep the pump prices lower than the market prices, thus cushioning the economy from the effect of high global oil prices.

2.3 The inflation adjustment is undertaken on 1st October every year.

3.0 Policy Background

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

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

3.3 The Kenya National Bureau of Statistics (KNBS) under the National Treasury and Planning is responsible for determining and publishing the inflation rate. For the year 2021/2022, the average inflation rate was determined to be 6.3 per cent.

3.4 The average inflation rate is a factual figure published by the KNBS and is available to the public. Neither the Commissioner General nor the public has any role in its determination.

3.5 In cases where excise duty is charged as a percentage of the value of goods, it automatically increases as the prices of goods increase. In essence, this compensates for the price adjustment, leading to the maintenance of the real value of tax.

3.6 However, the same is not true where excise duty is charged at a specific rate per unit of measure (e.g., Kshs. 129.53 per litre of powdered beer). In this case, when the prices of goods increase, the excise duty rate remains constant; hence the real value of the tax is eroded.



3.7 To address this, Parliament enacted Section 10 of the Excise Duty Act, 2015, and Paragraph 2 of the First Schedule to the Act. These provisions provide for adjusting the specific rates of excise duty every year to protect the duty value from erosion through inflation.

4.0 Public Consultation Outcome

4.1 In developing this Legal Notice, public participation was undertaken in compliance with Section 5 of the Statutory Instruments Act, 2013 and Article 201 (a) of the Constitution.

4.2 The Kenya Revenue Authority (KRA) informed the public and relevant stakeholders of the intention to review the rates for inflation in compliance with the law and sought their comments on the same through a Public Notice published on **Friday, 2nd September 2022**. The Authority received feedback from various stakeholders, including manufacturers and importers of excisable goods, tax consultants, and business associations.

4.3 Kenya Revenue Authority invited and held meetings with a member of the business community and the general public to review their comments and submissions.

4.4 The main concern of the business community and the public through their submissions was the inclusion in the inflation adjustment of items that became excisable vide the Finance Act 2022. These items are “liquid nicotine for electronic cigarettes” and “imported ready-to-use SIM cards”. They were not excisable in the period July 2021 to June 2022; therefore, the adjustment is not applicable since it is meant for the specific rates of excise duty that were chargeable in the preceding period.



4.5 They also requested that the Commissioner General do not effect inflation adjustment for specific excise duty rates in the current financial year, specifically on petroleum products, due to the current high prices.

4.6 Attached is a copy of Legal Notice No. 204 of 2022.

5.0 Impact

5.1 The Legal Notice provides for an increase of 6.3 per cent on the specific excise duty rates on excisable goods listed in the First Schedule to the Act, excluding petroleum products, "liquid nicotine for electronic cigarettes", and "imported ready-to-use SIM cards".

5.2 The expected revenue from the inflation adjustment is *Kshs 5.2 billion* from goods whose excise duty rates were adjusted for inflation.

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 inflation adjustment is done in line with the Excise Duty Act 2015, a regulatory impact statement is unnecessary.

5.4 However, the adjustment will positively impact government activities by enhancing the financial capacity to provide public services and reducing reliance on more expensive loans and tax burdens for the tax-paying public. It will also result in a nominal price increase, better services and improved infrastructure and business environment. The cost in terms of reduced consumption is expected to be low since the products are inelastic to changes in price.



6.0 Revocation and re-publication of the Legal Notice No. 176 of 2022

The initial Legal Notice No.176 was published on 3rd October 2022. However, it had clerical errors that needed to be corrected. The Attorney General advised that this Legal Notice supports public revenue collection, thus the best course of action would be to revoke and re-publish a corrected Notice. This has now been re-published under Legal Notice No. 204, which is now being forwarded for your consideration.

7.0 Monitoring and review

The Kenya Revenue Authority will implement the Legal Notice for one year under the law until the subsequent inflation adjustment is made.

8.0 Request to the National Assembly

The National Assembly is invited to:

- a) Note the contents of this Memorandum.
- b) Adopt Legal Notice No. 204 of 2022.

9.0 Contact

Commissioner General,
Kenya Revenue Authority,
Times Tower Building – 30th Floor,
NAIROBI

Tariff No.	Tariff description	Current rate of export levy	New rate of export levy
4301.80.00	Other raw fur skins, whole, with or without head, tail or paws	80% or USD 0.52 per kg	80% or USD 0.55 per kg
4301.90.00	Heads, tails, paws and other pieces or cuttings suitable for furriers' use	80% or USD 0.52 per kg	80% or USD 0.55 per kg
4302.11.00	Whole skins, with or without head, tail or paws, not assembled, of mink	80% or USD 0.52 per kg	80% or USD 0.55 per kg
4302.19.00	Other whole skins, with or without head, tail or paws, not assembled	80% or USD 0.52 per kg	80% or USD 0.55 per kg
4302.20.00	Heads, tails, paws and other pieces or cuttings, not assembled	80% or USD 0.52 per kg	80% or USD 0.55 per kg
4302.30.00	Whole skins and pieces or cuttings thereof, assembled	80% or USD 0.52 per kg	80% or USD 0.55 per kg

Dated the 6th October, 2022

GITHII MBURU,

Commissioner-General of the Kenya Revenue Authority.

LEGAL NOTICE NO. 204

THE EXCISE DUTY ACT, 2015

(No. 23 of 2015)

ADJUSTMENT OF RATES OF EXCISE DUTY FOR INFLATION

IN EXERCISE of the powers conferred by section 10 of the Excise Duty Act, 2015, the Commissioner-General adjusts for inflation the specific rates of excise duty set out in the schedule in accordance with the formula specified in Part I of the First Schedule to the Act, and takes into account the average rate of inflation for the 2021/2022 financial year of six decimal three per centum (6.3%). Legal Notice No. 176 of 2022 is revoked.

SCHEDULE

S/No.	Description	Current Rate of Excise Duty	New Rate of Excise Duty
1.	Fruit juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter	Sh. 13.30 per litre	Sh. 14.14 per litre
2.	Bottled or similarly packaged waters and other non-alcoholic beverages, not including fruit or vegetable juices	Sh. 6.03 per litre	Sh. 6.41 per litre
3.	Beer, cider, perry, mead, opaque beer and mixtures of fermented	Sh. 134.00 per litre	Sh. 142.44 per litre

	beverages with non-alcoholic beverages and spiritous beverages of alcoholic strength not exceeding 6%		
4.	Powdered beer	Sh. 121.85 per kg	Sh. 129.53 per kg
5.	Wines including fortified wines and other alcoholic beverages obtained by fermentation of fruits	Sh. 229.00 per litre	Sh. 243.43 per litre
6.	Spirits of undenatured ethyl alcohol, spirits liqueurs and other spiritous beverages of alcoholic strength exceeding 6%	Sh. 335.30 per litre	356.42 per litre
7.	Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes	Sh. 15,296.60 per kg	Sh. 16,260.29 per kg
8.	Cigarette with filters (hinge lid and soft cap)	Sh. 3,825.99 per mille	Sh. 4,067.03 per mille
9.	Cigarettes without filters (plain cigarettes)	Sh. 2,752.97 per mille	Sh. 2,926.41 per mille
10.	Other manufactured tobacco and manufactured tobacco substitutes, "homogenous" and "reconstituted" tobacco, tobacco extracts and essences	Sh. 10,707.88 per kg	Sh. 11,382.48 per kg
11.	Motoreycles of tariff no. 87.11 other than motorcycle ambulances and locally assembled motoreycles	Sh. 12,185.16 per unit	Sh. 12,952.83 per unit
12.	Imported sugar confectionary of tariff heading 17.04	Sh. 40.37 per kg	Sh. 42.91 per kg
13.	Imported white chocolate including chocolate in blocks, slabs or bars of tariff nos. 1806.31.00, 1806.32.00 and 1806.90.00	Sh. 242.29 per kg	Sh. 257.55 per kg
14.	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, and other manufactured tobacco and manufactured tobacco substitutes that have been homogenized and reconstituted tobacco, tobacco extracts and essences	Sh. 1,500.00 per kg	Sh. 1,594.50 per kg

Dated the 6th October, 2022.

GITHII MBURU,
Commissioner-General of the Kenya Revenue Authority.