

Tax Alert

Excise Duty Act, 2015

Licensing for excisable services

Introduction

Historically, excise duty in Kenya has been levied on goods considered luxurious or harmful and whose demand is price inelastic.

However, with the growing government budgetary needs, excise has expanded in scope to cover not only other goods not necessarily considered luxurious or harmful, but also services. Currently, the excisable services include mobile phone and other wireless telephone services, money transfer services by both financial institutions and cellular phone service providers and other fees charged by financial institutions.

The recently enacted Excise Duty Act, 2015 ("The Act") which became law effective 1 December 2015, repealed the excise duty provisions of the Customs and Excise Act, Cap 472.

While the repealed Customs and Excise Act did not require providers of excisable services to be licensed by the Kenya Revenue Authority ("KRA"), the Act has introduced mandatory licensing requirements for providers of excisable services, which we seek to address in this alert.

Licensing

The Act requires providers of excisable services to be licensed with the KRA before engaging in the supply of excisable services.

A license is defined in the Act to mean, in case of excisable services, the certificate of registration. This is the certificate issued by the Commissioner upon application by the licensee and approval of the application by the Commissioner. Further, the Act provides that the application for a license should be in the in the prescribed format, accompanied

by prescribed fees and lodged with the Commissioner for domestic taxes in the prescribed manner.

Unfortunately, the prescribed format, the fees payable and the manner of application for the license are not provided for in the Act and we expect these will be provided for in Regulations, which are yet to be published.

Upon issuance, the license takes effect on the date specified therein but the Act does not provide for a specific duration of validity of the license. Instead, the Act provides that the license shall remain in force until it is either suspended or cancelled.

The Act also provides that the license should specify the excisable services offered and is issued subject to terms, conditions and restrictions as the Commissioner deems appropriate.

Licensing procedure under the iTax platform

In the absence of Regulations specifying the licensing requirements, we have sought clarity on the licensing procedure from the KRA and established that excise license application, processing and issuance can be done on the KRA's iTax platform.

The procedure is as follows:

1. Log on to the applicant's KRA iTax portal > Registration > Other registration > Excisable services;
2. Fill and submit the online application;
3. Receive an acknowledgement from the KRA; and
4. The KRA processes the application and upon approval, the licensee should be able print

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Further, non-compliance with general tax obligations not limited to excise duty can trigger the suspension or cancellation of the excise license.

Offences and penalties

The following offences attract punitive penalties of fines up to five million Kenyan shillings or imprisonment for a term not exceeding three years or to both:

1. Failure to display the original license at the principal place of business and certified copies at every other place of business;
2. Failure to notify the Commissioner upon ceasing operations or change in particulars;
3. Failure to apply for a license by a supplier of excisable services; and
4. Failure to file tax returns are governed by the Tax procedures Act, 2015.

Conclusion

It is important to take note of the obligations of excisable services providers under the Act in order to avoid punitive penalties and the other undesirable enforcement measures described above.

Please contact PwC should you need further clarifications on the above or need advice on general excise compliance.

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an updated PIN reflecting the Excise tax obligation. However, it is not clear whether the system actually generates a certificate of registration for display in the business premises or whether the updated PIN certificate showing the excise obligation will suffice for that purposes. This is an issue we expect the KRA to clarify in the coming days.

Refusal to issue a license

The Commissioner can refuse an application for license if satisfied that the applicant has been convicted of an offence under the Act, the Tax procedures Act, 2015 or an offence involving dishonesty or fraud, or the applicant has been declared by a court of law to be bankrupt or insolvent or the applicant has failed to keep proper records.

It is interesting to note that if the above set of conditions apply to a person related to the applicant, who may become involved in the activities to which the application relates, the Commissioner can also refuse the license application.

Compliance following licensing

Upon issuance of the license, the licensee is required to, among other obligations, display the license at his/her business premises, notify the commissioner of any change(s) in business particulars or upon ceasing operations, keep relevant records and submit monthly excise returns and pay the required duty.

Consequences of non-compliance

Suspension and cancellation of a license

The Act stipulates circumstances under which a license can be suspended by the Commissioner. These include the cessation of business, change of any particulars of the business, temporary closure of operations, failure to keep proper records, breach of any condition of the license or making false or misleading statements to the Commissioner.

The Act further empowers the Commissioner to cancel a license if the licensee ceases operations, fails to appeal against suspension of license, fails to take remedial action as advised by the Commissioner or if the Commissioner rejects the licensee's appeal against his/her license suspension.

Upon cancellation, the licensee should cease supplying excisable services and pay all duties outstanding at the time of such cancellation. In this regard, it is important to note that any obligation that arose while the licensee was licensed is not extinguished by the cancellation of the license.

The Commissioner is however required to give 21 days' notice prior to the suspension, revocation or cancellation of a license and state the grounds for such intended action. If the licensee disagrees with the Commissioner, the licensee can appeal to the Tax Appeals Tribunal.