



Advisory Note on the Cessation of Warehousing Goods

Gazette Notice No.3530 of 13th May, 2020

The Amendment

The Commissioner of Customs under gazette notice No.3350 of 13th May, 2020 has pursuant to section 47 of the East Africa Community Customs Management Act ("EACCMA"), 2004 and regulation 64 (k) of the East Africa Customs Management Regulations, 2010 provided a list of goods which shall cease to be warehoused.

The Legislation

Section 47 of the EACCMA provides that goods liable to import duty may on first importation be warehoused without payment of duty in a Government warehouse or a bonded warehouse.

Regulation 64 of the East Africa Customs Management Regulations provides further guidelines on the goods that would not qualify under the above provision and hence cannot be warehoused. Additionally, paragraph (k) provides that the same is not exhaustive and can be extended to any other goods which the Commissioner may gazette.

The Impact

In line with this regulation, *the Commissioner of Customs and Border Control, in his power has now excluded the following goods from being permissible for warehousing in line with Section 47 of the EACCMA:*

1. All foodstuffs in any form, whether fresh or preserved, including bulk commodities except for those used as ship stores and in duty free shops.
2. Wines, spirits and other alcoholic beverages except those imported for sale in duty free shops and wines and spirits in bulk imported by licensed manufacturers of wines and spirits.
3. Cigarettes and tobacco, except where these are warehoused by local excise factories or imported by duty free shops and used as ship stores.
4. Denatured and undenatured spirit of Tariff 2207.10.00 and 2207.20.00.
5. Ashes.
6. Clothing and textiles (new and used).
7. Used footwear.
8. Toiletries and cosmetic products ready for retail sale including fragrances, powder, lotions, creams, lipsticks, hair colouring and haircare products except for duty free shops.
9. Cameras and phones except those warehoused for duty free shops.
10. Furniture, carpets and floor coverings.



11. Building and construction materials including stones, sand, paint, pipes, nuts, bolts, nails, tiles, metals, electrical fixtures and parts and tools.
12. Office supplies ready for retail sale including stationery cartridges/toners for pens and printers.
13. Second hand motor vehicles.
14. Spares for motor vehicles (new and used).
15. Motor vehicle and motor cycle tyres.
16. Lubricants and batteries including vehicle batteries.
17. Any other goods whose warehousing, in the discretion of the Commissioner, is likely to impact negatively on the implementation of Customs laws and any other written laws.

Effective Date

At the expiry of ninety (90) days from the date of this gazette notice.

Our View

We expect this new directive by the Commissioner of Customs to be subjected to public participation and parliamentary approval in line with the provisions of Article 94 as read together with Article 210 (a) of the Constitution.

It is also imperative to note that the Statutory Instruments Act No. 23 of 2013 shall be applicable in this case as every statutory instrument made directly or indirectly under any Act or written legislation has one of its objects as requiring regulation making authorities to undertake appropriate consultation with persons who are likely to be affected by statutory instruments.

Additionally, the Statutory Instruments Act under section 11 requires that the statutory instrument is laid before parliament.

In the light of Covid 19 pandemic and economic recession being experienced in the country as a result of this pandemic, this may not be a favorable move made by the Commissioner of Customs. In our view, the motive behind this notice is to enhance collection of customs revenue upfront which counteracts the principle of warehousing envisioned by bonded warehouses.

Warehousing in a Government warehouse or a bonded warehouse allows for goods liable to import duty to be warehoused without the need for immediate payment of duty on importation. This allows the importers a window to pay duty on the warehoused goods on removal, thereby enabling them with some room for cash flow planning.



It is also worthwhile noting that the warehousing facilities are not only used to store items meant for supply to local markets only but also the regional market. The move by the Commissioner to collect taxes upfront on the goods listed above will most likely prompt warehouses to divest from the country to neighboring countries where they can supply local markets in the said countries at lower costs. Furthermore, when importers are made to pay immediate duty on importation of goods meant for the regional market, it will create cash flow problems thereby increasing finance cost to the importers. This is owing to the fact that the importers may be required to borrow in order to finance the duty amount as some of the goods listed are of a high value and do not usually have a ready market, immediately on importation.

This will result in loss of massive opportunities in the form of trade and employment and consequently loss of revenue in the form of taxes for the Kenya Revenue Authority ("KRA") itself, at a time when most companies are making losses and struggling to stay afloat.

In our view therefore, the KRA needs to reconsider this particular issue in view of the distress it can create on our economy.

For further clarification on a technical guidance on this advisory note and any other tax related matter, please contact any of the following people:

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notice that the Government intends to acquire the following parcels of land for the construction of Sultan Hamud - Kasikou Road project:

SCHEDULE

Parcel No.	Registered Owner	Approx Area Acquired (Ha.)
Kasikeu Adjudication Section/435	Nzuki Nzuiya	0.0542
Kasikeu Adjudication Section/439	Rael Kitenge	0.1272
Kasikeu Adjudication Section/3993	Julius Kinyanzui Kimolo	0.0724
Kasikeu Adjudication Section/417	Regina Ndavi	0.1013
Kasikeu Adjudication Section/1423	David Iseu Nyamai	0.0352
Kasikeu Adjudication Section/2357	David Iseu Nyamai	0.0435
Kasikeu Adjudication Section/428	David Iseu Nyamai	0.0588
Kasikeu Adjudication Section/403	Joseph Mutua Mwasya	0.1234
Kasikeu Adjudication Section/2001	Tanga Munyali	0.0747
Kasikeu Adjudication Section/404	John Matata Muthiani	0.0124

Plans of the affected land may be inspected during office working hours at the National Land Commission Ardhi House 3rd Floor, Room 305, 1st Ngong Avenue Nairobi,

Dated the 26th February, 2020.

MR/0747669 **GERSHOM OTACHI,**
Chairman, National Land Commission.

GAZETTE NOTICE NO. 3530

THE EAST AFRICA COMMUNITY CUSTOMS MANAGEMENT ACT, 2004

CESSATION OF WAREHOUSING GOODS

PURSUANT to section 47 of the East Africa Community Customs Management Act, 2004 and regulation 64 (k) of the East Africa Customs Management Regulations, 2010, the Commissioner of Customs and Border Control notifies the public that at the expiry of

ninety (90) days from the date of this notice, the following goods shall not be warehoused:

1. All foodstuffs in any form, whether fresh or preserved, including bulk commodities except for those used as ship stores and in duty free shops.
2. Ashes.
3. Lubricants and batteries including vehicle batteries.
4. Building and construction materials including stones, sand, paint, pipes, nuts, bolts, nails, tiles, metals, electrical fixtures and parts and tools.
5. Furniture, carpets and floor coverings.
6. Cigarettes and tobacco, except where these are warehoused by local excise factories or imported by duty free shops and used as ship stores.
7. Clothing and textiles (new and used).
8. Denatured and undenatured spirit of Tariff 2207.10.00 and 2207.20.00.
9. Cameras and phones except those warehoused for duty free shops.
10. Used footwear.
11. Office supplies ready for retail sale including stationery cartridges/toners for pens and printers.
12. Toiletries and cosmetic products ready for retail sale including fragrances, powder, lotions, creams, lipsticks, hair colouring and haircare products except for duty free shops.
13. Second hand motor vehicles.
14. Spares for motor vehicles (new and used).
15. Motor vehicle and motor cycle tyres.
16. Wines, spirits and other alcoholic beverages except those imported for sale in duty free shops and wines and spirits in bulk imported by licensed manufacturers of wines and spirits.
17. Any other goods whose warehousing, in the discretion of the Commissioner, is likely to impact negatively on the implementation of Customs laws and any other written laws.

Dated 13th May, 2020.

P. AHAGO,
PUBS 0000589/19-20Ag. Commissioner, Customs and Border Control.

GAZETTE NOTICE NO. 3531

ENERGY AND PETROLEUM REGULATORY AUTHORITY

SCHEDULE OF TARIFFS 2018 FOR ELECTRICITY TARIFFS, CHARGES, PRICES AND RATES

FUEL ENERGY COST CHARGE

PURSUANT to clause 1 of Part III of the Schedule of Tariffs 2018, notice is given that all prices for electrical energy specified in Part II of the said Schedule will be liable to a fuel energy cost charge of plus 240 Kenya cents per kWh for all meter readings to be taken in May, 2020.

Information used to calculate the fuel cost charge.

Power Station	Fuel Price in April 2020 KSh/Kg. (C1)	Fuel Displacement Charge/ Fuel Charge, April, 2020 KSh/kWh	Variation from March, 2020	Units in April, 2020 in kWh (Gi)
			Prices Increase/(Decrease)	
Kipevu I Diesel Plant	58.86		1.52	1,108,000
Kipevu II Diesel Plant (Taavo)	44.64		7.91	9,561,900
Kipevu III Diesel Plant	61.54		3.47	1,624,000
Embakasi GT 1-Muhoroni	84.99		(20.22)	-
Embakasi GT 2-Embakasi	84.99		(20.22)	1,889,120
Rabai Diesel without steam turbine	45.40		(1.12)	436,227
Rabai Diesel with steam turbine	45.40		(1.12)	11,167,773
Iberafrica Diesel	60.59		1.52	-
Iberafrica Diesel -Additional Plant	52.58		1.35	2,148,240
Thika Power Diesel Plant	63.10		1.58	1,368,700
Thika Power Diesel Plant (with steam unit)	63.10		1.58	(0)
Gulf Power	58.34		(11.50)	662,016