

LEGAL NOTICE No. 120

## THE CUSTOMS AND EXCISE ACT

(Cap. 472)

IN EXERCISE of the powers conferred by section 234 of the Customs and Excise Act, the Minister for Finance makes the following Regulations:-

## THE CUSTOMS AND EXCISE (AMENDMENT) REGULATIONS, 1996

1.(1) These Regulations may be cited as the Customs and Excise (Amendment) Regulations, 1996.

(2) Regulation 2 shall come into operation on the 1st July, 1996.

(3) Regulations 8, 9 and 10 shall come into operation on the 1st December, 1996.

2. The Customs and Excise Regulations, in these Regulations referred to as "the principal Regulations" are amended by inserting the following new regulation immediately after regulation 38 -

Sub-Leg.

Pre-shipment inspection. 38A.(1) The imported goods specified in the Fifth Schedule shall be subject to pre-shipment inspection in accordance with section 127D of the Act.

(2) The Commissioner shall notify in the Gazette the name of every person appointed as a pre-shipment inspection agent under the Act and shall specify in relation thereto the countries or regions at which such person shall conduct pre-shipment inspection.

(3) An importer of goods other than the goods specified in the Sixth Schedule shall, prior to shipment of such goods, complete an import declaration form in Form C61 and present it to the office in Kenya of a pre-shipment inspection agent operating at the place where such goods were purchased.

(4) On receipt of an import declaration form under paragraph (3), the pre-shipment inspection agent shall, where the respective goods are subject to pre-shipment inspection, proceed to inspect such goods in accordance with the provisions of the Act.

(5) An importer shall present a copy of the import declaration form completed under paragraph (3) to Customs at the time of entering the goods, together with an import declaration fee which shall be two per cent of the dutiable value of the goods.

(6) Where any goods subject to pre-shipment inspection are imported prior to such inspection, the goods may be inspected locally at a fee which shall be -

(i) in the case of motor vehicles, twenty per cent of the assessed f.o.b. value; and

(ii) in the case of all other goods, ten per cent of the assessed f.o.b. value.

(7) Local inspection of any goods under paragraph (6) shall be limited to two consignments per importer and any excess thereof shall be either re-exported at the cost of the importer or abandoned to Customs.

(8) In this regulation -

"pre-shipment inspection" has the meaning assigned to it in section 127D of the Act;

"pre-shipment inspection agent" means a person appointed by the Commissioner under section 127D(2) of the Act.

Amendment of  
regulation 57.

3. The principal Regulations are amended in regulation 57 by deleting paragraph (1) and inserting the following new paragraph -

(1) Rent shall be charged on goods deposited or deemed to be deposited in a customs warehouse at the following rates -

(a) at the port of Kilindini, Sh.100 per bill of lading tonne per day or part thereof;

(b) at the inland container depots, Sh.100 per bill of landing tonne per day or part thereof;

(c) at the Jomo Kenyatta International Airport and Moi International Airport, Sh.1,000 per bill of landing tonne per

day or part thereof;

(d) at all other ports and places, Sh.50 per bill of lading tonne per day or part thereof;

(e) accompanied baggage (excluding motor vehicles) or any other goods which the proper officer is satisfied cannot be dealt with under subparagraphs (a), (b), (c) or (d), Sh.40 per package or item per week or part thereof:

Provided that -

(i) the minimum rent charged shall be Ksh.40; and

(ii) rent under this regulation shall not be charged on passengers' baggage (excluding motor vehicles) if removed within eight days of the date of deposit in a customs warehouse.

4. Regulation 61 of the principal Regulation is amended -

Amendment of  
regulation 61.

(a) in paragraph (1), by inserting the following new items in proper alphabetical sequence -

Maize.

Milk (powdered).

Rice.

Sugar.

Wheat.

(b) by deleting paragraphs (2) and (3) and inserting the following new paragraphs -

(2) In addition to the goods specified under paragraph (1), the following general or particular categories of goods shall not be warehoused -

(i) office supplies ready for retail sale including stationery, computer paper, pens, markers, ink, cartridges for pens, pencils, file, typewriters and printer ribbons;

(ii) cosmetic products ready for retail sale including fragrances, powders, lotions, creams, lipstick, hair

colouring and hair care products;

(iii) batteries including motor vehicle batteries and dry cells;

(iv) spares for vehicles and machinery;

(v) motor vehicle tyres and excluding tyre casings for retreading;

(vi) second hand motor vehicles;

(vii) building and construction materials including pipes, nuts, bolts, nails, metal articles, electrical fixtures and parts, and tools;

(viii) carpets and floor coverings;

(ix) clothing (used);

(x) machinery;

(xi) all foodstuffs in any form whether fresh or preserved including bulk commodities;

(xii) chemical compounds specified in chapters 28 and 29 of the First Schedule to the Act;

(xiii) goods that are duty free under the First Schedule to the Act;

(xiv) packaged goods which are not readily identifiable by markings.

(3) If the Commissioner requires that goods entered for warehousing in a bonded warehouse be specially secured while in the warehouse, he may require the warehouse keeper, in writing, to provide to the satisfaction of the Commissioner a secure compartment in the warehouse for the storage of such goods; and the Commissioner may refuse to allow any goods for which special security is required to be warehoused until such time as a secure compartment in terms of this paragraph is provided.

(4) A person who contravenes paragraph (3) shall be guilty of an offence.

5. The principal Regulations are amended by inserting the following new regulation immediately after regulation 234 - Insertion of regulation 234A.

Remission on official aid funded projects. 234A. Where under section 138(2)(g) of the Act remission is sought in respect of an official aid funded project executed by a contractor other than official aid funding agency, such contractor shall furnish to the Commissioner, a security bond in Form CB 16.

6. Regulation 240A of the principal Regulations is amended - Amendment of regulation 240A.

(a) in subparagraph (b) of paragraph (3), by inserting the following -

(v) are shade netting for agricultural or horticultural use by a person the Commissioner is satisfied on the recommendation of the Director of Agriculture, qualifies for exemption under Item 28 of Part B of the Third Schedule to the Act;

(vi) are reinforced polyvinyl chloride (PVC) or reinforced polyethylene for agricultural or horticultural use by a person the Commissioner is satisfied on the recommendation of the Director of Agriculture, qualifies for exemption under Item 29 of Part B of the Third Schedule to the Act.

(b) in the proviso to paragraph (7), by deleting the words "one million" and inserting the words "two hundred thousand".

7. The principal Regulations are amended by deleting regulation 259 and replacing it with the following new regulations - Replacement of regulation 259.

Fee to be paid and security furnished. 259.(1) Where an application under regulation 258 is approved, the applicant shall -

(a) pay a licence fee which shall be twenty-five thousand shillings;

(b) furnish a bond in Form CB.11 or a cash deposit

of such sum as the Commissioner may require but which shall not be less than two hundred and fifty thousand shillings; and

(c) submit to the proper officer, if he so requires, a tariff of the rates he proposes to charge for services to members of the public.

(2) Where a Customs agent proposes to handle or clear goods in transit, he shall apply in writing to the Commissioner for a licence and shall, on approval of such application -

(a) pay a licence fee of ten thousand shillings;

(b) furnish an additional bond in Form CB 11 or a cash deposit of such sum, not being less than two hundred and fifty thousand shillings; and

(c) submit to the proper officer, if he so requires, a tariff of the rates he proposes to charge for services to members of the public.

Deletion of regulation 274.

8. The principal Regulations are amended by deleting regulation 274.

Amendment of regulation 275.

9. The principal Regulations are amended in regulation 275 by deleting paragraph (1) and inserting the following new paragraph -

(1) Goods shall be sold by the customs or by a licensed auctioneer appointed by the Commissioner.

Deletion of regulation 276.

10. The principal Regulations are amended by deleting regulation 276.

Amendment of First Schedule.

11. The principal Regulations are amended in the First Schedule by inserting the following new Forms -

FORM C61[r.38A(4)]

REPUBLIC OF KENYA

SEXTUPLICATE

IMPORTER

See guidelines overleaf

MINISTRY OF FINANCE

No. AB

## IMPORT DECLARATION FORM

|  |                           |                           |                   |   |
|--|---------------------------|---------------------------|-------------------|---|
| Importer (Full Particulars)                    |                           |                           | PIN.              |   |
|  |                           |                           | Importer Code     |   |
| Name and Position of Contact Person (Importer) |                           |                           | Telephone         | Fax/Telex   |
| Seller (Full Particulars)                      |                           |                           | Telephone         | Fax/Telex   |
| Supply Country                                 | Port of Discharge (Kenya) | Port of Customs Clearance | Transport Mode    | ETD   |
| Transaction Terms                              | Goods Origin              | Import Regime             | Proforma No./Date | PTA<br><input type="checkbox"/> Yes <input type="checkbox"/> No |
| Currency                                       | FOB Value                 | Freight                   | Insurance         | Other Charges   |
| Description (by item)                          |                           | HS Code                   | Quantity          | FOB Value   |
|  |                           |                           |                   |   |

I/We declare that the above particulars are true and correct.

Date: Name:

Signature:

|  |  |  |
|--|--|--|
|  | Exchange Rate  | Approval Stamp for Items on Schedule B |
|  | GoK Processing Fee (KSh.)  |  |
|  | PSI Confirmation to seller<br><input type="checkbox"/> Yes <input type="checkbox"/> No |  |

**REPUBLIC OF KENYA**

**CUSTOMS AND EXCISE DEPARTMENT**

**BOND FOR THE PROJECT GOODS IMPORTED AND DELIVERED WITHOUT PAYMENTS OF DUTY**

I/We.....  
of.....  
and.....  
of.....

hereby acknowledge that I/we am/are bound to the Commissioner of Customs & Excise in the sum of .....shillings to be paid to the Commissioner of Customs and Excise for which payment I/we bind myself/ourselves jointly and severally and also my/our heirs, executors, administrators, and assigns and each of them.

Dated this..... day of..... 19.....

WHEREAS the above named .....has/have imported into Kenya by the from.....the following goods,  
that is to say.....

(hereafter called the goods) whereon duties of Customs have not been paid; and whereas the above named is/are required to use and expend the goods in the project within twelve months of the date hereof and to produce proof to the satisfaction of the Commissioner of such usage/expenditure in the project, or otherwise to pay to the Commissioner the full duties of Customs in respect of so much of the goods as have not been used or expended in the project and so proved.

Now the condition of this obligation is such that if the above-named .....shall pay to the Commissioner the full duties of Customs upon so much of the goods as have not been used/expended in the project and so proved and shall not sell or otherwise dispose of any or all of the goods within Kenya except for the project without the written permission of the Commissioner, then this obligation shall be void but otherwise shall be and remain in full force.

Signed, sealed and delivered by )  
the above named..... )  
in the presence of..... )  
of..... )

Signed, sealed and delivered by )  
the above named..... )  
in the presence of..... )  
of..... )

Approved: .....

for Commissioner

12. The principal Regulations are amended by inserting the following new Schedules -

Insertion of Fifth  
and Sixth  
Schedules.

**FIFTH SCHEDULE**

(r.38A(i))

**GOODS SUBJECT TO PRE-SHIPMENT INSPECTION**

All imports whose f.o.b. value exceeds US\$1000, except the following -

- (i) goods destined to approved duty free shops;
- (ii) goods destined to approved Export Processing Zones enterprises;
- (iii) goods destined to approved enterprises manufacturing goods under bond;
- (iv) unset precious stones or precious metals in bullion form;
- (v) accompanied or unaccompanied used personal effects;
- (vi) objects of art;
- (vii) explosives and pyrotechnic products;
- (viii) ammunition, weapons or implements of war imported by the Government;
- (ix) live animals;
- (x) current newspapers and periodicals (daily and weekly);
- (xi) household and personal effects including motor vehicles, provided such motor vehicles qualify for exempt entry under items 8(3) or 8(4) of the Third Schedule to the Act;
- (xii) post parcels, excluding goods imported for trade;
- (xiii) gifts or donations by foreign governments or international organisations to foundations, charities and recognised humanitarian organisations;

- (xiv) commercial samples of no commercial value;
- (xv) crude or refined petroleum;
- (xvi) personal gifts sent by foreign residents to their relatives in Kenya for their personal use, but excluding motor vehicles;
- (xvii) gifts and supplies for use by diplomatic and consular missions and to United Nations Organisations.

## SIXTH SCHEDULE

(r.38A(4))

## GOODS TO BE ENTERED ON FORM C61

All imports require to be entered in Import Declaration Form C61 except -

- (i) goods destined to approved duty free shops;
- (ii) goods destined to approved Export Processing Zones enterprises;
- (iii) goods destined to approved enterprises manufacturing under bond;
- (iv) accompanied or unaccompanied used personal effect;
- (v) ammunition, weapons or implements of war imported by the Government;
- (vi) household and personal effects including motor vehicles, provided such motor vehicles qualify for exempt entry under Part B, items 8(3) and 8(4) of the Third Schedule to the Act;
- (vii) post parcels, excluding goods imported for trade;
- (viii) gifts or donations by foreign residents to their relatives in Kenya for their personal use, but excluding motor vehicles;
- (ix) commercial samples of no commercial value;

- (x) personal gifts sent by foreign residents to their relatives in Kenya for their personal use, but excluding motor vehicles;
- (xi) gifts and supplies to diplomatic and consular missions and to the United Nations Organisations;
- (xii) such other goods as the Minister may specify.

Made on the 18th June, 1996.

MUSALIA MUDAVADI,  
*Minister for Finance.*

LEGAL NOTICE No. 121

**THE VALUE ADDED TAX ACT**  
*(Cap. 476)*

IN EXERCISE of the powers conferred by section 58 of the Value Added Tax Act, Cap. 476, the Minister for Finance makes the following Regulations:-

**THE VALUE ADDED TAX (AMENDMENT) REGULATIONS, 1996**

1. These Regulations may be cited as the Value Added Tax (Amendment) Regulations, 1996 and shall come into operation on the 18th June, 1996.

2. Regulation 7 of the Value Added Tax Regulations (hereinafter referred to as the principal Regulations) is amended -

- (a) in paragraph (1) by deleting the words "an officer" and inserting the words "an authorised officer";
- (b) in paragraph 1(e) by deleting the word "month" and inserting the word "period";
- (c) in paragraph (3) by deleting the words "shall issued" and inserting the words "shall issue";
- (d) in paragraph (4) by deleting the words "sub paragraph (3)" and inserting the words "paragraph (3)";

3. Regulation 9 of the principal Regulations is amended:-

- (a) in paragraph (1), by deleting the words "paragraph 6" and inserting the words "paragraph 7";