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Indirect Tax Alert

Kenya revises list of dutiable goods that may be warehoused in a bonded facility

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Executive summary

In accordance with Section 47 of the *East Africa Community (EAC) Customs Management Act, 2004* which grants authority to any taxpayer to warehouse dutiable goods in a government or bonded warehouse and regulation 64 of the EAC Customs Management regulation, 2010 which lists goods which are excluded, Kenya's Commissioner of Customs and Border Control issued a Gazette Notice No. 3350 providing an additional list of goods that may not be warehoused.

Initially, the effective date of the notice was 12 August 2020. However, following consultations with taxpayers, the Commissioner has considered an extension of the effective date to October 2020. At the time of drafting this alert, a formal gazette notice effecting this extension has not been published.

Detailed discussion

Bonded warehouses in Kenya are operated by warehouse service providers following a grant of license to operate such facilities in a secure area in which dutiable goods may be stored, handled, or undergo manufacturing operations without payment of duty. In contrast to designated government warehouses, bonded warehouses are licensed annually to store goods for six months, which may be extended to a further six months or such other period subject to the Commissioners discretion.

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Following reported issues in the administration of such facilities including loss of revenue and misuse of the duty to request and obtain a grant of the extension of time to keep warehoused goods in a bonded facility, the Commissioner has determined a list of goods to be excluded from storage in a bonded facility.

The designated imported goods will include:

- All foodstuffs in any form, whether fresh or preserved, including bulk commodities except for those used as ship stores and duty-free shops
- Ashes
- Lubricants and batteries including vehicle batteries
- Building and construction materials including stones, sand, paint, pipes, nuts, bolts, nails, tiles, metals, electrical fixtures and parts and tools
- Furniture, carpets and floor coverings
- Cigarettes and tobacco, except where these are warehoused by local excise factories or imported by duty free shops and used as ship stores
- Clothing and textiles (new and used)
- Denatured and denatured spirits under Tariff 2207.10.00 and 2207.20.00
- Cameras and phones except those warehoused for duty free shops
- Used footwear
- Office supplies ready for retail sale including stationery cartridges/toners for pens and printers.
- Toiletries and cosmetic products ready for retail sale including fragrances, powder, lotions, creams, lipsticks, hair coloring and haircare products except for duty free shops
- Secondhand motor vehicles
- Spare parts for motor vehicle (new and used)
- Motor vehicle and motorcycle tires
- Wines, spirits and other alcoholic beverages except those imported for sale in duty free shops and spirits in bulk imported by licensed manufacturers of wines and spirits
- Any other goods whose warehousing, in the discretion of the Commissioner, is likely to impact negatively on the implementation of Customs laws and other written laws

Duty free shops are licensed by the Commissioner for the deposit of dutiable goods on which duty has not been paid and which have been entered for sale to passengers departing to places outside Kenya. The published list of items will not be subject to the bonded facility conditions and accounting or reconciliation of warehoused stock.

Implication of restriction of the above goods from bonded warehousing

1) Renewal of bonded warehouse licenses

A bonded warehouse allows importers to hold goods in Kenya Revenue Authority customs-controlled premises without paying the duty until they are ready for sale in the local or export markets. Restriction of the above goods implies that the taxpayer will be required to pay duty on these goods immediately which implies that most of the taxpayer's money will be held up in payment of taxes.

Existing bonded warehouse facilities licensed annually specifically for the goods indicated on the list will not be renewed. Affected taxpayers will be required to pay duties upfront upon importation of the goods into Kenya. This will have significant cashflow implications for businesses that have been procuring in bulk/economies of scale and deferring duty payment upon importation into the country.

2) Transfer of locally manufactured goods to customs bonded facilities

Previously, the listed goods may have been sold by entities in Kenya and deposited in a bonded warehouse for purposes of consolidation, repacking, blending and labelling of goods prior to ex-warehousing for export. The notice does not specify how such goods will be treated.

Implementation of the restriction on the listed goods from being deposited in a bonded facility will generate taxes for the revenue authority at the point of importation as opposed to later when goods are removed from the warehouse. Warehouses in Kenya are widely used by many companies and multinational entities positioning the country as a regional hub in their supply given its geographical position as an entry to landlocked countries, diversified economy in the region and additional incentives such as bonded warehouses that allows for stocking of goods to defer duty payment or enhance re exports to other countries. Cessation of warehousing for the listed goods will likely provide this benefit to other countries.

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