

Commentaries on the Excise Duty (Non-Alcoholic, Carbonated and Sweetened Beverages) Regulations 2022

KPMG in Nigeria

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On 12 September 2022, The Honourable Minister of Finance, Budget and National Planning ("the Minister"), Mrs. Zainab Shamsuna Ahmed, signed the Excise Duty (Non-alcoholic, Carbonated and Sweetened Beverages) Regulations, 2022 ("the Regulations"). This was pursuant to her powers under Section 120 of the Customs and Excise Management Act Cap. C45 Laws of the Federation of Nigeria, 2004 (CEMA). The Regulations were subsequently published by the Federal Government of Nigeria (FGN) in its Official Gazette No. 168, Vol. 109 of 16 September 2022.

The Regulations were issued to provide guidance on the implementation of the excise duty of ₦10 per litre on non-alcoholic, carbonated and sweetened beverages introduced by the Finance Act, 2021 to Section 21 of the Customs, Excise Tariffs, Etc. (Consolidation) Act (CETA). We draw your attention to our [Finance Act, 2021: Impact Analysis](#) for details.

We have summarised below the relevant provisions of the Regulations:

1. Dutiable non-alcoholic beverages

Paragraph 2(1) of the Regulations provides that excise duty shall be chargeable at ₦10 per litre on non-alcoholic, carbonated, and sweetened beverages, including beverages intended to be mixed into alcoholic drinks or sold in powdered, solid (including capsules and tablets), or concentrated form for consumption after dilution, manufactured in Nigeria or imported into Nigeria.

Paragraph 3 expands the definition of non-alcoholic beverages to include beverages with harmonised system (HS) codes (2202.1000.00 - 2202.9000.91 - 2202.9000.99, 2009.1100.12 to 2009.9000.99) as contained in the Fifth Schedule to CETA, and non-alcoholic beverages containing caloric sweeteners, which are prepared by a combination of concentrates or other matter that is:

- i. diluted with water;
- ii. combined with carbon dioxide;
- iii. combined with crushed ice, or processed to create crushed ice; or
- iv. prepared by a combination of one or more of the above processes for human consumption.

The Regulations empower the Comptroller-General of the Nigeria Customs Service (NCS) to recommend any other beverage for inclusion based on sugar or substitute content, dilution ratio or other relevant information. In addition, where the Minister has reason to believe that a company has amended its dilution ratio or formulation to avoid the duty, such beverage can be included in the list of dutiable products accordingly.

Based on Paragraph 4 of the Regulations, the following non-alcoholic beverages are exempt from excise duty:

- i. Beverages for medical use such as oral nutritional therapy for persons, who cannot absorb or metabolize caloric or dietary nutrients from usual food or beverages; oral rehydration electrolyte solutions formulated to prevent or treat dehydration due to illness; or any beverage that meets the satisfactory definition of a medical food, to the extent that they are not sports drinks and other similar variations.
- ii. Infant and baby formula for infants not more than 12 months old prepared as partial or full substitutes for human milk.
- iii. Non-flavoured or carbonated water prepared for human consumption.

- iv. Natural milk or milk products with at least 75% animal-produced natural milk concentrate or dehydrated natural milk.
- v. Cocktails prepared by mixing liquids and served in an open container.
- vi. Any goods used in manufacturing other excisable goods stipulated in the Seventh Schedule to the CEMA by a manufacturer of excisable goods duly registered with the NCS.

2. Chargeable event

Based on Paragraph 2(3), a chargeable event for a dutiable non-alcoholic beverage occurs upon the manufacture of non-alcoholic beverages in Nigeria. The Regulations define manufacturing to include packaging of goods as non-alcoholic beverages.

For non-alcoholic beverages imported into Nigeria, a chargeable event occurs on the *first receipt* of the beverage at the Customs Control in Nigeria. The Regulations define *first receipt* as the first occasion where the beverage is delivered from Customs Control to a place of business in Nigeria, including delivery to or removal from premises within the Nigeria Export Processing Zones, Oil and Gas Free Zones or Customs bonded areas or warehouses.

3. Persons liable to pay excise duty

Paragraph 5 of the Regulations provides that excise duty shall be payable by the manufacturer or importer of non-alcoholic beverages for sale in Nigeria.

However, where the non-alcoholic beverage is manufactured by a company on behalf of another person in Nigeria, the excise duty shall be paid by the person on whose behalf the beverage was manufactured. Further, where the manufacturer or importer is a non-resident company, it shall register with the NCS, and appoint a fiscal representative for the purpose of excise duty compliance in Nigeria.

The Regulations define a manufacturer to mean “*a person who cans, bottles, packages or contracts another to can, bottle or package non-alcoholic beverages in a form that is suitable for consumption without further preparation.*”

4. Payment of excise duty

Based on Paragraph 6 of the Regulations, excise duty on non-alcoholic beverages manufactured in Nigeria is due monthly in arrears and payable on the 21st day of the month following the dutiable period. Where the due date falls on a weekend or public holiday, the payment shall be made on the working day immediately following that weekend or public holiday.

For non-alcoholic beverages imported into Nigeria, the duty will be due and payable on the date of release of such goods from Customs Control.

5. Obligations of dutiable persons

Paragraph 7 of the Regulations requires manufacturers and importers of chargeable non-alcoholic beverages to register with the NCS not later than 30 June 2022. Manufacturers of less than 5,000 litres of dutiable non-alcoholic beverages are exempt from both registration with the NCS and payment of excise duty. However, once they exceed the 5,000 litres exemption threshold, the manufacturer is obligated to register with the NCS within 15 days of exceeding the prescribed threshold.

Other obligations prescribed by the Regulations include:

- i. Submission of monthly returns of manufactured non-alcoholic beverages in the manner prescribed by the Comptroller-General of the NCS.
- ii. Provision of a report of inventory of dutiable goods held by manufacturers and importers of non-alcoholic beverages as at 31 May 2022 to the Comptroller-General by 30 June 2022.
- iii. Calculation, and submission to the NCS, of average daily value and volume of non-alcoholic beverages supplied within a 12-month period following the introduction of the duty.

Manufacturers and importers are precluded from supplying non-alcoholic beverages greater than 30 times the total value of the supply in the preceding 12 months for consumption in Nigeria in the 30-day period following the implementation of the Regulations.

6. Penalty for Non-compliance

Paragraph 7(6) of the Regulations provides that a dutiable person, who fails to register with the NCS within the stipulated timeframe or pay the excise duty, will be liable to a penalty of 200% of the excise duty payable as prescribed in Section 160 of CEMA. Although Section 160 of the CEMA provides for a penalty on non-payment of excise duty, it does not include non-registration with NCS as provided in the Regulations. Therefore, it is unclear how the NCS intends to implement the penalty for non-registration and the legal basis for its imposition.



Commentary

We commend the Minister for issuing the Regulations as they clarify several issues for businesses, especially with respect to affected manufacturers and importers of dutiable non-alcoholic beverages, the relevant collection agent, time of payment and other compliance processes. However, some provisions of the Regulations may require revisions to ensure consistency with the extant laws and avoid unnecessary disputes with stakeholders:

- i. The exclusion of manufacturers producing less than 5,000 litres of dutiable non-alcoholic beverages from the excise duty is commendable, especially as it will reduce the cost of tax compliance for those manufacturers. It appears that the stipulated production volume relates to small manufacturing companies and the exemption of such companies from payment of excise duties is an attempt to mirror the exemption from corporate income tax provided for small companies by Finance Act, 2019. However, the exemption may be deemed as an attempt by the Minister to amend the extant law through the Regulations, which is the exclusive reserve of the National Assembly. Therefore, it is important that the Principal Acts be updated, where appropriate, to reflect the intent of government, ensure consistency and mitigate any potential nullification of that provision of the Regulations.
- ii. Some of the provisions of the Regulations predate the commencement date of the Regulations. For example, the 30 June 2022 deadline stipulated for manufacturers and importers of dutiable non-alcoholic beverages to register with the NCS, and the 30 June 2022 deadline for manufacturers to provide the NCS with a report on dutiable goods held in stock as of 31 May 2022 had already lapsed. It is arguable that the Finance Act, 2021 has already introduced the levy. Therefore affected taxpayers should have been making provisions for the excise duties pending the issuance of the clarifying Regulations by the Minister. However, providing for the amount due is not the same as knowing what needs to be done to comply with the law especially when the modalities for implementation are not defined.

We understand that the NCS had formally notified affected manufacturers and importers on the implementation of the reporting requirements provided in the Regulations. The notification was

based on the circular issued on 1 March 2022 by the Honourable Minister on the implementation of the 2022 fiscal policy measures and tariff amendments. Therefore, affected manufacturers and importers have been submitting the required reports and paying the relevant excise duties as contained in the Regulations since June 2022. However, the effective date stipulated in the Regulations is 12 September 2022. The relevant question, therefore, is whether the payments made prior to this date would be treated as credits for the excise duties payable in future? This would need to be clarified.

The affected industry manufacturers and importers have expressed concerns on the impact of the excise duty on their sales margins, and the resultant upsurge in illicit trade and counterfeiting due to the substitution effect being triggered by the excise duty. Given the current harsh economic conditions and increase in the cost of manufacturing caused by challenges with sourcing foreign exchange and naira devaluation, the Federal Government may need to explore ways to manage its impact on the beverage sector. Clearly, the impact on healthcare by unchecked consumption of sweetened or sugar-based beverages cannot be understated. However, the objective should not be to stifle the growth of the sub-sector. Rather, it should be to balance the need to grow the sector while managing the adverse impact on healthcare.

We also understand that government needs to raise sufficient revenue to finance its budget. This, however, should not be to the detriment of the beverage sub-sector. Government needs to pay greater attention to tax incentive reforms and enhanced tax administration to increase tax collections. The deployment of analytical tools to provide actionable insights to tax authorities on the tax returns submitted by taxpayers will also go a long way in this regard.

There is also an urgent need to define and clarify the mechanism for resolving any dispute between the Comptroller-General (CG) and a manufacturer in a situation where the CG is of the opinion that the manufacturer has changed its dilution ratio or formation to avoid the payment of the excise duty. In the meantime, it is hoped that the Minister will re-evaluate the Regulations in line with the issues discussed above to ensure its effectiveness and the achievement of Government's key objective, which is raising revenue.



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