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LEGAL UPDATE

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**Ethiopia's New Excise Proclamation replaces
decades old legislation**

*The new excise law has broadened
the tax base of excisable goods*



Ethiopia's New Excise Proclamation replaces decades old legislation

The House of Peoples' Representatives ("Parliament") in its 6th Ordinary session held on the 13th of February 2020 promulgated a new excise tax Proclamation No. 1186/2020 ("new excise law"). The new excise law repeals and replaces the decades old excise tax Proclamation No. 307/2002 (as amended) ("repealed law"). The Ministry of Revenues has issued a rather unusual letter (Ref. No. 3.0/191/12) that states the coming into force of the law as of February 14, 2020, without waiting for the publication of the law in the official Negarit Gazette. That said, the new excise law has provided for a grace period of six months for importers which already have processed a Bank permit before the coming into force of the new excise law.

The purpose of the new excise law is primarily to: boost the government's revenue; improve excise tax administration; discourage consumption of products considered hazardous to public health and the environment; discourage the use of luxury products considering foreign currency optimization; and address counterfeit and contraband trading practices.

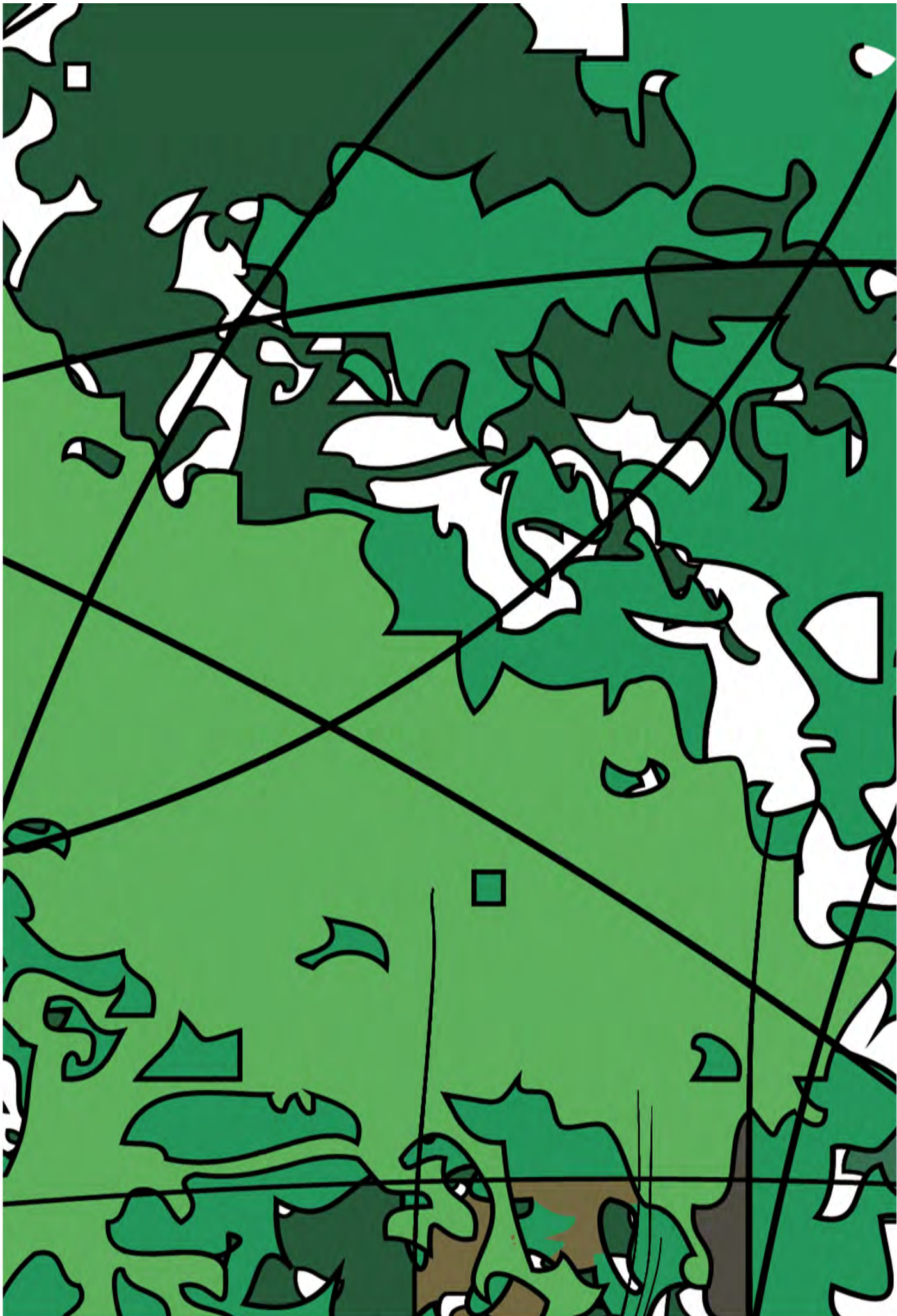
This legal update discusses major changes introduced by the new excise law. In particular, it briefly discusses a shift in the tax base, excisable products and the administration of excise tax.

Shift in the tax base

The new excise law makes a major shift in respect of the basis for excise tax assessment from the previous ‘cost of production of goods’ to ‘ex-factory sales price’ in respect of locally manufactured goods. This shift was necessitated due to repeated controversies arising from whether certain costs (the likes of corks, labels, cigarette packets, and plastic bottles) considered as marketing/packaging expenses by manufacturers constituted cost of production of the final goods. While the ex-factory sales price is expected to address these controversies, it is not going to be immune from future contentions. Ex-factory sales price is defined as the open market value of the goods at the time of removal from the manufacturer’s factory (as determined by the Tax Administration Proclamation). Nonetheless, given the lack of clarity on determining open/fair market value, tax payers need to pay attention to the manner of determining such value of products for excise tax purposes. In particular, tax payers need to be cautious of whether market pricing strategies such as discounts and promotions affect the determination of the fair market value of their products for excise tax assessment.

In respect of imported goods, the base of computation of excise tax was ‘cost, insurance and freight’ (CIF) under the repealed law. In contrast, the base of computation for imported goods under the new excise law is the sum total of the ‘customs value of the goods and the customs duty payable on the goods’ (as determined based on the Customs Proclamation).

Despite the relative clarity of excise tax assessment introduced through the shifts in the tax base, it is important to note that the new excise law will increase the tax base for taxpayers.



Excisable products

The new excise law has a long list of excisable goods categorized in nineteen (19) major sections and an extensive list of sub-sections. In an attempt to offset what would have been a significant increase in excise tax due to the shift on the excise tax base (discussed above), the new excise law has made some reductions on the tax rates of certain excisable products.

Under the new excise law, some excisable products which previously were subject to excise tax including dolls, laundry machines and watches are now excluded from the list of excisable products. On the other hand, a list of new excisable products (such as used tractors, plastics, fireworks, chocolate, artificial hair and pearl) are included under the new law. While telecommunication services made the initial list of excisable services attracting 5% rate, the final bill approved by the Parliament has removed telecommunication services from the list.

Further, the new excise law has made rate adjustments on many products. Some of the products where rate reduction has been made include locally assembled and manufactured vehicles or new cars (with an engine capacity of not more than 1300 cc), bottled water, sugar confectionary products, textile products and audiovisual products. On the contrary, a significant tax rate increment on few products (particularly used cars) have been made, igniting controversy on the appropriateness of such adjustment.

On a separate note, the Ministry of Finance is given the power to adjust (to increase or decrease) the excise tax rates of excisable products by an amount not exceeding ten per cent (10 %), suggesting that the excise tax rates for excisable goods will likely change from year to year. Apparently, this provision would be problematic in terms of ensuring certainty of the excise tax rates for excisable goods.

Finally, with respect to the type of tax assessment, under the repealed law, an ad valorem assessment (the tax expressed as a percentage of the cost or the value assessed) was generally applied except for chat. Excise tax for chat was assessed on a specific tax rate basis, a type of assessment based on volume, weight or any other unit of measurement. On the other hand, while the new excise law maintains ad valorem type of assessment for most products, it has introduced a hybrid type of assessment (ad valorem and/or specific) for few products, including beer, plastic bottles, and cigarettes.

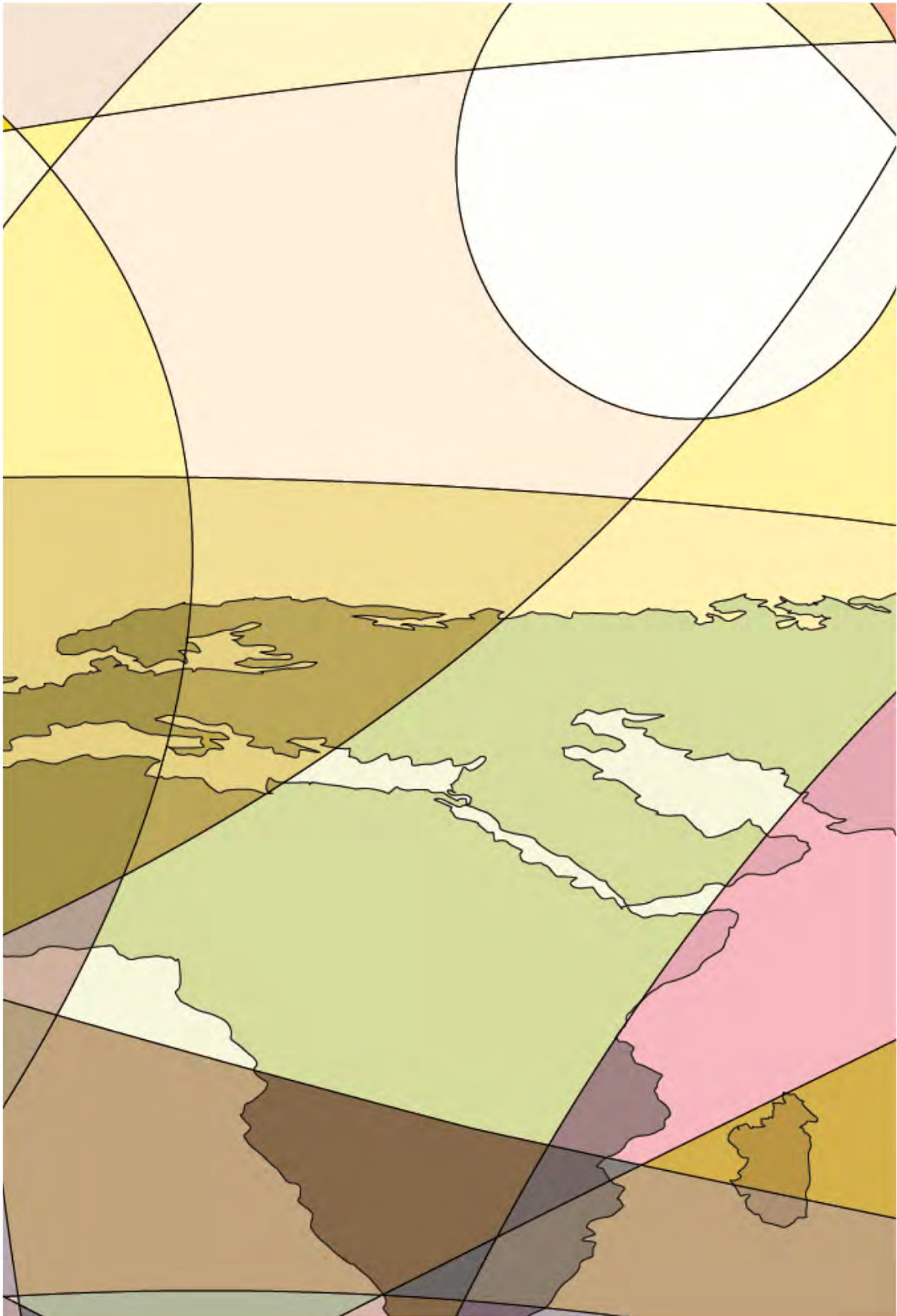
Excise Tax Administration

The new excise law contains provisions specific to excise tax administration including, but not limited to the issuance, suspension, and cancellation of licenses, control, refunds, and penalties for breach of the law. In alleviating some of the inefficiencies and shortcomings, the excise tax administration has been modified in respect to some of the subject matters below.

Permit requirement and notification

The new excise law, unlike its predecessor, requires anyone intending to manufacture excisable goods in Ethiopia or anyone importing excisable goods to apply for a license. The Authority (the Ministry of Revenue or Tax Authorities of regional governments) has been granted powers to issue, deny or cancel licenses based on the criteria defined under the law.

Under the new law, excise license holders are obliged to provide information on all changes to their manufacturing plants/machineries, constitutions and ownerships of the entity, and change of address to their businesses, among others.



Control related provisions

Excisable goods stored in the factory of a licensed manufacturer are deemed to be under excise control of the Authority until being removed from factory or exported from Ethiopia or even destroyed pursuant to the excise law provisions. The new law has imposed obligations on manufacturers for the purpose of assisting the Authority's control effort. With a view to ensuring proper accounting of excisable goods under excise control, manufacturers have the duty to keep metering/measuring equipment in order to take an account of or gauge the excisable goods and materials. The new excise law also imposes other obligations on manufacturers, including duty to record and document, for the purpose of proper accounting of excisable goods.

Further, the new excise law provides that the Ministry of Finance may issue a directive requiring the affixing of excise stamps on some products. Nonetheless, the scope and details of excise stamps will be known when the directive is issued. The excise stamp regime is expected to optimize the revenue collection, assist in tracking excisable products and reduce the prevalence of counterfeit goods in Ethiopia.

Goods not liable to excise tax and refunds

The new excise law specifies goods not subject to excise tax (exempt) including but not limited to: goods exported under customs control or stored in approved warehouses; goods destroyed before their removal from the factory with the pre-approval of the Ministry of Finance; and goods supplied to entities that are exempted from excise by law or instances where such goods are lost or destroyed by accident or other unavoidable causes. With respect to goods to be destroyed with the pre-approval of the Ministry, one contentious issue we expect to trouble manufacturers of excisable products is the speed in which the Ministry responds to the request for the pre-approval.

Further, the new excise law provides that the Authority may refund the excise tax paid to tax payers provided that: the goods have been damaged or stolen during the voyage or transportation to Ethiopia; the goods have been damaged or destroyed while subject to excise control; the buyer has returned the goods to the seller in accordance with the contract of sale; or the excisable goods have been used by a registered manufacturer to manufacture excise tax exempted goods.



Offences and administrative penalties

A breach of the new excise tax law by a licensee has consequences having administrative and criminal implications. A breach of some of the provisions of the new proclamation could result in double the excise tax that would have been payable while some of the rather serious offenses could result in a rigorous imprisonment of up to 7 years and a fine of 200,000 Ethiopian Birr.

Finally, it is noteworthy that the Tax Administration Proclamation No. 983/2016 is to apply on matters and offenses not specifically covered under the new excise law.

Disclaimer

The information contained in this legal update is only for general information purposes. Nothing herein shall be considered as a legal advice or a substitute thereto.

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