

## CHAPTER 179

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#### Section

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## **CHAPTER 179**

### **THE FINANCE ACT (No. 2), 1991.**

*Commencement:* 28 June, 1990.

**An Act to provide for the alteration of certain taxes and duties and to amend certain enactments relating thereto and for other matters connected therewith.**

PART I—AMENDMENTS TO THE EAST AFRICAN CUSTOMS AND TRANSFER TAX MANAGEMENT ACT.

#### **1. Construction of Part I.**

Part I of this Act shall be read and construed as one with the East African Customs and Transfer Tax Management Act, in this Part referred to as the principal Act.

#### **2. Amendment of section 136.**

The principal Act is amended in section 136 by inserting after subsection (2)(d) the following paragraph—

“(e) he may lock up, seal, mark, or otherwise secure any such premises, room, place, equipment, tank or container.”.

#### **3. Amendment of section 136.**

The principal Act is amended in section 136 by inserting after subsection (4) the following subsection—

“(5) Any person, not being a proper officer, who opens, breaks, or in any way interferes with any lock, seal, mark or other fastening placed by an officer in accordance with the provisions of this section on any building, room or place shall be guilty of an offence and liable on conviction to a term of imprisonment not exceeding three years or to a fine not exceeding five million shillings.”.

**4. Amendment of section 147.**

The principal Act is amended in section 147 by adding after the word “offence” the expression “and liable on conviction to a term of imprisonment not exceeding five years or to a fine equal to ten percent of the CIF value of the goods or to three times the duty and taxes, whichever is greater or to both such imprisonment and fine”.

**5. Amendment of section 172.**

The principal Act is amended in section 172, by inserting between the words “officer” and “may” the words “of the rank of Collector or above”.

PART II—AMENDMENTS TO THE EAST AFRICAN EXCISE MANAGEMENT ACT.

**6. Construction of Part II.**

Part II of this Act shall be read and construed as one with the East African Excise Management Act, in this Part referred to as the principal Act.

**7. Amendment of section 30.**

The principal Act is amended by deleting the expression “Beer and” occurring in the subheading immediately before section 30 and in section 30 itself.

**8. Amendment of section 47.**

The principal Act is amended by substituting for section 47, the following section—

“Excise duty on value. 47. (1) Where any locally manufactured goods are liable to excise duty *ad valorem*, then the value of such goods shall be taken to be as laid down in the Fourth Schedule of the Act and excise duty shall be paid on that value.”.

## **9. Insertion of Schedule.**

The principal Act is amended by inserting after the Third Schedule, the following Schedule—

### **“FOURTH SCHEDULE VALUE OF EXCISABLE GOODS**

1. (1) The value of any excisable goods shall be the normal ex-factory price, exclusive of excise duty, sales tax on such goods.

(2) The normal ex-factory price of any locally manufactured goods shall be determined on the following assumptions—

- (a) that the goods are treated as having been delivered to the buyer at the place of manufacture;
- (b) that the manufacturer shall include raw material costs, manufacturing costs, labour costs, profit margin, bank charges and interest and all other costs, charges and expenses incidental to the factory, production and sale;
- (c) that the manufacturer will bear any excise duty or tax chargeable under the law.

2. A sale in the open market between manufacturer and buyer independent of each other presupposes—

- (a) that the price is the sole consideration; and
- (b) that the price made is not influenced by any commercial, financial or other relationship, whether by contract or otherwise, between the manufacturer or any person associated in business with him and the buyer (other than the relationship created by the sale of the goods in question); and
- (c) that no part of the proceeds of the subsequent re-sale, use or disposal of the goods will accrue either directly or indirectly to the seller of any

person associated with him.

3. Where the goods to be valued—
  - (a) are manufactured in accordance with any patented invention or are goods to which any registered design has been applied; or
  - (b) are manufactured under a foreign trade mark,the normal price shall be determined on the assumption that the price covers the right to use the patent, design or trade mark in respect of the goods.

4. For the purposes of paragraph 3, the expression “trade mark” includes a trade name and a get up, and a foreign trade mark is a trade mark used for the purpose of indicating that goods in relation to which it is used are those of—

- (a) a person by whom the goods to be valued have been grown, produced, manufactured, selected, offered for sale or otherwise dealt with outside the country;
  - (b) a person associated in business with any such person as is referred to in sub-paragraph (a) of this paragraph; or
  - (c) a person to whom any such person as is mentioned in sub-paragraph (a) or (b) of this paragraph has assigned the good will of the business in connection with which the trade mark is used.

5. Two persons shall be deemed to be associated in business with one another if, whether directly or indirectly, either of them has any interest in the business or property of the other, or both have a common interest in any business or property, or some third person has an interest in the business or property of both of them.”

## **10. Amendment of section 53.**

The principal Act is amended by deleting the expression “Beer and” occurring in the subheading immediately before section 53 and in section 53 itself.

PART III—MISCELLANEOUS PROVISION.

**11. Surtax.**

There shall be charged, levied and collected a surtax in respect of imported goods set out in the second column of the Schedule to this Act at rates correspondingly specified in the third column of the Schedule.

*Schedule.*

s. 11.

**Surtax.**

Column 1	Column 2	Column 3
Tariff No.	Description	Rate
22.01.10	Waters, including spa waters and aerated waters	30%
22.01.90	Other	30%
22.02.10	Lemonade, flavoured spa waters and flavoured aerated waters	30%
22.02.90	Other	30%
22.03.00	Beer made from malt	50%
22.05.10	Still wine and grape must, not in bottle	60%
22.05.90	Other sparkling wine	60%
22.09.10	Whisky	50%
22.09.90	Other	60%

**History:** Statute 3/1991; Statute 11/1991, s. 1; Statute 1/1992, s. 35; Statute 1/1993, s. 16; Statute 17/1994, s. 20; Statute 9/1996, ss. 14, 24; Act 3/1996, s. 12; Act 2/1998, s. 10; Act 1/1999, s. 18; Act 7/1999, ss. 14, 18.

**Cross References**

East African Customs and Transfer Tax Management Act, Laws of the Community, 1970 Revision, Cap. 27. East African Excise Management Act, Laws of the Community, 1970 Revision, Cap. 28.