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UNDERSTANDING IMPORT TAXES

Import taxes are part and parcel of our daily lives given that Kenya is a net importer of goods as evidenced by the country's balance of payments. This means that ultimately, each one of us gets to feel the impact of import taxes in the prices of goods in the market. Therefore, it is important to gain an understanding of import taxes and the customs process with respect to importation of goods.

Import taxes is a composite of three main taxes, that is; the import duty, excise duty and Value Added Tax (VAT).

Import Duty

Upon importation of a good, import duty is one of the costs incurred. Import duty is paid at the rate in force at the time when the goods liable to such duty are entered for home consumption. Import duty is computed by multiplying the customs value by the appropriate rate of import duty.

Customs value is inclusive of three components; the cost of the good, the insurance cost and the freight cost. As a result, customs value is commonly referred to as Cost Insurance & Freight (CIF). Upon determination of the CIF, the import duty is computed by multiplying the CIF with the appropriate rate of duty. Ideally, the key component in CIF is the cost since the insurance and freight components are highly inelastic.

Excise duty

Excise duty is computed by multiplying the excise value of the import with the appropriate excise duty rate. The excise value of an import is computed by adding the import duty assessed to the CIF value. Thus, it is always crucial to ensure that the correct rate is applied to avoid overpayment or underpayment of excise duty.

VAT

VAT is computed based on the taxable value of the import. The taxable value is arrived at by adding the excise value to the excise duty and the VAT payable is computed by multiplying the taxable value with appropriate VAT rate. This can either be standard rated at sixteen percent, zero rated or exempt from VAT.

It is important to note that some imported goods intended for export purposes are exempt from VAT, therefore warranting KRA's vigilance in ensuring that there is no dumping in the Kenyan economy of such goods. An example is KRA's implementation of the Regional Electronic Cargo Tracking System (RECTS) on oil tankers which triggers an alarm when an oil truck diverts from its designated route or makes an unusually long stopover.

IDF and RDL

Over and above the tax components discussed above, an importer has to pay for Import Declaration Fee (IDF) and the Railway Development Levy (RDL). IDF is charged at 2 percent of the CIF subject to a minimum of Kshs. 5,000, and is a revenue source for the government. RDL is charged at 1.5% of CIF, which goes towards repayment of the Standard Gauge Railway (SGR) infrastructure funding. It is prudent to note that RDL and IDF are not taxes per se, rather the latter is fee that goes into facilitating efficient management of customs and clearance while the former is a repayment of the funds used for development of the SGR. Furthermore, it is important to note that

some imports are exempt from IDF and RDL. Notably, the Finance Act, 2017 has exempted goods imported for the construction of Liquefied Petroleum Gas (LPG) storage facilities that have been approved by the Cabinet Secretary for Energy from IDF and RDL.

Key areas to note

From the import tax breakdown presented herein, it is evident that the customs value has a significant impact on the taxes payable during importation.

The EACCMA provides for ad valorem valuation where the price of the imported goods cannot be ascertained conclusively. In this respect, the transaction value of identical goods exported at or about the time of valuation, may be used. Identical goods are defined for customs purposes, to mean goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearance do not suffice to preclude goods from being identical.

Where the transaction value cannot be determined from the cost nor the transaction value of identical goods, the transaction value of similar goods exported at or about the time of valuation, may be used to determine the customs value. Similar goods are defined for custom purposes, to mean goods which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable.

In a situation where the customs value cannot be determined from the above, the EACCMA provides an order of preference which considers firstly the deductive value, computed value and finally the fall-back value.

In light of the above, reliance on online sources such as online stores in determining the cost of a good might not give a fair value of the cost of a good as the price of a good posted on an online store might be inclusive of, inter alia, commissions to the online store and marketing costs. Further, Section 122 of the EACCMA provides that an importer has legal basis to challenge the CIF computed especially in situations the imported good is an uncommon good, for example, specialized machinery.

It is also important to note that some goods are not subject to import duty as enshrined in the exemption regime of the Fifth Schedule of the EACCMA. Examples of such goods include, but not limited to goods imported for official use by the armed forces and goods and equipment imported for use in Aid Funded Projects.

As a summary to the above, it is important to be aware of the taxes payable during importation these being; import duty, excise duty and VAT as well as additional levies, IDF and RDL. Further, the taxable values are computed on an additive approach thus explaining the significant spread between the original cost and the final cost. As a reiteration, ascertainment of customs value is very crucial as it determines the amount of taxes payable upon importation of goods. It is our recommendation that professional advice from a tax expert or a customs specialist should be sought when importing goods and/or when faced with a customs dispute.



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