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ROAD MAINTENANCE LEVY FUND ACT

NO. 9 OF 1993

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ROAD MAINTENANCE LEVY FUND ACT

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NO. 9 OF 1993

ROAD MAINTENANCE LEVY FUND ACT

[Date of assent: 16th December, 1993.]

[Date of commencement: 31st December, 1993.]

An Act of Parliament to provide for the imposition of a road maintenance levy on petroleum fuels and for the establishment and administration of a Road Maintenance Levy Fund and for connected purposes

[Act No. 9 of 1993, Act No. 3 of 1994, L.N. 200/1994, Act No. 8 of 1997, Act No. 5 of 1998, Act No. 9 of 2000, Act No. 4 of 2004, L.N. 59/2005, Act No. 6 of 2005, Act No. 14 of 2015.]

1. Short title

This Act may be cited as the Road Maintenance Levy Fund Act, 1993.

2. Interpretation

In this Act, unless the context otherwise requires—

“**Advisory Committee**” means the Advisory Committee to be appointed under section 8A;

“**classified road**” deleted by Act No. 3 of 1994, s. 2;

“**collector**” means—

- (a) the Commissioner-General appointed under section 11(1) of the Kenya Revenue Authority Act (Cap. 469); or
- (b) with respect to powers or functions that have been delegated under section 11(4) of the Kenya Revenue Authority Act (Cap. 469) to another Commissioner, that other Commissioner;

“**entered for home use**” has the meaning assigned to it in section 2 of the Customs and Excise Act (Cap. 472);

“**levy**” means the road maintenance fuel levy imposed under section 3;

“**marketer**” means a person who engages in the business of importing, processing and marketing of petroleum products or in the business of both importing and processing and marketing of petroleum products and for the time being specified in the First Schedule;

“**Minister**” means the Minister for the time being responsible for Public Works and Housing or for Public Roads;

“**motor vehicle**” has the meaning assigned to it in section 2 of the Traffic Act (Cap. 403);

“**officer administering the Fund**” means the Chief Executive appointed by the Kenya Roads Board established under section 4(1) of the Kenya Roads Board Act, 1999 (No. 7 of 1999);

“**petroleum fuel**” means automotive diesel, ordinary petrol, premium petrol or such other petroleum products as classified by reference to the tariff numbers set out in the First Schedule to the Customs and Excise Act (Cap. 472) as the Minister may from time to time by notice in the *Gazette* determine, and for the purpose of interpreting the said First Schedule section 2(3)(a) to (j) of the Customs and Excise Act shall, *mutatis mutandis* apply;

“**public road**” has the meaning assigned to it in the Public Roads and Roads of Access Act (Cap. 399) and includes an adopted street under the Streets Adoption Act (Cap. 406);

“**remitter**” means a marketer registered under section 4;

“**unclassified road**” means any public road which on or before the commencement of this Act is maintained by a local authority or which is classified as such with the approval of the Minister, or any adopted street under the Streets Adoption Act (Cap. 406);

“**vehicle**” includes a motor vehicle, a trailer or such other conveyance as the Minister may from time to time determine by notice in the *Gazette*.

[Act No. 3 of 1994, ss. 2 and 9, Act No. 8 of 1997, s. 68, Act No. 9 of 2000, s. 128, Act No. 4 of 2004, s. 84.]

3. Imposition of levy

(1) The Minister shall, in consultation with the Minister for the time being responsible for finance, by Order published in the *Gazette*, impose on any or all petroleum fuels entered for home use in Kenya a road maintenance levy (in this Act referred to as “the levy”) which may be determined from time to time and in such manner as the Minister may specify in the Order.

(2) Out of the levy collected under subsection (1) there shall be paid an amount of three shillings per litre of petroleum sold into the Road Annuity Fund established under the Public Finance Management Act, 2012.

[Act No. 3 of 1994, s. 3, Act No. 14 of 2015, s. 46.]

4. Registration of remitters

(1) Any person who—

- (a) at the commencement of this Act is a marketer shall, on or before the expiration of thirty days after such commencement, register as a remitter; or
- (b) on or after the commencement of this Act becomes a marketer, shall before the last day of the month immediately following the month in which he becomes a marketer register as a remitter.

(2) Registration under subsection (1) shall be effected when the marketer has duly completed the registration form set out in the Second Schedule and lodged the original with the Chief Engineer (Roads) or Head of the Roads Department in the Ministry for the time being responsible for roads.

(3) A remitter who ceases either permanently or temporarily to be a marketer shall, within thirty days of so ceasing, notify the collector accordingly in writing stating the reasons for his ceasing to be a remitter.

(4) The Chief Engineer (Roads) or the Head of the Roads Department in the Ministry for the time being responsible for roads shall in all cases notify the collector of all marketers registered or deregistered under this Act.

(5) On the commencement of this Act no petroleum shall be allowed to be entered for home use unless the marketer has been duly registered under subsection (2).

[Act No. 3 of 1994, ss. 4 and 9.]

5. Levies collected to be remitted to the collector

(1) A remitter shall pay the levy to the collector at the time of importation of the petroleum fuel or at the time of its delivery from the refinery, in such form and manner as the collector may direct.

(2) Payment of the levy under subsection (1) shall be accompanied by Form 2 set out in the Third Schedule.

(3) A remitter shall keep a record of volumes of petroleum fuels imported and levies paid and submit to the Minister a return in the manner prescribed in Form 3 set out in the Third Schedule.

(4) The collector shall keep a record of the volumes of petroleum fuels imported and levies paid and submit to the Minister a return in the manner prescribed in Form 4 set out in the Third Schedule.

[Act No. 3 of 1994, s. 5, Act No. 6 of 2005, s. 47.]

6. Defaulting remitters to pay penalty

(1) Where any amount of levy which is payable under this Act remains unpaid after the date when it becomes due and payable as specified in section 5(1), a penalty equal to three per centum of the unpaid amount shall be forthwith due and payable for each month or part thereof that the amount remains unpaid.

(2) A penalty imposed under subsection (1) shall be recoverable as if it were a levy.

[Act No. 3 of 1994, s. 5A.]

6A. Recovery of levy and penalty

Any levy or penalty imposed under this Act shall be summarily recovered as a civil debt due by the collector in accordance with the provisions of the Customs and Excise Act (Cap. 472) as if it were duty due and payable under that Act.

[Act No. 3 of 1994, s. 6.]

6B. Collection of levies from agents

(1) The collector may, by written notice addressed to any person (in this section called the agent) appoint him to be the agent of another person (in this section called the principal) for the purposes of collecting levies from the principal where the collector is satisfied that the agent—

- (a) owes or is about to pay money to the principal;
- (b) holds money for or on account of the principal;
- (c) holds money on account of some other person to pay money to the principal; or
- (d) has authority from some other person to pay money to the principal.

(2) The collector shall, in the notice under subsection (1), specify the amount of levies to be collected by the agent, which amount shall not exceed the amount held or owing by the agent for or to the principal.

(3) The collector may, by notice in writing, require any person to furnish the collector, within a reasonable time not being less than thirty days from the date of service of the notice, with a return showing details of any moneys which may be held by that person for or on account of a person from who levies are due.

(4) An agent who claims to be, or to have become, unable to comply with the notice for any reason shall, as soon as may be practicable, notify the collector accordingly in writing stating the reasons for his inability, and the collector may accept and cancel, amend or reject the notification as he may think fit.

(5) Notwithstanding subsection (4), an agent shall be presumed to be holding sufficient money for the payment of the levies specified in the notice unless his notification under subsection (4) is accepted or amended, and in any proceedings for the collection of those levies he shall be estopped from asserting the lack of those moneys.

(6) Where an agent fails to remit any amount of levies specified in the notice, within thirty days of the date of service of the notice on him or of the date on which any moneys came into his hands for, or become due by him to, his principal, whichever is the later, and he has not complied with subsection (4) then the provisions of this Act relating to the collection and recovery of levies shall apply as if they were levies due and payable by him from the date when such levies should have been paid to the collector.

(7) An agent who has made payment of levies under this section shall for all purposes be deemed to have accepted therein with the authority of his principal and of all other persons concerned, and shall be indemnified in respect of that payment against any proceedings civil or criminal and all process, judicial or extrajudicial, notwithstanding any provisions to the contrary in any written law, contract or agreement.

(8) A person who, in giving a notification under subsection (4), wilfully makes any false or misleading statement, or wilfully conceals any material fact, shall be guilty of an offence and liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term of not more than three years or to both.

[Act No. 4 of 2004, s. 85.]

6C. Recovery of levies by distress

(1) If a levy remains unpaid after the time it was required, under this Act, to be paid, the Collector may authorize distress to be levied upon goods, chattels and effects of the person who should have paid the levy wherever those goods, chattels and effects may be found.

(2) The following provisions of the Customs and Excise Act (Cap. 472) shall apply, with necessary modifications, with respect to distress authorized under subsection (1)—

- (a) section 225(2), (3) and (4);
- (b) the Sixth Schedule.

[Act No. 4 of 2004, s. 85.]

7. Establishment of Road Maintenance Levy Fund

(1) There is thereby established a fund to be known as the Road Maintenance Levy Fund (in this Act referred to as the "Fund") which shall be administered by the officer administering the Fund.

(2) The Fund shall consist of the proceeds from the levy and the transit tolls levied under the Public Roads Toll Act (Cap. 407).

(3) All monies accruing to the Fund from the levy and transit tolls shall be paid into two special accounts to be established by the Kenya Roads Board namely, a general account and a local authority account.

(3A) The monies accruing to the Fund from the levy shall be paid into the accounts established under subsection (3) in the following amounts—

- (a) in the 1998/1999 financial year, thirty percent of the printed estimates of the 1997/1998 road maintenance levy collections into the local authority account, and the balance into the general account;
- (b) in the 1999/2000 financial year, forty percent of the printed estimates of the 1997/1998 road maintenance levy collections into the local authority account, and the balance into the general account;
- (c) in the 2000/2001 and subsequent financial year, fifty percent of the printed estimates of the 1997/1998 road maintenance levy collections into the local authority account, and the balance into the general account;
- (d) in any financial year such amount as may be determined by objective estimates of the annual road maintenance costs of unclassified roads reduced by any annual expenditures by local authorities on the maintenance of such roads.

(4)

- (a) There shall be paid out of the general account of the Fund, such monies as are approved for repair and maintenance of public roads.
- (b) There shall be paid out of the local authority's account of the Fund, such monies as may be approved by the Advisory Committee for the repair and maintenance of unclassified roads.

(5) All receipts, savings and accruals to the Fund and the balance of the Fund at the end of each financial year shall be retained for the purposes for which the Fund is established.

(6) *Repealed by Act No. 9 of 2000, s. 129.*

[Act No. 3 of 1994, s. 7, Act No. 8 of 1997, s. 69,
Act No. 5 of 1998, s. 66, Act No. 9 of 2000, s. 129.]

8. *Repealed by Act No. 9 of 2000, s. 130.*

8A. Advisory Committee

The officer administering the Fund shall, by order published in the *Gazette*, establish an Advisory Committee to advise him on the manner of allocation of the funds in the local authority account of the Fund comprising—

- (a) two persons appointed by the Permanent Secretary of the Ministry for the time being responsible for local government, one of whom shall be appointed chairman;

Road Maintenance Levy Fund

- (b) two persons appointed by the Permanent Secretary of the Ministry the time being responsible for Public Works; and
- (c) two persons appointed by the Permanent Secretary of the Ministry for the time being responsible for finance.

[Act No. 8 of 1997, s. 70.]

9. Offences

(1) Any person who, without reasonable cause, fails to comply with an Order made under section 3 or refuses to pay the levy, shall be guilty of an offence and liable to a fine not exceeding three million shillings or to imprisonment not exceeding three years or to both.

(2) A marketer who, without reasonable cause, fails or refuses to register under section 4 as a remitter shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings or to imprisonment not exceeding one year or to both, and without prejudice to sections 6 and 6A the collector shall in any such case assess and collect any monies due to the Fund notwithstanding any penalty imposed on the marketer under this section.

[Act No. 3 of 1994, ss. 8 and 9.]

10. Amendment of Schedules

The Minister may by notice published in the *Gazette* amend any of the Schedules.

11. Regulations

The Minister may make regulations generally as may appear to him necessary or expedient for the proper carrying out of the intent and purposes of this Act.

FIRST SCHEDULE

[Section 2, Act No. 3 of 1994, s. 9.]

LIST OF MARKETERS

1. Esso Kenya Limited.
2. Kenya Shell Limited.
3. Total Kenya Limited.
4. Caltex Oil (Kenya) Limited.
5. Agip (Kenya) Limited.
6. Kobil Petroleum Limited.

Road Maintenance Levy Fund

- 7. Kenya Oil Company.
- 8. British Petroleum (BP Kenya) Limited.

SECOND SCHEDULE

[Section 4, Act No. 3 of 1994, s. 9.]

Form 1

REGISTRATION FORM

Registration of marketer as required by section 4 of the Road Maintenance Levy Fund Act, 1993

- 1. Name of Marketer
- 2. Postal Address
- 3. Place of Business.....
 - Road/Street
 - Town
- 4. Date Signed

Note:- This registration form must be forwarded to Chief Engineer Roads, Ministry of Public Works and Housing, P.O. Box 30260, Nairobi.

THIRD SCHEDULE

[Section 5(2)]

Form 2

(In Triplicate)

REPUBLIC OF KENYA
 MINISTRY OF ROADS AND PUBLIC WORKS
 ROAD MAINTENANCE LEVY FUND ACT
 (Cap. 425D)
 FORM FOR PAYMENT OF LEVY
To be completed by remitter

- 1. Name of Remitter
- 2. Personal Identification Number (PIN)
- 3. Customs Code Number
- 4. Address of remitter

Road Maintenance Levy Fund

THIRD SCHEDULE—*continued*

6. Petroleum fuels entered for home use and the levy payable:

Tariff number	Tariff description	Quantity entered (litres 1,000s)	Amount of levy payable
TOTAL LEVY PAYABLE			

I CERTIFY that the levy payable to the Commissioner of Customs is Kshs
 for which payment has been made vide

Date Signed
(Remitter)

(For Official Use Only)

Amount received:
 Kshs

Date Signed
For: Commissioner of Customs

Form 3 (s. 5(2))
 (In Triplicate)

REPUBLIC OF KENYA
 ROADS MAINTENANCE FUND ACT, 1993
[Cap. 426D]

RETURN OF ROAD MAINTENANCE LEVY BY MARKETER TO MINISTER
 To be completed by Remitter

For the month of

PRODUCT	VOLUME	LEVY PAID (KSHS)
Total		

Road Maintenance Levy Fund

THIRD SCHEDULE—continued

Name of Remitter Pin No.

Date

Signed
Remitter

Form 4 (s. 5(4))

REPUBLIC OF KENYA
ROAD MAINTENANCE FUND ACT, 1993
[Cap. 426D.]

RETURN OF ROAD MAINTENANCE LEVY BY COLLECTOR

MARKETER	TYPE OF PETROLEUM PRODUCTS & VOLUMES			LEVY PAID
	Motor Spirit Super	Motor Spirit Regular	Automotive Diesel	
TOTAL				

Date:

Signed
For: Commissioner of Customs