



CALL FOR COMMENTS & INVITATION FOR PUBLIC PARTICIPATION ON THE REVIEW OF ROAD MAINTENANCE LEVY FUND (IMPOSITION OF LEVY) ORDER, 2016



KENYA ROADS BOARD

In exercise of the powers conferred by Section 3 of the Road Maintenance Levy Fund Act, the Cabinet Secretary for Roads and Transport, in consultation with the Cabinet Secretary, National Treasury is seeking to review the Road Maintenance Levy Fund (Imposition of Levy) Order, 2016.

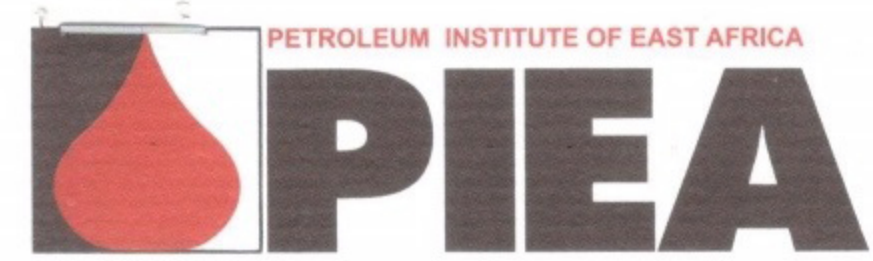
The Ministry of Roads and Transport proposes an amendment to the Road Maintenance Levy Fund (Imposition of Levy) Order, 2016 by increasing the Road Maintenance Levy on petrol and diesel.

Pursuant to Article 10 of the Constitution of Kenya on public participation the ministry, through this Notice, hereby invites members of the public and stakeholders to various public participation forums to be conducted on **Monday, 8th July 2024 from 9:00a.m. to 5:00p.m. as follows:**

S/No.	REGION	VENUE
1	Nairobi	8th Floor, Boardroom, Transcom House (Ministry Headquarters)
2	Central	KRB Regional Office, Off Ruringu Road, Nyeri
3	North Rift	KURA Regional Office, Pioneer-Cherunya-Lungas Road, Eldoret
4	South Rift	KRB Regional Office 1st Floor, Public Works Building, Nakuru-Sigor Road, Nakuru
5	Upper Eastern	KRB Regional Office Off A10 Isiolo-Wajir Road, Isiolo
6	Lower Eastern	KeRRA Regional Office, Off Makutano Chumvi Machakos, opposite Machakos School, Machakos
7	Nyanza	KRB Regional Office Mezzanine Floor, Lake Basin Mall, Kisumu-Kakamega Road, Kisumu
8	North Eastern	KRB Regional Office Off A3-Boys Town Secondary School Road, Garissa
9	Coast	KeNHA Regional Office, 2nd Floor, Ministry of Public Works Building, Off Shimanzi Road, Mombasa

Written memoranda/comments may be submitted on email to: magumbi@krb.go.ke or hand delivered to the Director General, Kenya Roads Board, Kenya Re Towers, 6th Floor, Upperhill, Nairobi and all Regional Offices indicated above to be received by **Friday 5th July, 2024 at 5:00p.m.**

Ministry of Roads and Transport
8th Floor, Transcom House, Ngong Road
P.O. Box 52692 - 00200, Nairobi



Bruce House, 4th Floor, Standard Street .P.O Box 8936, 00200 Nairobi .Tel: 2249081/3313046/7
Fax: 3313048 .Mobile: 0722 221120 .Website: www.petroleum.co.ke .Email: admin@petroleum.co.ke

SUBMISSION OF PETROLEUM INDUSTRY COMMENTS ON THE REVIEW OF ROAD MAINTENANCE LEVY FUND (IMPOSITION OF LEVY ORDER, 2016)

Submitted to

**THE DIRECTOR GENERAL, KENYA ROADS BOARD
THE CABINET SECRETARY MINISTRY OF ROADS AND TRANSPORT
THE CABINET SECRETARY, NATIONAL TREASURY**

Presented By

**WANJIKU MANYARA, GENERAL MANAGER,
PETROLEUM INSTITUTE OF EAST AFRICA (PIEA)**

4TH JULY 2024 - NAIROBI, KENYA



1.0 INTRODUCTION

- The Petroleum Institute of East Africa (PIEA) is the leading professional industry association in the oil and gas industry in the region and part of our mandate is to advocate that Kenyan laws and policies support socio-economic development.
- PIEA has over 70 members and represents over 80% of Kenya's oil and gas sector including manufacturing value add industries in the petroleum sector. Our membership is drawn from large, medium, small Oil Marketing Companies (OMCs), vital petroleum common user facilities (including the Kenya Petroleum Refinery and the Kenya Pipeline Company), as well as oil and gas service providers like transporters, financial institutions and engineering consulting firms, amongst others
- The petroleum industry has and continues to play a significant role in the Country's petroleum, energy and manufacturing sectors in line with achieving the objectives for the Country to attain vision 2030 and the Government's Bottom-up Economic Transformation Agenda (BETA).

2.0 PROPOSED AMENDMENT TO THE ROAD MAINTENANCE LEVY FUND TO RAISE THE LEVY FROM KSH18 PER LITRE OF FUEL TO KSH25

In response to the call for public participation on the afore-referenced Levy Fund Order, we wish submit our dissent to the same based on the justifications below:

- The recent drastic increase in fuel prices in Kenya on account of global geopolitical tensions in the recent years has caused **adverse effects on the cost of living, businesses and the economy** leading to public outcry particularly in light of the attempt to recover economically amidst Kenya's bludgeoning debt and tax burden.
- In light of this, the President has now withdrawn the Finance Bill 2024 and directed for the review of the National Budget with a view of providing appropriate relief to Kenyans.
- It is our humble submission that **an increase of Ksh 7 to this levy through the fuel pump price at this time will negate all the efforts and gains** that Government has consistently been making to lower the prices of fuel in Kenya exemplified through the Government-to-Government Importation model that was implemented in 2023.
- As you are aware the Kenya petroleum **price components include product costs, distribution and storage costs, margins, taxes and levies**. This followed a review of the same by the Energy Petroleum and Regulatory Authority (EPRA) through the Cost-of-Service Study in the Supply of Petroleum Products (COSSOP Study) in 2018. The study which is currently being reviewed this year aimed to comprehensively assess the costs and margins across the petroleum supply chain, with the costs of supply chain activities being separated while seeking ways to improve efficiencies and transparency.
- There are **currently nine (9) taxes and levies** which impact the price of petroleum and petroleum products that the industry pays upfront which we submit are a critical element in the increased retail pump prices. This are: Excise Duty, Road Maintenance Levy, Value Added Tax (VAT), Petroleum Development Levy, Import Declaration Fee, Railway Regulatory Levy, Petroleum Regulatory Levy, Merchant Shipping Levy and the Anti-adulteration Levy.
- Pursuant to the Finance Act 2023, the **Value Added Tax (VAT)** on Super Petrol (PMS) Diesel (AGO) and Kerosene (IK) **have been revised from 8% to 16%** that became effective 1st July 2023. Further, the Ministry of Energy and Petroleum Cabinet Secretary Davis Chirchir on February 15, 2024 published the Energy (Energy and Petroleum Regulatory Authority Petroleum Levy) Regulations,

2024 giving effect to an increase of the Petroleum Regulatory Levy to KSh 0.75 per litre up from KSh 0.25.

- While there is nothing, we can do to control **Crude Oil Prices** and the **strength of the Kenya Shilling against the US Dollar**, Government can certainly control the amount of **taxes and levies which account for 43-46% of petroleum retail prices**.
- PIEA submits that the proposed amendment to the Road Maintenance Levy Fund will have adverse implications to the Petroleum Industry players including a negative impact to Kenyans livelihoods that will arise from the increase of the current petroleum pump prices **without having due regards to the current economic realities**.
- Certainty of the law** is especially critical in legislation that imposes taxes, fees and levies on members of the public. The fundamental principle of rule of law as encapsulated in **Article 10 of the Constitution** is that the law must be certain, clear and a true reflection of economic realities, which in this case it is not.
- Further this proposal violates the **principles of public finance** under **Article 201 of the Constitution** particularly that the public finance system shall **promote an equitable society that ensures the burden of taxation is shared fairly**.
- Consequently, due to the **inflationary impact of petroleum prices** on other critical sectors such as manufacturing, transport, electricity and energy production, military and tourism, it is critical that any adjustment that will impact petroleum pump prices be preceded by a review and justification of the current elements relating to the same.
- Despite the Petroleum Industry massive contributions towards the Road Maintenance Levy, we wish to bring to your attention the **dilapidated state of the roads that surround all the petroleum depots** in the country (notably in the Nairobi, Mombasa, Kisumu and Konza areas) resultant from the incomplete rehabilitation owing to insufficient funding allocation. These roads have now become a serious safety- and security risk for petroleum fuel tankers and depot installations. (This have repeatedly exemplified through our prior separate communications with yourselves and the Kenya Urban Roads Authority).
- Rather than increase of tax on essential products the Government should have **prudent utilization and the elimination of wastage of resources** on non-essentials supplies or through **rampant corruption** as is repeatedly reported by the office of the Auditor General (OAG) as well as the adoption of **innovative strategies on tax reform and the expansion of the tax base and the promotion of equitable distribution of wealth and equitable distribution of taxes**.
- In the spirit of concessions, the process of public participation to amend section 3 of the Road Maintenance Levy Fund Act so as to increase fuel Levies on petroleum Fuels should thus be halted. The public mood is not right to propose any increase in fuel levies. We must listen to what Kenyans, specifically the young Generation Z are saying right now.

CONCLUSION

We trust that you will consider our proposals to spur economic development and maintain Kenya's competitiveness in Petroleum Industry. These proposals are aligned with the best fiscal and economic interests of the country. We humbly submit.

Yours faithfully,

Wanjiku Manyara,
General Manager