



SWAZILAND GOVERNMENT GAZETTE EXTRAORDINARY

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PUBLISHED BY AUTHORITY

PART A

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THE SWAZILAND REVENUE AUTHORITY BILL, 2006 (Bill No. 5 of 2006)

(To be presented by the Minister of Finance)

MEMORANDUM OF OBJECTS AND REASONS

The object of this Bill is to provide for -

- (a) the establishment of the Swaziland Revenue Authority;
- (b) the definition of powers and functions of the Governing Board of the Authority;
- (c) the transfer from the Government to the Authority of the functions and powers of the Department of Income Tax and the Department of Customs and Excise;
- (d) the transfer from the Government to the Authority the assets and liabilities used by the said Departments; and
- (e) matters connected with or incidental to the foregoing.

M. J. DLAMINI
Attorney-General

A BILL Entitled

An Act to establish the Swaziland Revenue Authority and to provide for matters incidental thereto.

ENACTED by the King and the Parliament of Swaziland

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**PART I
PRELIMINARY**

Short title and commencement.

- 1. This Act may be cited as the Swaziland Revenue Authority Act, 2006, and shall come into operation on such date as the Minister may, by Notice published in the Gazette determine.

Interpretation.

- 2. (1) In this Act, unless the context otherwise requires-

“Authority” means the Swaziland Revenue Authority established under section 3;

“Board” means the Governing Board established under section 6;

“Chairman” means the Chairman appointed under section 5;

“Commissioner General ” means the Commissioner General appointed under section 15;

“date of commencement” means the date referred to in section 1;

“Department” means either the Department of Income Tax or the Department of Customs and Excise;

“member” means a member of the Governing Board appointed under section 6;

“Minister” means the Minister responsible for Finance;

“revenue” means taxes, duties, fees, levies, fines or other monies charged or collected pursuant to the laws specified under section 4 (2) (a) or any other revenue law;

“revenue law” means any law, in terms of which revenue is collected, and includes the specified provisions in the laws in the Schedule; and

"Secretary" means the Secretary of the Authority appointed under section 16;

(2) Whenever in this Act reference is made to property, rights, liabilities and obligations of the Departments, such reference shall be read and construed as a reference to the property, rights, liabilities and obligations of the Government, in so far as such property, rights, liabilities and obligations relate to the Departments.

PART II SWAZILAND REVENUE AUTHORITY

Establishment of the Authority.

3. There is hereby established the Swaziland Revenue Authority which shall be a body corporate with perpetual succession and a common seal, capable of suing and of being sued in its corporate name, and with power, subject to the provisions of this Act, to do all such acts and things as a body corporate may by law do or perform.

Powers and Functions of the Authority.

4. (1) The Authority shall be responsible for the assessment and collection of all revenue on behalf of the Government.

(2) Without prejudice to the generality of subsection (1), the Authority shall-

- (a) administer and give effect to the laws or the specified provisions of the laws set out in the Schedule and account for all revenue to which those laws apply;
- (b) study the revenue laws and identify amendments which may be made to any revenue law for the purposes of improving the administration of, and compliance with, revenue laws;
- (c) advise the Minister on matters of policy relating to all revenue, whether or not that revenue is referred to in a law set out in the Schedule;
- (d) calculate the administrative costs, compliance costs and the operational impact of existing revenue and intended revenue charges and to advise the Minister accordingly;
- (e) promote compliance with the revenue laws;
- (f) take such measures as may be required to counteract tax or revenue fraud and other forms of tax or revenue evasion;
- (g) to ensure that all revenue collected is, as soon as reasonably practicable, credited to the Swaziland Government General Account; and,
- (h) subject to the laws set out in the Schedule, perform such other functions relating to revenue as the Minister may direct.

(3) In the discharge of its functions the Authority shall have the power to-

- (a) collect and process statistical data needed to provide forecasts of revenue receipts and the effect on yield of any proposals for changes in the revenue laws and to advise the Minister accordingly;

- (b) enter into agreements with the Treasury and other Government departments on the revenue collection modalities and targets for any financial year;
- (c) set objectives and work targets appropriate to each revenue department and monitor progress in achieving them;
- (d) subject to the provisions of this Act, take such other measures as it considers necessary or desirable for the achievement of the purposes or provisions of the revenue laws.

Seal of the Authority.

5. (1) The seal of the Authority shall be such device as may be determined by the Board and shall be kept by the Secretary.

(2) The Board may use a wafer or rubber in lieu of the seal.

(3) The affixing of the seal shall be authenticated by the Chairman of the Board and the Secretary or some other person authorized in that behalf by a resolution of the Board.

(4) Any contract or instrument which, if entered into or executed by a person not being a body corporate, would be required to be under seal may be entered into or executed without seal on behalf of the Authority by the Secretary or any other person generally or specifically authorized by the Board in that behalf.

(5) Any document purporting to be a document under the seal of the Authority or issued on behalf of the Authority shall be received in evidence and shall be deemed to be executed or issued, as the case may be, without further proof, unless the contrary is proved.

PART III

ESTABLISHMENT AND COMPOSITION OF THE BOARD

Establishment of the Governing Board.

6. (1) There is hereby established the Governing Board for the Authority, which shall consist of-

- (a) a Chairman, who shall be appointed by the Minister;
- (b) the Principal Secretary in the Ministry of Finance;
- (c) the Principal Secretary in the Ministry of Enterprise and Employment;
- (d) the Governor of the Central Bank of Swaziland;
- (e) three other members appointed by the Minister; and
- (f) the Commissioner-General, who shall be an ex-officio member of the Board.

(2) The Chairman and the members referred to in subsection (1) (e) shall be appointed by the Minister on the basis of their integrity, knowledge, qualification, and experience in commerce, economics, law, taxation or such other matters of revenue as the Minister may determine.

(3) The Minister shall designate one of the members appointed in terms of subsection (1) (e) to be Vice-Chairman.

Powers and Functions of the Governing Board.

7. (1) The Board shall be a statutory organ responsible for the formulation and implementation of the policy of the Authority.

(2) The Minister may give to the Board such general directives with respect to the carrying out of its functions under this Act as he considers necessary or expedient and the Board shall give effect to such directives, but only the Authority shall have power to give effect to the laws specified under section 4.(2) (a).

(3) The Board may delegate to the Commissioner General or to any member or committee, the power and authority to carry out, on behalf of the Authority, such functions of the Board as the Board may determine.

(4) In the discharge of its functions under this Act, the Board may-

- (a) direct the Commissioner General to furnish it with any information, report or other document which the Board considers necessary for the performance of its functions;
- (b) give direction to the Commissioner General in connection with the management, performance, operational policies and implementation of such policies of the Authority;
- (c) on the recommendation of the Commissioner General, approve such organisational structures as the Commissioner General may consider necessary for the discharge of the functions of the Authority;
- (d) prescribe such administrative measures as may be required to safeguard all revenue;
- (e) approve a code of conduct for the Authority.

(5) The Board shall not interfere in the determination of any tax assessment, tax liability of or tax appeal by, any taxpayer.

Tenure of office and vacancy.

8. The members referred to in section 6 (1) (a) and (e) shall hold office for a period not exceeding three years from the date of appointment and may be re-appointed for one further term of three years.

Disqualification from membership.

9. (1) A person shall not be eligible for appointment as a member, or be qualified to hold office if that person has-

- (a) in terms of the laws of any country-
 - (i) been declared insolvent and has not been discharged; or
 - (ii) made an assignment, arrangement or composition with his or her creditors which has not been rescinded or set aside;
- (b) within a period of 10 years preceding the date of his or her appointment been convicted of a criminal offence involving dishonesty;
- (c) a proven record of tax or revenue evasion;

- (d) become an employee or contractor of the Authority;
- (e) become a member of either of the Houses of Parliament.

Removal from membership.

10. (1) The Minister may remove a member from the Board where-
- (a) that member is absent without reasonable excuse from three consecutive meetings of the Board of which the member has had notice; or
 - (b) that member has been certified by a medical practitioner to be physically or mentally incapable of performing his or her duties efficiently;
 - (a) that member ceases to be a representative of the organization which nominated that member;
 - (c) that member contravenes any of the provisions of this Act or otherwise misconducts himself or herself to the detriment of the objectives of the Board;
 - (d) that member has been found guilty of professional misconduct by a tribunal, board or other body constituted for the purpose of adjudicating on a matter of discipline or conduct;
 - (e) that member fails to comply with the provisions of section 14;
 - (f) if any of the circumstances set out in section 9 arise.

(2) A member appointed in terms of section 6 (1) (a) or (e) may resign upon giving one month's notice in writing to the Minister.

Filling of Vacancy.

11. Where the office of a member becomes vacant before the expiry of the term of office of that member, the Minister shall, in accordance with section 6, appoint another person to be a member in place of the member whose office has become vacant.

Remuneration and allowances.

12. (1) A member of the Board shall be paid such remuneration or allowances as the Minister may determine.

(2) The remuneration and allowances of the Board shall be charged to the Authority.

Quorum and Proceedings of the Board.

13. (1) The quorum for meetings of the Board shall be five members, including the Chairman or the Vice-Chairman.

(2) Subject to this section, the Board may make regulations and procedures to govern its conduct in line with principles of good corporate governance.

(3) The Board shall meet at least once every three months.

(4) All decisions of the Board shall be made by simple majority of the vote of the members present and, in the event of an equality of votes, the person presiding shall have a casting vote.

Disclosure of Interest.

14. (1) Where a member has an interest, whether direct or indirect, in the private capacity of that member, in any matter and is present at a meeting of the Board or committee of the Board at which the matter is the subject matter of consideration by the Board or committee, that member shall, as soon as is practicable after the commencement of the meeting, disclose all the material facts pertaining to that member's interest in the matter and this disclosure shall be recorded in the Minutes of that meeting.

(2) A member referred to in subsection (1) shall not take part in any consideration or discussion of, or vote on any question relating to the matter.

(3) A member who contravenes this section commits an offence and shall on conviction be liable to a fine not exceeding E10, 000 or to a term of imprisonment not exceeding three months.

(4) The Minister may, from time to time, by Notice published in the Gazette, vary the penalty prescribed subsection (3).

PART IV
ADMINISTRATION OF THE AUTHORITY

Commissioner-General.

15. (1) The Minister shall, acting on the recommendation of the Board, appoint a Commissioner-General of the Authority, who shall be a person who:

- (a) possess at least a Masters Degree majoring in taxation and including law, business administration, accounting, finance, or economics; and
- (b) has at least 10 years experience in a managerial position, dealing with taxation, law or finance issues.

(2) The Commissioner-General shall be chief executive officer of the Authority, and shall, subject to the general supervision and control of the Board, be responsible for the-

- (a) execution of the functions of the Board;
- (b) implementation of the decisions of the Board;
- (c) day to day operations of the Authority;
- (d) management of the funds property and business of the Authority; and
- (e) administration, organisation and control of the other officers and staff of the Authority.

(3) The Commissioner-General shall devote his time to the duties of his office and shall not engage in any business, profession occupation or paid employment elsewhere.

(4) The Minister may, acting on the recommendation of the Board, terminate the appointment of the Commissioner-General for-

- (a) gross misbehaviour;

- (b) inability to perform the functions of the office; or
- (c) any other sufficient cause.

Secretary and other staff.

16. (1) There shall be a Secretary to the Board who shall be appointed by the Board on such terms and conditions as the Board may determine.

(2) The Secretary shall record and keep proper Minutes of the Board and be under the general supervision and direction of the Commissioner-General.

(3) The Board may, subject to the approval of the Minister, establish such organizational structures as it may consider necessary for the discharge of the functions of the Authority.

(4) Subject to the provisions of subsection (3), the Board may appoint such other staff of the Authority as may be necessary for the efficient and effective execution of the functions of the Authority on such terms and conditions as the Board may determine.

Reference to Commissioner of Customs or Commissioner of Income Tax

17. On or after the date of commencement, reference in any written law or any other legal document to the Commissioner of Taxes, or the Commissioner of Customs and Excise shall be read and construed as reference to the Commissioner-General appointed under section 15 of this Act.

**PART V
TRANSITIONAL AND OTHER PROVISIONS**

Disengagement of Departments.

18. When the Minister is satisfied that all necessary agreements and arrangements have been made for the disengagement of the Departments from the Government, he shall cause the Notice referred to in section 1 to be published in the Gazette.

Transfer of assets and liabilities of Departments to the Authority.

19. (1) On the date of commencement there shall be transferred to, and vest in, or subsist against, the Authority by virtue of this Act and without further assurance-

- (a) the affairs of the Departments; and

(b) all property, rights, liabilities and obligations which immediately before the date of commencement were the property, rights, liabilities and obligations of the Departments.

(2) Except as provided in this Act, every deed, bond or agreement (other than an agreement for personal service) to which either of the Departments was a party immediately before the commencement of this Act, whether in writing or not, and whether or not of such nature that the rights, liabilities and obligations thereunder could be assigned, shall, unless its subject-matter or terms make it possible that it should have effect as modified in the manner provided by this subsection, have effect as from the date of the commencement of this Act thereof, as if-

- (a) the Authority had been a party thereto;

- (b) for any reference to either of the Departments there were substituted, as respects anything falling to be done on or after the commencement of this Act, a reference to the Board; or
- (c) for any reference to any other officer of either of the Departments not being a party thereto and beneficially interested therein there were substituted, as respects anything falling to be done on or after the commencement of this Act, a reference to such officer of the Authority as the Board may designate.

(3) Subject to subsection (2), documents other than those referred to in that subsection which refer specifically or generally to either of the Departments shall be construed in accordance with the said subsection as far as applicable.

Registration of property transferred by Government

20. (1) Where under this Act, any property, rights, liabilities or obligations of either of the Departments are deemed transferred in respect of which transfer any law requires registration, the Government authority concerned shall make an application in writing to the appropriate registration authority for the registration of such transfer and such authority shall make such entries in the appropriate register as shall give effect to such transfer.

(2) In executing the transfer, the registering authority shall, where appropriate, issue to the transferee concerned a certificate of title in respect of the said property or make necessary amendments to the register, as the case may be, and if presented therefore, make endorsement on the deeds relating to the title, right or obligation concerned.

(3) Registration fee, stamp duty or other duties shall not be payable in respect of any registration, transfer or endorsement done in terms of this section.

Legal proceedings.

21. (1) Without prejudice to the other provisions of this Act, where any right, liability or obligation vests in, or subsists against, the Authority by virtue of this Act, the Authority and all other persons affected thereby shall, as from the date of commencement of this Act, have the same rights, powers and remedies (and in particular the same rights as to the instituting or defending of the legal proceedings or the making or resisting of applications to any authority) for ascertaining, perfecting or enforcing that right, liability or obligation as they would have had if it had at all times been a right, liability or obligation of the Authority.

(2) Any legal proceedings or application to any authority pending immediately before the date of commencement of this Act by or against either of the Departments may be continued by or against the Authority.

(3) After the commencement of this Act, proceedings in respect of any right, liability or obligation which was vested in, held, enjoyed, incurred, suffered by, or subsisted against either of the Departments may be instituted by or against the Authority.

PART VI FINANCIAL MATTERS

Funds of the Authority.

22. (1) The funds of the Authority shall consist of such moneys as may:-

- (a) be appropriated by Parliament for the purpose of the Authority;

(b) be paid to the Authority by way of grants or donations; and

(c) vest in or accrue to the Authority

(2) The Authority may-

(a) accept money by way of grants or donations from any source;

(b) subject to subsections (4), and (5), raise money by ways of loans or otherwise from any source in Swaziland and, subject to the approval of the Minister, from any source outside Swaziland; or

(c) charge and collect fees in respect of programmes, publications, seminars, consultancy services and other services provided by the Authority.

(3) There shall be paid from the funds of the Authority-

(a) the salaries, allowances and loans of the staff of the Authority;

(b) such reasonable travelling, transport and subsistence allowances for members or members of any committee of the Governing Board when engaged on the business of the Board at such rates as the Board may determine; and

(c) any other expenses incurred by the Authority in the performance of its duties.

(4) The Authority shall not enter into any financial agreement without the prior approval of the Board.

(5) Where a financial agreement has major financial implications for Government, the Board shall obtain the prior approval of the Minister.

(6) Subject to subsections (4) and (5), the Board may, in such manner as it thinks fit, invest such of its funds not being revenue as it does not immediately require for the performance of its functions.

(7) For the purposes of this section, "major financial implication" means where, in terms of a financial agreement, Government is, or may be, obliged to appropriate or guarantee an amount which is in excess of 10% of the budget of the Authority.

Financial Year.

23. The financial year of the Authority shall be the period of twelve months ending on 31st March in each year.

Accounts.

24. (1) The Governing Board shall cause to be kept proper books of account and other records relating to the accounts of the Authority.

(2) The accounts of the Authority shall be audited annually by independent auditors appointed by the Authority.

Annual reports.

25. (1) As soon as practicable, but not later than three months after the expiry of the financial year, the Board shall submit to the Minister a report concerning its activities during the financial year.

(2) The report referred to in subsection (1) shall include information on the financial affairs of the Authority and there shall be appended to the report-

- (a) an audited balance sheet;
- (b) an audited statement of income and expenditure; and
- (c) such other information as the Minister may require.

(3) The Minister shall, not later than seven days after the first sitting of Parliament next after the receipt of the report referred to in subsection (1), lay it before Parliament.

**PART VII
MISCELLANEOUS**

Immunity.

26. An employee of the Authority or member of the a Board shall not be liable in his or her personal capacity in civil or criminal proceedings in respect of any act or omission done in good faith in the performance of that employee's functions under this Act.

Savings.

27. Subject to the provisions of this Act, any right of any person, including a right of appeal, subsisting against the Commissioner of Taxes, or the Commissioner of Customs and Excise immediately before the commencement of this Act shall after commencement be treated as subsisting against the Commissioner-General in so far as that right relates to the duties of the Commissioner-General under this Act.

Schedule.

28. The Minister may from time to time, by Notice published in the Gazette, amend the Schedule.

Regulations.

29. The Minister may make Regulations for the better carrying out of the provisions of this Act.

Application of the Public Enterprise (Control and Monitoring) Act.

30. The Public Enterprises (Control and Monitoring) Act, 1989, shall apply, mutatis mutandis, to the Revenue Authority.

SCHEDULE

Revenue laws to be Administered by the Swaziland Revenue Authority

- 1. The Registration of Dogs Act, 1953

2. The Income Tax Order, 1975
3. The Stamp Duties Act, 1970
4. The Customs and Excise, 1921
5. Fuel Oil Levy Act, 1980
6. Sales Tax Act, 1983
7. Trading Licences Order, 1975
8. Transfer Duty Act, 1902
9. Liquor Licence Act 1964
10. Companies Act, 1912
11. Sugar Export Levy Act, 1997
12. Lotteries Act, 1943
13. Cattle Export and Slaughter Tax Act, 1968
14. Graded Tax Act, 1968
15. Road Transportation Act, 1963
16. Such other law as may be enacted from time to time for the purpose of mobilization and collection of revenue.