



SWAZILAND GOVERNMENT GAZETTE

VOL. XLIX]

MBABANE, Friday NOVEMBER 11th 2011

[No. 119

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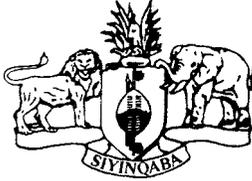
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PART B

SI

THE INCOME TAX (AMENDMENT) ACT, 2011

(Act No. 11 of 2011)



I ASSENT

MSWATI III
King of Swaziland

26th October, 2011

AN ACT ENTITLED

AN ACT to amend the Income Tax Order 1975.

ENACTED by the King and the Parliament of Swaziland.

Short Title and Commencement

1. (1) This Act may be cited as the Income Tax (Amendment) Act, 2011, shall be read as one with the Income Tax Order, 1975, (hereinafter referred to as the "Order").

(2) This Act shall come into operation on a date to be announced by the Minister by notice published in the Gazette.

Amendment of Section 2

2. Section 2 of the Order is amended -

(a) by replacing, the definition of "assessment" with the following new definition of "assessment" -

"assessment" means the determination by the Commissioner, by way of a notice of assessment (including a notice of assessment in electronic form) served in a manner contemplated in section 67(2) -

(a) of an amount upon which any tax leviable under this Order is chargeable; or

(b) of the amount of any tax payable; or

(c) of any loss ranking for set-off,

by a taxpayer for a year of assessment under this Order, including a deemed assessment under section 33^{ter} and, for the purposes of Part VI, includes any determination by the Commissioner in respect of any of the reductions referred to in section 8, and any decision of the Commissioner which is in terms of this Order subject to objection and appeal;"

(b) by adding, in the alphabetical order, the following new definitions –

“associate” means any person, not being an employee, who acts or is likely to act in accordance with the directions, requests, suggestions, or wishes of another person whether or not they are in a business relationship and whether those directions, requests, suggestions or wishes are communicated to the first-mentioned person, including –

- (a) a relative of the person, unless the Commissioner is satisfied that neither person acts in accordance with the directions, requests, suggestions, or wishes of the other person;
- (b) a partner of the person, unless the Commissioner is satisfied that neither person acts in accordance with the directions, requests, suggestions, or wishes of the other person;
- (c) a partnership in which the person is a partner where the person, either alone or together with an associate or associates controls 50 percent or more of the rights to income or capital of the partnership either directly or through one or more interposed companies, partnerships, or trusts; or
- (d) the trustee of a trust under which the person or an associate benefits or may benefit;
- (e) a company in which the person, either alone or together with an associate or associates, controls 50 percent or more of the voting power in the company either directly or through one or more interposed companies, partnerships, or trusts;
- (f) where the person is a partnership, a partner in the partnership who, either alone or together with an associate or associates, controls 50 percent or more of the rights to income or capital of the partnership either directly or through one or more interposed companies, partnerships, or trusts;
- (g) where the person is the trustee of a trust, any other person or an associate of such other person who benefits or may benefit under the trust;
- (h) where the person is a company –
 - (i) a person who, either alone or together with an associate or associates, controls fifty percent (50%) or more of the voting power in the company, either directly or through one or more interposed companies, partnerships, or trusts; or
 - (ii) another company in which the person referred to in sub-paragraph (i), either alone or together with an associate or associates, controls fifty percent (50%) or more of the voting power in that other company, either directly or through one or more interposed companies, partnerships, or trusts;”

“insurance business” means the business of issuing or undertaking liability under life policies or policies to make good or indemnify the insured against any loss or damage, including liability to pay damages or compensation contingent upon the happening of a specified event;”

“pensionable salary” means a member’s basic salary and excludes any allowance which has not been specifically designated as pensionable;”

Amendment of Section 5

3. Section 5 of the Order is amended, by replacing section 5 with the following new section 5 -

“Preservation of secrecy

5. (1) Subject to this section, every person appointed under, or employed in carrying out the provisions of this Order shall preserve and aid in the preservation of secrecy with regard to all information or documents which may come to the knowledge of that person in connection with the performance of the duties of that person under this Order, and shall not communicate any such information or the contents of such documents to any person other than the taxpayer or the lawful representative of that person not suffer any such person to have access to any documents in the possession or custody of the Commissioner except in the performance of the duties of the Commissioner under this Order or by order of a court.

(2) Subject to subsection (3) and (4), subsection (1) does not prohibit the disclosure of information or documents to -

- (a) the Attorney General or any legal practitioner acting on behalf of the Commissioner for the purpose of seeking the advice of, or instructing, that person; or
- (b) the Auditor General or any officer duly authorised by him in the performance of his duties under the Finance and Audit Act;
- (c) the Director of Statistics in relation to any person as may be required by the Director of Statistics for the performance of his powers and duties under the Statistics Act;
- (d) the Commissioner of Customs and Excise, as are required for the performance of his duties under the Sales Tax Act;
- (e) the Commissioner for Human Rights and Public Administration to the extent necessary for performing the functions and exercising the powers of the Commission on Human Rights and Public Administration;
- (f) the Commissioner of the Anti Corruption Commission acting under the Prevention of Corruption Act, to the extent necessary for performing the functions and exercising the powers of the Anti Corruption Commission;
- (g) a Director of the Financial Intelligence Unit as may be required for purposes of exercising any power or performing any function or duty under the money laundering and financing of terrorism (prevention) law;
- (h) the Director of Public Prosecutions as may be relevant to the prosecution of any offence committed in terms of this Order or any other Act administered by the Commissioner;
- (i) any person being a consultant to or an officer employed by the Government who is approved by the Minister to receive such confidential information; or
- (j) the competent authority of the Government of a country with which an agreement for the avoidance of double taxation or for the exchange of information exists, to the extent permitted under that agreement.

(3) The information obtained by the Commissioner in the performance of the powers and duties of the Commissioner under this Order or any previous law relating to income tax may be used by the Commissioner for the purposes of any other fiscal law administered by the Commissioner.

(4) The Commissioner shall disclose to the Minister of Finance information in respect of any taxpayer or any other class of taxpayers, to the extent necessary for the purposes of tax policy design or revenue estimation.

(5) Every person appointed or employed in carrying out the provisions of this Order and every person to whom confidential information is disclosed under paragraphs (b) to (i) of subsection (2), shall make an oath or declaration of secrecy in such manner and form as may be prescribed.

(6) Subject to subsection (7), a person shall not in any manner publish or make known to any other person (not being an officer carrying out his duties under the control, direction or supervision of the Commissioner) the contents or tenor of any instruction or communication given or made by the Commissioner or any such officer in the performance of his duties under this Order for or concerning the examination or investigation of the affairs of any taxpayer or class of taxpayers or the fact that such instruction or communication has been given or made, or information concerning the tax matters of a taxpayer or class of taxpayers.

(7) The provisions of this subsection shall not be construed –

- (a) as preventing any taxpayer or his representative who is or may be affected by any such examination, investigation or furnishing of information from publishing or making known information concerning his own tax matters; or
- (b) subject to the provisions of subsection (1), as in any way limiting the duties or powers of the Commissioner or any such officer; or
- (c) as preventing any person from publishing or making known anything which has been published or made known by the taxpayer or his representative as contemplated in paragraph (a) or by the Commissioner or any such officer in the exercise of his duties or powers.

(8) Every person who, in contravention of the true intent of the oath of confidentiality or secrecy taken by him and without lawful excuse, reveals any matter or thing which has come to his knowledge in his official capacity, commits an offence and shall be liable on conviction to fine not exceeding ten thousand emalangeni, or to imprisonment for a term not exceeding two years, or to both such fine and term of imprisonment.

(9) If any person acts in the execution of his office before he has taken the prescribed oath commits an offence and shall be liable on conviction to a fine not exceeding one thousand emalangeni.

(10) A taxpayer may waive, expressly or by implication, any right which he may have under this Order to secrecy or any matter relating to him or his affairs.”

Amendment of Section 7

4. Section 7 of the Order is amended -

- (a) by replacing the words “paragraphs (a) to (o)” with the words “paragraphs (a) to (r)”.

(b) by inserting immediately after paragraph (n) the following new paragraphs -

- “(o) any amount received by or accrued to any person as compensation in respect of trading stock under a policy of insurance or contract for indemnity against loss of profits;
- (p) any amount received by or accrued to any person by way of recovery or reimbursement of -
 - (i) any expenditure or loss;
 - (ii) any bad or doubtful debt which has been allowed as a deduction under section 14.
- (q) the value of gifts provided by a person in the course of, or by virtue of, a past, present, or prospective business relationship;”

(c) by renumbering paragraph (o) as paragraph (r).

Insertion of a new section 9bis

5. This Order is amended by, inserting the following new section 9bis immediately after section 9 -

“Compensation receipts

9bis. A compensation payment derived by a person takes the character of the item that is compensated.”

Amendment of Section 12

6. Section 12 of the Order is amended in subsection (1) by deleting paragraph (a) and replacing it with the following new paragraph (a) -

“12. (1) There shall be exempt from normal tax -

- (a) the receipts and accruals of -
 - (i) a pension fund, a retirement annuity fund, a benefit fund or a provident fund;
 - (ii) any company, society or other association of persons, whether or not registered under any law, the profits or gains of which, other than profits or gains from investments, are derived solely from transactions with or on behalf of its individual members, and the constitution of which does not admit of the distribution of its profits or gains to any persons other than the members with whom or on whose behalf the transactions took place, and does not confer upon any person any benefit other than benefits accruing to that person from transactions with or on behalf of such person, except as regards any receipts or accruals from investments by any such company, society, or association of persons; and
 - (iii) any exempt organisation other than business income that is not related to the function constituting the basis for the existence of the organisation.

Amendment of section 14

7. Section 14 of the Order is amended in subsection (1) by replacing paragraph (x) with the following new paragraph (x) -

“(x) expenditure incurred during the year of assessment by a taxpayer for appropriate training of a citizen of Swaziland, other than an associate of the employer, who is employed in a business, the income of which is subject to tax;”

Amendment of Section 15

8. Section 15 of the Order is amended by replacing section 15 with the following new section 15 -

“Deductions not allowable

15. (1) A deduction shall not be allowed for -

- (a) any expenditure or loss actually incurred by a taxpayer to the extent to which it is of a domestic or private nature;
- (b) except as otherwise provided in this Order, any expenditure or loss of a capital nature;
- (c) any expenditure or loss which is recoverable under any insurance contract or indemnity;
- (d) any income carried to a reserve fund or capitalised in any way;
- (e) normal tax or levy and any interest or penalty payable in consequence of the late payment of any tax or levy payable under any Act administered by the Commissioner;
- (f) any expenditure incurred in respect of any amounts received or accrued which are not included in income;
- (g) As regards income derived from any trade –
 - (i) any money to the extent to which such money was not laid out or expended for the purpose of trade;
 - (ii) the rent or value or cost of repairs to any premises not occupied for the purposes of trade, or any dwelling-house or domestic premises except such part thereof as may be occupied for such purposes;
 - (iii) any interest which might have been made on any capital employed in trade;
- (h) except in the case of a depreciation or amortisation deduction, an amount that is included in the cost base of an asset;
- (i) a fine or similar penalty paid to a government for breach of any law;
- (j) the cost of a gift made directly or indirectly to a natural person where the gift is not included in the income of a natural person subject to tax.

(2) In this section, expenditure of a domestic or private nature actually incurred by a taxpayer include -

- (a) the cost incurred in the maintenance of the taxpayer and the family or residence of the taxpayer;
- (b) the cost of commuting between the residence and work of a taxpayer;
- (c) the cost of clothing worn to work, except clothing which is not suitable for wearing outside of work;
- (d) the cost of education not directly relevant to the employment or business of the taxpayer;
- (e) except as otherwise provided in this Order, the cost of education leading to a degree or diploma, whether or not is directly relevant to the employment or business of the taxpayer.”

Insertion of new Division V under Part III

9. Part III of the Order is amended by, immediately after section 32B, inserting a new Division V as follows -

“DIVISION V – INTEREST PAID TO RESIDENTS

Withholding tax from payments of interest made to persons ordinarily resident in Swaziland

32C. (1) Every financial institution, unit trust company, building society, mutual loan association or co-operative society, which makes a payment of interest or dividend on society shares to any person, other than a company, a person or institution exempt in terms of sections 12 (1) (a) (viii) and (ix), ordinarily resident in Swaziland shall withhold tax at the rate of ten percent of the gross amount of the payment.

(2) The tax withheld under subsection (1) shall be on account of the tax liability to tax of the person ordinarily resident in Swaziland.

(3) Every person who has withheld any tax under subsection (1) shall within fifteen days from the end of the month in which the interest was paid remit to the Commissioner the amount of tax so withheld.

(4) Every person making any payment (of interest) to which this section applies shall maintain a record showing in relation to each year of assessment –

- (a) the payment of interest made to each resident person;
- (b) the tax withheld from such person,

and such record shall be kept for the period specified under section 35*bis* for examination by the Commissioner as and when required.

(5) The deduction of tax under this section shall not relieve the resident person from the obligation to furnish a return for the assessment of the tax or any return as provided under section 33 or from any other obligation imposed by this Order.

(6) A person who fails to withhold any tax under subsection (1) or having withheld such tax fails to remit to the Commissioner, as required under subsection (3), shall, in addition to any penalty for which he may be liable under section 40*bis* or section 66, be personally liable to pay the Commissioner that amount of tax as if it were tax due and payable by such person under Part VII of this Order.”

Amendment of Section 33

10. Section 33 of the Order is amended, by deleting subsection (13).

Insertion of new sections 33ter and 33quat

11. The Order is amended by inserting, immediately after 33bis, the following new sections 33ter and 33quat -

“Substituted year of assessment

33ter. (1) The Commissioner may, on written application by a company, grant permission to the company to use as its year of assessment (referred to as a “substituted year of assessment”) a twelve month period other than the normal year of assessment, provided the company has shown a compelling need to do so and subject to any conditions prescribed by the Commissioner.

(2) The Commissioner may, by notice in writing, withdraw the permission to use a substituted year of assessment granted to a company under subsection (1).

(3) A notice issued by the Commissioner under subsection (2) takes effect at the end of the taxpayer’s substituted year of assessment in which the notice is issued.

(4) Where the year of assessment for a taxpayer changes as a result of subsection (1) or (2), the period between the last full year of assessment prior to the change and the date on which the changed year of assessment commences is treated as a separate year of assessment, to be known as the “transitional year of assessment”.

(5) In this Order, a reference to a particular year of assessment includes a substituted year of assessment or a transitional year of assessment commencing during the year of assessment.

(6) In this section, “normal year of assessment” means the period of twelve months ending on 30 June.

Registration as a taxpayer

33quat. (1) Every person who at any time becomes liable for any normal tax or who becomes liable to submit any return contemplated in section 33 must, within sixty days after so becoming a taxpayer, apply to the Commissioner to be registered as a taxpayer.

(2) If a person’s address which is normally used by the Commissioner for any correspondence with that taxpayer at any time changes, that person must, within sixty days after the change, inform the Commissioner of the new address for correspondence.

(3) Subsection (1) does not apply in respect of any person whose income, not exceeding E120 000 in any year of assessment, is derived solely from employment which subject to the final deduction system under the Second Schedule.”

Insertion of Section 38bis

12. The Order is amended by inserting, immediately after 38, the following new section 38bis -

“Self-Assessment

38*bis*. (1) Where a taxpayer has furnished a return of income for a year of assessment, the Commissioner is deemed to have made an assessment of the taxable income of the taxpayer and the tax payable on that taxable income for that year, being those respective amounts shown in the return.

(2) Where subsection (1) applies, the taxpayer’s return of income is treated as a notice of an assessment served on the taxpayer by the Commissioner on the due date for furnishing of the return or on the actual date the return was furnished, whichever is later.

(3) Notwithstanding subsection (1), the Commissioner may raise an assessment under section 33 or section 39 on a taxpayer in any case in which the Commissioner considers necessary.

(4) Where the Commissioner raises an assessment in accordance with subsection (3), the Commissioner shall include with the assessment a statement of reasons as to why the Commissioner considered it necessary to make such an assessment.

(5) This section only applies to any taxpayer as declared by the Commissioner by notice published in the Gazette to be subject to this section.”

Amendment of Section 57

13. Section 57 of the Order is amended by adding, immediately after subsection (3), the following new subsection (4) -

“(4) Subject to section 58A, in the case of a taxpayer to whom section 38*bis* applies the tax payable under this Order is due and payable on the date on which the return of income is due under this Order.”

Insertion of new sections 65bis and 65ter

14. The Order is amended by inserting, immediately after section 65, the following new section 65*bis* -

“Income Splitting

65*bis*. (1) Where a taxpayer attempts to split income with another person, the Commissioner may adjust the taxable income of the taxpayer and the other person to prevent any reduction in tax payable as a result of the income splitting.

(2) A taxpayer is treated as having attempted to split income where -

(a) the taxpayer transfers income, directly or indirectly, to an associate; or

(b) the taxpayer transfers property (including money), directly or indirectly, to an associate with the result that the associate receives or enjoys the income from that property,

where the reason or one of the reasons for the transfer is to lower the total tax payable upon the income of the transferor and transferee.

(3) In determining whether the taxpayer is seeking to split income, the Commissioner shall consider the value, if any, given by the associate for the transfer.

“Dividend Stripping

65ter. (1) Where a company takes part in a transaction in the nature of a dividend stripping and receives a dividend from a company ordinarily resident in Swaziland in the transaction, the company receiving the dividend shall include the dividend in gross income to the extent to which the Commissioner considers necessary to offset any decrease in the value of shares in respect of which the dividend is paid or in the value of any other property caused by the payment of the dividend.

(2) In any such transaction, the Commissioner may also reduce the amount of any deduction arising to the extent to which it represents the decrease in value of the shares or other property.”

Amendment of Section 66

15. Section 66 of the Order is amended, in subsection (1) thereof, by adding immediately after paragraph (k) the following new paragraph (m) -

“(m) fails or neglects to apply to the Commissioner for registration as a taxpayer as required by subsection (1) of section 33*quat*, or having so applied fails or neglects to notify the Commissioner of any change of his address,”

Amendment of Section 68

16. Section 68 of the Order is amended by inserting, immediately after section 68, the following new sections 68*bis* and 68*ter* -

“Practice notes

68*bis*. (1) To achieve consistency in the administration of this Order and to provide guidance to taxpayers and officers employed in carrying out the provisions of this Order, the Commissioner may issue practice notes setting out the Commissioner’s interpretation of this Order.

(2) a practice note is binding on the Commissioner until revoked.

(3) a practice note is not binding on a taxpayer.

“Private rulings

68*ter*. (1) The Commissioner may, upon application in writing by a taxpayer, issue to the taxpayer a private ruling setting out the Commissioner’s position regarding the application of this Order to a transaction proposed by the taxpayer.

(2) Provided the taxpayer has made a full and true disclosure of the nature of all aspects of the transaction relevant to the ruling and the transaction proceeds in all material respects as described in the taxpayer’s application for the ruling, the ruling shall be binding on the Commissioner with respect to the application to the transaction of the law as it stood at the time of the ruling.

(3) Where there is any inconsistency between a practice note and a private ruling, priority is given to the terms of the private ruling.”

Amendment of Section 69

17. Section 69 of the Order is amended, in subsection (3), by replacing the words “tax clearance certificate” wherever they occur in subsection (3) with the words “tax compliance certificate”.

Amendment of the Second Schedule

18. The Second Schedule to the Order is amended in paragraph 1 -

- (a) by replacing the definition of an “employee” with the following new definition of “employee” -

“employee” means any person (other than a company) who in respect of employment, receives remuneration from an employer or to whom remuneration accrues, including -

- (a) any former employee who receives remuneration which accrued before the termination of the contract of employment;
- (b) any person who receives any remuneration or to whom any remuneration accrues by reason of any services rendered by such person to or on behalf of a labour broker;
- (c) any labour broker;
- (d) any personal service company; and
- (e) any personal service trust.

- (b) by adding, in the alphabetical order, the following new definitions -

“employment” means -

- (a) the position of an individual in the employ of another person; or
- (b) a directorship of a company; or
- (c) a position entitling the holder to a fixed or ascertainable remuneration; or
- (d) a public office;

“labour broker” means any person who conducts or carries on any business whereby such person for reward provides a client of such business with other persons to render a service or perform work for such client, or to procure such other persons for the client, for which services or work such other persons are remunerated by such person;

“personal service company” means any company (other than a company which is a labour broker), where any service rendered on behalf of such company to a client of such company is rendered personally by any person who is an associate in relation to such company, and -

- (a) such person would be regarded as an employee of such client if such service was rendered by such person directly to such client, other than on behalf of such company; or

- (b) such person or such company is subject to the control or supervision of such client as to the manner in which the duties are performed or are to be performed in rendering such service and must be mainly performed at the premises of the client; or
- (c) where more than eighty per cent of the income of such company during the year of assessment, from services rendered, consists of or is likely to consist of amounts received directly or indirectly from one client of such company, in relation to such client,

except where such company throughout the year of assessment, employs three or more full-time employees who are on a full-time basis engaged in the business of company of rendering any such service, other than any employee who is a shareholder or member of the company or is an associate in relation to such person;

“personal service trust” means any trust (other than a trust which is a labour broker), where any service rendered on behalf of such trust to a client of such trust is rendered personally by any person who is an associate in relation to such trust, and –

- (a) such person would be regarded as an employee of such client if such service was rendered by such person directly to such client other than on behalf of such trust; or
- (b) such person or such trust is subject to the control or supervision of such client as to the manner in which the duties are performed or are to be performed in rendering such service and those duties must be mainly performed at the premises of the client; or
- (c) where more than 80 per cent of the income of such trust during the year of assessment, from services rendered, consists of or likely to consist of amounts received directly or indirectly from any one client of such trust, in relation to such client,

except where such trust throughout the year of assessment, employs three or more full-time employees who are on full-time basis engaged in the business of such trust of rendering any such service, other than any employee who is an associate in relation to such person or such trust;”

Addition of New Schedule

19. This Order is amended by adding a new schedule immediately after the Fourth Schedule as follows-

“FIFTH SCHEDULE

**TAXATION OF INCOME DERIVED FROM INSURANCE BUSINESS
(Section 7)**

1. The taxable income of a taxpayer for year of assessment arising from carrying on insurance business is determined according to the following formula –

$$A - B$$

Where –

- A is the gross income derived by the taxpayer for the year of assessment in carrying on insurance business in Swaziland as determined under paragraph 2; and

B is the total deductions allowed for the year of assessment in the production of income referred to in **A** as determined under paragraph 3.

2. The gross income derived by a taxpayer for a year of assessment in carrying on insurance business in Swaziland is the sum of –

- (a) premiums (including premiums on reinsurance) derived by the taxpayer during the year of assessment in carrying on such business of the insurance of any risk; and
- (b) any other income or gains derived by the taxpayer during the year of assessment in carrying on such business; and
- (c) the amount of any allowance deducted in the previous year of assessment under sub-paragraphs 3(d), (e), (f), and (g).

3. The total deductions allowed for a year of assessment in the production of income from insurance business is the sum of –

- (a) the total amount of the liability incurred by the taxpayer during the year of assessment in respect of premiums on reinsurance; and
- (b) the total amount of the liability incurred by the taxpayer during the year of assessment in respect of any claims relating to that business, less the value of any claims recovered or recoverable under any contract of insurance, guarantee, security, or indemnity; and
- (c) the total amount of expenditures and losses incurred by the taxpayer during the year of assessment in carrying on that business which are allowable as a deduction under section 14, other than expenditures or losses referred to in paragraphs (a) and (b); and
- (d) an allowance of such amount as the Commissioner may approve in respect of unexpired risks at the end of the year of assessment; and
- (e) an allowance of such amount as the Commissioner may approve in respect of claims which have been intimated but not paid at the end of the year of assessment; and
- (f) an allowance of such amount as the Commissioner may approve in respect of claims which have not been intimated at the end of the year of assessment.
- (g) An allowance of such amount as the Commissioner may approve in respect of a contingency reserve.

4. Where, for any year of assessment, the deductions allowed to a taxpayer under paragraph 3 exceed the income derived by the taxpayer as determined under paragraph 2, the excess may not be deducted against any other income of the taxpayer for the year of assessment, but shall be carried forward and deducted in determining the taxable income of the taxpayer arising from the carrying on of insurance business in the year of assessment.

S14

THE VALUE ADDED TAX ACT, 2011

(Act No. 12 of 2011)



I ASSENT

MSWATI III
King of Swaziland

26th October, 2011

AN ACT
ENTITLED

AN ACT to provide for the imposition of value added tax and the repeal of the Sales Tax Act, 1983.

ENACTED by the King and the Parliament of Swaziland.

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AN ACT
ENTITLED

AN ACT to provide for the imposition and collection of value added tax; the repeal of the Sales Tax Act, 1983 and for incidental matters.

ENACTED by the King and the Parliament of Swaziland

PART I
PRELIMINARY

Short Title and Commencement

1. (1) This Act may be cited as the Value Added Tax Act, 2011, and shall come into force on a date that the Minister may, by notice published in the Gazette, determine.

(2) The Minister may appoint different dates of coming into operation in respect of different sections of this Act.

Interpretation

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

“application to own use”, in relation to goods, means applying the goods to personal use, including personal use by a relative, or any other non-business use;

“associate”, for the purposes of this Act, means, in relation to a person, any other person who acts or is likely to act in accordance with the directions, requests, suggestions, or wishes of the person whether or not they are communicated to that other person. Without limiting the generality of the above the following are treated as an associate of a person-

- (a) a relative;
- (b) a partner, an associate of a partner under another application of this section, or a partnership in which the person is a partner;
- (c) the trustee of a trust under which the person, or an associate under another application of this section, benefits or is capable of benefiting; or,
- (d) a company in which the person either alone, or together with an associate or associates under another application of this section, controls directly or indirectly 50% or more of the share capital or voting power in the company, or which is accustomed or may reasonably be expected to act in accordance with the directions or wishes of the person or an associate of the person;

“Commissioner General” means the Commissioner General of the Swaziland Revenue Authority;

“company” means a body corporate or unincorporated, whether created or recognised under a law in force in Swaziland or elsewhere, but does not include a partnership or trust;

“consideration”, in relation to a supply of goods or services, means the total amount in money or in kind paid or payable for the supply by any person, directly or indirectly, including any duties, levies, fees, and charges paid or payable on, or by reason of, the supply other than tax, reduced by any discounts or rebates allowed and accounted for at the time of the supply;

“exempt import” has the meaning in section 21;

“exempt supply” means a supply of goods or services to which section 20 applies;

“finance lease”, in relation to goods, means the lease of goods where-

- (a) the lease term exceeds 75% of the expected economic life time of the goods;
- (b) the lessee has an option to purchase the goods for a fixed or determinable price at the expiration of the lease; and,
- (c) the estimated residual value of the goods to the lessor at the expiration of the lease term (including the period of any option to renew) is less than 20% of its fair market value at the commencement of the lease;

“goods” means all kinds of movable and immovable property, thermal and electrical energy, heating, gas, refrigeration, air conditioning, and water, but does not include money;

“fair market value”, for the purposes of this Act, is the consideration in money which a similar supply would generally fetch if supplied in similar circumstances at that date in Swaziland, being a supply freely offered and made between persons who are not associates. Where the fair market value of a taxable supply cannot be determined according to the above, the fair market value of the supply shall be such amount that, in the opinion of the Commissioner-General having regard to all the circumstances of the supply, is the fair market value of the supply.

“hire purchase agreement” means an agreement that is a hire purchase agreement in terms of hire purchase law in Swaziland;

“import” means to bring, or to cause to be brought goods or services, into Swaziland from a foreign country or place;

“importer”, in relation to an import of goods, includes the person who owns the goods, or any other person for the time being possessed of or beneficially interested in the goods and, in relation to goods imported by means of a pipeline, includes the person who owns the pipeline;

“input tax” means tax paid or payable in respect of a taxable supply to, or an import of goods or services by, a taxable person;

“Minister” means the Minister responsible for Finance;

“money” means-

- (a) coins or paper currency that the Central Bank of Swaziland has issued as legal tender;
- (b) coins or paper currency of a foreign country which is used or circulated as currency; or,
- (c) a bill of exchange, promissory note, bank draft, postal order, or money order, other than coins or paper currency that are collector’s pieces, investment articles, or items of numismatic interest;

“officer” means an officer employed or appointed by the Swaziland Revenue Authority;

“output tax” means the tax chargeable under section 5 in respect of a taxable supply;

“person” includes a partnership, company, trust, government, and any public or local authority;

“reduced consideration” has the meaning in section 19(7);

“relative”, in relation to an individual, includes an ancestor of the individual, a descendant of the individual’s grandparents, or the spouse of the individual or of any of the foregoing;

“services” means anything done for a consideration, which is not goods or money;

“similar supply” means, in relation to a taxable supply, a supply that is identical to, or closely or substantially resembles, the taxable supply, having regard to the characteristics, quality, quantity supplied, functional components, reputation of, and materials comprising the goods and services which are the subject of the taxable supply;

“tax” means value added tax chargeable under this Act;

“taxable person” has the meaning ascribed in section 5;

“taxable supply” has the meaning in section 18;

“tax fraction” means the fraction calculated in accordance with the following formula- $(r)/(r + 100)$ in which “r” is the rate of tax applicable to the taxable supply;

“taxable transaction” means a taxable supply or an import of goods or services that is subject to tax under this Act;

“taxable value”, in relation to a taxable supply or an import of goods or services is determined under Part VI of this Act;

“tax period” means the period described in section 32(1);

“trust” means any relationship where property is under the control or management of a trustee;

“trustee” includes-

- (a) an executor, administrator, tutor, or curator;
- (b) a liquidator or judicial manager;
- (c) a person having or taking on the administration or control of property subject to another person having a beneficial interest in the property;
- (d) a person acting in a fiduciary capacity; and,
- (e) a person having possession, control, or management of the property of a person under a legal disability.

PART II CHARGE TO TAX

Charge to Tax

3. A tax, to be known as valued added tax, shall be charged in accordance with the provisions of this Act on-

- (a) every taxable supply in Swaziland made by a taxable person;
- (b) every import of goods other than an exempt import; and,
- (c) the supply of any imported services other than an exempted import by any person.

Persons liable to pay Tax

4. Except as otherwise provided in this Act, the tax payable in the case of-

- (a) a taxable supply, is to be collected and paid by the taxable person making the supply;
- (b) an import of goods, is to be paid by the importer; and,
- (c) an import of services, is to be paid by the recipient of the imported services.

PART III TAXABLE PERSONS

Taxable Person

5. (1) A person registered under section 6 is a taxable person from the time the registration takes effect.

(2) A person who is not registered, but who is required to apply to be registered under section 8, is a taxable person from the first day of the month immediately following the period in which the duty to apply for registration arose.

Registration

6. (1) A person who is not already a registered under this Act shall apply to be registered in accordance with section 7-

(a) within twenty days of the end of any period of three calendar months if during that period the person made taxable supplies, the value of which, exclusive of any tax, exceeded one-quarter of the annual registration threshold determined in terms of subsection (2); or,

(b) at the beginning of any period of three calendar months where there are reasonable grounds to expect that the total taxable value, exclusive of any tax, of taxable supplies to be made by the person during that period will exceed one-quarter of the annual registration threshold set out in subsection (2).

(2) The Minister shall by notice published in the Gazette determine the annual registration threshold.

(3) In determining whether the registration threshold has been exceeded for the period specified in subsection (1), it is to be assumed that the person is a taxable person during that period.

(4) A person supplying goods or services for consideration as part of that person's business activities, but who is not required by subsection (1) or (5) to apply for registration may apply to the Commissioner-General to be registered under this Act in accordance with section 7.

(5) Notwithstanding subsection (1), a person being a national, regional, or local public authority or body which carries on business activities shall apply for registration at the date of commencement of those activities.

Requirements for Registration

7. (1) An application under section 6 for registration shall be in the form and manner prescribed by the Commissioner-General and the applicant shall provide the Commissioner-General with such information as the Commissioner-General may require.

(2) The Commissioner-General shall register a person who applies for registration under section 6 and issue to the person a certificate of registration, including the VAT registration number, unless the Commissioner-General is satisfied that the person is not eligible to apply for registration for the purposes of this Act or, in the case of an application under section 6(4)-

(a) the person has no fixed place of abode or business; or

(b) the Commissioner-General has reasonable grounds to believe that the person-

(i) will not keep proper accounting records relating to any business activity carried on by that person;

(ii) will not submit regular and reliable tax returns as required by section 32; or,

(iii) is not a fit and proper person to be registered.

(3) Registration under this section takes effect-

- (a) in the case of an application under subsection (1) or (5) of section 6, from the beginning of the tax period immediately following the period in which the duty to apply for registration arose; or,
- (b) in the case of an application under section 6(4), from the beginning of the tax period immediately following the period in which the person applied for registration.

(4) A certificate of registration shall state the name and other relevant details of the taxable person, the date on which the registration takes effect, and the taxpayer identification number.

(5) The Commissioner-General shall establish and maintain a register containing the relevant details of all taxable persons.

(6) The Commissioner-General may register a person if there are reasonable grounds for believing that the person is required to apply for registration under section 8 but has failed to do so and that registration shall take effect from the date specified in the certificate of registration.

(7) The Commissioner-General shall serve a notice in writing on a person of a decision to refuse to register a person under subsection (2) within one month of receiving the application.

(8) The Commissioner-General shall serve a notice in writing on a person of a decision to register the person under subsection (6) within one month of making the decision.

(9) A person dissatisfied with a decision made under subsection (6) may only challenge the decision under Part VIII of this Act on the basis that the decision also includes an assessment.

(10) A taxable person shall notify the Commissioner-General in writing of any change-

- (a) in the name, address, telephone number, email address and bank account number of the person;
- (b) in circumstances where the person no longer satisfies the grounds for registration, or,
- (c) of a material nature in business activities or in the nature of taxable supplies being made, and such notification shall be made within fourteen days after the change has occurred.

Cancellation of Registration

8. (1) A taxable person shall apply in writing for cancellation of registration if that person has ceased to make supplies of goods or services for consideration as part of the business activities of the person.

(2) Subject to subsection (3), a taxable person may apply in writing to have registration cancelled if, with respect to the most recent period of three calendar months, the value of that person's supplies, exclusive of tax, does not exceed one-quarter of the annual registration threshold specified under section 8 (2) and if the value of taxable supplies, exclusive of tax, for the previous 12 calendar months does not exceed 75 per cent of the annual registration threshold.

(3) In the case of a taxable person who applied for registration under section 8(4), an application under subsection (2) may only be made after the expiration of two years from the date of registration.

(4) The Commissioner-General may cancel the registration of-

- (a) a person who has applied for cancellation under subsection (1) or (2); or,
- (b) a person who has not applied for cancellation of registration but, in respect of whom the Commissioner-General is satisfied that the person not entitled under section 8 to apply for registration.

(5) The Commissioner-General may cancel the registration of a person who is not required to apply for registration under section 8 where the person-

- (a) has no fixed place of abode or business;
- (b) has not kept proper accounting records relating to any business activity carried on by that person;
- (c) has not submitted regular and reliable tax returns as required by section 32; or,
- (d) is not, in the opinion of the Commissioner-General, a fit and proper person to be registered.

(6) The Commissioner-General shall serve a notice in writing on a taxable person of a decision to cancel or to refuse to cancel the registration under this section within fourteen days of making the decision.

(7) The cancellation of registration shall take effect from the end of the tax period in which the registration is cancelled.

(8) Where the registration of a person is cancelled, the Commissioner-General shall remove the person's name and the details described in section 7 from the register.

(9) A taxable person whose registration has been cancelled under this section shall be regarded as having made a taxable supply of all goods on hand (including capital goods) and shall be liable to adjustment of previous deducted input tax on all these goods, at the time the registration is cancelled. The adjustment shall be done as specified in the VAT Regulations.

(10) The obligations and liabilities of a person under this Act, including the lodging of returns required by section 32, of any person in respect of anything done or omitted to be done by that person while a taxable person shall not be affected by cancellation of the person's registration.

Taxpayer Identification Number

9. (1) For the purpose of identification of taxpayers, the Commissioner-General shall issue a number, to be known as Taxpayer Identification Number, to every taxpayer.

(2) A taxpayer shall be required to show his Taxpayer Identification Number in any return, notice or other document used for the purposes of this Act.

PART IV
SUPPLIES OF GOODS AND SERVICES

Supply of Goods

10. (1) Except as otherwise provided under this Act, a supply of goods means any arrangement under which the owner of the goods parts, or will part, with possession of the goods, including an agreement of sale and purchase.

(2) A supply of electrical or thermal energy, heating, gas, refrigeration, air conditioning or water is a supply of goods.

(3) The application of goods to own use is considered similar to a supply of the goods.

Supply of Services

11. (1) Except as otherwise provided under this Act, a supply of services means any supply which is not a supply of goods or money including the-

(a) performance of services for another person;

(b) making available of any facility or advantage, or,

(c) toleration of any situation or the refraining from the doing of any activity.

(2) A supply of services made by an employee to an employer by reason of employment is not a supply made by the employee.

Mixed Supplies

12. (1) A supply of services incidental to the supply of goods is part of the supply of goods.

(2) A supply of goods incidental to the supply of services is part of the supply of services.

(3) A supply of services incidental to the import of goods is part of the import of goods.

(4) A supply of goods incidental to the import of services is part of the import of services.

(5) Regulations made under section 84, may provide that a supply is a supply of goods or services.

Supply by Agent

13. (1) A supply of goods or services made by a person (as agent for another person, being the principal, is a supply by the principal.

(2) Subsection (1) does not apply to an agent's supply of services as agent to the principal.

Time of Supply

14. (1) Except as otherwise provided under this Act, a supply of goods or services occurs-

(a) where the goods or services on which input tax has been deducted, are applied to own use, on the date on which the goods or services are first applied to own use;

(b) where the goods or services are supplied by way of gift, on the date on which ownership in the goods passes or the performance of the services is completed; or,

(c) in any other case, on the earlier of the date on which-

(i) the goods are delivered or made available, or the performance of the service is completed;

(ii) payment for the goods or services is made, or,

(iii) a tax invoice is issued.

(2) The supply of goods under a hire purchase agreement or finance lease occurs on the date the goods are made available under the agreement or lease.

(3) Where-

(a) goods are supplied under a rental agreement; or,

(b) goods or services are supplied under an agreement or law which provides for periodic payments, the goods or services are treated as successively supplied for successive parts of the period of the agreement or as determined by that law, and each successive supply occurs on the earlier of the date on which payment is due or received.

(4) For the purposes of this section, where two or more payments are made or are to be made for a supply of goods or services other than a supply to which subsection (2) or (3) applies, each payment shall be regarded as made for a separate supply to the extent of the amount of the payment on the earlier of the date the payment is due or received.

(5) A person making a supply to which subsection (1)(a) or (b) applies, shall keep a record of the date on which the supply occurred as determined under this section.

(6) In this section, "rental agreement" means any agreement for the letting of goods other than a hire purchase agreement or finance lease.

Place of Supply of Goods

15. (1) Except as otherwise provided under this Act, a supply of goods takes place where the goods are delivered or made available by the supplier.

(2) A supply of thermal or electrical, heating, gas, refrigeration, air conditioning, or water takes place where the supply is received.

Place of supply of services

16. (1) Except as otherwise provided under this Act, a supply of services takes place where the services are rendered.

(2) The supply of the following services takes place where the recipient uses or obtains the advantage of the services-

(a) transfers and assignments of copyrights, patents, licenses, trademarks and similar rights;

(b) advertising services;

- (c) the services of consultants, engineers, consultancy bureaus, lawyers, accountants and other similar services, as well as data processing and the provision of information;
- (d) obligations to refrain from pursuing or exercising, in whole or in part, a business activity or a right referred to in this paragraph;
- (e) banking, financial and insurance transactions, including reinsurance, with the exception of the hire of safes;
- (f) the supply of staff;
- (g) the hiring out of movable tangible property, with the exception of all means of transport;
- (h) the provision of access to, and of transport or transmission through natural gas and electricity distribution systems and the provision of other services directly linked thereto;
- (i) telecommunications services;
- (j) radio and television broadcasting services;
- (k) electronically supplied services, such as-
 - (i) website supply, web-hosting, distance maintenance of programmes and equipment;
 - (ii) supply of software and updating of the software;
 - (iii) supply of images, text and information and making available of databases;
 - (iv) supply of music, films and games, including games of chance and gambling games, and of political, cultural, artistic, sporting, scientific and entertainment broadcasts and events; and,
 - (v) supply of distance teaching.

(3) Where tax is payable in terms of section 4(c) in respect of imported services mentioned in section 16(2), the recipient of the services shall within 30 days of the date an invoice is issued or payment is made, whichever time is the earliest, submit a declaration to the Commissioner-General (in a form the Commissioner-General may prescribe) containing information as may be required and calculate the tax payable on the value of the imported services and pay the tax to the Commissioner-General.

(4) The obligation under subsection 3 does not apply to taxable persons (importers) of the mentioned services who have the right to full deduction of input tax on the rendered services.

(5) A supply of services in connection with immovable property takes place where the immovable property is located.

(6) A supply of services of, or incidental to, transport takes place where the transport commences.

Imports

17. An import of goods takes place-

- (a) where customs duty is payable, on the date on which the duty is payable; or,
- (b) in any other case, on the date the goods are brought into Swaziland.

PART V
TAXABLE SUPPLIES

Taxable Supply

18. (1) A taxable supply means a supply of goods or services, other than an exempt supply, made by a taxable person for consideration as part of that person's business activities.

(2) A supply is made as part of a person's business activities if the supply is made by that person as part of, or incidental to, any independent economic activity the person conducts, whatever the purposes or results of that activity.

(3) The business activities of an individual do not include activities carried on by that person only as part of a hobby or leisure activities.

(4) A supply is made for consideration if the supplier directly or indirectly receives payment for the supply, whether from the person supplied or any other person, including any payment wholly or partly in money or in kind.

(5) The application to own use by a taxable person of goods supplied to that person for the purposes of business activities shall be regarded as a supply of those goods for consideration as part of the business activities of that person.

(6) For the purpose of subsection (5), a supply of business goods for no consideration, on which input tax has been deducted, is an application to own use.

(7) Where goods have been supplied to a taxable person for the purposes of the business activities of that person, the supply of those goods for reduced consideration shall be regarded as a supply for consideration unless the goods are supplied or used only as trade samples.

(8) A supply is made for reduced consideration if the supply is made between associates for no consideration or between associates for a consideration that is less than the fair market value of the supply.

Exempt Supply

19. (1) A supply of goods or services is an exempt supply if it is specified in the First Schedule.

(2) Where a supply is an exempt supply under clause 1(j) of the First Schedule, both the transferor and transferee shall, within 21 days of transfer, notify the Commissioner-General in writing, of the details of the transfer.

Exempt import

20. An import of goods or services is an exempt import if the goods or services-

- (a) are exempt from customs duty under the Customs and Excise Act 1971, unless the Minister provides otherwise by regulation; or,
- (b) would be exempt had they been supplied in Swaziland.

PART VI
TAXABLE VALUE

Taxable value of a taxable supply

21. (1) Except as otherwise provided under this Act, the taxable value of a taxable supply is the total consideration paid in money or in kind by all persons for that supply.

(2) The taxable value of a taxable supply-

- (a) of goods under a hire purchase agreement or finance lease;
- (b) for reduced consideration, or
- (c) described in section 8 (9),

is the fair market value of the supply inclusive VAT at the time the supply is made, excluding, in the case of a hire purchase agreement or finance lease, any interest or finance charges.

(3) The taxable value of a taxable supply of goods by way of an application to own use is the cost price of the goods.

(4) Where a taxable supply is made without a separate amount of the consideration being identified as a payment of tax, the taxable value of that supply is the total amount of the consideration paid excluding tax.

(5) The taxable value of a taxable supply of goods under a rental agreement, as defined in section 14, is the amount of the rental payments due or received.

Adjustments

22. (1) This section applies where, in relation to a taxable supply by a taxable person, the-

- (a) supply is cancelled;
- (b) nature of the supply has been fundamentally varied or altered;
- (c) previously agreed consideration for the supply has been altered by agreement with the recipient of the supply, whether due to an offer of a discount or for any other reason; or
- (d) goods or services or part of goods or services have been returned to the supplier, and,

the taxable person making the supply has-

- (e) provided a tax invoice in relation to the supply and the amount shown in the tax invoice as the tax charged on the supply is incorrect as a result of the occurrence of any one or more of the above-mentioned events; or,
- (f) filed a return for the tax period in which the supply occurred and has accounted for an incorrect amount of output tax on that supply as a result of the occurrence of any one or more of the above-mentioned events.

(2) Where subsection (1) applies, the taxable person making the supply shall make an adjustment as specified in subsection (3) or (4).

(3) Where the output tax properly chargeable in respect of the supply exceeds the output tax actually accounted for by the taxable person making the supply, the amount of the excess shall be regarded as tax charged by the person in relation to a taxable supply made in the tax period in which the event referred to in subsection (1) occurred and the taxable person shall issue a debit note in connection with the adjustment.

(4) Subject to subsection (6), where the output tax actually accounted for exceeds the output tax properly chargeable in relation to that supply, the taxable person making the supply shall be allowed a credit for the amount of the excess in the tax period in which the event referred to in subsection (1) occurred. The taxable person shall issue a credit note in connection with the adjustment.

(5) The debit required under subsection (3) and the credit allowed under subsection (4) shall, for the purposes of this Act, be treated as an increase and reduction of output tax respectively.

(6) No credit is allowed under subsection (4) where the supply has been made to a person who is not a taxable person, unless the amount of the excess tax has been repaid by the taxable person to the recipient, whether in cash or as a credit against any amount owing to the taxable person by the recipient and a credit note has been issued by the supplier.

Taxable value of an import of goods

23. The taxable value of an import of goods is the sum of-

- (a) the value of the goods ascertained for the purposes of customs duty under the laws relating to customs;
- (b) the amount of customs duty, excise tax, and any other fiscal charge other than tax payable on those goods; and,
- (c) the value of any services to which section 12(3) applies which is not otherwise included in the customs value under paragraph (a).

PART VII
CALCULATION OF TAX PAYABLE

Calculation of tax payable on a taxable transaction

24. (1) Subject to subsection (2), the tax payable on a taxable transaction is calculated by applying the rate of tax to the taxable value of the transaction.

(2) Where the taxable value is determined under subsections (2) or (3) of section 21, the tax payable is calculated by the following formula-

A x B, where:

A is the taxable value as determined under subsection (2) or (3) of section 21; and,

B is the tax rate.

(3) Subject to subsection (4), the rate of tax shall be as specified in the VAT Regulations.

(4) A supply of goods or services is zero-rated supply if it is specified in the Second Schedule.

Calculation of tax payable by taxable person for a tax period

25. Subject to section 26, the tax payable by a taxable person for a tax period is calculated according to the following formula-

C – D, where:

C is the total output tax charged by the taxable person during the tax period in respect of taxable supplies made by the person; and,

D is the total input tax credit allowed to the taxable person in terms of section 28 of this Act.

Cash basis accounting

26. (1) This section applies to a taxable person, the annual value of whose taxable supplies does not exceed E 3 million.

(2) A taxable person to whom this section applies may elect to account for tax purposes on a cash basis.

(3) An election under subsection (2) shall be made in writing to the Commissioner-General by the due date for the first return in which the taxable person seeks to use the method of accounting specified in subsection (2).

(4) Where a taxable person makes an election under subsection (2), that person shall account for both the output tax payable and the input tax credited on a cash basis.

(5) A taxable person who has made an election under subsection (2) shall determine the tax payable for a tax period according to the following formula-

E – F, where:

E is the total output tax received by the taxable person during the tax period in respect of taxable supplies made by the person; and,

F is the total input tax credit paid and allowed to the taxable person in the tax period under the Act.

(6) An election made under subsection (2) remains in force until-

(a) withdrawn by the taxable person by notice in writing to the Commissioner-General; or,

(b) the Commissioner-General, by notice in writing to the taxable person, requires the person to determine the tax payable for a tax period in accordance with section 25.

(7) A taxable person who has made an election under subsection (2) may not withdraw the election within two years after making the election unless the person is no longer a person to whom this section applies.

Consequences of a change in accounting basis

27. (1) Every taxable person whose accounting basis is changed is liable for tax, if any, as determined under this section in the tax period in which the change occurred.

(2) Where a taxable person changes from the method of accounting provided under section 25 (referred to as the “invoice basis”) to the method of accounting provided under section 26 (referred to as the “cash basis”), the tax payable under subsection (1) is determined in accordance with the following formula-

G – H, where:

G is the total amount of input tax credited in relation to amounts due by the taxable person at the time of change in accounting basis; and,

H is the total amount of output tax accounted for in relation to amounts due to the taxable person at the time of change in accounting basis.

(3) Where a taxable person changes from a cash basis to an invoice basis of accounting, the tax payable under subsection (1) is determined in accordance with the following formula-

I – J, where:

I is the total amount of output tax that would have been accounted for on amounts due to the taxable person at the time of change in accounting basis if the taxable person had been accounting for tax on an invoice basis, and,

J is the total amount of input tax that would have been credited on amounts due by the taxable person at the time of change in accounting basis if the taxable person had been accounting for tax on an invoice basis.

(4) If the amount determined in accordance with subsection (2) or (3) is negative, it shall be refunded to the taxable person in accordance with section 47(1).

Credit for input tax

28. (1) Where section 25 applies for the purposes of calculating the tax payable by a taxable person for a tax period, credits are allowed to the taxable person for the following-

(a) tax payable in respect of all taxable supplies made to that person during the tax period;

(b) tax paid in respect of all imports of goods made by that person during the tax period; and,

(c) an amount equal to the tax fraction of the lesser of-

(i) the amount paid, or,

(ii) the fair market value, including tax, of second-hand goods acquired in Swaziland during the tax period by a registered person from a person, registered or not registered, in a transaction not subject to tax if the goods are taxable at a positive rate under this Act, if the goods supplied or imported are for use in the business of the taxable person.

(2) Where section 26 applies for the purposes of calculating the tax payable by a taxable person for a tax period, a credit is allowed to the taxable person for any tax paid in respect of taxable supplies to, or imports by, the taxable person where the supply or import is for use in the business of the taxable person.

(3) A credit is allowed to a taxable person, on becoming registered, for input tax paid or payable in respect of all-

- (a) taxable supplies of goods, including capital assets, made to the person prior to the person becoming registered; or,
- (b) imports of goods, including capital assets, made by the person prior to becoming registered,

where the supply or import was for use in the business of the taxable person, provided the goods are on hand at the date of registration and provided that the supply or import occurred not more than four months prior to the date of registration, or, in the case of capital goods, not more than 6 months before the date of registration.

(4) An input tax credit-

- (a) under subsection (1) arises on the date the goods or services are supplied to, or imported by, the taxable person;
- (b) under subsection (2) arises on the date the tax is paid; or,
- (c) under subsection (3) arises on the date of registration.

(5) A taxable person under this section shall not qualify for input tax credit in respect of a taxable supply or import of-

- (a) a passenger automobile, including spare parts for and repairs and maintenance of that automobile, unless the automobile is acquired by the taxpayer exclusively for the purpose of making a taxable supply of that automobile in the ordinary course of a continuous and regular business of dealing in or hiring passenger automobiles;
- (b) entertainment, unless the taxable person is in the business of providing entertainment;
or
- (c) mobile telephone services up to a limit to be decided by the Minister by Regulations.

(6) Subject to subsection (7), where a taxable supply to, or an import of goods by a taxable person is partly for a business use as set out in subsection (1), (2), or (3) and partly for another use, the amount of the input tax allowed as a credit is that part of the input tax that relates to the business use.

(7) Subject to subsections (9) and (10), the input tax that may be credited by a taxable person for a tax period is where-

- (a) all of the taxable person's supplies for that period are taxable supplies, the whole of the input tax specified in subsection (1) or (2); or,

(b) only part of the taxable person's supplies for that period are taxable supplies, the amount calculated according to the following formula-

A x B/C, where:

A is the total amount of input tax for the period;

B is the total amount of taxable supplies made by the taxable person during the period; and,

C is the total amount of all supplies made by the taxable person during the period other than an exempt supply under clause 1((k) of the First Schedule.

(8) Where the fraction B/C in subsection (7)(b) is less than 0.05, the taxable person may not credit any input tax for the period.

(9) Where the fraction B/C in subsection (7)(b) is more than 0.95, the taxable person may credit all input tax for the period.

(10) Notwithstanding subsection (7)(b), the Commissioner-General may approve a proposal by a taxable person for the apportionment of input tax credit where the taxable person makes both taxable and exempt supplies.

(11) Subject to subsection (12), an input tax credit allowed under this section may not be claimed by the taxable person until the tax period in which the taxable person has-

(a) an original tax invoice for the taxable supply; or,

(b) a bill of entry or other document prescribed under the customs and excise laws evidencing the amount of import tax paid.

(12) Where a taxable person has made a calculation under subsection (7) for any tax period of a financial year, the person shall, in the first tax period of the following year, make a calculation based on the annual value of taxable and exempt supplies.

(13) Where-

(a) the calendar year credit exceeds the return credit, the excess shall be claimed as a credit in the first tax period of the following financial year; or,

(b) the return credit exceeds the calendar year credit, the excess shall be regarded as tax charged by the taxable person in relation to a taxable supply made in the first tax period of the following financial year.

(14) In this section-

“financial year credit” means the total input tax payable, where section 25 applies, or paid, where section 24 applies, for the financial year;

“entertainment” means the provision of food, beverages, accommodation, amusement, recreation, or hospitality of any kind; and

“passenger automobile” means a road vehicle designed solely for the transport of less than 10 sitting persons but does not include a safari vehicle;

“return credit” means the total of the input tax claimed as a credit in each tax period of the calendar year; and

“safari vehicle” means a vehicle designed, registered or adapted for use and used to transport tourists in a game reserve, national park, sanctuary, or safari area by a holder of a valid tourism enterprise license.

Tax Invoices

29. (1) A taxable person making a taxable supply to another taxable person shall provide that other person with an original tax invoice for the supply within 30 days after the date of the supply.

(2) A taxable person making a taxable supply shall retain one copy of the tax invoice referred to in subsection (1).

(3) Where a supplied person loses the original tax invoice, the supplier may provide a duplicate copy clearly marked “COPY”.

(4) A tax invoice is an invoice containing the particulars specified in section 1 of the Third Schedule.

Credit and debit notes

30. (1) Where a tax invoice has been issued in the circumstances specified in section 22(1)(e) and the amount shown as tax charged in that tax invoice exceeds the tax properly chargeable in respect of the supply, the taxable person making the supply shall provide the recipient of the supply with a credit note containing the particulars specified in section 2 of the Third Schedule.

(2) Where a tax invoice has been issued in the circumstances specified in section 22(1)(e) and the tax properly chargeable in respect of the supply exceeds the amount shown as tax charged in that tax invoice, the taxable person making the supply shall provide the recipient of the supply with a debit note containing the particulars specified in section 3 of the Third Schedule.

**PART VIII
RETURNS AND ASSESSMENTS**

Tax period

31. (1) Subject to subsection (2), the tax period applicable to registered persons under this Act is the period of one month ending on the last day of each calendar month.

(2) The Minister may, by regulation, authorize a different tax period for specific categories or classes of registered persons.

Returns

32. (1) A taxable person shall submit a tax return with the Commissioner-General for each tax period within 20 days after the end of the tax period.

(2) A tax return shall be in the form and manner prescribed by the Commissioner-General and shall state the amount of tax payable for the period, the amount of output tax and input tax, and such other matters as may be prescribed.

(3) In addition to any return required under subsection (1), the Commissioner- General may require any person, whether a taxable person or not, to submit (whether on that person's own behalf or as agent or trustee of another person) with the Commissioner- General such further or other return in the prescribed form as and when required by the Commissioner- General for the purposes of this Act.

(4) Upon application in writing by a taxable person, the Commissioner- General may, where good cause is shown by the taxable person, extend the period in which a tax return is to be submitted.

Assessments

33. (1) Where-

- (a) a person fails to submit a return under section 32;
- (b) the Commissioner-General is not satisfied with a return submitted by a person; or,
- (c) the Commissioner-General has reasonable grounds to believe that a person will become liable to pay tax but is unlikely to pay the amount due,

the Commissioner-General may make an assessment of the amount of tax payable by that person.

(2) An assessment under subsection (1)-

- (a) where fraud, or gross or wilful neglect has been committed by, or on behalf of the person, may be made at any time; or,
- (b) in any other case,

shall be made within 5 years after the date on which the return was lodged by the person.

(3) The Commissioner-General may, based on the best information available, estimate the tax payable by a person for the purposes of making an assessment under subsection (1).

(4) Where a person is not satisfied with a VAT return submitted by that same person under this Act, that person shall notify the Commissioner-General before making an adjustment of that return.

(5) A notification under subsection (4) shall be in writing and specify in detail the grounds upon which it is made and shall be made within five years after the date on which the return was lodged by the person.

(6) Where an assessment has been made under this section, the Commissioner-General shall serve notice of the assessment on the person assessed, which notice shall state-

- (a) the tax payable;
- (b) the date the tax is due and payable;
- (c) an explanation of the assessment; and,
- (d) the time, place, and manner of objecting to the assessment.

(7) The Commissioner-General may, within the time limits set out in subsection (2), amend an assessment as the Commissioner-General considers necessary, and the Commissioner-General shall serve notice of the amended assessment on the person assessed.

(8) The time limit for amending an assessment is-

(a) where fraud, or gross or wilful neglect has been committed by, or on behalf of, the person assessed in respect of the period of assessment, the assessment may be amended at any time; or

(b) in any other case, within 3 years after service of the notice of assessment.

(9) An amended assessment is treated in all respects as an assessment under this Act.

General provisions relating to assessments

34. (1) The production of a notice of assessment or a certified copy of a notice of assessment is receivable in any proceedings as conclusive evidence of the due making of the assessment, and except in proceedings relating to objections and appeals relating to the assessment, that the amount and particulars of the assessment are correct.

(2) No assessment or other document purporting to be made, issued, or executed under this Act shall be-

(a) set aside or deemed to be void or voidable for lack of form; or,

(b) affected by reason of mistake, defect, or omission therein, if it is, in substance and effect, in conformity with this Act and the person assessed, or intended to be assessed or affected by the document, is indicated in it according to common understanding.

PART IX OBJECTIONS AND APPEALS

Objection to Decision

35. (1) A person who is dissatisfied with a decision of an officer may submit an objection to the decision to the Commissioner-General within thirty days after the service of the notice of decision.

(2) Where the Commissioner-General is satisfied that owing to absence from Swaziland, sickness or other reasonable cause, the person who is dissatisfied was prevented from submitting an objection within the time specified in subsection (1) and there has been no unreasonable delay by the person in lodging the objection, the Commissioner-General may accept an objection submitted after the time specified in subsection (1).

(3) The objection shall be in writing and shall specify in detail the grounds upon which it is made.

(4) Where an objection to, or a notice of appeal against an assessment has been submitted, the tax payable under the assessment is due and payable, and may be recovered, notwithstanding that objection or appeal.

(5) The Commissioner-General shall only consider an objection submitted under subsection (1) if the person has given sufficient security for the tax due under the assessment and any penal tax that may become payable.

(6) The Commissioner-General shall serve the person objecting with notice in writing confirming the receipt of the objection within 14 days of receipt of the objection.

(7) If the Commissioner-General has not made an objection decision within 90 days after the receipt of the objection, the Commissioner-General shall be deemed to have made a decision to allow the objection.

Appeal to the Tax Tribunal

36. (1) A person dissatisfied with an objection decision may, within 30 days after being served with notice of the objection decision, submit a notice of appeal with the Tax Tribunal and serve a copy of the notice of appeal on the Commissioner-General.

(2) The Tribunal may admit an appeal after the expiration of 30 days if it is satisfied that the appellant has a good and sufficient reason for not submitting the notice of appeal within the time specified in subsection (1).

(3) In an appeal to the Tax Tribunal against an objection decision, a person is limited to the grounds set out in the objection, unless the Tribunal grants the person leave to add new grounds.

(4) In deciding an appeal, the Tribunal may make a decision-

- (a) affirming, reducing, increasing, or varying the assessment under appeal; or,
- (b) remitting the assessment for reconsideration by the Commissioner-General in accordance with the directions of the Tribunal.

Appeal to High Court

37. (1) A person who is dissatisfied with a decision of the Tax Tribunal may, within 30 days after being notified of the decision, submit a notice of appeal with the Registrar of the High Court; and shall serve a copy of the notice of appeal on the other party to the proceedings before the Tribunal.

(2) An appeal to the High Court may be made on questions of law only, and the notice of the appeal shall state the question or questions of law that will be raised on the appeal.

Burden of proof

38. The burden of proving that an assessment is excessive is on the person objecting.

Due date for payment of tax

39. (1) Tax payable under this Act is due and payable-

- (a) in the case of a taxable supply by a taxable person in respect of a tax period, on the date the return for the tax period is submitted according to section 32(1);
- (b) in the case of an assessment issued under this Act, on the date specified in the notice of assessment; or,
- (c) in any other case, on the date the taxable transaction occurs as determined under this Act.

(2) The tax payable by a taxable person under subsection (1) is determined in accordance with Part VII of the Act.

(3) Upon written application by a person liable for tax, the Commissioner-General may, where good cause is shown, extend the time for payment of tax by the person beyond the date on which it is due and payable, or make such other arrangements as appropriate to ensure the payment of the tax due.

(4) Where the Commissioner-General has reasonable grounds to believe that a person may leave Swaziland permanently without paying all tax due under this Act, the Commissioner-General may issue a notice containing particulars of the tax to the Chief Immigration Officer and may request the Commissioner of Immigration to prevent that person from leaving Swaziland until that person makes-

(a) payment in full; or,

(b) a satisfactory arrangement with the Commissioner-General for the payment of the tax.

(5) A copy of a notice issued under subsection (5) shall be served on the person named in the notice if it is practicable in the circumstances to do so.

(6) Payment of the tax specified in the notice to a customs or immigration officer or the production of a certificate signed by Commissioner-General stating that the tax has been paid or secured shall be sufficient authority for allowing that person to leave Swaziland.

Tax as a debt due to the Kingdom of Swaziland

40. (1) Value added tax due and payable under this Act is a debt due to the Government of Swaziland and is payable to the Commissioner-General by the person liable for the tax as determined under the Act.

(2) The Commissioner-General and the Director of Postal Services may make appropriate arrangements to facilitate the collection of value added tax on the import of goods.

(3) If a person fails to pay value added tax when it is due and payable, the Commissioner-General may institute an action in a court of competent jurisdiction for the recovery of the value added tax and where the Commissioner-General institutes an action under this section, judgment shall be delivered within sixty days from the date of institution of the action.

(4) The action under subsection (3) may be filed with the court having jurisdiction over that person, notwithstanding any provision of the legislation establishing that court to the contrary.

Security

41. Where it appears to the Commissioner-General necessary to do so for the protection of the revenue, the Commissioner-General may require any taxable person to give security of an amount and in a manner that the Commissioner-General may determine for the payment of tax which is or may become due by the person.

Preferential claim to assets

42. From the date on which tax is due and payable, the Commissioner-General has a preferential claim against other claimants upon the assets of the person liable to pay the tax until the tax is paid.

Seizure of goods

43. (1) The Commissioner-General may seize any goods in respect of which there are reasonable grounds to believe that tax that is due and payable in respect of the supply or import of those goods has not been, or will not be, paid.

(2) Goods that have been seized under subsection (1) shall be detained in a place approved by the Commissioner-General.

(3) Immediately after the seizure of the goods, a written statement shall be signed by the owner of the goods or the person who had custody or control of the goods and by the Commissioner-General identifying the goods and stating that the goods have been seized under this section and the reason for seizure. The statement shall also state the quantity and quality of the goods and set out the terms for the release or disposal of the goods.

(4) The Commissioner-General is not required to serve the statement under subsection (3) if, after making reasonable enquiries, the Commissioner-General does not have sufficient information to identify the owner of the goods or the person who had custody or control of the goods.

(5) Where subsection (4) applies, the Commissioner-General may sign a statement under subsection (3) on a person claiming the goods, provided that person has given sufficient information to enable the statement to be signed.

(6) The Commissioner-General may authorize any goods seized under subsection (1) to be delivered to the person who signed the statement under subsection (3) where that person has paid, or gives security for the payment of the tax due and payable or that will become due and payable in respect of the goods.

(7) Where subsection (6) does not apply, the Commissioner-General shall detain the goods seized under subsection (1)-

- (a) in the case of perishable goods, for a period that the Commissioner-General considers reasonable, having regard to the condition of the goods; or,
- (b) in any other case, until the later of-
 - (i) twenty days after the seizure of the goods; or,
 - (ii) twenty days after the due date for payment of the tax.

(8) Where the detention period in subsection (7) has expired, the Commissioner-General may by way of auction sell the goods in the manner specified in section 44(5) and apply the proceeds of sale as set out in that section.

(9) Nothing in this section precludes the Commissioner-General from proceeding under section 40 with respect to any balance owed if the proceeds of disposal are not sufficient to meet the costs of disposal and the value added tax due.

Closure of business and distress proceedings

44. (1) Where a person liable for tax has failed to remit the amount payable by that person within the prescribed time, the Commissioner-General may lock up and seal the business premises of that person and after that the goods in the business premises shall be deemed to be attached and at the disposal of the Commissioner-General.

(2) The Commissioner-General may recover unpaid tax by distress proceedings against the movable and immovable property of the person liable to pay the tax, by issuing an order in writing, specifying the person against whose property the proceedings are authorized, the location of the property, and the tax liability to which the proceedings relate and may require a police officer to be present while the distress is being executed.

(3) For the purposes of executing distress under subsection (2), an officer may at any time enter any premises described in the order authorizing the distress proceedings.

(4) Property upon which a distress is levied under this section, other than perishable goods, shall be kept for twenty days either at the premises where the distress was levied or at such other place as the Commissioner-General may consider appropriate, at the cost of the person liable.

(5) Where the person liable does not pay the tax due, together with the costs of the distress-

- (a) in the case of perishable goods, within a period that the Commissioner-General considers reasonable having regard to the condition of the goods; or
- (b) in any other case, within twenty days after the distress is levied,

the property distressed may be sold by public auction, or in such other manner as the Commissioner-General may direct.

(6) The proceeds of a disposal under subsection (5) shall be applied by the auctioneer or seller first towards the cost of taking, keeping, and selling the property distrained upon, then towards the tax due and payable, and the remainder of the proceeds, if any, shall be given to the person liable.

(7) Nothing in this section precludes the Commissioner-General from proceeding under sections 39 and 40 with respect to any balance owed if the proceeds of the distress are not sufficient to meet the costs of the distress and the tax due.

(8) All costs incurred by the Commissioner-General in respect of any distress may be recovered by from the person liable, as tax due under this Act.

Recovery of tax from third parties

45. (1) Where a person liable fails to pay tax on the due date, the Commissioner- General may by notice in writing require any person-

- (a) owing or who may owe money to the person liable;
- (b) holding or who may subsequently hold money for, or on account of, the person liable; or
- (c) having authority from some other person to pay money to the person liable,

to pay the money to the Commissioner-General on the date set out in the notice, up to the amount of the tax due.

(2) The date specified in the notice under subsection (1) shall not be a date before the money becomes due to the person liable to pay tax, or held on the person's behalf.

(3) A copy of a notice issued under subsection (1) shall be forwarded to the person liable.

(4) A person making a payment pursuant to a notice under subsection (1) is deemed to have been acting under the authority of the person liable and of all other persons concerned and is hereby indemnified in respect of that payment.

Duties of receivers

46. (1) In this section, "receiver" means a person who, with respect to an asset in Swaziland, is-

- (a) a liquidator of a company; or
- (b) a receiver appointed out of court or by a court; or
- (c) a trustee for a bankrupt person; or
- (d) a mortgagee in possession; or
- (e) an executor of a deceased estate; or
- (f) any other person conducting the business of a person legally incapacitated.

(2) A receiver shall in writing notify the Commissioner-General within fourteen days after being appointed to the position of receiver or taking possession of an asset in Swaziland, whichever first occurs.

(3) The Commissioner-General may in writing notify a receiver of the amount which appears to the Commissioner-General to be sufficient to provide for any tax which is or will become payable by the person whose assets are in the possession of the receiver.

(4) A receiver shall not part with any asset in Swaziland which is held by the receiver in their capacity as receiver without the prior written permission of the Commissioner-General.

(5) A receiver-

- (a) shall set aside, out of the proceeds of sale of an asset, the amount notified by the Commissioner-General under subsection (2), or such lesser amount as is subsequently agreed on by the Commissioner-General;
- (b) is liable to the extent of the amount set aside for the tax of the person who owned the asset; and,
- (c) may pay any debt that has priority over the tax referred to in this section notwithstanding any provision of this section.

(6) A receiver is personally liable to the extent of any amount required to be set aside under subsection (4) for the tax referred to in subsection (2) if, and to the extent that, the receiver fails to comply with the requirements of this section.

PART X
REFUND OF TAX

Refund of Tax

47. (1) If, for any tax period, a taxable person's input tax credit exceeds output tax for that period, the Commissioner-General shall refund the excess within two months of the due date for the return for the tax period to which the excess relates, or within two months of the date when the return was made if the return was not made by the due date.

(2) Notwithstanding the provisions of subsection (1), the Commissioner-General may with the consent of the taxable person, allow that person to offset the excess against future liability.

(3) A person may claim a refund of any tax paid in excess of the amount of tax due under this Act for a tax period.

(4) A claim for a refund under subsection (3) shall be made within five years after the end of the tax period in which tax was overpaid.

(5) Where a person has claimed a refund under subsection (3) and the Commissioner-General is satisfied that the person has paid an amount of tax in excess of the amount of tax due, the Commissioner-General shall refund the excess to the taxable person.

(6) Where a person claiming a refund is required by the Commissioner-General to provide accounts or records to substantiate the claim and fails to do so in a manner satisfactory to the Commissioner-General within 7 working days of being requested, the time period specified in subsection (1) for making the refund shall not be binding on the Commissioner-General.

(7) The Commissioner-General shall serve on a person claiming a refund a notice in writing of a decision in respect of the claim.

(8) A person dissatisfied with a decision referred to in subsection (7) may only challenge the decision under Part IX.

(9) No refund shall be made under subsection (4) in relation to a taxable supply that has been made to a person who is not a taxable person, unless the Commissioner-General is satisfied that a credit note has been issued and the amount of the excess tax has been repaid by the taxable person to the recipient, whether in cash or as a credit against an amount owing to the taxable person by the recipient.

(10) Where the Commissioner-General is satisfied that tax is refundable, the Commissioner-General shall-

(a) apply the amount of tax refundable against any outstanding liability of the person under this Act;

(b) apply the balance of the tax refundable against any outstanding liability of the person under any legislation administered by the Commissioner-General.

(11) A refund shall not be affected if the taxable person has any outstanding VAT returns or income tax returns from previous tax periods or financial years.

(12) The Commissioner-General may make such procedures as the Commissioner-General considers appropriate to facilitate the processing of tax refunds.

Refund of tax on bad debts

48. (1) Where a taxable person has supplied goods or services for a consideration in money, and has-

- (a) paid the full tax on the supply to the Commissioner-General but has received payment, in whole or in part, from the person to whom the goods or services are supplied; and
- (b) taken all reasonable steps to the satisfaction of the Commissioner-General, to pursue payment and reasonably believes that the person will not be paid, the taxable person may reduce the output tax of that portion of the tax paid for which payment has not been received.

(2) Subject to subsection (1)(b) reasonable steps include-

- (a) creditors own letters of demand to debtor, in vain;
- (b) engagement of external debt collector who failed to collect the debt; and-
 - (i) the debt must be non-disputable and final;
 - (ii) there must be a reasonable relation between the monetary size of the debt and the costs implication in connection with the recovery attempts; and
 - (iii) the business relations with the debtor must have ceased.

(3) If a refund is made under subsection (1) and the taxable person later receives payment, in whole or in part, in respect of the debt, the person shall remit to the Commissioner-General, with the next tax return, a sum equal to the tax portion of the payment received.

Interest on overpayments and late refunds

49. (1) Where the Commissioner-General is required to refund an amount of tax to a person as a result of-

- (a) an objection decision under section 35; or
- (b) a decision of the Tribunal under section 36; or
- (c) a decision of the High Court under section 37,

the Commissioner-General shall pay interest at a rate of one percent per month on the amount of the refund for the period commencing from the date the person paid the tax.

(2) Where the Commissioner-General fails to make a refund required within two months, the Commissioner-General shall pay interest at a rate of two percent per month on the amount of the refund for the period commencing on the day after the latest date for making the refund and ending on the date the refund is made.

(3) Where the Commissioner-General finds, after conducting an investigation of any amount shown as an excess in terms of section 47(1), that the excess amount of input tax credit is greater than the true amount of input tax, or if the declared amount of output tax is less than the real output tax, no interest shall be payable in terms of subsection (2) in respect of the delay in making the refund.

Refund of Tax to Diplomats, Diplomatic and Consular Missions and International Organizations

50. (1) The Minister may, in consultation with the Minister of Foreign Affairs, authorize the granting of a refund in respect of tax paid or borne by-

- (a) any person enjoying full or limited immunity, rights, or privileges under any local or international laws applicable in Swaziland or under recognized principles of international law; or,
- (b) any diplomatic or consular mission of a foreign country or any public international organization operating in Swaziland, relating to transactions concluded for its official purposes.

(2) The refund provided for in subsection (1)(a) shall not be available to any citizen or permanent resident of Swaziland.

(3) Any claim for a refund of tax under this section shall be made in a form and at a time that the Commissioner-General may prescribe and shall be accompanied by proof of payment of tax.

(4) The Minister may make regulations specifying conditions to be met or restrictions to apply for claiming or granting of tax refunds under this section.

**PART XI
RECORDS AND INVESTIGATION POWER**

Records

51. (1) A person liable for tax under this Act shall maintain in Swaziland in the English or SiSwati language-

- (a) original tax invoices, copy tax invoices, credit notes, and debit notes received by the person;
- (b) a copy of all tax invoices, credit notes, and debit notes issued by the person;
- (c) customs documentation relating to imports and exports by the person; and,
- (d) such other accounts and records as may be prescribed by the Commissioner-General.

(2) Records required to be maintained under subsection (1) shall be retained for at least five years after the end of the tax period to which they relate.

Access to books, records and computers

52. (1) In order to enforce a provision of this Act, the Commissioner-General, or an officer or other individual authorized in writing by the Commissioner-General-

- (a) shall have at all times during normal working hours and without any prior notice to any person full and free access to any place at which a business of trade is carried on (whether such place is the principal place of the business or not), premises, place, book, record, or computer;

- (b) may make an extract or copy from any book, record, or computer-stored information to which access is obtained under paragraph (a);
- (c) may seize any book or record that, in opinion of the Commissioner-General, affords evidence that may be material in determining the liability of any person under this Act;
- (d) may retain any book or record for as long as is required for determining a person's liability or for any proceeding under this Act; and,
- (e) may, where a hard copy or computer disk of information stored on a computer is not provided, seize and retain the computer for as long as is necessary to copy the information required.

(2) No officer shall exercise the powers under subsection (1) without a general authorization in writing from the Commissioner-General and the officer shall produce the authorization on request by the occupier of the premises or place.

(3) The owner, manager, or any other person representing the owner on the premises or at the place entered or proposed to be entered under this section shall provide all reasonable facilities and assistance for the effective exercise by the Commissioner-General or officer of the powers under this section.

(4) A person whose books, records, or computer have been removed and retained under subsection (1) may examine them and make copies or extracts from them during regular office hours under such supervision as the Commissioner-General may determine.

Notice to Obtain Information or Evidence

53. (1) The Commissioner-General may, by notice in writing, require any person, whether or not liable for tax under this Act-

- (a) to furnish such information as may be required by the notice; or
- (b) to attend at a time and place designated in the notice for the purpose of being examined on oath by the Commissioner-General or by an officer authorized by the Commissioner-General, concerning the tax affairs of that person or any other person, and for that purpose the Commissioner-General or an authorized officer may require the person examined to produce any book, record, or computer-stored information in the control of the person.

(2) Where the notice requires the production of a book or record, it is sufficient if that book or record is described in the notice with reasonable certainty.

(3) A notice issued under this section shall be served by or at the direction of the Commissioner-General by a signed copy delivered by hand to the person to whom it is directed, or left at the person's last and usual place of business or abode. The person to whom the notice is delivered shall sign a copy of the notice.

Books and Records not in English or SiSwati Language

54. Where any book or record referred to in section 52 or 53 is not in English or SiSwati, the Commissioner-General may, by notice in writing, require the person keeping the book or record to provide, at the expense of that person, a translation into English or SiSwati by a translator approved by the Commissioner-General.

PART XII
OFFENCES AND PENALTIES

Offences related to registration

55. A person who fails-

- (a) to apply for registration as required under section 6;
- (b) to notify the Commissioner-General of a change in circumstances as required by section 9(10); or
- (c) to apply for cancellation of registration as required by section 8(1);

commits an offence and is liable on conviction-

- (i) where the failure is deliberate or reckless, to a fine not less than E 6,000 but not exceeding E 15,000 or to imprisonment for a term not exceeding 6 years or to both; or
- (ii) in any other case, to a fine not less than E 2,000 but not exceeding E6,000 or to imprisonment for a term not exceeding 3 years, or to both.

Offences Related to tax invoices, credit notes, and debit notes

56. (1) A taxable person who fails to provide a tax invoice as required by subsection (1) or (4) of section 29, or a credit or debit note as required by section 30 commits an offence and is liable on conviction to a fine not less than E 2,000 but not exceeding E 10,000 or to imprisonment for a term not exceeding 3 years, or to both.

(2) A person who provides a tax invoice otherwise than as is provided for in subsection (1) or (4) of section 29, or a credit or debit note otherwise than as is provided for in section 30 commits an offence and is liable on conviction to-

- (a) where the act is deliberate or reckless, a fine not less than E 6,000 but not exceeding E15,000 or to imprisonment for a term not exceeding 6 years, or both; or,
- (b) in any other case, a fine not less than E 2,000 but not exceeding E 10,000 or to imprisonment for a term not exceeding 3 years, or both.

Failure to submit a return or a document

57. (1) A person who fails to submit a return or any other document under this Act within the period stipulated by the Commissioner-General commits an offence and is liable on conviction to a fine not exceeding E 10, 000 or to imprisonment for a term not exceeding 3 years, or to both.

(2) If a person convicted of an offence under subsection (1) fails to submit the return or document within the period specified by the Commissioner-General, that person commits an offence and is liable on conviction to a fine of E 1,000 for each day during which the failure continues and to imprisonment for 3 months without the option of a fine.

Failure to pay tax when due

58. A person who fails to fails to pay tax when due commits an offence and is liable on conviction to a fine not less than E 2,000 but not exceeding E 6, 000 or to imprisonment for a term not exceeding 3 years, or to both.

Failure to comply with recovery provisions

59. (1) A person who fails to comply with-

- (a) a notice under section 45; or,
- (b) the requirements of section 46,

commits an offence and is liable on conviction to a fine not less than E 4,000 but not exceeding E 12,000 or to imprisonment for a term not exceeding 6 years, or to both.

(2) Where a person is convicted of an offence under subsection (1)(a), the court may, in addition to imposing a fine, order that person to pay to the Commissioner- General an amount not exceeding the amount that the person failed to pay as required by section 45.

Failure to maintain proper records

60. A person who fails to maintain proper records under this Act commits an offence and is liable on conviction to-

- (a) where the failure was deliberate or reckless, a fine not less than E 4,000 but not exceeding E 12,000 or to imprisonment for a term not exceeding 6 years, or to both; or,
- (b) in any other case, a fine not less than E 2,000 but not exceeding E 6,000 or to imprisonment for a term not exceeding 3 years, or to both.

Failure to provide reasonable assistance

61. A person who fails to provide the Commissioner-General or authorized officer with all reasonable facilities and assistance as required by section 52(3) commits an offence and is liable on conviction to a fine not less than E 6,000, but not exceeding E 15,000 or to imprisonment for a term not exceeding 6 years, or to both.

Failure to comply with a section 41, 53 or section 54 notice

62. A person who fails to comply with a notice issued under section 41, 53 or section 54 commits an offence and is liable on conviction to a fine not less than E 6,000 but not exceeding E 15,000 or to imprisonment for a term not exceeding 6 years, or to both.

Improper use of Taxpayer Identification Number

63. A person who knowingly uses a false taxpayer identification number, including the taxpayer identification number of another person, on a return or document prescribed or used for the purposes of this Act commits an offence and is liable on conviction to a fine not less than E 6,000 but not exceeding E 15,000 or to imprisonment for a term not exceeding 6 years, or to both.

False or misleading statements

64. (1) A person who-

- (a) makes a statement to an officer that is false or misleading; or

- (b) omits from a statement made to an officer any matter or thing without which the statement is misleading,

commits an offence and is liable on conviction to-

- (i) where the statement or omission was made knowingly or recklessly, a fine not less than E 6,000 but not exceeding E 15,000 or to imprisonment for a term not exceeding 6 years, or to both; or,
- (ii) in any other case, a fine not less than E 2,000 but not exceeding E 6,000 or to imprisonment for a term not exceeding 3 years, or to both.

(2) It is a defence for an accused person to prove that the person did not know and could not reasonably be expected to have known that the statement to which the prosecution relates was false or misleading.

(3) A reference in this section to a statement made to an officer is a reference to a statement made orally, in writing, or in any other form to that officer acting in the performance of duties under this Act, and includes a statement made-

- (a) in an application, certificate, declaration, notification, return, objection, or other document made, prepared, given, filed, or furnished under this Act;
- (b) in information required to be furnished under this Act;
- (c) in a document furnished to an officer otherwise than pursuant to this Act;
- (d) in answer to a question asked of a person by an officer; or,
- (e) to another person with the knowledge or reasonable expectation that the statement would be conveyed to an officer.

Obstructing an officer of the Swaziland Revenue Authority

65. A person who obstructs the Commissioner-General or an authorized officer in the performance of duties under this Act commits an offence and is liable on conviction to a fine not less than E 4,000 but not exceeding E 12,000 or to imprisonment for a term not exceeding 4 years, or to both.

Offences by officers and persons

66. (1) Any officer or any other person employed or appointed to carry out the provisions of this Act who-

- (a) directly or indirectly asks for, or takes in connection with any of the officer's duties, any payment or reward whatsoever, whether pecuniary or otherwise, or any promise or security for any such payment or reward, not being a payment or reward which the officer was lawfully entitled to receive; or,
- (b) enters into or acquiesces in any agreement to do, abstain from doing, permit, conceal, or connive at any act or thing whereby the tax revenue is or may be defrauded or which is contrary to the provisions of this Act or to the proper execution of the officer's duty; or,

- (c) does not preserve secrecy with regard to all information or documents which may come to the knowledge of that person in an official capacity in the performance of duties under this Act,

commits an offence and is liable on conviction to a fine not less than E 8,000 but not exceeding E 24,000 or to imprisonment for a term not exceeding 10 years, or to both.

(2) Any person who-

- (a) directly or indirectly offers or gives to any officer payment or reward, whether pecuniary or otherwise, or any promise or security for payment or reward; or,
- (b) proposes or enters into any agreement with any officer in order to induce the officer to do, or to abstain from doing, permit, conceal, connive at any act or thing whereby tax revenue is or may be defrauded or which is contrary to the provisions of this Act or the proper execution of the duty of such officer,

commits an offence and is liable on conviction to a fine not less than E 4,000 but not exceeding E 12,000 or to imprisonment for a term not exceeding 6 years, or to both.

Breach of section 82

67. A person who contravenes section 82 commits an offence and is liable on conviction to a fine not less than E 2,000 but not exceeding E 6,000 or to imprisonment for a term not less than 1 year but not exceeding 3 years or to both.

Payment of tax on bad debts

68. A taxable person who fails to remit tax in accordance with section 48(2) with the next return, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding E 6,000, in addition to the payment of the full amount of the undeclared tax plus a penal tax on that outstanding tax calculated at the rate of two percent per month compounded.

Offences by companies

69. (1) Where an offence is committed by a company, any person who at the time of the commission of the offence-

- (a) was a nominated officer, director, general manager, company secretary, or other similar officer of the company; or,
- (b) was acting or purporting to act in that capacity,

is deemed to have committed the offence and shall be dealt with in accordance with sections 55 to 68.

(2) Subsection (1) does not apply where-

- (a) the offence was committed without that the consent or knowledge of that person; and,
- (b) the person exercised all diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of the functions of the person and all the circumstances.

Officer may appear on behalf of Commissioner-General

70. Notwithstanding anything contained in any written law, any officer duly authorized in writing by the Commissioner-General may on the request of the Attorney-General appear in any court on the behalf of the Commissioner-General in any proceedings in which the Commissioner-General is a party.

Compounding of offences

71. (1) Where any person has committed an offence under this Act other than an offence under section 66, the Commissioner-General may at any time prior to the commencement of the court proceedings, compound the offence and order the person to pay a sum of money as specified by the Commissioner-General, not exceeding the amount of the fine prescribed for the offence.

(2) The Commissioner-General shall only compound an offence under this section if the person concerned admits in writing to have committed the offence.

(3) Where the Commissioner-General compounds an offence under this section, the order referred to in subsection (1)-

- (a) shall be in writing and specify the offence committed, the sum of money to be paid, and the due date for the payment, and shall have attached the written admission referred to in subsection (2);
- (b) shall be served on the person who committed the offence;
- (c) shall be final and not subject to any appeal; and,
- (d) may be enforced in the same manner as a decree of a court for the payment of the amount stated in the order.

(4) Where the Commissioner-General compounds an offence under this section, the person concerned shall not be liable for prosecution in respect of that offence or for additional tax under section 72.

(5) If the concerned person does not pay the compounded amount within the time limit stated by the Commissioner-General, the compounding shall be considered null and void and the person shall be prosecuted and additional taxes under section 72 imposed.

Additional Tax

72. (1) A person who fails to apply for registration as is required by subsection (1) or (5) of section 8 is liable to pay an additional tax equal to double the amount of tax payable during the period commencing on the last day of the application period in section 6(1) until either the person files an application for registration with the Commissioner-General or the Commissioner-General registers the person under section 7(6).

(2) A person who fails to submit a return within the time required under this Act is liable to pay an additional tax on the tax payable for the period of the return at a rate of two per cent per month of part thereof for the period the return is outstanding.

(3) A person who fails to pay tax imposed under this Act on or before the due date is liable to pay an additional tax on the unpaid tax at a rate of two per cent per month of part thereof for the period the tax is outstanding.

(4) If a person pays additional tax under subsection (3) and the tax to which it relates is found not to have been due and payable by the person and is refunded, then the additional tax, or so much of the additional tax as relates to the amount of the refund, shall also be refunded to that person.

(5) A person who fails to maintain proper records in a tax period in accordance with the requirements of this Act is liable to pay an additional tax equal to double the amount of tax payable by the person for the tax period.

(6) Where a person knowingly or recklessly-

(a) makes a statement to an officer that is false or misleading in a material particular; or,

(b) omits from a statement made to an officer any matter or thing without which the statement is misleading in a material particular,

and the tax properly payable by the person exceeds the tax that was assessed as payable based on the false or misleading information, the person is liable to pay an additional tax equal to double the amount of the excess.

(7) Section 63(3) applies in determining whether a person has made a statement to an officer.

Recovery of Additional Tax

73. (1) Where good cause is shown, in writing, by the person liable to pay additional tax, the Commissioner-General may waive in whole or part any additional tax payable.

(2) The imposition of an additional tax is in addition to any penalty imposed as a result of a conviction for an offence under sections 56 to 58, 60 to 62 and 64 to 69.

(3) No additional tax is payable under section 72 where the person has been convicted of an offence under section 55, 59, or 63 in respect of the same act or omission.

(4) If additional tax under section 72 has been paid and the Commissioner-General institutes a prosecution proceeding under section 55, 61 or 63 in respect of the same act or omission, the Commissioner-General shall refund the amount of additional tax paid.

(5) If the Commissioner-General subsequently withdraws the prosecution the additional tax shall be reinstated and become payable.

(6) Additional tax shall for purposes of this Act be treated as tax of the same nature as the tax to which it relates and shall be payable in and for the same tax period as that output tax.

(7) Additional tax shall be assessed by the Commissioner-General in the same manner as the tax to which it relates and an assessment of additional tax shall be treated for all purposes as an assessment under this Act.

Remission of tax

74. (1) Where the Commissioner-General is of the opinion that the whole or any part of the tax due under this Act from a taxpayer cannot be effectively recovered by reason of-

(a) considerations of hardship; or,

(b) impossibility, undue difficulty, or the excessive cost of recovery, the Commissioner-General may write off the tax which cannot be recovered.

(2) The Commissioner-General shall on a quarterly basis inform the Minister about written off due taxes.

(3) The Minister may make regulations specifying criteria to be observed for writing off due taxes, and for the information to be submitted to the Minister by the Commissioner-General regarding due taxes written off.

PART XIII **MISCELLANEOUS PROVISIONS**

Forms and notices, authentication of documents

75. (1) Forms, notices, returns, statements, tables, and other documents prescribed or published by the Commissioner-General may be in a form and manner as the Commissioner General may determine for the efficient administration of this Act and publication of documents in the Gazette shall not be required.

(2) The Commissioner-General shall make the documents referred to in subsection (1) available to the public at the Swaziland Revenue Authority and at any other locations as the Commissioner-General may determine.

(3) A notice or other document issued, served, or given by the Commissioner-General under this Act is sufficiently authenticated if the name or title of the Commissioner-General, or an authorized officer, is printed, stamped, or written on the document.

Service of notices and other documents

76. Unless otherwise provided in this Act, a notice or other document required or authorized by this Act to be served-

(a) on a person being an individual other than in a representative capacity, is considered sufficiently served if-

- (i) personally served on that person;
- (ii) left at the usual or last known place of abode, office or place of business in Swaziland of the person; or,
- (iii) sent by registered post to a place of abode, office or place of business, or to the usual or last known address in Swaziland of the person; or,

(b) on any other person, is considered sufficiently served-

- (i) if personally served on the nominated officer of the person;
- (ii) if left at the registered office of the person or the address for service of notices under this Act of the person; or
- (iii) if it is left at or sent by registered post to any office or place of business of the person in Swaziland.

Nominated person

77. (1) Every taxable person being a partnership, trust, company, non-resident individual or resident individual shall have a nominated person for tax purposes who is a resident individual.

(2) The name of the nominated person shall be notified to the Commissioner-General in connection with the first registration of the taxable person.

(3) Where a taxable person fails to comply with subsection (2), the Commissioner-General shall specify a nominated person for that taxable person.

(4) A taxable person may, by notice in writing to the Commissioner-General, change the nominated person.

(5) Subject to section 76, the nominated person is responsible for any obligation imposed on the partnership, trust, company or individual under this Act.

Application of Act to partnerships and unincorporated associations

78. (1) This Act applies to a partnership as if the partnership were a person, but with the following changes-

- (a) obligations that would be imposed on the partnership are imposed on each partner, but may be discharged by any of the partners;
- (b) the partners are jointly and severally liable to pay any amount that would be payable by the partnership; and,
- (c) any offence under this Act that would otherwise be committed by the partnership is taken to have been committed by each of the partners.

(2) This Act applies to an unincorporated association as if it were a person, but the obligations that would be imposed on the association are imposed on each member of the committee of management of the association, but may be discharged by any of those members.

Trustee

79. A person who is a trustee in more than one capacity is treated for the purposes of this Act as a separate person in relation to each of those capacities.

Currency conversion

80. (1) For the purposes of this Act, all amounts of money are to be expressed in Emalangeni.

(2) Where an amount is expressed in a currency other than Emalangeni, the amount shall be converted into Emalangeni at the average daily selling exchange rates of the previous month for the currency concerned.

Prices quoted to include tax

81. Any price advertised or quoted for a taxable supply shall include tax and the advertisement or quotation shall state that the price includes the tax.

Schemes for obtaining undue tax benefits

82. (1) Notwithstanding anything in this Act, if the Commissioner-General is satisfied that a scheme has been entered into or carried out where-

- (a) a person has obtained a tax benefit in connection with the scheme; and
- (b) having regard to the substance of the scheme, it would be concluded that the person, or one of the persons, who entered into or carried out the scheme did so for the sole or dominant purpose of enabling the person to obtain the tax benefit,

the Commissioner-General may determine the liability of the person who has obtained the tax benefit as if the scheme had not been entered into or carried out, or in a manner as in the circumstances the Commissioner-General considers appropriate for the prevention or reduction of the tax benefit.

(2) In this section-

“scheme” includes any agreement, arrangement, promise, or undertaking whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings, and any plan, proposal, course of action, or course of conduct;

“tax benefit” includes-

- (a) a reduction in the liability of any person to pay tax;
- (b) an increase in the entitlement of a person to a credit or refund; or,
- (c) any other avoidance or postponement of liability for the payment of tax.

International agreements

83. (1) To the extent that the terms of a treaty or other international agreement to which Swaziland is a party are inconsistent with the provisions of this Act (apart from section 80), the terms of the treaty or international agreement prevails over the provisions of this Act.

(2) In this section, “international agreement” means an agreement between Swaziland and a foreign government or a public international organization.

Regulations and amendment of schedules

84. (1) The Minister may make regulations for the better carrying into effect of the provisions and purposes of this Act.

(2) The Minister may make regulations, specifying the rates of tax payable under this Act.

(3) The Minister may, by notice published in the Gazette, amend the Schedules to this Act.

Transitional provision

85. (1) The legislation repealed under section 86(1) shall continue to apply to all the supply or import of goods and services prior to the date on which this Act comes into operation.

(2) All appointments made under the repealed legislation and subsisting at the date of commencement of this Act are deemed to be appointments made under this Act; and an oath of secrecy taken under the repealed legislation shall be regarded as having been taken under this Act.

(3) All forms and documents used in relation to the repealed legislation may continue to be used under this Act and all references in those forms and documents to provisions of and expressions appropriate to the repealed legislation are taken to refer to the corresponding provisions and expressions of this Act.

(4) Notwithstanding section 25, and subject to section 28 in calculating the amount of tax payable by a taxable person in the tax period ending on March 2012 there may be credited an amount equal to the sales tax credit calculated in accordance with subsection (5).

(5) For the purposes of subsection (4), where a taxable person held, at the end of March 2012, goods for use in the business of that taxable person, being goods acquired not more than 3 months before 31 March 2012, or in the case of plant and machinery, goods acquired not more than 6 months before 31 March 2012 and the Commissioner-General is satisfied that sales tax has been paid in respect of those goods, the amount of the sales tax credit shall not exceed the amount of tax which would have been payable had the goods been subjected to tax chargeable under this Act.

(6) In this section, "sales tax" means sales tax imposed under the Sales Tax Act, 1983.

Repeal

86. (1) The Sales Tax Act, 1983, and regulations to that Act are repealed.

(2) Notwithstanding the repeal under subsection (1), all tax due in respect of any transaction that took place before the commencement of this Act shall be due and payable as if the Act under which that tax was due is still in force, but in case of a default the taxable person shall be dealt with under this Act.

Supremacy of Act

87. Where there is any inconsistency between this Act and any other law prescribing a rate or exemption of tax, this Act shall prevail.

FIRST SCHEDULE

EXEMPT SUPPLIES (Under Section 19)

1. The following supplies are specified as exempt supplies for the purposes of section 19 -
 - (a) the supply of postage stamps;
 - (b) the supply of financial services;
 - (c) the supply of insurance services;
 - (d) the supply of land and buildings except for land and buildings used for commercial and industrial purposes;

- (e) a supply by way of lease or letting of immovable property, other than a -
 - (i) lease or letting of commercial premises;
 - (ii) lease or letting of hotel or holiday accommodation;
 - (iii) lease or letting of residential accommodation for periods not exceeding 45 days; or,
 - (iv) lease or letting of space for parking or storing cars or other vehicles;
- (f) the supply of education services;
- (g) the supply of medical, dental, and nursing services;
- (h) the supply of social welfare services;
- (i) the supply of betting, lotteries, games of chance or casino gambling services;
- (j) the supply of goods as part of the transfer of a business as a going concern by one taxable person to another taxable person;
- (k) the supply of burial and cremation services;
- (l) the supply of precious metals and other valuables to the Central Bank of Swaziland for the Treasury of the Government of Swaziland
- (m) the supply of passenger transportation services, other than services provided by registered tour operators;
- (n) the supply of tap water and sewage;
- (o) the supply of services and of goods closely linked to welfare and social security work, including those supplied by old people's homes, by bodies governed by public law or by other bodies recognized as being devoted to social wellbeing;
- (p) the supply by an amateur sporting organization of sporting activities, where such activities are deemed for purposes of the Act to be non-professional;
- (q) the supply of nonprofit making cultural activities and services; and,
- (r) the supply of goods and services in a charity arrangement.

2. In this Schedule-

“education services” means education provided by -

- (a) pre-primary, primary, secondary school and high school;
- (b) tertiary institution, college or university governed by public law;
- (c) an institution established and operating on a not-for-profit basis and governed by public law for the promotion of adult education, vocational training, technical education, or the education or training of physically or mentally handicapped persons;

“financial services” means -

- (a) granting, negotiating, and dealing with loans, credit, credit guarantees, and any security for money, including management of loans, credit, or credit guarantees by the grantor;
- (b) transactions concerning deposit and current accounts, payments, transfers, debts, cheques, and negotiable instruments, other than debt collection and factoring;
- (c) transactions relating to shares, stocks, bonds, and other securities, other than custody services;
- (d) management of investment funds;

but does not include services provided for a specific fee, charge or commission, other than discount cost, by persons engaged in provision of financial services.

“insurance services” means services related to provision of insurance or re-insurance, including services related thereto provided by brokers or agents.

“land and building for commercial and industrial use” means land and building used or suitable for any commercial or industrial use except for land and building used only for agriculture, forestry, wild life or nature reserve”.

“medical, dental, and nursing services” means

- (a) hospital and medical care and closely related activities undertaken by bodies governed by public law or, under social conditions comparable with those applicable to bodies governed by public law, by hospitals, centers for medical treatment or diagnosis and other duly recognized establishments of a similar nature;
- (b) the provision of medical care in the exercise of the medical and paramedical professions as defined by public law;
- (c) the supply of human organs, blood and milk;
- (d) the supply of services by dental technicians in their professional capacity and the supply of dental prostheses by dentists and dental technicians;

“passenger transportation services” means the transportation of fare-paying passengers and their accompanied personal effects by road, rail or air, but does not include passenger transport services within Swaziland provided by a registered tour operator; and

“social welfare services” means -

- (a) care for the elderly, children, sick, and disabled, including care in a hospital, aged person’s home, and similar establishments; or
- (b) care and welfare services provided for the benefit of minors, supplied by nurseries, old people’s homes, by bodies governed by public law or by other bodies recognized as being devoted to social wellbeing, and the supply of services and of goods closely linked to the protection of children and young persons by bodies governed by public law or by other organizations recognized as being devoted to social wellbeing;

“transfer of a going concern” includes the disposal of any part of a business which is capable of separate operation.

the supply of sporting activities means activities deemed for purposes of the Act to be non-professional.

the supply of burial and cremation services means services solely related to the burial or cremation, but do not include any other services like catering services.

SECOND SCHEDULE

ZERO-RATED SUPPLIES

(Under Section 24(4))

1. The following supplies are specified for the purposes of section 24(4) -
 - (a) The supply of goods or services where the goods or services are exported from Swaziland as part of the supply;
 - (b) The supply of international transport of goods or passengers or goods or services in connection with the international transport of goods or passengers;
 - (c) Maize meal (Tariff Heading 1102.20), where it is graded as super maize meal, special maize meal, sifted maize meal or unsifted maize meal;
 - (d) Maize (Tariff Heading 1005.00), where it is dried maize or dried seed of the plants *zea mays indurata* and *zea mays inderata* or any one or more crossings thereof of a mixture of the dried seed of such plants, but excluding pop corn (*zea mays everta*) or green mealies for human consumption;
 - (e) Beans (Tariff Heading 0713.00), provided that they are dried, whole split, or crushed, but not further prepared or processed, or where packaged as seed;
 - (f) Agricultural input, viz. fertilizers (chapter 31) seeds, excluding flower seeds, and pesticides (3808.00) zero rated; where fertilizers constitutes goods consisting of a substance in its final form which is intended or offered for use in order to improve or maintain the growth of plants or the productivity of the soil; where pesticides consists of goods consisting of any chemical substance or biological remedy, or a ny mixture or combination of any such substance or remedy, intended or offered for use -
 - (i) in the destruction, control, repelling, attraction, disturbance or prevention of any undesired microbe, alga, bacterium, nematode, fungus, insect, plant, vertebrate or invertebrate; or
 - (ii) as a plant growth regulator, defoliant, desiccant, adjuvant or legume inoculants, and anything else which the Minister of Agriculture has by notice in the Gazette declared to be a pesticide;
 - (iii) where seeds are in form used for cultivation.
 - (g) Paraffin (Tariff Heading 2710.11) intended for cooking, illuminating and heating is zero rated provided it is not mixed or blended with any other substance for any purpose other than cooking, illuminating or heating;
 - (h) Milk (Tariff Headings 0401.10, 0401.20; 0403.90) being cultures high-fat, full-fat, low-fat and fat-free milk;
 - (i) Brown bread (tariff Heading 1905.10). For purposes of interpretation only brown bread made from brown wheaten meal and water that has been fermented by yeast and which has been baked in the standard form shall be zero rated;

- (j) Animal feeds (Tariff heading 2308.00) provided that they are goods which consist of any substance obtained by a process of crushing, gritting or grinding, or by addition to any substance or the removal there from any ingredient; or any condimental food, vitamin or mineral substance which possesses or is alleged to possess nutritive properties; or any bone product; or any maize product;
 - (k) Sump (tariff heading 1005.90) not further prepared or processed;
 - (l) Fresh fruit and vegetables (tariff headings 0701.10 – 0709.90 & 0801.11 – 0810.90) Vegetables, not cooked or treated in any manner except for the purpose of preserving such vegetables in their natural state, but excluding dehydrated, dried, canned or bottled vegetables. Fruit, not cooked or treated in any manner except for the purposes of preserving such fruit in its natural state, but excluding dehydrated, dried, canned or bottled fruit and nuts;
 - (m) Fresh eggs (tariff heading 0407.00) being raw eggs laid by hens of the species *gallus domesticus*, whether supplied in their shells or in the form of egg pulp being raw pulp consisting of the yolk and white which is obtained from such eggs after the shells have been removed;
 - (n) Rice (tariff heading 1006.20) whether husked, milled, polished, glazed, parboiled or broken;
 - (o) Vegetable oil except olive oil (tariff heading 1512.11 – 1512.21, marketed and supplied for use in the process of cooking food;
 - (p) the supply of prescription drugs and medicines; and,
 - (q) the supply of school text books.
2. For the purposes of clause 1(a), goods or services are treated as exported from Swaziland if
- (a) in the case of goods, the goods are delivered to, or made available at, an address outside Swaziland as evidenced by documentary proof acceptable to the Commissioner General; or,
 - (b) in the case of services, the services were supplied for use or consumption outside Swaziland as evidenced by documentary proof acceptable to the Commissioner General.
3. For the purposes of clause (1)(b), international transport of goods or passengers occurs where the goods or passengers are transported by road, rail or air-
- (a) from a place outside Swaziland to another place outside Swaziland where the transport or part of the transport is across the territory of Swaziland; or
 - (b) from a place outside Swaziland to a place in Swaziland; or,
 - (c) from a place in Swaziland to a place outside Swaziland.
4. In this Schedule-

“school text books” means school exercise books and text books approved by the Ministry responsible for education for primary, secondary and high school education or which are required for a primary, secondary and high school curriculum approved by that Ministry.

THIRD SCHEDULE
TAX INVOICES, CREDIT NOTES AND DEBIT NOTES
(Under Sections 29 and 30)

Tax Invoice

1. A tax invoice as required by section 29 shall, unless the Commissioner General provides otherwise, contain the following particulars-

- (a) the words "tax invoice" written prominently;
- (b) the commercial name, address, place of business, and the taxpayer identification number of the taxable person making the supply;
- (c) the commercial name, address, place of business, and the taxpayer identification and VAT registration numbers of the recipient of the taxable supply; if the recipient is registered for VAT;
- (d) the individualized serial number and the date on which the tax invoice is issued;
- (e) a description of the goods or services supplied;
- (f) the quantity or volume of the goods or services supplied;
- (g) the rate of tax for each category of goods and services described in the invoice, and,
- (h) either-
 - (i) the total amount of the tax charged, the consideration for the supply exclusive of tax and the consideration inclusive of tax; or,
 - (ii) where the amount of tax charged is calculated under section 24(2), the consideration for the supply, a statement that it includes a charge in respect of the tax and the rate at which the tax was charged.

Credit Note

2. A credit note as required by section 30(1) shall, unless the Commissioner General provides otherwise, contain the following particulars-

- (a) the words "credit note" written prominently;
- (b) the commercial name, address, place of business, and the taxpayer identification number of the taxable person making the supply;
- (c) the commercial name, address, place of business, and the taxpayer identification number of the recipient of the taxable supply; if the recipient is registered for VAT;
- (d) the date on which the credit note was issued;
- (e) either-
 - (i) the taxable value of the supply shown on the tax invoice, the correct amount of the taxable value of the supply, the difference between those two amounts, and the tax charged that relates to that difference; or,

- (ii) where the tax charged is calculated under section 24(2), the amount of the difference between the taxable value shown on the tax invoice and the correct amount of the taxable value and a statement that the difference includes a charge in respect of the tax;
- (f) a brief explanation of the circumstances giving rise to the issuing of the credit note; and,
- (g) information sufficient to identify the taxable supply to which the credit note relates, including the invoice number to which the credit note relates.

Debit Note

3. A debit note as required by section 30(2) shall, unless the Commissioner General provides otherwise, contain the following particulars-

- (a) the words "debit note" written prominently;
- (b) the commercial name, address, place of business, and the taxpayer identification number of the taxable person making the supply;
- (c) the commercial name, address, place of business, and the taxpayer identification number of the recipient of the taxable supply; if the recipient is registered for VAT;
- (d) the date on which the debit note was issued;
- (e) either-
 - (i) the taxable value of the supply shown on the tax invoice, the correct amount of the taxable value of the supply, the difference between those two amounts, and the tax charged that relates to that difference; or,
 - (ii) where the tax charged is calculated under section 24(2), the amount of the difference between the taxable value shown on the tax invoice and the correct amount of the taxable value and a statement that the difference includes a charge in respect of the tax;
- (f) a brief explanation of the circumstances giving rise to the issuing of the debit note; and,
- (g) information sufficient to identify the taxable supply to which the debit note relates, including the invoice number of the tax invoice to which the debit note relates.

