



# SWAZILAND VALUE ADDED TAX ROADMAP

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## Acronym List

ADB	Asian Development Bank
CED	Customs and Excise Department
CG	Commissioner-General
DfID	Department for International Development
DT	Department of Taxes
EU	European Union
IMF	International Monetary Fund
IT	Information Technology
LRA	Lesotho Revenue Authority
MoF	Ministry of Finance
RSA	South Africa
SACU	Southern African Customs Union
SARS	South Africa Revenue Services
SRA	Swaziland Revenue Authority
TA	Technical Assistance
VAT	Value Added Tax
VIU	VAT Implementation Unit
VRA	VAT Refund Administrator

## I. Foreword

In response to a request by Swaziland's Ministry of Finance (MoF), the Southern Africa Global Competitiveness Hub agreed to assist with the preparation of a Road Map for the introduction of Value Added Tax (VAT). Over the past decade several reviews of tax policy have recommended that Swaziland should move from its current Sales Tax towards a VAT, with the objective of improving the revenue yield and removing distortions caused by the Sales Tax system.

The Ministry has already decided to transform the existing Taxes and Customs Departments into a unified revenue service, to be called the Swaziland Revenue Authority, which is planned to come into operation during 2008. While the process of reforming tax administration proceeds, the Ministry wishes to develop a detailed roadmap that will set down all the necessary steps for implementation of VAT.

The specific terms of reference for the assignment to prepare a Swaziland VAT Roadmap included:

- Drawing on the experience of South Africa and other SACU countries that have implemented value added tax, prepare a brief summary of the main lessons learned from the implementation process. Towards this objective, visits should be made to South Africa Revenue Service (SARS) in Pretoria and at least one other SACU country which has recently introduced VAT;
- Based on regional experience and the lessons learned from the introduction of VAT, prepare presentations to senior MoF officials;
- Prepare a detailed roadmap identifying all the necessary steps required for the smooth introduction of a VAT system, giving specific attention to allowing sufficient time for legal drafting, discussion, approval of the necessary legislation, the preparation of educational and briefing materials, the need to sensitize the business community, and the training of officials for administering the VAT.

To carry out this assignment, a USAID Southern Africa Global Competitiveness (Trade Hub) Consultant, Mr. Gerry Cawley, visited Swaziland from 25 February to 7 March 2008. A senior official from the MoF's Fiscal and Monetary Affairs Division, Ms. Nokuthula Dlamini, accompanied the Consultant on visits, over the period 10-14 March 2008, to SARS in Pretoria, and to the Lesotho Revenue Authority (LRA) in Maseru to see how VAT works in these countries. These visits also provided an opportunity to understand the important issues that arose in those countries with developing a VAT strategy and making the preparations for introducing VAT.

The Trade Hub and the Consultant appreciates the assistance given by MoF officials in Swaziland and also the time and help given by SARS and LRA officials during the visits by an MoF delegation to Pretoria and Maseru. A full list of persons/organizations met with during the assignment is shown in Annex 1.

This report comprises an Executive Summary and five sections dealing with (a) recent revenue trends and performance; (b) tax policy/administration revenue reforms; (c) Swaziland Revenue Authority Issues; (d) VAT policy/legislation issues; and (e) VAT preparations. An indicative VAT Roadmap is presented on Page 3.

## II. Executive Summary

Swaziland is the only country in the SACU area that has not yet moved from a Sales Tax to a Value Added Tax (VAT). Similarly, Swaziland is the last country in the region to modernize its revenue administration and to put in place a unified revenue service.

Heavy dependence on SACU receipts, which are expected to decline sharply over the medium term, underlines the need to act quickly to achieve more effective revenue collection so as to ensure a sustainable budget.

The Swaziland authorities have recently acted to establish a unified revenue service. Towards this end, a law to establish the Swaziland Revenue Authority (SRA) was recently passed by Parliament and awaits Royal Assent. It is expected that the SRA will come into operation during 2008 and will take over the functions now performed by two Ministry of Finance (MoF) departments, the Department of Taxes (DT) and the Customs and Excise Department (CED). DT is responsible for collecting a wide range of local taxes, principally Income Tax, while CED deals with customs, excise and sales tax revenues.

Owing to the capacity shortage within their organizations, the DT and CED depend heavily on taxpayers' voluntary compliance with their tax obligations and substantial transformation will be required before there can be effective VAT implementation.

MoF recognizes the need to move from a narrow-based sales tax to a more broadly based VAT to enhance revenue and to address the distortions of the sales tax regime. The intention is that once the new SRA has become operational, the preparations for introducing VAT should start as soon as possible.

In preparing for VAT, decisions taken with regard to establishing the SRA will be critical. Important issues here include:

- decisions on the new SRA organizational structure,
- how SRA appointments will be made,
- what resources will be provided to SRA, and
- whether/how Technical Assistance will be recruited.

The indicative VAT Roadmap shown below suggests early 2010 as the earliest possible date before SRA will be able to start the VAT preparations and early 2011 as the earliest possible date for VAT to come into operation. However, given the uncertainty about how the SRA establishment will be done, this VAT Roadmap must be considered tentative.

In the meantime, while SRA is being established and its capability is being developed, MoF could start the work of preparing a VAT strategy and drafting the necessary legislation. During the VAT Roadmap Mission, a draft VAT strategy and a draft VAT law were prepared and delivered to MoF management. These documents take account of information gathered about the VAT experience of SARS and the LRA. Annex 2 describes in detail the main features of the VAT systems in both South Africa and Lesotho and the lessons provided by their experience with VAT. The striking achievements since 2003 with reform of tax administration and VAT introduction in Lesotho are worthy of careful study and provide useful guidelines for Swaziland in embarking on similar tax reform activities.

## ***An Indicative VAT Roadmap for Swaziland***

### **Stage 1 - Policy/Legislation Issues**

#### **July 2008-December 2009**

Given that it is likely to take at least 18 months before the SRA can become a transformed tax administration and be able to undertake VAT preparations, the time period allowed for preparing the VAT strategy and drafting the law could extend to end 2009. The main tasks to be done during this period include -

- Consider/decide VAT policy issues, most importantly, the VAT registration threshold, goods/services to be zero-rated, goods/services to be treated as VAT-exempt, transitional arrangements in moving from Sales Tax to VAT, and the frequency of VAT filing/paying. Decisions on the VAT commencement date and the VAT rate should be deferred until after the preparations for implementation of VAT are well under way;
- If considered necessary, recruit Technical Assistance to help with developing the VAT Strategy and drafting the law;
- Seek Cabinet approval for the proposed VAT strategy;
- Draft/publish a VAT law to reflect the agreed VAT strategy;
- Conduct public consultations about the proposed VAT strategy as reflected in the draft VAT law;
- Review the proposed VAT strategy and the draft VAT law, taking account of any changes felt necessary to deal with concerns raised during the public consultation process;
- Prepare and present to Parliament a final VAT law.

## **Stage 2 - Making the VAT Preparations**

### **January - December 2010**

This task must be undertaken by the SRA, once it has become properly established with new management/staffing, a good organization structure, and with a transformed approach to revenue administration. The tasks to be undertaken by SRA in making the VAT preparations include –

- Establishing a VAT Implementation Unit (VIU);
- Providing VAT training for those required to staff the VIU and, later on, to administer the VAT;
- Recruit TA to help the VIU with the VAT preparations;
- Conduct a vigorous VAT education/publicity campaign;
- Engage with the private sector, especially the businesses which will have to register for VAT and key groups such as accounting/ tax professionals;
- Procure an appropriate IT system for VAT administration;
- Enter into discussions with SARS to have a VAT refund arrangement for cross border shopping and purchases by Swaziland traders in RSA; the LRA-SARS arrangement in this regard is described in detail in Annex 2;
- Conduct the VAT registration campaign;
- Decide and prepare forms and procedures needed for VAT administration;
- Address issues of concern to the general public, especially possible price effects.

## **Stage 3 - VAT Launch Date**

### **Early 2011**

This is dependent on Stages 1 and 2 being completed.

## **III. Recent Revenue Trends and Performance**

Swaziland's receipts from SACU have increased sharply in recent years, both in real terms and as a share of total Government revenues. In 2003/04, SACU receipts were E1.88 billion (or 50% of total revenue); by 2007/08 they had increased to E 6.29 and accounted for about 70% of total revenue. However, the prospect that SACU receipts will decline sharply in the medium term presents a serious challenge in terms of maintaining fiscal balance.

The following Table shows revenue collections under main headings for the period 2003/04 to 2006/07:

**Table: Swaziland Revenue Collections, 2003/04 – 2006/07 (Emalangeni millions)**

	<b>2003/04</b>	<b>2004/05</b>	<b>2005/06</b>	<b>2006/07</b>
SACU Receipts	1878.1	2772.8	3137.4	5321.8
Income Tax	1103.5	1161.1	1267.3	1533.5
Sales Tax	545.9	549.3	661.5	620.1
Other revenues	212.8	220.9	300.8	379.6
Total Revenues	3740.3	4704.1	5367.0	7855.0
<b>As % of total revenue</b>				
SACU Receipts	50.2%	58.9%	58.5%	67.8%
Income Tax	29.5%	24.7%	23.6%	19.5%
Sales Tax	14.6%	11.7%	12.3%	7.9%
Other revenues	5.7%	4.7%	5.6%	4.8%
<b>As % of GDP</b>				
SACU Receipts	12.8%	17.7%	18.3%	22.0%
Income Tax	7.5%	7.4%	7.4%	6.3%
Sales Tax	3.7%	3.5%	3.9%	2.6%
Other revenues	1.5%	1.4%	1.8%	1.6%
Total Revenues	25.5%	30.0%	31.3%	32.5%

*Source: Ministry of Finance*

This Table shows an increasing dependence on SACU receipts and the declining contributions of Sales Tax and Income Tax. The sharp decline in Sales Tax revenues in 2006/07 is especially noteworthy, although the yield from this source is expected to increase somewhat in real terms in 2007/08.

#### **IV. Tax Policy/Administration Reform**

Swaziland is the only country in the SACU area that has not yet moved from a Sales Tax to a Value Added Tax. The authorities recognize the need to move from a narrow-based sales tax to a more broad-based VAT to enhance revenue and to address the distortions of the sales tax regime.

The Government has recently acted to establish a semi-autonomous Swaziland Revenue Authority (SRA). As with the move to VAT, Swaziland is one of the last countries in the SACU area to make this reform. The creation of the SRA is considered to be essential for more effective tax administration, and especially necessary to allow implementation of the VAT in due course. Since 2006, a number of SRA launch dates have been announced, the latest target date being July 2008. The legislation to establish the SRA was passed by Parliament late in

2007 but still awaits Royal Assent. The Ministry expects the Royal Assent to be given soon. Once the Assent has been given, the new law can be Gazetted and MoF can proceed to appoint the SRA Board of Directors and a Commissioner General. However, a period of at least 6 months would be needed for making the pre-launch preparations. Depending on when the Assent is given, and decisions taken about the scope and extent of the preparations. It might be possible to launch the SRA before the end of 2008.

Currently, two MoF departments, the Department of Taxes (DT) and the Customs and Excise Department (CED) administer the tax collection functions, with CED being responsible for the Sales Tax. Both DT and CED experience a shortage of (human, organizational and infrastructure) capacity. The result is that for many tax obligations and for a sizeable number of taxpayers, the two Departments depend very heavily on voluntary compliance.

It is recognized that some essential reforms could be done immediately, even before the SRA is created. Similarly, establishing the SRA of itself may not be enough to deliver more effective revenue collection; much will depend on how the transformation from DT/CED to SRA administration takes place.

Annex 3 provides a brief description of the SRA Act, as enacted, and comments on some areas of concern with this new law. Issues of potential importance to the task of VAT preparations include, the procedure with regard to appointment of SRA staff and the definition of roles/responsibilities of the SRA.

## **V. Swaziland Revenue Authority Issues**

In proposing an appropriate time scale for preparing to implement VAT in Swaziland, decisions made with regard to establishing the SRA will be critical. As will be clear from Section II above, neither DT nor CED are currently prepared for VAT implementation. Moreover, while the substantial task of establishing the SRA is in progress there will be limited scope for revenue officials to undertake another major project such as preparing for VAT implementation.

Even after the SRA has been launched, important conditions must be met before SRA could begin to make VAT preparations. This includes making the right appointments to key management positions and providing SRA with necessary resources to function effectively. The new SRA must be able to pay salary scales adequate to attract well-qualified staff. In some areas, we consider it may be necessary to recruit external expertise, perhaps even in the start up period for some executive positions. SRA will have to create new common service functions to deal with tasks such as HR, financial management, IT systems, and to provide legal, research and statistical services. Even if the appropriate actions were taken by SRA quickly in these areas, it would take time, probably at least 18 months, before SRA could be ready to undertake the VAT preparations. For planning purposes, therefore, early 2010 may be assumed to be the earliest possible date for SRA to be able to start VAT preparations.

Without significant reform of tax administration, making the switch from Sales Tax to VAT could potentially have serious adverse implication. At a minimum, the project would have to be delayed. On a worst-case scenario, the switch could prove counter-productive, at least in terms of the revenue yield. Given that VAT is essentially a self-assessment system and as the process of paying refunds is an essential element of VAT, good administration capacity is a pre-requisite to good compliance and enhanced revenue yields. Without effective VAT administration, the

scale of under-declaration and abuse of the refund process could frustrate the objective of raising the revenue yield, which is so important given the expected decline in SACU revenues.

Within the new SRA, the organizational structure adopted will be particularly important for VAT implementation. While the current arrangement, whereby CED is responsible for administering the Sales Tax may be appropriate, especially because so much (more than 75%) of the yield from sales tax originates from imports. However, in switching to VAT, the more rational solution is for the VAT and Income Tax to be administered in a well-integrated fashion. This could be achieved by having them managed in one SRA Internal Revenue Department. This Internal Revenue Department should have a core group of SRA's most capable staff dedicated to administering the VAT and Income Tax affairs of Swaziland's largest enterprises. It is already clear that the top 100 enterprises in the country account for as much as 80% of total Sales Tax and Income Tax collections. This dominant position of the top 100 would not change with introduction of VAT. Special attention must therefore be given to the largest taxpayers - indeed, for both Sales Tax and Income Tax. This action does not have to wait until the SRA is established<sup>1</sup>.

Moreover, the authorities might consider appointing an expatriate CG, at least for the initial period of SRA operations. The recent positive experience of Uganda and Lesotho in this regard is instructive. Many countries have adopted the strategy of bringing in an expatriate with prior revenue authority management experience to establish the new institution. The critical state of existing revenue administration requires strong and capable SRA management. An "outsider" would be subject to fewer pressures and would be better placed to ignore local considerations for the many difficult decisions needed in the context of establishing an effective SRA.

Without knowing how the SRA establishment process will be affected, it is impossible at this stage to say when SRA might be able to commence VAT preparations. Once VAT preparations start, a period of at least 12 months must be allowed for tasks such as running the education/publicity campaign, training staff to administer VAT, conducting the VAT registration campaign, procuring an appropriate IT system, and developing auditing/investigation capacity. As indicated in Section III, the most optimistic scenario suggests early 2011 as the earliest possible date for a VAT to come into operation in Swaziland.

## **VI. VAT Policy/Legislation Issues**

If the MoF was satisfied that tax administration capacity was adequate, or would soon become adequate, to undertake the VAT preparations and administration, a start could be made now with developing a VAT strategy for Swaziland. With an agreed strategy, a draft VAT law could be prepared and published. Recruiting Technical Assistance (TA), if considered necessary for these tasks, might cause additional delays – especially if the procurement process for this TA proved to be slow or difficult.

The need to engage effectively with the business community is an important element in developing the VAT strategy. The MoF will need to decide at what stage and in what way this public consultation process should be done. It could prove helpful to do this before presenting a final text of the VAT law to Parliament. The role of the business community and especially

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<sup>1</sup> The Minister's Budget Speech on 7 March 2008 announced that a large taxpayers unit would be created in DT during the 2008/09 financial year.

accounting/tax professionals is crucial to successful VAT implementation – this is because VAT essentially operates as a self-assessment system and businesses registered for VAT are the principal collectors of VAT due. This underlines the need to engage effectively with the business sector in deciding the VAT strategy.

For the VAT Roadmap, the time needed for policy/legislation aspects is perhaps easier to determine, as these are entirely the responsibility of MoF. Depending on decisions about the public consultation process and the need for TA, a period of at least 12 months should be allowed for deciding the VAT strategy and drafting the legislation. If an extended public consultation process and TA are required, or delays occur with getting Parliament's approval, the period needed for the policy/legislation aspects might extend to 24 months.

Having had consultations with the business community, it might become necessary to make changes to the VAT Strategy earlier proposed. This would require a further approval by Cabinet and/or revising the draft VAT legislation.

The main issues to be decided in the context of developing a VAT strategy and drafting the legislation are:

- The Rate/Rates of Tax – the ideal is to have a standard positive rate and this should probably not exceed 14%, given that the existing Sales Tax rate is 14%.
- The supplies of goods/services to be zero-rated (e.g. exports, basic foods, prescription drugs/medicines, farm inputs, etc). This zero-rated list should be kept as short as possible to reduce the burden of VAT administration, especially to minimize the flow of VAT refund claims, and to reduce opportunities for fraud/abuse;
- The supplies of goods/services to be VAT-exempt – here the main areas to consider for VAT-exempt status are financial/insurance services, education services, medical services, public passenger transport services, residential letting, unprocessed agricultural products including livestock, and undeveloped land;
- The VAT Registration threshold – this should be set high enough to ensure a manageable VAT registered population for the crucial early years of VAT. In Swaziland's circumstances, an upper limit of 1500 business entities for the VAT Register would seem reasonable for the important early stages of VAT. To achieve this, it seems that a registration threshold of not less than E500,000 per annum will be required. In addition, there should be limited tolerance for allowing voluntary registration for those with a taxable turnover below the registration threshold.
- The periods for filing Returns and paying VAT (monthly, every 2 months, quarterly, etc). For the largest (say 100) taxpayers, there must be monthly filing, while for the remainder the filing period could be every 2 months.
- Transitional arrangements from Sales Tax to VAT. Under the current Sales Tax there is an extensive list of tax-exempt goods and a very short list of taxable services. If the zero-rated and VAT-exempt lists were strictly limited, relatively sharp price increases for some important consumption items would be inevitable. To avoid price shocks, the authorities may wish to take action during the transition period, e.g. by removing some items from the list of exempt goods/services under the sales tax well in advance of the VAT commencement date.

To enable the MoF to make a start on developing a VAT strategy, a draft policy paper was prepared and discussed with Ministry officials during the Roadmap Mission. This policy paper can easily be adapted to become a Cabinet Memorandum, which could be submitted to seek approval for the VAT strategy and the go-ahead for drafting a VAT law. In addition, a draft VAT Act was prepared and left with MoF management as a guide, if it is decided to proceed soon with preparing VAT legislation.

## VII. VAT Preparations

To prepare for implementing VAT, it will be essential for SRA to create a small but effective team of well-trained staff, led by a capable and committed manager. This might be called the VAT Implementation Unit (VIU). The following paragraphs describe the important tasks to be undertaken by the VIU to prepare for VAT.

- **Organizational arrangements in SRA.** SRA must make an early decision about which department will administer the VAT. Ideally, the VAT and Income Tax should be administered in the same SRA Department with a core group of SRA's more competent staff dedicated to managing the tax affairs of a small group of the largest taxpayers. In Swaziland's context this group of large taxpayers should probably not exceed 100.
- **VAT Training.** There are three main training tasks to be dealt with here:
  - Training the staff required to make the VAT preparations;
  - Training VAT administrators so as to be ready to administer VAT when it comes into operation;
  - Developing VAT audit/investigation capacity.

Some of these training tasks will require external inputs which should include visits by key staff to other countries to see how VAT preparations were made and how VAT is administered. South Africa, Namibia and Lesotho are options for field visits like these. Another (low-cost) option is to recruit VAT training experts to spend time in Mbabane to train those who will be involved in the VAT project. SARS might be willing to assist here – a SARS input in this area was made available in the recent past to both Botswana and Lesotho during their preparations to implement VAT.

- **Conduct the VAT Education/publicity campaign.** This campaign must be well organized, vigorous and sustained. It must be targeted strongly on the business sector, especially those who will be required to register for VAT. There is significant merit here in engaging with accounting/tax professionals – many of these would play a key role in advising their clients about the implications of the VAT law, and how to prepare for and implement the VAT. The VIU would need to arrange countrywide seminars and workshops to guide the business community about how VAT works, the importance of keeping good records, the need to issue tax invoices, when/how input tax credits are claimed, and the filing/payment obligations under VAT. The general public also needs to be involved, so that they understand how VAT will apply to the goods/services they buy, the difference between registered and non-registered traders, and in particular, to allay any public concerns about the likely VAT effect on consumer prices.
- **Procure an IT system to manage/administer VAT.** There are off-the-shelf options here or the SRA could seek a custom-made solution. With a very small VAT-register, the better option may be to buy an off-the-shelf system. It would be important to have an IT system that can be linked with other tax systems to allow more integrated tax

administration. Here it would also be important that each taxpayer has a unique tax identification number which would help all SRA staff concerned to know the transactions of taxpayers under all main tax headings – Customs, Excise, Income Tax and VAT.

- **Conduct the VAT Registration campaign.** For the VAT registration campaign, the objective must be to ensure that all enterprises above the registration threshold are identified and registered well before the VAT commencement date. The campaign should be accompanied by strong publicity actions to ensure that people register of their own accord.
- **Decide forms & procedures.** The experience of neighboring countries where VAT is operating should be very useful here. The VIU should be able to decide these, based on what is currently in use in the region.
- **Technical Assistance for VAT preparations<sup>2</sup>.** MoF/SRA must decide about the need for Technical Assistance to support the VIU. It seems essential to recruit an international VAT expert to guide the entire preparations process and to assist during the critical early stages of VAT implementation. Given that procurement of this expert could take time, it would be important to make early decisions about securing funding and the recruitment process to be used. Options here might include, the European Union, the IMF and perhaps also SARS.
- **Time period for the VAT preparations.** The time required will depend on factors such as the competence and commitment of the VIU team, the level of SRA commitment to introducing the VAT and the Government's revenue requirements. A high level of political commitment to the entire VAT project would be important, especially during the period of preparing for VAT implementation.
- **Lessons from elsewhere.** In Lesotho, the entire VAT preparations process took almost 3 years. The VAT law was enacted in late 2001. Two target dates to bring the VAT into operation were missed, before it was finally launched in July 2003. The preparations were greatly intensified in the final 6 months before VAT commenced; during this period a long-term VAT expert came on board the project under funding provided by DfID and made a big contribution to the successful implementation of the VAT. In Botswana, the VAT preparations period extended to about 3 years and was assisted by external inputs, including IMF assistance with drafting the VAT legislation, long-term TA to the Ministry of Finance (under EU funding), and inputs by SARS experts, which were focused mainly on the implementation aspects. Annex 2 provides more information about the experience of Lesotho and South Africa with preparing for and administering VAT and suggests some lessons for Swaziland in making plans to switch to VAT.

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<sup>2</sup> A project to support reform of revenue administration has been agreed between MoF and the African Development Bank. This is likely to include recruitment of an expatriate Adviser to the CG - which implies a decision not to appoint an expatriate to this post. Another expatriate is to be recruited as an IT adviser for the SRA. In addition, ADB-funded inputs are envisaged for training and other SRA capacity building measures – information was not available on the details of these additional inputs. It is not yet possible to say when or how these various ADB-funded inputs for improving revenue administration in Swaziland are going to come on stream.

## **ANNEX 1. List of Officials/Organizations Met, VAT Road Map Mission, 25 February – 14 March 2008**

### **1. List of persons/organizations met in Swaziland during the period 25 February-7 March 2008**

#### **Ministry of Finance:**

Mr. Dumisani Masilela, Principal Secretary  
Ms. Dumsile Magugula, Director of Fiscal & Monetary Affairs  
Ms. Nokuthula Dlamini, Deputy Director, Fiscal Affairs  
Mr. Mduduzi Zwane, Deputy Director, Fiscal Affairs  
Mr. Gordon Fitzgerald, Legal Adviser  
Mr. Hilton Dlamini, Facilitator  
Mr. M L Vilikazi, Commissioner of Customs & Excise  
Ms. P Msibi, Commissioner of Taxes

#### **Private Sector Representatives:**

Ms. Zodwa Mabuza, CEO, Swaziland Employers Federation & Chamber of Commerce  
Mr. Marcus Ward, Owner/Manager, Mountain View Hotel, Member of MoF's Tax Advisory Committee  
Mr. Robert Webb, Tax Partner, KPMG  
Mr. Cobus Richter, Financial Controller, Sun International Hotel Group

### **2. Visit to Lesotho Revenue Authority – 12-14 March 2008: List of LRA officials met**

Dr. Charles Jenkins, Commissioner-General  
Mr. Nthako Sekome, Commissioner Revenue Compliance  
Mr. Thabo Moleko, Deputy Commissioner Back Office  
Mr. Tsepo Ranyamatsane, Deputy Commissioner Front Office

### **3. Visit to South Africa Revenue Service – 10-11 March 2008: List of SARS officials met**

Mr. Lincoln Marais and Ms Patricia Langa (International Relations, SARS)  
Mr. Cecil Morden (National Treasury)  
Ms. Rodney Govender, Ms. Thandiwe Mokwana, Ms. Nadine Laubsher and Mr. Eddie Haig (SARS)  
Mr. Trevor van Heerden (Retired VAT Manager of the National Treasury and SARS )

## **ANNEX 2. Report of Visits to Lesotho Revenue Authority (LRA) and South Africa Revenue Service (SARS), 10-14 March 2008**

Section 1 of this Annex provides some guidelines for Swaziland's tax reform plans, especially for introduction of VAT, based on the experience of LRA and SARS. Section 2 describes recent tax reforms in Lesotho and provides a brief outline of Lesotho's VAT system. Section 3 describes the main features of South Africa's VAT system. This report is essentially based on information collected during visits by a Swaziland Ministry of Finance Delegation (consisting of Mr. Gerry Cawley and Ms. Nokuthula Dlamini) to the LRA in Maseru and to SARS in Pretoria during the week commencing 10 March 2008.

### **1. Main Lessons for Swaziland's Tax Reform Program**

In planning to reform the tax system, especially preparing to introduce VAT, the main lessons from these visits are as follows:

- There should be strong and sustained political commitment to the entire tax reform program, including the establishment of SRA, making tax administration more effective and making good preparations for introducing the VAT.
- The VAT system should be made as simple as possible, with one standard rate of tax and very few items in the zero-rated and VAT-exempt lists. In particular, MoF should carefully consider the zero-rated lists in both countries and, if at all possible, Swaziland's zero-rated list for VAT should be even shorter. Lesotho's zero-rated and VAT-exempt lists are more interesting than those applying in RSA.
- For introducing VAT, the education/publicity campaign should be intensive and it should start in good time.
- The VAT registration threshold should be set high enough to ensure a manageable total of registered enterprises (1500 would seem a reasonable maximum for Swaziland); also there should be limited accommodation for those with a turnover below the threshold who are seeking voluntary registration. A registration threshold of E500,000 (the same as for Lesotho's VAT) would seem appropriate for Swaziland.
- Special attention must be given to the minority (no more than 10-20%) of enterprises with highest turnover who can be expected to deliver more than 80% of the total revenue.
- The SRA must develop an adequate VAT administration capacity – given that VAT is essentially a self-assessment system, good enforcement is crucial. Having a strong capacity to conduct VAT audits and investigations is particularly important.
- Government must be sensitive to possible adverse price effects in making the switch to VAT, especially if a higher rate of tax is envisaged or if a significant scaling back on (previous) sales tax exemptions is planned. In switching to VAT, MoF should not seek to achieve a substantial revenue increase – otherwise price effects might endanger the entire VAT project. The education/publicity campaign should address the risk that some traders might seek to use the VAT as an excuse to apply unjustified price increases.
- The VAT refund system must work well – this is particularly important for exporters.
- Swaziland should carefully consider an arrangement with SARS for direct payment to SRA of the VAT paid in South Africa by traders and personal shoppers. The Lesotho arrangements with SARS and the South Africa's VAT Refund Administrator in South

Africa works well, delivers much higher revenues to LRA and greatly simplifies border procedures for both LRA and the importers.

- Reforming tax administration should have first priority now; decisions made with regard to establishing the SRA will be critical in this regard. Substantial measures to make tax administration more effective will be essential to ensure successful preparations for and implementation of VAT. The VAT preparations should not commence until effective tax administration capacity has been put in place.

## **2. Tax Reform in Lesotho – Establishing the Lesotho Revenue Authority and Introducing VAT**

### **Establishing the Lesotho Revenue Authority**

The preparations to establish the Lesotho Revenue Authority (LRA) started effectively in late 2001, with enactment of the LRA Act. However the LRA project did not get properly under way until the new Commissioner General was appointed in mid 2002. The formal launch of the LRA was delayed until Jan 2003; this launch was held back until the new LRA organization structure and staffing was agreed and all officer positions were filled. About 90% of the staff of the old Sales Tax and Income Tax Departments succeeded in getting LRA jobs but only 30% of Customs & Excise Department (CED) staff were accepted.

The LRA transformation was given substantial donor support, especially by the UK's Department for International Development (DFID). This support included funding expatriate CG's since 2001, provision of other long term TA, assistance in HR areas, especially with recruitment/training, and IT support.

Staff of the three revenue Departments (Sales Tax, Income Tax and CED) who did not go to LRA were either transferred to other public service jobs or retired. Those transferring from the civil service to LRA got the terminal benefits due to them in terms of their previous civil service employment.

### **Lesotho's VAT system**

The Value Added Tax (VAT) Act was enacted in late 2001 but it didn't come into effect until July 2003; two previous target dates for introducing it were abandoned, largely because the VAT preparations were far from complete. The ongoing work of getting LRA properly established, which was given highest priority, was an important factor in the decisions to postpone the VAT commencement date. The final 6 months before the VAT was implemented was a period of much intensified VAT preparations and included a generous budget for education/publicity work. Early in this final preparation period a long-term expatriate VAT adviser came on board the project under DfID funding.

As part of the VAT preparations project, the LRA and SARS concluded an agreement for dealing with VAT on the substantial flow of imports from South Africa into Lesotho by personal shoppers and traders, especially small traders. In terms of this agreement, South Africa's VAT Refund Administrator (VRA) remits directly to LRA the VAT paid by personal shoppers and traders on goods bought in South Africa (RSA) and brought into Lesotho. As a result, the importers have no liability for VAT as the goods cross into Lesotho but they cannot claim VAT refunds from the VRA as the goods leave RSA. For those traders who are registered for VAT in Lesotho, an input tax credit can be claimed for the VAT paid in RSA. For those who are not registered for VAT in Lesotho, the payment of VAT in South Africa is final. For both groups of importers (VAT-registered and non VAT-registered), the basis for LRA to claim VAT refunds

from the VRA is the documentation provided as the goods cross the border. On importation, personal shoppers and traders are required to present the normal import declarations together with original tax invoices provided by the RSA suppliers for the goods being imported. The VRA gets a modest handling fee for processing the VAT refunds and the actual transfer of the VAT paid in RSA net of the VRA handling fee) is done by SARS directly into a nominated LRA bank account on a regular basis.

The LRA-SARS-VRA scheme does not apply to goods exported directly (i.e. delivered by RSA suppliers or by RSA-based transport operators) to Lesotho traders – these supplies attract the normal zero rate in RSA, which applies to all RSA exports. Where such direct exports are made to a person in Lesotho who is not VAT-registered, or if registered does not have a Deferred Account facility, the VAT must be paid as the goods come into Lesotho. Similarly, where goods are zero-rated in RSA, but are not zero-rated or VAT-exempt in Lesotho, the importer will have to pay VAT as the goods enter Lesotho.

### **Revenue performance since VAT was implemented**

The LRA reports a dramatic increase in collections on imports since implementation of their agreement with SARS and the VRA. Previous to July 2003, border collections of sales tax on imports rarely exceeded Maloti 2-3 million per month. Today, the revenue yield from the SARS/VRA arrangement ranges from Maloti 30 to 40 million per month. The scheme has been well received by traders and has greatly reduced the paperwork for them as they move goods from RSA to Lesotho. Since no tax is payable at the border on the vast bulk on Lesotho's imports, the administration burden for LRA at border posts is also dramatically reduced.

The LRA also reports a dramatic improvement in the revenue yield from VAT as compared with what was delivered by the previous Sales Tax.

It is clear that both the LRA and VAT reforms have been well implemented and have proved highly effective in terms of delivering much increased revenue yields, a modern tax system and a more competent/professional tax administration. Ireland Aid, one of Lesotho's major bilateral donors, reports that LRA is widely considered as a flagship project and that LRA is now one of Lesotho most effective parastatal organizations.

### **Main features of Lesotho's VAT system**

The following paragraphs describe the main features of Lesotho's VAT:

A VAT registration threshold of M500,000 was adopted. Initially a threshold of M250,000 was proposed but as the VAT commencement date approached the threshold was increased to M500,000 to ensure a lower VAT Register. The result is that LRA's VAT-registered total is only 1500 and there is also limited tolerance for voluntary registration. The VAT registration threshold in Lesotho is much higher than those that apply in RSA or Botswana, which are, respectively, R300,000 or close to R300,000 equivalent.

A standard VAT rate of 14% is applied, with 15% for alcoholic drinks and cigarettes – previously the standard sales tax rate was 10%, with a higher rate for alcoholic drinks and cigarettes.

Limited lists of zero-rate and VAT-exempt supplies – the main zero-rated items are basic foods (e.g. mealie/sorghum meal, bread, milk, eggs, beans/lentils), farm inputs, animal feeds and illuminating paraffin. The main VAT-exempt items are education/financial services, road/rail passenger transport and letting of residential accommodation. Goods eligible for concessions are defined by their Customs Tariff Code number.

A special regime has been put in place to accommodate exports – this is particularly important because of the need to keep Lesotho’s large textile exporters competitive; the main feature of this scheme is that refunds of the VAT paid on inputs are made very quickly.

All VAT-registered enterprises must file and pay on a monthly basis.

There is a deferment scheme for VAT on imports that is available only to those whose overall tax compliance record is satisfactory.

Short-term Technical Assistance (TA) was provided to help with developing the VAT strategy and preparing the VAT law. In addition a long-term VAT Adviser was provided under DfID funding to help with the VAT preparations and VAT implementation.

DfID and SARS provided substantial VAT training (both general and specific) to build LRA’s capacity to deal with the preparations for and the administration of VAT.

### **3. South Africa’s VAT System - Visit to SARS, 10-11 March 2008**

Note: The Swaziland Delegation to SARS joined up with a Tanzanian delegation and both groups were given presentations on various VAT topics during the 2-day visit to SARS on 10-11 March 2008.

The main features of RSA’s VAT system are summarized as follows:

The VAT registration threshold is Rands 300,000 per annum. Recently, it was announced that the threshold will be increased to R1.0 million and simultaneously a Presumptive Tax option will be introduced for small-scale enterprises in lieu of both VAT and Income Tax. There is generous accommodation for voluntary registration and as result over half of RSA’s VAT register of 730,000 enterprises are voluntary registrants. This voluntary category accounts for refunds equivalent to about 5% of the VAT yield.

A standard VAT rate of 14% is applied.

The zero-rated list is much longer than SARS would have wished but reflects the South African government’s larger policy concerns. The main zero-rated items (apart from exports) are basic foods (mealie/sorghum meal, brown bread, rice, milk, eggs, fresh fruit/vegetables, certain tinned fish, beans/lentils and cooking oil), farm inputs, animal feeds and illuminating paraffin.

The main VAT-exempt items are education services, certain financial services, road/rail passenger transport and letting of residential accommodation.

There are many options for filing returns and paying VAT. Large VAT-registered suppliers (those with a taxable turnover above R30 million p.a.) must file and pay monthly. For smaller businesses the filing period is every 2 months; for very small businesses (below R1.2 million p.a.) the filing period is every 4 months; farmers file every 6 months and for holding and management companies the filing period is every 12 months.

When VAT was introduced in late 1991, the rate of 10% was lower than the rate of 14%, which had applied previously under sales tax. In addition, political pressures resulted in a longer zero-rated list than was first proposed. The result was that the early years of VAT saw a significantly reduced revenue yield. To deal with this, it was decided to raise the VAT rate to 14% and, to

soften the impact somewhat, the zero-rated list was further extended. These changes came into effect in 1993 and led to a strong recovery in the contribution of VAT to total revenues.

With a relatively long list of zero-rated goods and a substantial export sector, the scale of VAT refund claims under RSA's VAT system is very high. About 40% of the gross yield from VAT is currently being paid out as VAT refunds. The problem of processing a huge volume of small refunds claims for the large population of voluntary registrants is particularly serious for SARS. Over the years SARS has experienced major problems with abuse of the refunds process. However, they are satisfied that they have adequate audit/investigation capacity to deal with suspect refund claims.

## ANNEX 3. The Swaziland Revenue Authority (SRA) Act 2007

### 1. The Main Provision of the Act

**The SRA and its Board.** The Act establishes the SRA as a body corporate, with a Board of Directors responsible for the direction of its operations. The Board will consist of 10 Members - a Chairman appointed by the Minister of Finance, the Principal Secretaries of the Finance and Enterprise/Employment Ministries, the Central Bank Governor, 3 (private sector?) members appointed by the Minister and the Commissioner-General (CG) as ex-officio member.

**The SRA mandate.** The essential function of the SRA is to assess and collect a wide range of revenues on behalf of the government. A Schedule to the Act lists the revenue laws to be administered by the SRA. The main laws are the customs and excise act, the income tax act, and the sales tax act but twelve other revenue laws are specified, many of which are totally insignificant in terms of the revenue yield given. The SRA must advise the Minister on current laws from an administrative perspective, but it has a wider mandate to advise on policy relating to all revenue, even for taxes/fees other than those listed in the Schedule to the Act.

**Board powers.** The Board is responsible for the formulation and implementation of SRA policies and may approve such organizational structures as may be considered necessary by the CG. With regard to staffing, the Board is responsible for appointing the Secretary and other staff as necessary for proper execution of SRA functions. The Board also decides the terms and conditions of the Secretary and other staff. The Act is silent on the issue of determining the terms and conditions of the CG's appointment – possibly it can be assumed that this matter will be subject to approval by the Minister of Finance.

**Role of the Minister of Finance.** The Minister of Finance is the key minister with respect to SRA, having the power to appoint the Board Chairman and three Board members. The Minister also appoints the CG on the recommendation of the Board, provided the nominee possesses at least a Masters Degree majoring in taxation and including law, accounting, finance or economics, and has not less than least 10 years experience in a managerial position dealing with taxation, law or finance issues. Additionally, the Minister may give directives to the Board with respect to the carrying out of its functions under the Act, as the Minister considers necessary or expedient.

**Role of the CG.** The CG is responsible for supervising and managing day-to-day operations, including administration/control of staff, and managing the funds, property and business of the SRA. The management authority of SRA is vested in the Board, of which the CG is an ex-officio member. The powers currently exercised by the Commissioners of the Taxes and Customs Departments will transfer to the CG once the SRA becomes operational.

**SRA funding.** The funds of the SRA will consist of (1) moneys appropriated by Parliament, (2) grants or donations received, and (3) moneys vesting in or accruing to the SRA.

**Reporting to MoF and Parliament.** The SRA Board must keep proper records and books of account. As soon as practicable, but not later than three months after the end of the financial year, the Board is required to submit to the Minister an Annual Report dealing with its activities and results for the financial year. The Annual Report will include: (1) an audited balance sheet; (2) an audited statement of income and expenditure; and (3) such other information as the Minister may require. The Minister must present the annual report to Parliament, within seven

days after its first sitting following receipt of the report. The SRA accounts must be audited by independent auditors appointed by the Board.

## **2. Issues of Concern with the SRA Act**

***SRA role in collecting minor taxes/fees.*** The effectiveness of the SRA could be compromised because its mandate extends well beyond the collection of core taxes. The essential objective of establishing the SRA is to collect more effectively under three main revenue headings - customs/excise, sales tax and income tax. The mandate in terms of the Schedule to the Act includes responsibility for a wide range of minor taxes/fees. Efforts made to collect these effectively would almost certainly undermine performance on the main revenue streams. Some of minor taxes could be terminated without serious revenue consequences; for those that must remain, other agencies (e.g. local authorities) could be given the collection responsibility.

***The Commissioner-General's (CG) qualifications.*** The requirement for post-graduate qualifications and extensive management experience for appointment as CG can be considered appropriate. However, specifying taxation as a requirement in the CG's post-graduate qualification may exclude many good candidates. The key attributes required in a CG are strong leadership and good change-management skills. Technical competence should be strong at lower management levels. The Act may require amendment in due course to make the qualification requirements for the CG less restrictive.

***Powers to make SRA appointments.*** The Minister's power to appoint the CG, based on the Board's recommendation, seems appropriate. The Board's role in appointing the Secretary is also appropriate. However, the limited role for the CG in appointing all other SRA staff is an open invitation for the Board to become excessively involved in staffing issues and could seriously undermine the CG's capacity to manage effectively. The Board's role with regard to appointing SRA staff, other than the CG and the Board Secretary, should not extend beyond the second or third level of SRA's management.

***Board's role in operational matters.*** There is apparent conflict between the provision in Section 7(4)(a) of the Act, which requires the CG to furnish the Board with any information it considers necessary, and Section 7(5), which prohibits the Board from interfering in tax decisions in any particular case. It should be very clear that the Board cannot have access to any kind of taxpayer-specific information. Section 7 may need to be amended in due course to restrict the Board's role to non-operational matters.

***Board's role on tax policy issues.*** On tax policy, the SRA through the CG should provide input to the MoF on the administrative dimensions of tax policy and the revenue implications of tax policy changes. However, the Board should not have any role in providing tax policy advice, particularly given the intention to have external (private sector?) representation on the Board. MoF must play the lead role on tax policy issues, with the SRA Board's role restricted to advising on the administration/revenue implications of current or proposed tax policies.

***Terms of the CG's appointment.*** The Act may need to be amended to deal with the important issue of deciding the CG's terms and conditions. While the Board could be empowered to make proposals in this regard, the remuneration/benefits package of the CG must be subject to approval by an external authority – perhaps most appropriately the Minister of Finance.

**SRA autonomy.** The application of the Public Enterprise Act to the SRA could create problems for making policy decisions and the appointment of senior staff (e.g. the CG and the Director of Finance). This could undermine SRA freedom to act in key areas and hence undermine its ability to perform effectively. It may become necessary to specify that the Public Enterprise Act does not apply to the SRA, given its vital role as collector of all government revenues.

## **ANNEX 4. Explanatory Memorandum - Value Added Tax Bill 2008**

The attached draft Value Added Tax Bill provides for the imposition of Value Added Tax (VAT) in Swaziland to replace the Sales Tax.

Section 1 of the Bill provides that the Commencement Date for the VAT will be specified by the Minister by a Notice in the Gazette. The intention of this provision is to allow flexibility with naming the VAT starting date. The important consideration here is that VAT should come into operation only when the Minister is satisfied that adequate preparations have been made to ensure its effective implementation. Once the VAT Bill has been enacted, an extended period (at least 12 months) will be needed to prepare for its implementation. The preparations must include a comprehensive education and publicity campaign and development of capacity in the new Swaziland Revenue Authority (SRA) to implement it successfully. SRA capacity building measures must include significant training and procurement of an IT system to help with VAT administration.

With regard to the rate of tax to apply under VAT, Section 85 allows some flexibility by providing that the Minister will specify the rate of tax in a Statutory Instrument. However, Section 85 (2) provides that an Instrument fixing the rate of tax will cease to have effect unless it is introduced into Parliament within 3 months from the date of its publication and the Parliament must approve a resolution confirming that Instrument.

By allowing flexibility with regard to specifying the rate of VAT, the Minister can take due account of the general budgetary situation and the revenue requirements of government at the time VAT is coming into operation.

The scope and coverage of goods/services under the VAT system are essentially defined in Schedules II and III of the Bill, which respectively specify **VAT-exempt** and **Zero-rated** goods and services.

By classifying goods/services as **Zero-rated** in Schedule III, the effect is that suppliers of such goods/services will not charge VAT on sales but they will be entitled to claim credits/refunds of all VAT paid on the inputs used to enable them to make the zero-rated supplies. In the Bill the following goods/services are included in the Zero-rated list:

exported goods/services, international transport services for both goods and persons, basic foods such as mealie/sorghum meal, and prescription drugs/medicines.

Schedule II gives a list of the goods/services to be **VAT-exempt** under the Bill. With a VAT-exempt status, the effect is slightly different; suppliers of exempt goods/services do not charge VAT on sales but neither are they eligible for credits/refunds for any VAT paid on the inputs used to make such supplies. The result is that for VAT-exempt goods/services, the suppliers must incorporate VAT like any other input cost into the pricing structure. Schedule III proposes the following main categories as VAT-exempt supplies:

unprocessed agricultural products (incl livestock), financial, insurance and education services, medical dental and nursing services, important farm inputs (seeds, fertilizers

and pesticides), residential letting, unimproved land, burial/cremation services, postage stamps, betting/lotteries and casino operations.

Section 8 of the Bill provides for a VAT registration threshold of E 500,000. This means that enterprises with an annual taxable turnover above this figure will be required to register for VAT. The essential argument for having a registration threshold is that it is not effective in revenue terms to try and collect VAT from very small enterprises. With a registration threshold of E 500,000, it is estimated that the initial total of VAT registered enterprises will not exceed 2000, which is a reasonable maximum for SRA to manage during the critical early stages of VAT administration. Section 8 also makes provision for voluntary registration for those with a turnover of taxable supplies below E500,000 per annum but only a minority would be expected to apply and be allowed to register on a voluntary basis.

Section 32 proposes a monthly system for VAT-registered enterprises to file VAT returns and to pay their VAT liability. However, this section also empowers the Minister to make regulations to prescribe a different period for filing/paying purposes. This power could be used to reduce the frequency for filing/paying VAT for smaller enterprises. A lower frequency for filing/paying could prove useful to both SRA and for the smaller VAT-registered enterprises, in terms of reducing the burden of administering and complying with VAT.

Part VIII of the Bill (sections 32-75) deals with procedures and administration aspects. There are provisions in this Part dealing with making returns and assessments of VAT due, specifying the procedure for objections and appeals where a taxpayer wishes to dispute an assessment, collecting VAT due and payable, and refunding tax to those eligible for VAT refunds. This part also deals with record keeping requirements of VAT-registered persons and specifies penalties for different VAT offences.

Section 81 requires that all prices advertised or quoted publicly must show buyers the full VAT-inclusive cost; this can be done by quoting the full VAT-inclusive price or by showing the pre-tax price, the VAT being charged and the full cost to the buyer.

For VAT-registered enterprises there are provisions in the Bill (sections 30-31) specifying how VAT must be dealt with in Invoices, Debit Notes and Credit Notes issued for a supply of goods /services. These are especially important for VAT-registered buyers because they provide the basis for them to claim credits/refunds for VAT paid on their business inputs.

With regard to administering the VAT, the Bill vests this responsibility with the Swaziland Revenue Authority (SRA). However, as the SRA Act has not yet been assented to, decisions cannot yet be made about the VAT preparations or bringing VAT into operation. Given the importance of making good preparations for VAT, SRA must have time to get properly established, with new structures and some reorganization of tax collecting functions. As a result it is not possible to specify precisely when the VAT preparations can commence. Even with early decisions on the policy/legislation aspects, it is unlikely that VAT preparations can commence properly until early 2010.

## **VALUE ADDED TAX BILL 2008**

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## **ANNEX 5. Draft Value Added Tax Act, 2008**

An Act to provide for the imposition and collection of Value Added Tax and for other purposes related thereto.

Date of Assent:

Date of Commencement: To be determined by the Minister by Notice in the Gazette.

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, 20---.

(2) This Act shall come into force on a date to be fixed by the Minister by Notice published in the Gazette.

#### **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;

"Commissioner-General" means the Commissioner-General of the Swaziland Revenue Authority;

"company" means a body corporate or unincorporate, 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 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 life of the goods; or
- (b) the lessee has an option to purchase the goods for a fixed or determinable price at the expiration of the lease; or
- (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;

"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, 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; or
- (b) coins or paper currency of a foreign country which is used or circulated as currency;
- (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;

"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;

"public international organisation" means an organisation listed in Schedule I to this Act;

"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 which is not goods or money;

"tax" means value added tax chargeable under this Act;

"taxable person" has the meaning in section 7;

"taxable supply" has the meaning in section 19;

"tax fraction" means the fraction calculated in accordance with the following formula:

$$\frac{r}{r + 100}$$

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 31A;

"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;
- (e) a person having possession, control, or management of the property of a person under a legal disability.

### **Interpretation of Fair Market Value**

3. (1) For the purposes of this Act, the fair market value of a taxable supply at any date 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.

(2) Where the fair market value of a taxable supply cannot be determined under subsection (1), 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.

(3) In this section, "similar supply", in relation to a taxable supply, means 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.

### **Interpretation of Associate**

4. (1) For the purposes of this Act, "associate", in relation to a person, means 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.

(2) Without limiting the generality of subsection (1), 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; or

- (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 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; or
- (e) where the person is a partnership, a partner in the partnership, an associate of the partner under another application of this section, or another partnership in which the person or an associate is a partner; or
- (f) where the person is the trustee of a trust, any other person or an associate of such other person under another application of this section who benefits or is capable of benefiting under the trust; or
- (g) where the person is a company, a person who either alone or together with an associate or associates under another application of this section controls directly or indirectly 50% or more of the voting power of the company, or in accordance with whose directions or wishes the company is accustomed or may reasonably be expected to act.

## ***PART II - CHARGE TO TAX***

### **Charge to Tax**

5. 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 by any person.

### **Persons Liable to Pay Tax**

6. Except as otherwise provided in this Act, the tax payable -

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

## ***PART III - TAXABLE PERSONS***

### **Taxable Person**

7. (1) A person registered under section 8 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, is a taxable person from the beginning of the tax period immediately following the period in which the duty to apply for registration arose.

### **Registration**

8. (1) A person who is not already a registered person shall apply to be registered in accordance with section 9 -

- (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 set out in 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 annual registration threshold is **Lilangeni 500,000**.

(3) In determining whether the registration threshold is 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 his 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 in accordance with section 9.

(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 of Registration**

9. (1) An application under section 8 for registration shall be in the form 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 8 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 8(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; or
  - (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 8, 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 8(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 the 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 (8) may only challenge the decision under Part VIII of this Act on the basis that the decision is an assessment.
- (10) A taxable person shall notify the Commissioner-General in writing of any change -
- (a) in the name or address of the person; or
  - (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**

10. (1) A taxable person shall apply in writing for cancelled of the 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 his registration cancelled if, with respect to the most recent period of three calendar months, the value of his taxable supplies, exclusive of tax, do not exceed one-quarter of the annual registration threshold specified under section 8 (2) and if the value of his taxable supplies, exclusive of tax, for the previous 12 calendar months do 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 he is neither required nor 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; or
  - (b) has not kept proper accounting records relating to any business activity carried on by him; or
  - (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 9 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 for output tax, at the time the registration is cancelled, on all goods in respect of which he received input tax credit, the output tax payable being based on the fair market value of the goods at the time his registration was cancelled.

(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.

## ***PART IV - SUPPLIES OF GOODS AND SERVICES***

### **Supply of Goods**

11. (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 a supply of the goods.

### **Supply of Services**

12. (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 -

- (a) the performance of services for another person; or
- (b) the making available of any facility or advantage, or
- (c) the 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**

13. (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) Regulations made under section 82 may provide that a supply is a supply of goods or services.

### **Supply by Agent**

14. (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**

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

(a) where the goods 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; or

(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**

16. (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**

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

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

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

(4) A supply of services to which clause 1(a) of Schedule III applies shall be regarded as having been made in Swaziland.

(5) Where a person is required to pay a fee for receiving a signal or service for a supply of television, radio, telephone or other communication services, the supply takes place where that person receives the signal or service, or where the supply involves an agent or any other person of whatever description, the supply takes place at that person's place of business.

### **Imports**

18. 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**

19. (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 his business activities.

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

(3) The business activities of an individual do not include activities carried on by him only as part of his 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 kind.

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

(6) For the purpose of subsection (5), a supply of business goods for no consideration is an application to own use.

(7) Where goods have been supplied to a taxable person for the purposes of his business activities, 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**

20. (1) A supply of goods or services is an exempt supply if it is specified in Schedule II.

(2) Where a supply is an exempt supply under clause 1(k) of Schedule II, 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**

21. An import of goods is an exempt import if the goods -

- (a) are exempt from customs duty under the Customs and Excise Act 1921, 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**

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

(2) The taxable value of -

- (a) a taxable supply of goods under a hire purchase agreement or finance lease;
- (b) a taxable supply of goods by way of an application to own use;
- (c) a taxable supply for reduced consideration, or
- (b) a taxable supply described in section 10 (9),

is the fair market value of the supply 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) 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.

(4) The taxable value of a taxable supply of goods under a rental agreement, as defined in section 15, is the amount of the rental payments due or received.

### **Adjustments**

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

- (a) the supply is cancelled; or
- (b) the nature of the supply has been fundamentally varied or altered; or

- (c) the 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) the goods or services or part thereof 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 therein 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.

(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.

(5) The credit allowed under subsection (4) shall, for the purposes of this Act, be treated as a reduction of output tax.

(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.

### **Taxable Value of an Import of Goods**

24. 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 13(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**

25. (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 22, the tax payable is calculated by the following formula -

$$A \times B$$

where,

- A** is the taxable value as determined under subsection (2) or (3) of section 22; and  
**B** is the tax fraction.

(3) Subject to subsection (4), the rate of tax shall be as specified in section 82 (2).

(4) The rate of tax imposed on taxable supplies specified in Schedule III is zero.

### **Calculation of Tax Payable by Taxable Person for a Tax Period**

26. Subject to section 27, 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 29 of this Act.

### **Cash Basis Accounting**

27. (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 must 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 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 26.

(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**

28. (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 26 (referred to as the "invoice basis") to the method of accounting provided under section 27 (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 48(1).

### **Credit for Input Tax**

29. (1) Where section 26 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 payable 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 27 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 -

- (a) all taxable supplies of goods, including capital assets, made to the person prior to the person becoming registered; or
- (b) all 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; or
- (b) entertainment, unless the taxable person is in the business of providing entertainment; or
- (c) mobile telephone services up to a limit of 50% of the cost of the services provided.

(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 -

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

$$\mathbf{A \times B/C}$$

where,

- A** is the total amount of input tax for the period; and
- 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 Schedule II.

(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 (13), 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 & Excise laws evidencing the amount of input tax.

(12) Where a taxable person does not have a tax invoice evidencing the input tax paid, the Commissioner-General may allow an input tax credit in the tax period in which the credit arises where the Commissioner-General is satisfied that -

- (a) the taxable person took all reasonable steps to acquire a tax invoice;
- (b) the failure to acquire a tax invoice was not the fault of the taxable person; and
- (c) the amount of input tax claimed by the taxable person is correct.

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

(14) 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 calendar 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 calendar year.

(15) In this section -

"calendar year credit" means the total input tax payable, where section 26 applies, or paid, where section 25 applies, for the calendar 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 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.

## **I. Tax Invoices**

30. (1) A taxable person making a taxable supply to another taxable person shall provide that other person, at the time of supply, with an original tax invoice for 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 taxable person -

- (a) who has not received a tax invoice as required by subsection (1); or
- (b) to whom section 29(3) applies,

may request a taxable person, who has supplied goods or services to him, to provide a tax invoice in respect of the supply.

(5) A request for a tax invoice under subsection (4) shall be made -

- (a) in the case of a request under subsection (4)(a), within 30 days after the date of the supply;
- (b) in the case of a request under subsection (4)(b), within 30 days after the date of registration.

(7) A taxable person who receives a request under subsection (4) shall comply with the request within 14 days after receiving that request.

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

## **Credit and Debit Notes**

31. (1) Where a tax invoice has been issued in the circumstances specified in section 23(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 Schedule IV.

(2) Where a tax invoice has been issued in the circumstances specified in section 23(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 Schedule IV.

## **PART VIII - PROCEDURE AND ADMINISTRATION**

### **DIVISION I - RETURNS AND ASSESSMENTS**

#### **Tax Period**

32. (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 month.

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

## **Returns**

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

(2) A tax return shall be in the form prescribed by the Commissioner-General and shall state the amount of tax payable for the period, the amount of input tax credit refund claimed, 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 lodge (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 lodged.

## **Assessments**

34. (1) Where -

- (a) a person fails to lodge a return under section 33; or
- (b) the Commissioner-General is not satisfied with a return lodged 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 return lodged by that person under this Act, that person may apply to the Commissioner-General to make any addition or alteration to that return.

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

(6) After considering an application under subsection (4), the Commissioner-General shall make an assessment of the amount that, in the Commissioner-General's opinion, is the amount of tax payable under this Act.

(7) 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.

(8) The Commissioner-General may, within the time limits set out in subsection (9), amend an assessment as the Commissioner-General considers necessary, and the Commissioner-General shall serve notice of the amended assessment on the person assessed.

(9) 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.

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

### **General Provisions Relating to Assessments**

35. (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) quashed or deemed to be void or voidable for want 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 designated in it according to common understanding.

## **DIVISION II - OBJECTIONS AND APPEALS**

### **Interpretation**

36. In this subheading,

"objection decision" means a decision by the Commissioner-General under section 37(6) or a deemed decision of the Commissioner-General under section 37(8).

### **Objection to Assessment**

37. (1) A person who is dissatisfied with a decision of an officer may lodge an objection to the decision with 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 lodging 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 lodged after the time specified in subsection (1).

- (3) The objection must be in writing and must specify in detail the grounds upon which it is made.
- (4) Subject to subsection (5), the Commissioner-General shall only consider an objection lodged under subsection (1) if the person has paid the tax due under the assessment.
- (5) The Commissioner-General may, in exceptional circumstances, consider an objection if he is satisfied that the person objecting is unable to pay the full amount of tax due and has given sufficient security for the amount of tax unpaid and any penal tax that may become payable.
- (6) After considering the objection, the Commissioner-General may allow the objection in whole or part and amend the assessment accordingly within 30 days of receipt of the objection.
- (7) The Commissioner-General shall serve the person objecting with notice in writing of the objection decision within 30 days of receipt of the objection.
- (8) If the Commissioner-General has not made an objection decision within 30 days of the objection being lodged, the Commissioner-General shall be deemed to have made a decision to allow the objection.

#### **Appeal to the Minister**

38. (1) A person dissatisfied with an objection decision may, within 60 days after being served with notice of the objection decision, lodge a notice of appeal with the Minister and shall serve a copy of the notice of appeal on the Commissioner-General.

(2) The Minister may admit an appeal after expiration of 60 days if he is satisfied that the appellant had sufficient reason for not lodging the notice of appeal within the time specified in subsection (1).

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

(4) In deciding an appeal, the Minister may make an order -

- (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 Minister.

#### **Appeal to High Court**

39. (1) A party who is dissatisfied with the decision of the Minister may, within 60 days after being notified of the decision, lodge a notice of appeal with the Registrar of the High Court; and the party so appealing shall serve a copy of the notice of appeal on the other party to the proceedings before the Minister.

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

#### **Burden of Proof**

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

## **DIVISION III - COLLECTION AND RECOVERY**

### **Due Date for Payment of Tax**

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

(4) 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.

(5) 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 certificate containing particulars of the tax to the Commissioner of Immigration and he may request the Commissioner of Immigration to prevent that person from leaving Swaziland until that person makes -

- (a) payment in full; or
- (b) an arrangement satisfactory to the Commissioner-General for the payment of the tax.

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

(7) Payment of the tax specified in the certificate 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**

42. (1) Tax due and payable under this Act is a debt due to the Government and is payable to the Commissioner-General by the person specified in section 6.

(2) Except where the contrary intention appears, the customs and excise law applicable in Swaziland in relation to imported goods shall, with such exceptions, modifications, and adaptations as the Minister may by Regulations prescribe, apply, so far as relevant, in relation to any tax chargeable on the import of goods.

(3) The Commissioner-General may, under subsection (2), exercise any power conferred on him by the customs and excise law applicable in Swaziland as if the reference to customs duty or excise tax in those laws included a reference to tax charged on imported goods under this Act.

(4) If a person fails to pay tax when it is due and payable, the Commissioner-General may file, with a court of competent jurisdiction, a statement certified by the Commissioner-General setting forth the amount of the tax due, and that statement shall be treated for all purposes as a civil judgement lawfully given in that court in favour of the Commissioner-General for a debt in the amount set forth.

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

### **Security**

43. 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, as a condition of the person making a taxable supply, 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**

44. 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**

45. (1) The Commissioner-General may seize any goods in respect of which he has 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 stored in a place approved by the Commissioner-General.

(3) Immediately after the seizure of the goods, a written statement shall be requested by the Commissioner General from the owner of the goods, or the person who has custody or control, stating the quantity and quality of the goods.

(4) Where goods have been seized under subsection (1), the Commissioner-General shall, within 10 days after seizure, serve on the owner of the goods or the person who had custody or control of the goods immediately before seizure, a notice in writing -

- (a) identifying the goods;
- (b) stating that the goods have been seized under this section and the reason for seizure; and
- (c) setting out the terms for the release or disposal of the goods.

(4) The Commissioner-General is not required to serve a notice under subsection (4) if, after making reasonable enquiries, he does not have sufficient information to identify the person on whom the notice should be served.

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

(6) The Commissioner-General may authorise any goods seized under subsection (1) to be delivered to the person on whom a notice under subsection (4) has been served 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 (7) 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 he 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 (8) has expired, the Commissioner-General may sell the goods in the manner specified in section 45(6) and apply the proceeds of sale as set out in that section.

### **Closure of Business and Distress Proceedings**

46. (1) Where a person liable for tax has failed to remit the amount payable by him within the prescribed time, the Commissioner-General may lock up and seal the business premises of that person and thereafter the goods in those 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 property of the person liable to pay the tax, by issuing an order in writing, specifying the person against whose property the proceedings are authorised, 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), the Commissioner-General may at any time enter any house or premises described in the order authorising the distress proceedings.

(4) Property upon which a distress is levied under this section, other than perishable goods, shall be kept for ten 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 ten days after the distress is levied,

the property distrained upon 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.

(6) Nothing in this section precludes the Commissioner-General from proceeding under section 41 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.

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

### **Recovery of Tax from Third Parties**

47. (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; or
- (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**

48. (1) 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.

(2) 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.

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

(4) 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.

(5) 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.

(6) 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.

## **DIVISION IV - REFUND OF TAX**

### **Refund of Tax**

49. (1) If, for any tax period, a taxable person's input tax credit exceeds his liability for tax for that period, the Commissioner-General shall refund him 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 such person to offset the excess against his future liability.

(3) A person may claim a refund of any output 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) must be made in a return within three 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 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 Division II (Objections and Appeals) of Part VIII.

(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 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.

### **Refund of tax on bad debts**

50. (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 not within two years after the supply 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 he reasonably believes that he will not be paid,

the taxable person may seek a refund of that portion of the tax paid for which he has not received payment.

(2) 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, he shall remit to the Commissioner-General, with his next tax return, a sum equal to the tax portion of the payment received.

(3) A registered supplier who fails to remit the tax in accordance with subsection (2) with his next return, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \_\_\_\_\_, 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 2% per month compounded.

### **Interest on Overpayments and late refunds**

51. (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 37; or
- (b) a decision of the Minister under section 38; or
- (c) a decision of the High Court under section 39,

he shall pay interest at a rate of \_\_\_\_\_ percentage points higher than the prevailing Official Bank rate of the Central Bank of Swaziland on the amount of the refund for the period commencing from the date the person paid the tax refunded and ending on the last day of the month the refund is made.

(2) Where the Commissioner-General fails to make a refund required under section 49(1) within the time specified in that section, he shall pay interest at a rate of \_\_\_\_\_ percentage points higher than the prevailing Official Bank rate of the Central Bank of Swaziland 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 49(1), that the excess amount of input tax credit is greater than the true amount due in excess of not less than \_\_\_\_\_, 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 Organisations**

52. (1) The Minister may, with the concurrence of the Minister of Foreign Affairs, authorise 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 recognised principles of international law; or
- (b) any diplomatic or consular mission of a foreign country or any public international organisation operating in Swaziland and listed in Schedule I to this Act, 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 such 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.

## **DIVISION V - RECORDS AND INVESTIGATION POWERS**

### **Records**

53. (1) A person liable for tax under this Act shall maintain in Swaziland in the English language

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- (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 six years after the end of the tax period to which they relate.

### **Access to Books, Records and Computers**

54. (1) In order to enforce a provision of this Act, the Commissioner-General, or an officer authorised 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 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 his opinion, affords evidence that may be material in determining the liability of any person under this Act;
- (d) may retain any such 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 authorisation in writing from the Commissioner-General and the officer shall produce the authorisation on request by the occupier of the premises or place.

(3) The owner, manager, or any other person 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**

55. (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 the time and place designated in the notice for the purpose of being examined on oath by the Commissioner-General or by an officer authorised by the Commissioner-General, concerning the tax affairs of that person or any other person, and for that purpose the Commissioner-General or an authorised 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, and the certificate of service signed by the person serving the notice is evidence of the facts stated therein.

#### **Books and Records not in English Language**

56. Where any book or record referred to in section 54 or 55 is not in English, the Commissioner-General may, by notice in writing, require the person keeping the book or record to provide at that person's expense a translation into English by a translator approved by the Commissioner-General.

### **DIVISION VI - TAXPAYER IDENTIFICATION NUMBER**

#### **Taxpayer Identification Number**

57. (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) The Commissioner-General may require a person to show his Taxpayer Identification Number in any return, notice or other document used for the purposes of this Act.

### **DIVISION VII - OFFENCES AND PENAL TAX**

#### **Offences Related to Registration**

58. A person who fails -

(a) to apply for registration as required under section 8,

- (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 10(1), commits an offence and liable on conviction -
- (d) where the failure is deliberate or reckless, to a fine not exceeding \_\_\_\_\_ or to imprisonment for a term not exceeding two years, or both; or
- (e) in any other case, to a fine not exceeding \_\_\_\_\_ or to imprisonment for a term not exceeding six months, or both.

**Offences Related to Tax Invoices, Credit Notes, and Debit Notes**

59. (1) A taxable person who fails to provide a tax invoice as required by subsection (1) or (6) of section 30, or a credit or debit note as required by section 31 commits an offence and is liable on conviction to a fine not exceeding \_\_\_\_\_ or to imprisonment for a term not exceeding two years, or both.

(2) A person who provides a tax invoice otherwise than as is provided for in subsection (1) or (6) of section 30, or a credit or debit note otherwise than as is provided for in section 31 commits an offence and is liable on conviction to -

- (a) where the act is deliberate or reckless, a fine not exceeding \_\_\_\_\_ or to imprisonment for a term not exceeding two years, or both; or
- (b) in any other case, a fine not exceeding \_\_\_\_\_ or to imprisonment for a term not exceeding six months, or both.

**Failure to Lodge a Return**

60. (1) A person who fails to lodge a return or any other document under this Act within 15 days of being so required commits an offence and is liable on conviction to a fine not exceeding \_\_\_\_\_ or to imprisonment for a term not exceeding six months, or both.

(2) If a person convicted of an offence under subsection (1) fails to lodge 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 \_\_\_\_\_ for each day during which the failure continues and to imprisonment for three months without the option of a fine in lieu of imprisonment.

**Failure to Comply with Recovery Provisions**

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

- (a) a notice under section 47; or
- (b) the requirements of section 48,

commits an offence and is liable on conviction to a fine not exceeding \_\_\_\_\_ or to imprisonment for a term not exceeding two years, or both.

(2) Where a person is convicted of an offence under subsection (1)(a), the Court may, in addition to imposing a penalty, 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 47.

**Failure to Maintain Proper Records**

62. 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 exceeding \_\_\_\_\_ or to imprisonment for a term not exceeding two years, or both; or

- (b) in any other case, a fine not exceeding \_\_\_\_\_ or to imprisonment for a term not exceeding six months, or both.

#### **Failure to Provide Reasonable Assistance**

63. A person who fails to provide the Commissioner-General or authorised officer with all reasonable facilities and assistance as required by section 54(3) commits an offence and is liable on conviction to a fine not exceeding \_\_\_\_\_ or to imprisonment for a term not exceeding six months, or both.

#### **Failure to Comply with a Section 55 or Section 56 Notice**

64. A person who fails to comply with a notice issued under section 55 or section 56 commits an offence and is liable on conviction to a fine not exceeding \_\_\_\_\_ or to imprisonment for a term not exceeding six months, or both.

#### **Improper Use of Taxpayer Identification Number**

65. (1) 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 exceeding \_\_\_\_\_ or to imprisonment for a term not exceeding two years, or both.

(2) Subsection (1) does not apply to a person who has used the taxpayer identification number of another person with the permission of that other person on a return or document relating to the tax affairs of that other person.

#### **False or Misleading Statements**

66. (1) A person who -

- (a) makes a statement to an officer of the Swaziland Revenue Authority that is false or misleading in a material particular; or
- (b) omits from a statement made to an officer of the Swaziland Revenue Authority any matter or thing without which the statement is misleading in a material particular, commits an offence and is liable on conviction to -
- (c) where the statement or omission was made knowingly or recklessly, a fine not exceeding \_\_\_\_\_ or to imprisonment for a term not exceeding five years, or both; or
- (d) in any other case, a fine not exceeding \_\_\_\_\_ or to imprisonment for a term not exceeding six months, or both.

(2) It is a defence to an accused person to prove that he 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 of the Swaziland Revenue Authority is a reference to a statement made orally, in writing, or in any other form to that officer acting in the performance of his 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 of the Swaziland Revenue Authority otherwise than pursuant to this Act;
- (d) in answer to a question asked of a person by an officer of the Swaziland Revenue Authority; or

- (e) to another person with the knowledge or reasonable expectation that the statement would be conveyed to an officer of the Swaziland Revenue Authority.

### **Obstructing an officer of the Swaziland Revenue Authority**

67. A person who obstructs the Commissioner-General or an authorised officer in the performance of his duties under this Act commits an offence and is liable on conviction to a fine not exceeding \_\_\_\_\_ or to imprisonment for a term not exceeding two years, or both.

### **Offences by Officers and persons**

68. (1) Any officer or any other person employed in carrying 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,

commits an offence and is liable on conviction to a fine not exceeding \_\_\_\_\_ or to imprisonment for a term not exceeding five years, or 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 such payment or reward; or
- (b) proposes or enters into any agreement with any officer in order to induce him 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 to a fine not exceeding \_\_\_\_\_ or to imprisonment for a term not exceeding five years, or to both the fine and imprisonment.

### **Offences by Companies**

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

- (a) was a nominated officer, director, general manager, 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.

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

- (a) the offence was committed without that person's consent or knowledge; 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 person's functions and all the circumstances.

### **Officer may appear on behalf of Commissioner-General**

70. Notwithstanding anything contained in any written law, any officer duly authorised in writing by the Commissioner-General may appear in any Court on his behalf in any proceedings in

which he is a party and, subject to the directions of the Attorney-General, that officer may conduct any prosecution for an offence under this Act and for that purpose shall have all the powers of a public prosecutor appointed under the \_\_\_\_\_ Courts Act, \_\_\_\_\_.

### **Compounding of Offences**

71. (1) Where any person has committed an offence under this Act other than an offence under section 69, 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 that the person has 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 penal tax under section 72.

### **Penal 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 a penal tax equal to double the amount of tax payable during the period commencing on the last day of the application period in section 8(1) until either the person files an application for registration with the Commissioner-General or the Commissioner-General registers the person under section 9(6).

(2) A person who fails to lodge a return within the time required under this Act is liable to pay a penal tax on the tax payable for the period of the return at a rate per annum of 5 percentage points higher than the official Bank Rate of the Central Bank of Swaziland 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 a penal tax on the unpaid tax at a rate per annum of 5 percentage points higher than the official Bank Rate of the Central Bank of Swaziland for the period the tax is outstanding.

(4) If a person pays penal 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 penal tax, or so much of the penal 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 a penal 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 official of the Swaziland Revenue Authority that is false or misleading in a material particular; or
  - (b) omits from a statement made to an official of the Swaziland Revenue Authority 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 a penal tax equal to double the amount of the excess.

(7) Section 66(3) applies in determining whether a person has made a statement to an official of the Swaziland Revenue Authority.

### **Recovery of Penal Tax**

73. (1) Where good cause is shown, in writing, by the person liable to pay penal tax, the Commissioner-General may remit in whole or part any penal tax payable, other than penal tax imposed or payable under section 72 for late payment.

(2) Subject to subsection (3), the imposition of a penal tax is in addition to any penalty imposed as a result of a conviction for an offence under sections 58 to 71.

(3) No penal tax is payable under section 72 where the person has been convicted of an offence under section 58, 62, or 66 in respect of the same act or omission.

(4) If penal tax under section 72 has been paid and the Commissioner-General institutes a prosecution proceeding under section 58, 62 or 66 in respect of the same act or omission, the Commissioner-General shall refund the amount of penal tax paid; and that penal tax is not payable unless the prosecution is withdrawn.

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

(6) Penal tax shall be assessed by the Commissioner-General in the same manner as the output tax to which it relates and an assessment of penal 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 refer the taxpayer's case to the Minister.

(2) Where the taxpayer's case has been referred to the Minister under subsection (1) and the Minister is satisfied that the tax due cannot be effectively recovered, the Minister may remit or write off, in whole or in part, the tax due from the taxpayer.

## ***PART IX - GENERAL 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 such form 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, or by mail, 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 authorised 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 authorised 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; or
  - (ii) left at the person's usual or last known place of abode, office or place of business in Swaziland; or
  - (iii) sent by registered post to such place of abode, office or place of business, or to the person's usual or last known address in Swaziland; or
- (b) on any other person, is considered sufficiently served -
  - (i) if personally served on the nominated officer of the person; or
  - (ii) if left at the registered office of the person or the person's address for service of notices under this Act; 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 who is outside Swaziland for more than one tax period 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 -

- (a) in the case of a partnership, trust, company or non-resident individual, in the first tax period in which the partnership, trust, company or individual becomes a taxable person; or
- (b) in the case of a resident individual who is outside Swaziland, in the first tax period in which the individual is outside Swaziland.

(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 78, 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.

(3) In a prosecution of a person for an offence that the person is taken to have committed under subsection (1)(c), it is a defence if the person proves that he -

- (a) did not aid, abet, counsel, or procure the relevant act or omission; and
- (b) was not in any way knowingly concerned in, or party to, the relevant act or omission.

### **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 Emalilangeni.

(2) Where an amount is expressed in a currency other than Emalilangeni, the amount shall be converted into Emalilangeni at the weighted average selling 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; or
- (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 82), the terms of the treaty or international agreement prevail 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 organisation.

### **Priority of Schedules**

84. Where a supply of goods or services may be covered by both Schedule II and Schedule III, the supply shall be treated as being within Schedule III.

### **Regulations and Amendment of Schedules**

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

(2) The Minister may, by Statutory Instrument, specify the rates of tax payable under this Act; and such Instrument shall cease to have effect unless it is introduced into Parliament within 3 months from the date of its publication and Parliament approves a resolution confirming that Instrument.

(3) The Minister may, with the approval of Cabinet, make regulations amending Schedules I, II, III and IV.

### **Transitional**

86. (1) The Repealed Legislation shall continue to apply to all the supply or import of goods 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 26, and subject to section 29 in calculating the amount of tax payable by a taxable person in the tax period ending on \_\_\_\_\_ 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 \_\_\_\_\_, goods for use in his business, being goods acquired not more than 4 months before \_\_\_\_\_, or in the case of plant and machinery, goods acquired not more than 6 months before \_\_\_\_\_, 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.

### **Laws Repealed**

87. (1) The Acts and Orders specified in Schedule V to this Act and any regulations made thereunder 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 those Acts were still in force but in case of a default the taxable person shall be dealt with under this Act.

### **Supremacy of Act**

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

## **SCHEDULES**

### **SCHEDULE I (sections 2,50 and 80)**

#### **Public International Organizations:**

African Union (AU)  
Danish International Development Agency (DANIDA)  
Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ)  
European Union  
Food and Agricultural Organisation (FAO)  
Japan International Cooperation Agency (JICA)  
International Committee of the Red Cross (ICRC)  
International Civil Aviation Authority (ICAO)  
International Labour Organisation (ILO)  
International Monetary Fund (IMF)  
International Telecommunications Union (ITU)  
Netherlands Development Organisation (SNV)  
Norwegian Agency for Development (NORAD)  
United Nations Development Programme (UNDP)  
United Nations Children's Fund (UNICEF)  
United Nations Fund for Population Activities (UNFPA)  
United Nations High Commission for Refugees (UNHCR)  
United States Agency for International Development (USAID)  
World Bank (IBRD)  
World Food Programme (WFP)  
World Health Organisation (WHO)  
World Meteorological Organisation (WMO)

### **SCHEDULE II (section 20)**

#### **Exempt Supplies**

1. The following supplies are specified as exempt supplies for the purposes of section 20 -
  - (a) the supply of unprocessed foodstuffs, unprocessed agricultural products and livestock;
  - (b) the supply of seed and fertilisers as farming inputs;
  - (c) the supply of postage stamps;
  - (d) the supply of financial services;
  - (e) the supply of insurance services;
  - (f) the supply of unimproved land;
  - (g) a supply by way of lease or letting of immovable property, other than -
    - (i) a lease or letting of commercial premises;
    - (ii) a lease or letting of hotel or holiday accommodation;
    - (iii) a lease or letting of residential accommodation for periods not exceeding 45 days;
    - (iv) a lease or letting of space for parking or storing motor vehicles;
  - (h) the supply of education services;
  - (i) the supply of medical, dental, and nursing services;
  - (j) the supply of social welfare services;
  - (k) the supply of betting, lotteries, games of chance or casino gambling services;

- (l) the supply of goods as part of the transfer of a business as a going concern by one taxable person to another taxable person;
- (m) the supply of burial and cremation services;
- (n) the supply of precious metals and other valuables to the Central Bank of Swaziland for the Kingdom's Treasury;
- (o) the supply of passenger transportation services, other than services provided by registered tour operators.

2. In this Schedule -

"unprocessed " in relation to foodstuffs and agricultural products in paragraph 1(a) includes any process such as packaging, sorting, drying, etc which adds no more than 5% to the value of the goods.

"education services" means education provided by -

- (a) pre-primary, primary, or secondary school;
- (b) a technical college or university;
- (c) an institution established and operating on a not-for-profit basis 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.

"unimproved land " means land used or suitable for use only for agriculture, forestry, wild life or nature reserve but does not include land which is provided with services such as roads, water, drainage and electricity and which is used or suitable for development for residential, commercial or industrial purposes.

"passenger transportation services" means the transportation of fare-paying passengers and their personal effects by road or rail, but does not include passenger transport services within Swaziland provided by an airline or a registered tour operator, and

"social welfare services" means -

- (a) care for the elderly, sick, and disabled, including care in a hospital, aged person's home, and similar establishments; or

- (a) care and welfare services provided for the benefit of minors.

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

3. For the purposes of Clause 1 (a) of this Schedule the term "unprocessed" shall include low value added activity such as sorting, drying, salting, filleting, deboning, freezing, chilling, or bulk packaging, provided the value added does not exceed 10% of the total value of the supply.

### **SCHEDULE III (section 25(4))**

#### **Zero-rated Supplies**

1. The following supplies are specified for the purposes of section 25(4) -

- (a) a 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) the supply of maize and dorghum flour;
- (d) the supply of prescription drugs and medicines.
- (e) **other items as MoF may consider necessary/appropriate but it would be important to minimise the list of additional items – here the Lesotho zero-rated list is more interesting than the South Africa's list.**

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 for primary and secondary education which are approved by the Ministry of Education or which are required for a primary or secondary school curriculum approved by the Ministry of Education.

### **SCHEDULE IV (sections 30 and 31)**

#### **Tax Invoices, Credit Notes and Debit Notes**

### **Tax Invoice**

1. A tax invoice as required by section 30 shall, unless the Commissioner-General provides otherwise, contain the following particulars -

- (a) the words "tax invoice" written in a prominent place;
- (b) the commercial name, address, place of business, and the taxpayer identification and VAT registration numbers 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;
- (d) the individualised serial number and the date on which the tax invoice is issued;
- (e) a description of the goods or services supplied and the date on which the supply is made;
- (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 25(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.

### **Tax Credit Note**

2. A credit note as required by section 31(1) shall, unless the Commissioner-General provides otherwise, contain the following particulars -

- (a) the words "credit note" in a prominent place;
- (b) the commercial name, address, place of business, and the taxpayer identification and VAT registration numbers 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;
- (d) the date on which the credit note was issued;
- (e) the rate of tax;
- (f) 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 25(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;
- (g) a brief explanation of the circumstances giving rise to the issuing of the credit note; and
- (h) information sufficient to identify the taxable supply to which the credit note relates.

### **Tax Debit Note**

3. A debit note as required by section 31(2) shall, unless the Commissioner-General provides otherwise, contain the following particulars -

- (a) the words "debit note" in a prominent place;

- (b) the commercial name, address, place of business, and the taxpayer identification and VAT registration numbers 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;
- (d) the date on which the debit note was issued;
- (e) the rate of tax;
- (f) 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 25(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;
- (g) a brief explanation of the circumstances giving rise to the issuing of the debit note; and
- (h) information sufficient to identify the taxable supply to which the debit note relates.

## **SCHEDULE V (Section 84)**

### **Repealed Laws**

The Sales Tax Act 1983 and all Amendments thereto.