

SUPPLEMENT TO
THE
ESWATINI GOVERNMENT
GAZETTE

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PART B

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THE REVENUE APPEALS TRIBUNAL ACT, 2019

(Act No 13 of 2019)



I ASSENT

MSWATI III
King of the Kingdom of Eswatini

29th October, 2019

AN ACT ENTITLED

AN ACT to establish the Revenue Appeals Tribunal which shall hear and determine appeals from rulings, assessments, determinations and directions of the Commissioner General under any revenue law and to provide for other incidental matters

ENACTED by the King and the Parliament of Eswatini

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**PART I
PRELIMINARY PROVISIONS**

Short title and commencement.

1 (1) This Act may be cited as the Revenue Appeals Tribunal Act, 2019

(2) This Act shall come into operation on such date as the Minister may, by notice published in the Gazette, appoint

Interpretation.

2 In this Act, unless the context otherwise requires -

“Authority” means the Eswatini Revenue Authority established by Section 3 of the Eswatini Revenue Authority Act, 2008,

“Board” means the Board of Directors of the Eswatini Revenue Authority established under section 6 of the Eswatini Revenue Authority Act, 2008,

“Commissioner General” means the person appointed as Commissioner General under section 15 of the Eswatini Revenue Authority Act, 2008,

“member” means a member of the Tribunal,

“Minister” means Minister responsible for Finance,

“President” means the person appointed as President under section 3,

“Registrar” means the person appointed as Registrar under section 9,

“revenue law” means any law administered by the Eswatini Revenue Authority under the Eswatini Revenue Authority Act, 2008,

Tribunal means the Revenue Appeals Tribunal established under section 3

PART II

THE ESTABLISHMENT OF THE REVENUE APPEALS TRIBUNAL

Establishment of Revenue Appeals Tribunal.

- 3 (1) There is established a Tribunal to be known as the Revenue Appeals Tribunal
- (2) The Tribunal shall consist of seven (7) members appointed by the Minister
- (3) The Tribunal shall be composed of—
 - (a) a President, who shall be a person with not less than ten (10) years of experience in the legal profession and extensive knowledge in tax and customs matters,
 - (b) two (2) members who shall be chartered accountants registered under the Accountants Act, No 5 of 1985 with not less than seven (7) years of experience as a chartered accountant appointed in consultation with the Eswatini Institute of Accountants,
 - (c) two (2) members, who shall be legal practitioners with not less than seven (7) years of experience in the legal profession and may have special knowledge or skills relevant to revenue matters, appointed in consultation with the Law Society of Eswatini.
 - (d) two (2) members who shall be appointed from the business community on the basis of their knowledge and experience in finance, commerce or economic affairs
- (4) An officer of the Authority shall not be a member of the Tribunal

Reference to Tax Tribunal or Tax Appeal Tribunal.

4 On or after the date of commencement, reference in any written law or any other legal document to the Tax Tribunal or Tax Appeal Tribunal shall be read and construed as reference to the Revenue Appeals Tribunal established under section 3 of this Act

Term of and vacation from office.

5 (1) A member of the Tribunal shall, subject to subsection (2), hold office for a period of three (3) years from the date of appointment but may be eligible for re-appointment for a further two terms

(2) A member of the Tribunal shall, notwithstanding the period in subsection (1), cease to be a member-

- (a) upon the expiry of the period of the appointment of that member,
- (b) upon the death of that member,
- (c) where that member is absent without reasonable excuse from three consecutive meetings of the Tribunal of which the member had notice,
- (d) where that member is adjudged insolvent.
- (e) where that member has been found guilty of professional misconduct by a tribunal, board or other body constituted for adjudicating on a matter of discipline or conduct
- (f) upon infirmity of body or mind,
- (g) upon removal by the Minister, by notice in writing, for proven misconduct
- (h) on proven record of tax evasion, or
- (i) where that member resigns by giving notice in writing to the Minister

(3) Where a vacancy occurs in terms of subsection (2), a new member may be appointed in accordance with section 3, but that member shall hold office for the remaining part of the term and shall be eligible for re- appointment as a member

Jurisdiction of the Tribunal.

6 (1) The Tribunal shall have jurisdiction to hear and determine an appeal arising from an assessment, decision, ruling, determination, and direction of the Commissioner General under any revenue law

(2) The Tribunal shall hear and determine any other matter as may be prescribed by the Minister, by Notice in the gazette, to be a matter against which an appeal may be made under this Act

Constitution of the Tribunal.

7 (1) The Tribunal shall be duly constituted by a panel consisting of three members, one of whom shall be a Chairperson determined by the President

(2) Unless otherwise excused for good reason, the President shall preside over the proceedings of a full Tribunal

(3) Five members of the Tribunal including the President shall constitute a full Tribunal

Powers of the Tribunal.

8 (1) The Tribunal shall have power to -

- (a) take oral or written evidence on oath,
- (b) summon any person by issue, in writing, of a summons to give evidence,
- (c) require any person to produce for examination any document, record or thing in the possession of that person and allow extracts from any such document, record to be made,
- (d) inspect and examine any document, record or thing, or
- (e) require any person to produce for examination any papers, documents, records, or things in the possession of that person or under the control of that person, and to allow copies of or extracts from any such papers, documents, or records to be made

(2) A summons referred to in subsection (1) may be served by—

- (a) delivering it to the person summoned or
- (b) any other means that will ensure receipt of the summons by the person summoned

(3) The summons shall where-

- (a) it is served under subsection (2) (a), be served at least seven (7) days before the attendance of the witness is required, or
- (b) it is served under subsection (2) (b), be served at least fourteen (14) days before the date on which the attendance of the witness is required

(4) The Tribunal may, if it considers it necessary, require that any written information or particulars or any copies or extracts furnished under this section be verified in such manner as the Tribunal may require

Registrar.

9 (1) There shall be a Registrar of the Tribunal, who shall be appointed by the President on competitive basis and on such terms and conditions as the Tribunal may determine

(2) The Registrar shall -

- (a) be an employee and executive secretary of the Tribunal,
- (b) be responsible for the administrative business of the Tribunal and shall, in consultation with the President act as the convener and spokesperson of the Tribunal, and
- (c) exercise the functions of Registrar independently, impartially and in terms of this Act

Sittings.

10 (1) Subject to any general conditions or direction prescribed by the President, the Tribunal shall sit at such times and places as the President may consider convenient and economical for appellants to appear before the Tribunal

(2) The Tribunal may from time to time adjourn a sitting for a reasonable cause

Disclosure of interest.

11 (1) Where, before or during the hearing of an appeal, it transpires that a member of the Tribunal has a direct or indirect interest in the matter, that member shall disclose that interest and shall not be present nor take part in the determination of the appeal or give an opinion on any question relating to that matter

(2) The President may, assign another member of the Tribunal to take part in the determination of the appeal

(3) A member of the Tribunal shall not, on account of a liability imposed upon that member under any revenue law, be regarded as having an interest in a matter which that member may be called to adjudicate on, unless the liability is contested

(4) A member who fails to comply with this section commits an offence and shall, on conviction, be liable to a period of imprisonment not exceeding three (3) years or a fine not exceeding Nine Thousand (9,000) Emalangeni

Personal liability.

12 A member of the Tribunal shall not be personally liable for any act done or omitted to be done by that member in good faith in pursuance or intended in pursuance of the duties of that member under this Act

Oath or affirmation of office.

13 A person appointed to the Tribunal shall, before exercising the duties of the office of Tribunal, take and subscribe to an oath or affirmation before a judge of the High Court that that person will faithfully and impartially perform the duties of that office

Remuneration and travelling expenses.

14 A member of the Tribunal may be paid such remuneration by way of fees, allowances and travelling allowances as the Minister may, from time to time determine

**PART III
APPEALS AND PROCEEDINGS OF THE TRIBUNAL**

Right of appeal.

15. (1) Notwithstanding any other law, a person who is aggrieved by a decision, assessment, ruling, determination or direction of the Commissioner General may appeal to the Tribunal

(2) Notwithstanding any other law, the Tribunal shall not entertain an appeal pursuant to this section unless-

- (a) a notice of appeal is served upon the Commissioner General within twenty-one (21) days of the date on which a decision, assessment, ruling, determination or direction of the Commissioner General is served on the appellant,
 - (b) the appeal is lodged, in the prescribed form, with the Tribunal within thirty (30) days of the date on which the decision, assessment, ruling, determination or direction of the Commissioner General is served on the appellant
- (3) Any amount of revenue paid with the Commissioner General which is not in dispute shall remain with the Commissioner General pending the determination of the appeal by the Tribunal

Proceedings of Tribunal.

16 (1) The proceedings of the Tribunal shall be conducted in the manner and form and upon payment of a fee as may be prescribed under regulations to this Act

(2) The proceedings before the Tribunal shall be held *in camera* and the Tribunal may at any time, on application, exclude or require to withdraw from such sitting any person whose attendance is not necessary for the hearing of the appeal under consideration

(3) In every proceedings before the Tribunal, the appellant and the Commissioner General may call evidence and be given an opportunity to be heard either in person or by a person duly authorized by the appellant or the Commissioner General

(4) Where the appellant or the Commissioner General or both, fail to appear before the Tribunal at the time and place appointed, the Tribunal may, upon proof of service of the notice of the hearing, proceed to determine the appeal, unless good cause for non-appearance is shown

(5) A person appearing before the Tribunal shall have the same privileges in relation to the giving of information to the Tribunal, the answering of questions put by the Tribunal, and the production of papers, documents, records, and things to the Tribunal as witnesses have in a court of law

Decisions.

17 (1) A decision on an appeal shall be made in writing as soon as practicable after the completion of proceedings

(2) The decision of the Tribunal shall include the findings of fact and the reason for the decision of the Tribunal

(3) The decisions of the Tribunal shall be published for general information in such form and manner as does not reveal the identity of the appellant unless the appellant in writing, agrees otherwise

(4) A decision of the Tribunal shall be final

(5) In deciding an appeal, the Tribunal may make an order-

- (a) affirming, reducing, increasing or varying the assessment, decision, ruling, determination or direction of the Commissioner General under appeal, as the case may be,

- (b) remitting the assessment, decision, ruling, determination or direction under appeal for reconsideration by the Commissioner General in accordance with the directions of the Tribunal, or
- (c) in the case of an appeal against the amount of an additional tax, penalty or interest imposed by the Commissioner General, affirming, reducing, or increasing the amount of the additional tax or penalty or interest so imposed, subject to the maximum amount chargeable in terms of any revenue law in question

(6) The Registrar of the Tribunal shall, by notice in writing, furnish the appellant and the Commissioner General with a copy of the decision of the Tribunal

(7) For the purposes of this section, "full Tribunal" means the President and four other members

(8) Notwithstanding sub-section (4) either party may apply for review of the matter to the High Court

Costs.

18 Where-

- (a) the decision of the Commissioner General is held to be unreasonable,
- (b) the grounds of appeal of the appellant are held to be frivolous,
- (c) hearing of the appeal is postponed at the request of one of the parties, or
- (d) the appeal has been withdrawn or conceded by one of the parties after the date of hearing has been allocated by the Registrar,

the Tribunal may, on application by the aggrieved party, grant an order for costs in favour of that aggrieved party, which costs shall be determined in terms of the rules prescribed under section 24, otherwise parties shall bear their own costs

**PART IV
MISCELLANEOUS**

Contempt of Tribunal.

19 (1) A person shall not-

- (a) insult a member in relation to the exercise of powers or discharge of functions as such a member, or
- (b) interrupt the proceedings of the Tribunal, or
- (c) create a disturbance or take part in creating or continuing a disturbance in or near a place where the Tribunal is sitting or
- (d) do any other act or thing that would, if the Tribunal was a court of record, constitute a contempt of that court

(2) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a penalty to be prescribed by the Minister

Payment of tax pending appeal.

20 (1) The obligation to pay and the right to receive and recover any tax chargeable under a revenue law shall not be suspended by an appeal or pending the decision of the Tribunal or a court of law

(2) If an assessment is altered on appeal or by a decision of the Commissioner General to concede an appeal against an assessment-

- (a) a due adjustment shall be made,
- (b) amounts paid in excess shall be refunded with interest at the rate prescribed by the relevant provisions of the revenue law in question or by the Minister where no such rate is prescribed, and
- (c) amounts short-paid shall be recoverable with interest calculated in terms of the relevant provisions of the revenue law in question

(3) Every interest for the amount paid in excess shall be calculated from the date on which the excess was received

Amendment of an assessment after determination on appeal.

21 (1) Subject to subsection (2), nothing in this Act or under any revenue law shall prevent any person, including the Commissioner General from applying to the Tribunal for an amendment of an assessment within the limits set by such laws if the amendment does not re-open a matter which has been determined on appeal

(2) Where a fraud or gross or intentional neglect has been committed by a person or on behalf of any person in relation to tax for the period of assessment, the Commissioner General may with the permission of the Tribunal make an amended assessment on that person for such period of assessment even if it involves a re-opening of any matter which has been determined on appeal but only where the fraud, gross or intentional neglect came to the notice of the Commissioner General after the determination of the appeal

Settlement of dispute before objection.

22 (1) The Minister may, by Regulations, notwithstanding any provision of this Act or any revenue law, settle a dispute between the Commissioner General and a taxpayer in whole or in part, where such a settlement would be to the best interest of the State

(2) The Regulations contemplated under subsection (1), shall prescribe the requirements for the reporting by the Commissioner General of any dispute which has been settled in whole or in part by the Commissioner General to the Minister

(3) Where a dispute between the Commissioner General and the person aggrieved by an assessment has been settled as contemplated in subsection (1), the Commissioner General may, notwithstanding anything to the contrary contained in this Act or any revenue law, alter that assessment for purposes of giving effect to that settlement

(4) An altered assessment contemplated in subsection (3) shall not be subject to objection and appeal

Regulations.

23 The Minister may make Regulations to give effect to the objects of this Act and for-

- (a) the organization and administration of the Tribunal, and
- (b) any other matter incidental to the carrying into effect of the provisions of this Act

Rules of Tribunal.

24 The Tribunal may make rules-

- (a) prescribing the procedures to be observed in lodging an objection and noting appeal against a decision of the Commissioner General and the conduct and hearing of an appeal before the Tribunal,
- (b) prescribing the procedures for exercising the powers of the Tribunal in investigation summoning and compelling attendance of witnesses, or
- (c) regulating the award of costs in appropriate circumstances

LEGAL NOTICE NO. 206 OF 2019

THE ENVIRONMENTAL MANAGEMENT ACT, 2002
(Act No 5 of 2002)

THE REVOCATION OF THE CONTROL OF PLASTIC BAGS
REGULATIONS, 2019
(Under Section 86)

In exercise of the powers conferred by Section 86 of the Environmental Management Act, No 5 of 2002, the Minister for Tourism and Environmental Affairs issues the following Notice -

Citation and Commencement

1 (1) This Notice may be cited as The Revocation of the Control of Plastic Bags Regulations, 2019

(2) This Notice shall come into force on the date of publication in the Gazette

Revocation of Legal Notice No. 184 of 2019

2 Legal Notice No 184 of 2019 is revoked

HON. MOSES VILAKATI
MINISTER FOR TOURISM AND ENVIRONMENTAL AFFAIRS