

THE GRADED TAX ACT

Date of commencement: 1st January, 1969.

Date of Assent: 11th December, 1968.

Arrangement of Sections

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An Act to impose a graded tax.

Short title.

1. This Act may be cited as the Graded Tax Act, 1968.

Interpretation.

2. In this Act, unless the context otherwise requires —
 - “authorised officer” means a collector, police officer or Swazi authority;
 - “collector” means a person authorised in writing by the Commissioner to be a collector and also means an employer; (Amended A.10/1988.)

“Commissioner” means the Commissioner of Taxes appointed under the Income Tax Order, 1975; (Added A.7/1985.)

“employer” has the same meaning as in the Second Schedule to the Income Tax Order, 1975; (Amended A.10/1988.)

“graded tax” means the tax imposed by section 3;

“income” means gross cash income received by or accrued to or in favour of a person —

- (a) from any source within Swaziland in respect of —
 - (i) his trade, business or profession;
 - (ii) wages or salary arising from his employment;
 - (iii) any dividend, interest, allowance or annuity, except a cash allowance paid *bona fide* in terms of a contract of service in lieu of rations in any case where the employee has the option to receive rations as an alternative to the cash allowance;
 - (iv) rent, royalty or premium for a lease; or
- (b) income deemed to be from a source in Swaziland by virtue of section 3(2);
(Replaced A.10/1988.)

“magistrate’s court” means a court established under the Magistrates Courts Act, 1938; (Replaced A.10/1988.)

“Minister” means the Minister for Finance;

“stamp” means a stamp approved by the Commissioner;

“Swazi authority” includes a person holding office as a Chief within the area of his jurisdiction in accordance with Swazi law and custom or an indvuna or umgijimi or anyone duly authorised to perform the Chief’s function; (Amended A.7/1985.)

“tax card” means a card relating to the payment of tax and approved by the Commissioner;

“taxpayer” means a person liable to pay tax; and

“tax year” means the period commencing on the first day of January, 1969, and ending on the thirtieth day of June, 1969, and each period thereafter commencing on the first day of July in one year and ending on the thirtieth day of June in the next ensuing year. (Amended A.25/1969.)

Imposition of graded tax. (Schedule)

3. (1) Every person (excluding a company or an association or a body of persons, corporate or unincorporate) whether in receipt of income or not who is resident or domiciled in Swaziland shall pay a graded tax at the appropriate rate prescribed in the Schedule.

(2) For the purposes of subsection (1), a person who, being a citizen of Swaziland recruited on a foreign contract of employment, is employed outside Swaziland shall be

deemed to be domiciled or resident in Swaziland and his income from such employment shall be deemed to be income from a source in Swaziland.

(Amended A.10/1988.)

Exemption from graded tax.

4. (1) The following are exempt from the payment of graded tax —
- (a) a woman not in employment or whose income from employment does not exceed fifteen emalangenani a month;
 - (b) a person who is under the apparent age of eighteen years and for the purposes of this subsection a person shall be deemed to be of or over such age unless he produces evidence that he is under such age. (Replaced A.10/1988.)
 - (c) a *bona fide* visitor to Swaziland who remains for not more than two months during the tax year, and who is not in receipt of income; and
 - (d) a person who is in possession of a current certificate of exemption issued to him in accordance with subsection (2).
- (2) Upon application to him in the prescribed form, the Commissioner shall issue a certificate of exemption from graded tax to a person who satisfies him that he —
- (a) is indigent or otherwise unable by reason of age, chronic disease or other good cause, to pay graded tax; or
 - (b) was in full-time attendance at a school or any other educational institution recognized by the Minister:
Provided that the certificate shall only confer exemption for the period that he was in full-time attendance at such school or institution; or
 - (c) is of a class of person whom the Minister has by notice in the Gazette exempted from payment of graded tax. (Amended A.25/1969.)
- (3) The Commissioner may in writing delegate the duty imposed on him under subsection (2) to a public officer in his department. (Amended A.25/1969.)

Payment of graded tax derived from employment and related matters.

5. (1) Every person who, on the 1st July, 1987 is an employer who becomes an employer after that date shall apply to the Commissioner for registration as an employer in such form as the Commissioner may require within fourteen days of such date or, in the latter case, of becoming an employer or, in either case, within such further period as the Commissioner may allow:

Provided that every person who, on the 1st July, 1987, is an employer or who, after that date becomes an employer and is registered in compliance with paragraph 15 of the Second Schedule to the Income Tax Order, 1975 shall, for the purposes of this section, be deemed to be registered.

- (2) An employer shall deduct the amount of the graded tax referable to the income derived by a person from his employment from the first salary or wages payable to him each month in respect of such- employment in accordance with Part I of the Schedule:

Provided that:

- (i) upon being satisfied that a person is employed by more than one employer, the Commissioner may by written notice to all the employers concerned nominate one of them as the employer responsible for the deduction from such person's salary or wages of the total amount of graded tax for which such person is liable under this Act; and
- (ii) in the event of such person ceasing to be employed by the employer so responsible as provided in paragraph (i) of this proviso, such employer shall forthwith notify the other employer or employers of such person accordingly, and the provisions of this section shall thereupon apply to such employer or employers, as the case may be.

(3) An employer may, with the written permission of the Commissioner, maintain a tax card for each employee and such card shall be made available by the employer for inspection by the employer or a collector at all reasonable times:

Provided that the Commissioner may, after reasonable notice to an employer, withdraw any permission granted under this subsection or, by notice in the Gazette, prescribe any class or classes of employers or employees in relation to whom his permission to maintain tax cards shall not be required.

- (4) (a) Every employer shall deducts from the salary or wages of his employee the amount of graded tax which the employee is liable to pay under this Act shall, except as otherwise provided in paragraph (b), pay the amount so deducted to the Commissioner within seven days after the end of the month to which the deduction relates and within fourteen days after the end of the tax year or within such longer period as the Commissioner may allow, render to the Commissioner a return, in such form as the Commissioner may approve, setting out the names of the employees, the total amount of income paid to each employee and the total amount of graded tax deducted from the salary or wages of each employee during that tax year.
 - (b) An employer who maintains a tax card for his employee shall, in respect of each deduction of graded tax, affix to the tax card a revenue stamp of a denomination equal to the amount deducted and shall, within fourteen days after the end of the tax year or within such longer period as the Commissioner may allow, deliver to the Commissioner all tax cards of his employees relating to the tax year together with a list in duplicate certified by him as correct showing the names of each employee to whom the tax cards relate.
- (5) (a) Except as otherwise provided in paragraph (b), every employer shall issue a graded tax clearance certificate to his employee at the end of the tax year setting out the amount of graded tax deducted in respect of that year.
- (b) Where an employer maintains a tax card for an employee and has complied with the provisions of subsection (4)(b), the Commissioner shall issue a graded tax clearance certificate in respect of the relevant tax year and forward the certificate to the employer for delivery to the employee.
 - (c) Where an employee leaves his employment before the end of a tax year, the employer shall issue a provisional graded tax clearance certificate or a tax card, as the case may be, to such employee and if such person does not become employed within that tax year he may, at the end of that tax year,

surrender the provisional graded tax certificate or tax card to the Commissioner who shall issue to him a graded tax clearance certificate.

(6) Before commencing his duties under a contract of employment the employee shall hand over to his employer the provisional graded tax clearance certificate or a tax card, as the case may be, delivered to him by any previous employer during the year in which he so commences his duties.

(7) If an employee fails to hand over to employer the provisional graded tax clearance certificate or the tax card referred to in subsection (6) or it appears from the certificate or tax card that the employee has not paid tax during the tax year of at least thirty-five cents per month for each month of the tax year to the date the employee entered upon his duties, the employer shall deduct from the first wages or salary of the employee an amount sufficient to make up that amount unless the employee satisfies his employer by means of such proof as may be prescribed that he was exempt from paying graded tax for the previous months of the tax:

Provided that the Commissioner may in writing direct that the employer may deduct a lesser amount or that the amount may be deducted in instalments.

(8) An employer, who, without lawful excuse, fails to perform a duty imposed on him by this section shall be guilty of an offence.

(9) An employer who fails to deduct graded tax from the salary or wages of his employee or to pay any amount of tax deducted within the periods prescribed in subsection (4) shall become personally liable to pay such tax and in addition, shall be liable to pay to the Commissioner interest at 1% per month from the date on which the tax not deducted becomes due together with a penalty not exceeding 12% per annum which the Commissioner may impose in respect of graded tax not remitted within the prescribed period.

(Amended A.25/1969; Replaced A.10/1988.)

Payment of graded tax other than on income derived from employment. (Schedule Part II).

6. (1) Graded tax payable other than on income derived from employment shall be paid to a collector —

- (a) in the case of a person leaving Swaziland and not intending to return before the end of the tax year, by the taxpayer before he leaves Swaziland;
- (b) in the case of a person dying during the tax year, by his estate as a debt due at the date of death; and
- (c) in any other case, by the taxpayer annually at the end of each tax year.

(Amended A.25/1969.)

(2) The amount of graded tax payable by a person under subsection (1) shall be eighteen Emalangeni unless he or, in the case of a deceased person the representative of his estate, has lodged a declaration in the prescribed form with the Commissioner that he has no income or that his yearly income is less than six hundred Emalangeni and such declaration is lodged —

- (a) in the case of a person referred to in sub-paragraph (a) of that subsection, before his departure from Swaziland;
- (b) in the case of a person referred to in sub-paragraph (b) of that subsection, within six months of the death of the taxpayer; and

- (c) in the case of a person referred to in sub-paragraph (c) of that subsection, not later than three months before the end of the tax year.

whereupon the amount of tax payable shall be based on the information contained in such declaration.

(Replaced A.7/1985.)

(3) A collector shall issue a graded tax clearance certificate in respect of graded tax paid in terms of this section. (Amended A.7/1985; A.10/1988.)

(4) A person who makes a false statement in the declaration referred to in subsection (2) shall be guilty of an offence. (Amended A.7/1985.)

Aggregation and set off.

6bis. A person who has, in respect of the tax year for which he is liable to pay graded tax, paid such tax under section 5 or 6 shall not be required to pay, in the aggregate, more than the maximum amount of tax payable under this Act and any tax already paid in accordance with any of those sections shall be set off against the tax payable under the other section. (Added A.7/1985.)

Power to demand receipts or documents.

7. (1) A person liable to pay graded tax —

(a) shall, on demand made by an authorised officer, forthwith produce to him his graded tax clearance certificate; or (Replaced A.10/1988.)

(b) if he is unable to produce his graded tax clearance certificate shall furnish to the officer his full names and address and shall produce such certificate or receipt within fourteen days, to a person and at a place nominated in writing by the authorised officer. (Amended A.10/1988.)

(2) A person who, without lawful excuse, fails to comply with subsection (1) shall be guilty of an offence.

(3) A person who has obtained the production of a graded tax clearance certificate or a form of tax receipt under this section and who fails to return it to the person who produced it, unless the retention is authorised by law, shall be guilty of an offence. (Amended A.10/1988.)

Keeping of records and furnishing of information.

8. (1) An employer shall keep a correct record in the prescribed form containing such details as may be prescribed in respect of each employee, and shall retain it in his possession for a period of at least five years.

(2) An employee shall supply his employer with such information as may be necessary to enable him to comply with subsection (1) when requested by the employer to do so.

(3) A collector may inspect the records referred to in subsection (1) when requested by the employer to do so.

(4) An employee who fails to provide the information requested of him by the employer in terms of subsection (2) or who knowingly supplies false information shall be guilty of an offence.

- (5) An employer who —
- (a) fails to make or retain the records as required in subsection (1); or
 - (b) keeps false records; or
 - (c) fails or refuses to make his records available for inspection by a collector in terms of subsection (1);

shall be guilty of an offence.

Tax records.

9. (1) A collector who fails to keep records in a form required by the Commissioner shall be guilty of an offence.

(2) An extract from these records, certified as correct by the Commissioner shall be received as *prima facie* evidence of the facts therein stated upon production in a court.

Recovery of graded tax.

10. (1) When graded tax becomes due, it shall be a debt due to the Government and payable in the manner prescribed by this Act.

(2) Where a person fails to pay graded tax due or payable by him, the Commissioner may file with the clerk of a magistrate's court a statement certified by him as correct setting forth the amount of tax so due or payable, and such statement shall have the effect of, and proceedings may be taken on it as if it were, a civil judgment lawfully given in that court in favour of the Government for a liquid debt of the amount specified in the statement.

(3) (Repealed A.10/1988.)

Appointment of taxpayer's agent.

11. If necessary, the Commissioner may declare a person to be the agent of any other person, and the person so declared an agent may be required to make payment of any graded tax due by that person from any money, including pension, salary, wages or other remuneration held by him for, or due by him to, the person whose agent he had been declared to be.

Cancellation of tax stamps.

12. A person, on affixing a tax stamp to a tax card, shall immediately deface the stamp by writing or impressing in ink on or across it his name or initials or the name or title of his firm or company or his business name, and the date of defacement, so as effectually and permanently to deface the stamp and render it incapable of being used again.

Forging or misuse of tax stamps.

13. The provisions of Part VI of the Stamp Duties Act No. 37 of 1970 shall apply in relation to stamps under this Act.

Onus of proof.

14. In any proceedings, whether civil or criminal, under or arising out of this Act, it shall be presumed that a person is liable to pay graded tax unless the contrary is proved.

Refunds.

15. Where the Commissioner is satisfied that an amount paid by a person was in excess of the amount payable under this Act, he shall refund to that person the amount of such overpayment.

(2) (Repealed A.10/1988.)

(3) (Repealed A.10/1988.)

Failure to pay graded tax.

16. A person who, without lawful excuse, fails to pay graded tax due by him within thirty days of the date on which it falls due, shall be guilty of an offence.

Current tax clearance certificate to be produced in certain instances.

17. Notwithstanding any other law, no licence, permit, passport, travel document, certificate of khonta or of naturalisation or registration as a citizen of Swaziland, or any other certificate or document of authorisation prescribed by regulation shall be issued to a person liable to pay graded tax, without prior production, to the person authorised by law to issue such licence, passport, travel document, certificate or other document, of the current tax clearance certificate issued to the person in whose favour the document is required.

Penalties.

18. A person who has committed an offence specified in —

(a) section 7(2) or 8(4) shall be liable on conviction to a fine not exceeding ten emalangeni or, in or in default of payment thereof to imprisonment for a period not exceeding seven days;

(b) section 5(8) or 8(5) shall be liable on conviction to a fine not exceeding fifty emalangeni or, in or in default of payment thereof to imprisonment for a period not exceeding two months; (Amended A.10/1988.)

(c) section 6(6) shall be liable on conviction to a fine not exceeding one hundred emalangeni or imprisonment for a period not exceeding three months, or both, and the court shall, in addition, order him to pay the amount of the graded tax for which he would have been liable but for his false statement;

(d) section 7(3) or 9(1) shall be liable on conviction to a fine not exceeding one hundred emalangeni or imprisonment for a period not exceeding three months, or both; or

(e) section 16 shall be liable on conviction to a fine not exceeding the equivalent of three times the amount of unpaid tax or, in default of payment thereof, to imprisonment for a period not exceeding four months.

(Original section 18 Repealed by A.7/1985; Renumbered A.10/1988.)

Regulations.

19. The Minister may, by notice in the Gazette, make regulations to implement the objects of this Act, and in particular but without limiting the generality of the foregoing, such regulations may provide for —

- (a) the form of return, receipt, certificate or other document required or permitted by this Act;
- (b) the furnishing of tax cards free of charge to persons requiring them;
- (c) the functions of a Swazi authority in relation to the collection of graded tax;
- (d) the fee to be charged for a duplicate copy of a document required or permitted to be used by this Act;
- (e) the payment at the request of a taxpayer of annual graded tax in instalments by affixing stamps on tax cards or in any other manner; and
- (f) anything that may be, or is required to be prescribed by this Act.

(Renumbered A.10/1988.)

SCHEDULE
(Amended A.25/1969.)
(Sections 3 and 6)

PART I

<i>(A) Rates of taxation payable by employees</i>	<i>Tax payable a month</i>
	E. c.
(1) A person who is not in receipt of income exceeding E25.00 a month	35
(2) A person who is in receipt of income exceeding E25.00 a month but not exceeding E37.50 a month.....	50
(3) A person who is in receipt of income exceeding E37.50 a month but not exceeding E50.00 a month.....	1.00
(4) A person who is in receipt of income exceeding E50.00 a month	1.50

(B) Irrespective of whether an employee is employed on daily, weekly or fortnightly terms of service or rates of pay, his monthly rate of pay shall, for the purposes of assessing the tax payable by him, be deemed to be —

- (a) if he is paid his wages weekly, four and one-third of his weekly wage, and,
- (b) if he is paid his wages fortnightly, two and one-sixth of his fortnightly wage.

PART II

<i>Rates of taxation</i>	<i>Annual graded tax</i>
	E. c.
(1) A person not in receipt of income or whose income does not exceed E300.00 a year	4.20
(2) A person in receipt of income exceeding E300.00 a year but not exceeding R450.00 a year	6.00
(3) A person in receipt of income exceeding E450.00 a year but not exceeding E600.00.....	12.00

(4) A person in receipt of income exceeding E600.00 a year 18.00
