

## THE FUEL TAX ACT, 2022

(Act No. 11 of 2022)



I ASSENT

MSWATI III  
KING OF THE KINGDOM OF  
ESWATINI4<sup>th</sup> AUGUST, 2022AN ACT  
ENTITLED

AN ACT to provide for the imposition and collection of a fuel tax and incidental matters.

ENACTED by the King and Parliament of the Kingdom of Eswatini.

## ARRANGEMENT OF SECTIONS

PART I  
PRELIMINARY PROVISIONS

1. Short title and commencement.
2. Interpretation.

PART II  
IMPOSITION AND RECOVERY OF TAX

3. Application of Act.
4. Imposition of fuel tax.
5. Liability to pay tax.
6. Failure to remit tax.
7. Interest on unpaid tax.
8. Appointment of day for payment of tax.
9. Recovery of tax.

PART III  
INVESTIGATION AND ENFORCEMENT

10. Inspections, audit and examination of documents.

11. Garnishment.

#### **PART IV ADMINISTRATION**

12. Keeping records.

13. Demand for return.

14. Failure to answer demand.

15. Refunds and set-off.

16. Authentication and service of documents.

#### **PART V OFFENCES AND PENALTIES**

17. Offences and penalties.

#### **PART VI MISCELLANEOUS AND GENERAL PROVISIONS**

18. Regulations and amendment of schedule.

19. Transitional Arrangements.

20. Repeal.

Schedule.

#### **PART I PRELIMINARY PROVISION**

##### *Short title and commencement.*

1. (1) This Act may be cited as the Fuel Tax Act, 2022.

(2) This Act shall come into force on a date appointed by the Minister by notice in the Gazette.

##### *Interpretation.*

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

“authorized officer” means any person authorized by the Commissioner General to perform any function under this Act;

“Commissioner General” means the Commissioner General of the Eswatini Revenue Services;

“fuel” means any petroleum product that can undergo a combustion process to produce energy and includes petrol or diesel;

"fuel tax" means tax imposed under this Act;

"Minister" means the Minister responsible for tax;

"person" includes a company, a body of persons whether incorporated or not, an insolvent estate, the estate of a deceased person or any trust; and

"wholesaler" means any person or business that purchases and sells prescribed petroleum products in bulk quantities to other licensed wholesalers, retailers and end consumers for own consumption.

## PART II IMPOSITION AND RECOVERY OF TAX

### *Administration of the Act.*

3. (1) The Commissioner General shall be responsible for carrying out the provisions of this Act.

(2) The powers conferred, and the duties imposed upon the Commissioner General by the provisions of this Act may be exercised or performed by the Commissioner General, an authorized officer or a person engaged in carrying out the said provisions under the control, direction or supervision of the Commissioner General.

### *Imposition of fuel tax.*

4. (1) There shall, be imposed a tax to be known as "fuel tax" on the sale of fuel by a wholesaler.

(2) The Minister shall in consultation with the Minister for natural resources and energy determine the rate of tax to be imposed in the prescribed schedule from time to time.

### *Liability to pay tax and estimates*

5. (1) A wholesaler shall -

- (a) upon the sale of any fuel to another person, record the volume or quantity sold and the fuel tax payable;
- (b) not later than the fourteenth day after the end of each month, pay to the Commissioner General the total amount of the fuel tax payable on the fuel sold by the wholesaler in the previous month; and
- (c) submit fuel tax returns in compliance with paragraph (a) by way of a form prescribed by the Commissioner-General.

(2) Where a wholesaler fails to comply with subsection 1(b), the Commissioner-General shall, make a reasonable estimate of the fuel tax due and payable and issue a notice of assessment of the debt.

(3) The assessment made in terms of this section shall be deemed to be valid and binding notwithstanding any error, defect, or omission and the wholesaler shall be liable for the payment of the amount of the tax so estimated within the period provided for in the notice of assessment.

(4) Once the estimated tax becomes due, a wholesaler shall pay whether or not an objection or appeal from the assessment is lodged.

***Penalty for failure to remit tax***

6. (1) Where a wholesaler fails to comply with section 5 (1) (b), in addition to any other penalty or charge imposed in this Act, that wholesaler shall be liable to pay to the Commissioner-General a penalty equal to twenty (20) percent of the amount not paid.

(2) The Commissioner-General may, remit the whole or part of the penalty imposed under subsection (1), where the failure to pay the tax by a wholesaler is not due to an intent to evade, postpone payment of the tax or otherwise evade the obligation of that wholesaler under this Act.

(3) The penalty imposed under sub-section (1) shall be paid to the Commissioner General within the prescribed period in the notice or within a period as the Commissioner General may approve.

***Interest on unpaid tax.***

7. (1) A wholesaler that fails to remit tax shall, be liable to pay interest on the amount of the outstanding tax, calculated at the prime lending rate per month.

(2) The amount due including the interest in terms of sub-section (1) shall be treated as a debt due to the Government.

***Appointment of day for payment of tax.***

8. (1) The tax chargeable under this Act shall be due and payable on the date on which the return is due or in the case of estimated assessment, on the date specified in the notice of assessment.

(2) Where, in addition to any amount of tax, an amount of penalty or interest is payable by that person, any payment made in respect of the tax, penalty or interest which is less than the total amount due shall be deemed to be made -

- (a) in respect of the penalty;
- (b) to the extent to which the payment exceeds the amount of the penalty, in respect of the interest; and
- (c) to the extent to which the payment exceeds the sum of the amounts of the penalty and interest, in respect of the tax.

***Recovery of tax from wholesaler.***

9. (1) Fuel tax, including any interest or penalty payable to the Commissioner-General by the wholesaler shall, when it becomes due and payable, be deemed to be a debt due to the Government.

(2) Where the Commissioner-General acts in terms of subsection (1), the wholesaler shall be served with a notice of assessment of the debt due and payable.

(3) If the wholesaler is not satisfied with the notice of assessment the wholesaler shall submit an objection to the Commissioner-General within 30 days of the service of the notice.

(4) Where a wholesaler fails to pay tax that is due and payable, the Commissioner General for the recovery of a liquid debt shall file in support of the claim a certified statement setting forth all the facts and the amount of the tax due and payable by the wholesaler.

### PART III INVESTIGATION AND ENFORCEMENT

#### *Inspections, audit and examination of documents.*

10. (1) An authorized officer may, at any reasonable time, for any purpose related to the administration or enforcement of this Act, inspect, audit or examine documents, property or processes of a wholesaler that may be relevant in determining the obligations of that wholesaler under this Act or any refund due to that wholesaler.

(2) The authorized officer, for the purposes of sub-section (1) may-

- (a) subject to sub-section (3), enter any premises or place where any commercial activity is carried on, any property or item is kept, in connection with that business; and
- (b) require the owner, manager of the property, or any other person on the premises or in the place to give the authorized officer all reasonable access and assistance in responding to all questions relative for the administration or enforcement of this Act.

(3) Subject to subsection (4), where the premises or place is a dwelling house, the authorized officer may not enter that dwelling-house without the consent of the occupant.

(4) Where, an *ex parte* application is lodged by the Commissioner-General, and a Judge or Magistrate is satisfied by information on oath that -

- (a) there are reasonable grounds to believe that a dwelling house is a premise or place referred to in sub-section (2) (a);
- (b) entry into the dwelling-house is necessary for any purpose relating to the administration or enforcement of this Act; or
- (c) entry into the dwelling-house has been refused or that there are reasonable grounds to believe that entry will be refused,

the Judge or Magistrate shall issue a warrant authorizing an authorized officer to enter that dwelling house, subject to such conditions as may be specified in the warrant.

(5) Notwithstanding subsection (4), where the Judge or Magistrate is not satisfied that entry into that dwelling-house is necessary for any purpose relating to the administration or enforcement of this Act, the judicial officer may -

- (a) order the occupant of the dwelling house to provide an authorized officer with reasonable access to any document or property that is or ought to be kept within the dwelling house; and

(b) make such order as is appropriate in the circumstances to carry out the purposes of this Act.

(6) A wholesaler, whose affairs are subject to an inspection, audit, or examination for purposes of gathering any information, shall be given the right to be heard in respect of any material or information gathered and proposed to be used for the purposes of assessment or of any proceedings under this Act.

(7) A taxpayer that is required to comply with this section shall be given reasons in writing for any decision taken by the Commissioner-General.

#### ***Garnishment.***

11. (1) The Commissioner-General may for the purposes of this Act, declare a person to be an agent of a wholesaler and that agent shall, be required to pay the Commissioner-General any tax due from any money which -

- (a) is due or may become due to the wholesaler whose agent has been declared;
- (b) the person holds or may subsequently hold for or on account of the wholesaler whose agent that wholesaler has been declared; or
- (c) the person has authority from some other person to pay to the wholesaler whose agent that person has been declared, on the date set out in the notice of declaration, up to the amount of the tax due.

(2) The date specified in the notice of declaration under subsection (1) shall not be a date before the money becomes due to the wholesaler or held on the wholesaler's behalf.

(3) A copy of the notice of declaration issued under subsection (1) shall be forwarded to the wholesaler.

(4) The agent making a payment pursuant to a notice of declaration under subsection (1) shall be deemed to have been acting under the authority of the wholesaler and is indemnified in respect of that payment.

(5) An agent shall not pay an amount under this section in excess of the amount owed to the wholesaler.

(6) Without prejudice to the liability of the wholesaler under this Act, where the agent has received a notice of declaration and parts with any money contrary to the requirements of the notice of declaration, that Agent shall be liable to that extent for the tax due by the wholesaler.

### **PART IV ADMINISTRATION**

#### ***Keeping of records.***

12. (1) A wholesaler making tax payment shall maintain a record showing, in relation to each year of assessment the quantity of fuel received, imported or sold.

(2) The record in sub-section (1) shall be kept available for a period of five (5) years, for examination by the Commissioner-General as and when required.

*Demand for return.*

13. The Commissioner-General may, serve a wholesaler personally, by certified registered post or electronic mail, and make demand upon that wholesaler to file, within a reasonable time stated in the demand, a return under this Act for the period or transaction as may be designated in the demand.

*Failure to answer demand.*

14. (1) A wholesaler that fails to file a return upon demand within seven (7) days shall be liable to an administrative penalty not exceeding two thousand five hundred (E2,500) Emalangeni per day after the due date.

(2) The liability shall cease at the time the Commissioner-General receives the return.

*Refunds and set-off.*

15. (1) If an amount is paid by a wholesaler in terms of this Act, that amount shall be refundable to the extent that the amount exceeds the amount properly chargeable under this Act.

(2) The Commissioner-General shall not authorize a refund under subsection (1), where -

- (a) the refund is claimed by the wholesaler after a period of three (3) years after the end of that year of assessment, or from the date of the official receipt acknowledging the payment or, where more than one such payment was made on the date of the official receipt acknowledging the latest of such payments;
- (b) the wholesaler has failed to deliver a return for any year of assessment as required by this Act, until that wholesaler has delivered such return as required; or
- (c) the amount to be refunded is less than one hundred Emalangeni (E100, 00) or less than the other amount as the Commissioner-General may determine.

(3) Where any refund contemplated in subsection (1) is due to a wholesaler, the Commissioner-General shall within the period prescribed for payment of the amount -

- (a) apply the excess in reduction of any other tax due from the wholesaler;
- (b) apply the balance of the excess if any exists in reduction of any outstanding liability of the wholesaler to pay other taxes collected by the Commissioner General; or
- (c) refund the remainder of the amount if any exists to the wholesaler.

*Authentication and service of documents.*

16. (1) Any form, notice, demand or other document issued or given by or on behalf of the Commissioner-General or other officer under this Act shall be sufficiently authenticated where the name of the Commissioner-General or officer by whom it is issued or given is stamped or printed on it.

(2) Any form, notice, demand, document or other communication required or authorized under this Act to be served upon any person shall be sufficiently and effectively served if -

- (a) personally served upon that person;
- (b) left at the usual or last place of abode or office or place of business of that person in Eswatini;
- (c) sent in a registered or any other kind of post addressed to that person to such place of abode, office or place of business or to the usual or last known postal address of that person;
- (d) transmitted to that person by electronic means to that last known electronic address of that person; or
- (e) in the case of a company if -
  - (i) personally served on the public officer of the company or delivered to that public officer or left at the company's address for service under this Act;
  - (ii) the company did not lodge an address for service as required by this Act, then if the notice is left at or sent in a registered post or any other kind of post addressed to any office of the company in Eswatini or any premises where that company carries on business or the address or last known address of the public officer of that company; or
  - (iii) transmitted to the company or the public officer of that company by electronic means to the last known electronic address of that company or the public officer of that company.

(3) Any form, notice, demand, document, or other communication referred to in subsection (2) which has been issued, given, sent or served in the manner contemplated in paragraph (c) or (e) (ii) of that sub-section shall, be deemed to have been received by that person to whom it was addressed at the time when it would, in the ordinary course of business, have arrived at the place to which it was addressed, unless the Commissioner-General is satisfied that it was not so received or was received at some other time.

(4) If a dispute arises on the issue of service of any form, notice, demand, document, or other communication in this provision, the court shall make the final determination of whether or not the service was effected upon the person.

## PART V OFFENCES AND PENALTIES

### *Offences.*

17. A person who

- (a) fails to pay the required tax within the time prescribed under this Act;
- (b) fails to provide any information or return required under this Act;
- (c) knowingly makes a false statement in relation to any required information or return;
- (d) obstructs any authorized officer from the performance of any duties as provided in this Act; or



(c) fails to record or maintain proper records as provided for in this Act,

commits an offence and shall be liable, on conviction to a fine not exceeding twenty-five thousand Emlangeni (E25, 000.00), or to imprisonment for a term not exceeding five (5) years, or both, in addition to any administrative penalties provided for in this Act.

## PART VI MISCELLANEOUS PROVISIONS

### *Regulations.*

18. The Minister may make regulations for all or any of the following

- (a) generally to giving effect to the purposes of this Act; and
- (b) prescribing the rates of tax payable under this Act.

### *Transitional Arrangements*

19. Notwithstanding the repeal of the Fuel Oil Levy Act, 1980, all fuel tax due in respect of any transaction that took place before the commencement of this Act shall be due and payable as if the Act under which that fuel tax was due is still in force, but in case of a default the taxable wholesaler shall be dealt with under this Act.

### *Repeal of Act.*

20. The Fuel Oil Levy Act No. 1 of 1980 is repealed.

## SCHEDULE

### PART I RATES OF TAX (under section 4(2))

The rate of tax to be levied and paid in respect of every amount and in relation to any fuel prescribed by the Minister from time to time shall be as follows:-

	Description		Rate of tax
(a)	Unleaded Petrol (ULP 95)		E 3.85 per litre
(b)	Diesel 50ppm Sulfur (0.005%)		E 3.85 per litre

### PART II WHOLESALEERS

- (a) Galp Energia Eswatini (Pty) Ltd
- (b) Engen Eswatini (Pty) Ltd
- (c) Swazi Oil (Pty) Ltd

- (d) Total Eswatini (Pty) Ltd
- (e) Tholo Energy Eswatini
- (f) Puma Eswatini (Pty) Ltd
- (g) Eswatini Foelex Change
- (h) Kosotape Eswatini (Pty) Ltd
- (i) Phakama Oil (Pty) Ltd