

THE VALUE ADDED TAX (AMENDMENT) ACT, 2022

(Act No. 10 of 2022)



I ASSENT

MSWATI III
KING OF THE KINGDOM OF
ESWATINI12th MAY, 2022AN ACT
ENTITLED

AN ACT to amend the Value Added Tax Act, 2011 as to provide for the manner of dealing with bonded goods, and to provide for delegation of powers of the Commissioner General and criminalise certain acts and to provide for incidental matters.

ENACTED by the King and the Parliament of Eswatini.

PART I
PRELIMINARY*Short Title and Commencement.*

1. (1) This Act may be cited as the Value Added Tax (Amendment) Act, 2022, and shall be read as one with the Value Added Tax Act, 2011, (herein after referred to as the Principal Act).

(2) This Act shall come into force on a date the Minister may prescribe, by notice in the gazette.

Amendment of section 2.

2. Section 2 of the Principal Act is amended by adding the following definition in the alphabetical order-

“personal effects” means articles pertaining to or carried upon the body, such as clothing, toilet requisites, but excludes such articles as radios, musical instruments, cameras, binoculars, business equipment and sports goods;

“qualified educational institution” is an institution registered by the Ministry responsible for education whether it is a private institution operating on a for-profit basis or a non-profit organisation) to provide pre-primary, primary, secondary school or high school, college or university education, or institution established to promote adult education, vocational training, technical education, or education or training of physically or mentally handicapped persons registered with the Ministry responsible for education;

"qualified medical facility" means the office of a qualified medical professional, a hospital, maternity home, nursing home, convalescent home, hospice or clinic;

"qualified medical professional" means a general practitioner, physician, healer, nurse, health officer, physical therapist, veterinary specialist, para-veterinary worker, dentist, optometrist or other health care provider who is required to register and is registered with the Ministries responsible for health and agriculture;

"supply" in relation to goods and services, means performance in terms of a sale, rental agreement, instalment credit agreement and all other forms of supply, whether voluntary, compulsory or by operation of law, irrespective of where the supply is effected, and shall include the import or export of such goods and services;

"traveller" means a person who enters Eswatini from another country including a licenced hawkker, but excludes any person employed as the pilot or any member of the crew of an aircraft, train or vehicle arriving from outside Eswatini; and

"Value Added Tax Refund Agreement" means the agreement between the Government of the Kingdom of Eswatini and the Government of the Republic of South Africa signed in November 2013 or its successor"

Amendment of section 4.

3. Section 4 of the Principal Act is amended in paragraph (a) by adding the words "or as otherwise directed by the Minister through regulations" at the end of the paragraph immediately after the word "the supply".

Amendment of section 7.

4. Section 7 of the Principal Act is amended by adding a new subsection (11) immediately after subsection (10) as follows-

"(11) A registered taxpayer shall display the registration certificate issued in terms of this Act at a prominent place in the principal place of business of that registered taxpayer."

Amendment of section 17.

5. Section 17 of the Principal Act is amended by inserting a new section 17*bis* as follows:

"Removal of goods in bond.

17*bis*. Removal of goods in bond shall be in accordance with the Customs and Excise Act, 1971, or the relevant section of its successor."

Amendment of section 19.

6. Section 19 of the Principal Act is amended by deleting the whole section and replacing it with the following new section 19;

"Exempt supply of services.

"19. A supply of services shall be an exempt supply if it is specified in the First Schedule."

Amendment of section 20.

7. Section 20 of the Act is amended by deleting the entire section and replacing it with a new section 20 as follows -

"Exempt supply of goods.

20. (1) The supply of the goods set forth in Part B of the First Schedule to this Act shall be exempt from the tax charged and payable in terms of this Act.

(2) Where a supply of goods is an exempt supply under paragraph (1) (c) of Part B of the First Schedule, both the transferor and transferee shall, within twenty-one (21) days of transfer, notify the Commissioner General in writing, of the details of the transfer."

Amendment of section 21.

8. Section 21 of the Principal Act is amended in subsection (2), after paragraph (c), by deleting the word "inclusive" and replacing it with "exclusive"

Amendment of section 28.

9. Section 28 of the Principal Act is amended in subsection (7)(h) by deleting the numbering "1 (k)" between the words "clause" and "of" and replacing it with the numbering "1 (j)".

Amendment of section 33.

10. Section 33 is amended by adding a new section 33bis as follows-

"Special Assessment.

33bis. (1) The Commissioner General shall make an assessment of the amount of tax payable by any-

- (a) person, not being a taxable person, that supplies goods or services and represents that tax is charged on that supply; or
- (b) taxable person that supplies goods or services and such supply is an exempt supply or such supply is a taxable supply at a rate of zero percent, and in either case that taxable person represents that tax is charged on such supply at a rate in excess of zero per cent.

(2) The person referred to in subsection (1) (a) shall be deemed to be a taxable person only to the extent of accounting for output tax.

(3) Any tax represented to be charged on any supply referred to in subsection (1) (a) and (b) shall be deemed to be tax payable by the person concerned and the amount thereof as assessed under this section shall be paid within the period allowed by the Commissioner General.

(4) Notwithstanding subsection (1) a person who negligently or through wilful default or fraudulently charges tax without being registered shall be liable to a penalty not exceeding twice the tax charged."

Amendment of section 47.

11. Section 47 of the Principal Act is amended as follows-

(a) in subsection (11) by deleting the word "affected" which appears between the words "be" and "if" and replacing it with the word "effected";

(b) by adding a new subsection (13) immediately after subsection (12) which as follows-

"(13) Input tax claim shall not be paid to a taxable person who has been incorrectly charged tax by reason of failure of that taxable person to satisfy himself that the supplier is under obligation to charge tax."

(c) by adding a new section 47bis which shall read as follows-

"Refund of Tax on Indirect Exports."

47bis. A person may claim a tax refund on any movable goods supplied by any taxable person under a sale or an instalment credit agreement, removed from Eswatini by the recipient for conveyance to an export country, in accordance with any procedure made by the Commissioner General in terms of this Act."

Amendment of section 50.

12. Section of the Principal Act is amended by deleting the section in its entirety and replacing it with the following new section 50-

"Refund of Tax to King and iNgwenyama, Ndlovukazi (Queen Mother), Diplomats, Diplomatic and Consular Missions and International Organisations"

50. (1) Any tax borne by the King and iNgwenyama and the Ndlovukazi (Queen Mother) shall be refunded.

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

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

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

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

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

Amendment of section 55.

13. Section 55 of the Principal Act is amended by deleting the reference to section "9(10)" and replace it with "7(10)".

Amendment of section 64.

14. The Principal Act is amended in section 64 by adding new subsections (4) and (5) immediately after subsection (3) as follows:

“(4) A person who-

- (a) intentionally obtains or attempts to obtain any refund or input tax credit or any tax benefit under this Act to which that person is not entitled,
- (b) makes any false statement or presents any document to the Commissioner General for the purposes of obtaining any refund or input tax credit or any tax benefit.

commits an offence and shall be liable on conviction to a fine of not less than E 10, 000 but not exceeding E40,000 or imprisonment for term not exceeding 10 years or both.

(5) A person-

- (a) who charges tax on exempt supplies; or
- (b) who, not being registered, charges tax.

commits an offence and shall be liable on conviction to a fine of not less than E10,000 but not exceeding E40,000 or imprisonment for term not exceeding 10 years or both.

Amendment of section 70.

15. Section 70 of the Principal Act is amended by deleting the section in its entirety and replacing it with the following new section 70-

“Officer may appear on behalf of Commissioner-General.

70. (1) The Commissioner General shall, subject to the direction of the Minister, be charged with the administration of this Act, including the interpretation of the Schedules of this Act.

(2) The Commissioner General may delegate to any authorised officer any power or duty conferred or imposed upon the Commissioner General by this Act, and this power of delegation, save as especially provided by this Act, any decision made or any notice or communication issued or signed by any such authorised officer, may be amended or withdrawn by the Commissioner General, or by the authorised officer concerned, and shall, for the purposes of this Act, until it has been so withdrawn, be treated as having been made, issued or signed by the Commissioner General.

(3) Notwithstanding any provision of this Act or any written law to the contrary, an officer who is an attorney or advocate may, on behalf of the Commissioner General, appear as a legal representative in the Superior Courts, Subordinate Courts or any tribunal.

Amendment of section 72.

16. Section 72 of the Principal Act is amended as follows-

- (a) in subsection (2) by deleting the word “of” which appears between the word “month” and “part” and replacing it with the word “or”;

(b) in subsection (3) by deleting the word "of" which appears between the word "month" and "part" and replacing it with the word "or";

(c) insert a new subsection (4) as follows and renumber the rest of the subsections-

"(4) Notwithstanding the provisions of subsection (3), where there is no tax payable a person who fails to submit a return on the date as required under this Act shall be liable to penalty of two hundred and fifty Emalangeni (E250) per month after the due date and such liability ceases at the time the Commissioner General receives the return."

(d) add new subsections (9) and (10) immediately after subsection (8) as follows-

"(9) A person who makes any false statement or presents any document to the Commissioner General for the purposes of obtaining any refund or input tax credit or any tax benefit under this Act commits an offence and shall be liable to an additional tax equal to double the amount of the purported claim of the refund or input tax credit or any tax benefit.

"(10) Notwithstanding any provision in this Act, a person who negligently or through wilful default or fraudulently charges tax without being registered, shall be liable to an additional tax equal to double the amount of tax charged and such additional tax shall be recovered by the Commissioner General under the provisions of this Act."

Amendment of section 77.

17. Section 77 of the Principal Act is amended by adding a new subsection (6) immediately after subsection (5) as follows-

"(6) Any taxable person who fails to comply with subsections (1) and (2) or any person who acts within Eswatini as a nominated person of such taxable person shall, while such failure continues, be liable to a penalty of two hundred and fifty Emalangeni (E250) per month during which the fault continues and such penalty shall be recovered by the Commissioner General under the provisions of this Act."

Amendment of section 84

18. Section 84 of the Principal Act is amended as follows-

(a) the heading by deleting the words "amendment of schedules" after the word "Regulations"

(b) by deleting subsection (3) in its entirety and adding a new section 85 immediately after section 84 as follows.

"Amendment of schedules"

85. The Minister may by notice published in the Gazette, amend the Schedules to this Act".

Amendment of section 85.

19. Section 85 of the Principal Act is amended by adding a new subsection (7) immediately after subsection (6) as follows-

"(7) The provisions of the Customs and Excise Act, 1971 or its successor and the Regulations and rules made thereunder, relating to the importation, transit, exportation and Customs clearance of goods shall apply *mutatis mutandis* have effect as if enacted in this Act."