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ACT NO. 2 OF 2005

REVENUE APPEALS TRIBUNAL ACT 2005

An Act to establish the Revenue Appeals Tribunal to hear appeals under the Customs and Excise Act 1982¹; the Income Tax Act 1993² and the Value Added Tax Act 2001³; to repeal the provisions relating to the Administrative Tribunal for Tax Appeals under the Income Tax Act 1993 and Value Added Tax 2001; and to provide for related matters.

ENACTED by the Parliament of Lesotho

PART I - PRELIMINARY**Short title and commencement**

1. This Act may be cited as the Revenue Appeals Tribunal Act, 2005 and 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 Lesotho Revenue Authority established by section 4 of the Lesotho Revenue Authority Act 2001⁴;

“**Board**” means the Board of Directors of the Lesotho Revenue Authority established under section 8 of the Lesotho Revenue Authority Act 2001;

“**Commissioner General**” means the person appointed as Commissioner General under section 17 of the Lesotho Revenue Authority Act 2001;

“**former Tribunal**” means the Income Tax Administrative Tribunal for Tax Appeals established under section 203 of the Income Tax Act 1993;

“**member**” means an ordinary or associate member of the Tribunal;

“**Minister**” means Minister of Finance and Development Planning;

“**person**” includes a partnership, company, trust, government, political subdivision of a government, or public international organisation;

“**President**” means the person appointed as such under section 4;

“**Registrar**” means the person appointed as such under section 11;

“**Tribunal**” means the Revenue Appeals Tribunal established under section 3.

PART II - REVENUE APPEALS TRIBUNAL

Division I: Tribunal

Establishment

3. (1) There is established the Revenue Appeals Tribunal whose functions shall be sit as a judicial authority for hearing and deciding such appeals as are authorised by any of the laws set out in the Schedule against assessments, decisions, rulings, determinations, and directions of the Commissioner General.

(2) Without prejudice to the generality of subsection (1), the Tribunal shall-

(a) hear and determine all appeals under the Customs and Excise Act 1982, in particular, in the following circumstances:

(i) where an importer of any goods is of the opinion that the goods are incorrectly classified by the Commissioner General under any item of the Customs Tariff and the importer pays the amount demanded as duty by the Commissioner General or furnishes security to the satisfaction of the Commissioner General for the payment of the amount, and the importer appeals to the Tribunal against such

classification within three months after the payment of such amount or furnishing of such security;

- (ii) where a person who intends to import goods or manufacture goods within Lesotho and is of the opinion that the goods of the class or kind that the person intends to import or manufacture, as the case may be, are incorrectly classified by the Commissioner General under the Customs Tariff and that person appeals to the Tribunal against such classification; or
 - (iii) where the Commissioner General has determined the value of any goods intended for importation into Lesotho or manufactured within Lesotho and any person aggrieved by such determination appeals to the Tribunal;
- (b) hear appeals under the Value Added Tax Act 2001 in respect of any of the following matters:
- (i) the registration, or the cancellation of registration of, a vendor;
 - (ii) the refusal to register a vendor;
 - (iii) the tax assessed to be payable with respect to any tax period or on the importation of any goods or services;
 - (iv) any notice under sections 77 and 78 of the Value Added Tax Act 2001;
- (c) hear all appeals under the Income Tax Act 1993, in particular, in respect of assessments of income or fringe benefits tax, decisions, rulings and determinations of the Commissioner General; and to
- (d) hear and determine any matter prescribed by the

Minister, by Regulations, to be a matter against which an appeal may be made under this Act.

Membership

4. (1) The Tribunal shall consist of 10 ordinary and associate members.

(2) The ordinary members shall consist of 4 persons, namely –

(a) the President, who shall be a judge of the High Court, or a legal practitioner with not less than 7 years experience in the legal profession;

(b) one member, who shall be a chartered accountant with not less than 7 years experience in the accounting profession;

(c) one member, who shall be a legal practitioner with not less than 7 years experience in the legal profession and has special knowledge or skills relevant to the exercise of the powers of the Tribunal or has significant experience in taxation matters;

(d) one member, who shall be appointed from the business community on the basis of his or her knowledge and experience in finance, commerce or economic affairs.

(3) The associate members shall consist of 6 persons as have been appointed from among persons meeting any of the qualifications set forth in subsection (2).

(4) The members of the Tribunal shall be appointed by the Minister by Notice published in the Gazette, and in the case of a judge of the High Court, the Minister shall first consult with the Chief Justice.

Term of and vacation from office

5. (1) A member of the Tribunal shall, subject to subsection (2), hold office for a period of 5 years from the date of appointment but may be eligible

for re-appointment for further terms.

- (2) A member of the Tribunal shall cease to be a member:
 - (a) upon the expiry of the period of his or her appointment;
 - (b) upon the member's death;
 - (c) if a member is absent without reasonable excuse from three consecutive meetings of the Tribunal of which the member had notice;
 - (d) if he or she is adjudged insolvent;
 - (e) if a member who is legal practitioner or an accountant ceases to practice as such on disciplinary grounds confirmed by the Law Society of Lesotho or the Lesotho Institute of Accountants, respectively;
 - (f) on grounds of infirmity of body and or mind;
 - (g) if a member is removed by the Minister, by notice in writing, for proven misconduct;
 - (h) if a member resigns by notice in writing to the Minister;
 - (i) if the Tribunal is abolished by an Act of Parliament.

(3) If a vacancy occurs in accordance with subsection (2), a new member may be appointed in accordance with section 4, but that member shall hold office only for the remaining part of the term.

Conflict of interest

6. (1) if, before or during the hearing of any appeal before the Tribunal, it transpires that any member of the Tribunal has any direct or indirect interest in the matter, such member shall recuse himself or herself and such other member or members of the Tribunal as the President may determine, shall hear and determine the appeal.

(2) A member of the Tribunal shall not, solely on account of any liability imposed upon him or her under any of the laws set out in the Schedule, be regarded as interested in any matter upon which he or she may be called upon to adjudicate thereunder.

(3) No member of the Tribunal shall be an officer of the Authority.

(4) A member who fails to comply with this section commits an offence and is liable on conviction to a period of imprisonment not less three months or a fine not less than M600.

Personal liability

7. A member of the Tribunal shall not be personally liable for any act done or omitted to be done by him or her in good faith in pursuance or intended pursuance of his or her powers and authorities under this Act.

Oath of office

8. Other than the President who is a judge, a person appointed to the Tribunal shall, before exercising the duties of his or her office, take and subscribe an oath before a judge of the High Court that he or she will faithfully and impartially perform the duties of his or her office.

Remuneration and travelling expenses

9. (1) A member of the Tribunal shall be paid such remuneration by way of fees, allowances and travelling allowances as the Minister may, from time to time, determine.

(2) For purposes of subsection (1), Parliament shall appropriate funds to be administered by, and accounted for, by the Authority.

Powers of the Tribunal

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

Division II: Administration and Sittings

Registrar

11. There shall be a Registrar of the Tribunal, who shall be appointed by the Commissioner General on the basis of merit and on such terms and conditions as the Board may determine, and who—

- (a) shall be an employee of the Authority;
- (b) shall be responsible for all administrative and correspondence business of the Tribunal and shall, in consultation with the President and the Commissioner General, act as the convenor of the Tribunal;
- (c) shall exercise his or her functions independently and impartially and in terms of this Act, the laws set out in the Schedule and Regulations or Rules made under this Act.

Sittings

12. (1) Sittings of the Tribunal shall be held at such times and places and in sessions as the President, acting in consultation with the Commissioner General, shall determine with a view to securing a reasonable opportunity for appellants to appear before the Tribunal with as little inconvenience and

expense as is practicable.

(2) The Tribunal may adjourn a sitting from time to time or place to place before the time of the sitting or during the sitting.

Division III: Hearings, Procedure, Decisions and Appeals

Hearings

13. (1) The President shall assign members to hearings.

(2) On a hearing of an appeal, the Tribunal may be constituted by one ordinary member or by a panel consisting of three ordinary members or two ordinary and one associate member at the discretion of the President.

(3) The hearings before the Tribunal shall ordinarily not be open to the public, and the Tribunal may at any time, on application, exclude or require to withdraw from such sitting all or any persons whose attendance is not necessary for the hearing of the appeal under consideration.

(4) At the hearing of an appeal before the Tribunal, the appellant and the Commissioner General may call evidence and shall be given an opportunity to be heard either in person or by a person duly authorised by the appellant or the Commissioner General.

(5) If the appellant or the Commissioner General, or both, fail to appear before the Tribunal at the time and place appointed, the Tribunal may nevertheless, upon proof of service of the notice of the hearing, proceed to determine the appeal.

Procedure

14. (1) The procedure for the Tribunal shall in general be as regulated in terms of section 27.

(2) Notwithstanding subsection (1), the proceedings of the Tribunal shall be conducted with as little formality and technicality as possible, and the Tribunal is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks appropriate, subject to each party having the opportunity to put his or her case to the Tribunal in a reasonable manner.

(3) For purposes of subsection (2), the Tribunal may receive as evidence any statement, document, information, or matter that, in the opinion of the Tribunal, may assist the Tribunal to deal effectively with the proceedings, whether or not it would be admissible in a court of law.

(4) The Tribunal may take evidence on oath.

(5) The Tribunal may permit a person appearing as a witness before it to give evidence by tendering a written statement and, if the Tribunal thinks fit, verifying it under oath.

(6) Proceedings before the Tribunal shall be commenced by the lodging of an application in the form prescribed by rules made under section 27, together with the prescribed fee (if any), with the Tribunal.

Powers of investigation

15 (1) For the purposes of dealing with the matters before it, the Tribunal or any person authorised by the Tribunal in writing to do so may –

- (a) inspect and examine any papers, documents, records, or things;
- (b) require any person to produce for examination any papers, documents, records or things in that person's possession or under that person's control, and to allow copies of or extracts from any such papers, documents, or records to be made;
- (c) require any person to furnish, in a form approved by or acceptable to the Tribunal, any information or particulars that may be required by it, and any copies of or extracts from any papers, documents, or records in that person's possession or under that person's control.

(2) The Tribunal may, if it thinks fit, 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.

(3) for the purposes of dealing with the matters before it, the Tribunal may of its own motion, or on application, order that any information

or particulars, or a copy of the whole or any part of any paper, document, or record, furnished or produced to it be supplied to any person appearing before the Tribunal, and in the order impose such terms and conditions as it thinks fit in respect of such supply and of the use that is to be made of the information, particulars, or copy.

(4) A person 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 courts of law.

Power to summon witnesses

16 (1) For the purposes of dealing with the matters before it, the Tribunal may of its own motion, or on application, issue in writing a summons requiring any person to attend at the time and place specified in the summons and to give evidence, and to produce any papers, documents, records, or things in that person's possession or under that person's control that are relevant to the matters before the Tribunal.

(2) Failure to comply with a summons of the Tribunal shall be subject to the same penalties as failure to comply with a subpoena issued by a court of law.

(3) A summons referred to in subsection (1) may be served –

- (a) by delivering it to the person summoned; or
- (b) by posting it by registered letter addressed to the person summoned at that person's usual place of residence or business.

(4) The summons shall –

- (a) where it is served under subsection (3) (a), be served at least 7 days before the attendance of the witness is required;
- (b) where it is served under subsection (3) (b), be served at least 14 days before the date on which the attendance

of the witness is required.

(5) If the summons is posted by registered letter it shall be deemed for the purposes of subsection (3) (b) to have been served at the time when the letter would be delivered in the ordinary course of post.

Decisions

17. (1) A decision on an appeal shall be made as quickly as practicable after the completion of proceedings.

(2) The written decision of the Tribunal shall include its findings of fact and opinion.

(3) The decisions of the Tribunal shall be published for general information, in such form as does not reveal the identity of the appellant.

(4) Subject to the provisions of subsection (8) and section 19, a decision of the Tribunal in terms of this section, shall be final and conclusive.

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

(6) In the case of a decision by the Tribunal constituted by only one member, either party may apply for a rehearing by the full Tribunal.

(7) A decision to rehear shall be made by a vote of the ordinary members of the Tribunal.

(8) If the decision for rehearing by the full Tribunal is granted, the initial decision is vacated and the decision made upon the rehearing constitutes the decision of the Tribunal.

(9) For the purposes of this section, "full Tribunal" means the President and 2 other members

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 accordance with the fees prescribed by the rules made by the President.

Division IV: Appeals

Appeals to High Court

19. (1) A party to proceedings before the Tribunal who is dissatisfied with the decision of the Tribunal may, within 30 days (or within such further period as the President may on good cause shown allow) after the date of the notice referred to in section 17(5), file a notice of appeal with the Registrar of the High Court; and the party so appealing shall serve a copy of notice of appeal on the other party to the proceeding before the Tribunal.

(2) An appeal to the High Court may be made on questions of law or fact, and the notice of appeal shall clearly state the grounds of appeal.

(3) A party who is entitled to appeal but, without good cause being shown, fails to file notice of appeal within the time allowed by subsection (1), shall be deemed to have abandoned his or her right of appeal against such decision.

(4) In a case where an application for rehearing is filed under section 17(6), the period under subsection (1) shall be 30 days after the notice of the Tribunal's decision to deny the application for rehearing is served (or, if the application is granted, 30 days after notice of the Tribunal's decision after rehearing).

Appeal to Court of Appeal

20. (1) A party to proceedings before the High Court may, with special leave of the High Court, appeal the decision of the High Court to the Court of Appeal.

(2) A party intending to appeal under subsection (1) shall file a notice of appeal with the Registrar of the Court of Appeal within 60 days of being notified of the decision of the High Court; and the party so appealing shall serve a copy of the notice of appeal on the other party to the proceeding before the High Court.

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

(4) A party entitled to appeal but, without good cause being shown, fails to file notice of appeal within the time allowed by subsection (2), shall be deemed to have abandoned his or her right of appeal against such decision.

Stating Case for High Court

21. (1) The Tribunal may at any time, on the application of the appellant or the Commissioner General or of its own motion, state a case for the opinion of the High Court on any question of law arising in respect of any appeal before the Tribunal.

(2) The Tribunal shall give notice to the Commissioner General and the appellant of the Tribunal's intention to state a case under this section.

PART III - MISCELLANEOUS

Contempt of the Tribunal

22. (1) A person shall not -

- (a) insult a member in or in relation to the exercise of powers or functions as 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) is guilty of an offence and liable on conviction to a fine not less than M10,000 or to imprisonment for a term not less than 1 year, or both.

Payment of tax pending appeal

23. (1) The obligation to pay and the right to receive and recover any tax chargeable under any of the laws set out in the Schedule shall not, unless the Commissioner General or the Tribunal so directs, be suspended by any appeal or pending the decision of the Tribunal or any court of law.

(2) If any assessment is altered on appeal or by a decision of the Commissioner General to concede any appeal against an assessment, a due adjustment shall be made, amounts paid in excess being refunded with interest at the rate prescribed by the Minister by regulation, such interest being calculated from the date proved to the satisfaction of the Commissioner General to be the date on which the excess was received and amounts short-paid being recoverable with interest calculated in terms of the relevant provisions of any of the laws set out in the Schedule in question.

Powers of the Commissioner General after appeal

24. (1) Subject to subsection (2), nothing in this Act or under any of the laws set out in the Schedule shall prevent the Commissioner General from amending 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 any fraud, or gross or wilful neglect has been committed by or on behalf of any person in relation to tax for the period of assessment, the Commissioner General may 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 wilful neglect came to the notice of the Commissioner General after the determination of the appeal.

Settlement of dispute

25. (1) The Minister may, by Regulations, prescribe the circumstances under which the Commissioner General may, notwithstanding any provision of this Act or any of the laws set out in the Schedule, settle a dispute between the Commissioner General and a taxpayer in whole or in part, where such a settlement would be to the best advantage of the State.

(2) In Regulations contemplated under subsection (1), the Minister 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.

(3) Where any 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 of the laws set out in the Schedule, alter that assessment for purposes of giving effect to that settlement.

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

Regulations

26. The Minister may make Regulations-

- (a) for the organisation and administration of the Tribunal; and
- (b) for any matter incidental to the carrying into effect the provisions of this Act.

Rules of Tribunal

27. The President may make rules-

- (a) prescribing the procedure 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 Tribunal's powers of investigation, summoning and compelling attendance of witnesses;
- (c) regulating the award of costs in appropriate circumstances.

Transitional provisions

28. (1) On or after the commencement of the this Act, reference in any written law or other document to the Administrative Tribunal for Tax Appeal shall be read and construed as references to the Tribunal established under this Act.

(2) On or after the commencement of this Act, reference in any written law or any document to the President of the Administrative Tribunal for Tax Appeal shall be read and construed as President of the Tribunal established under this Act.

Repeals

29. Sections 33, 34 and 35 of the Value Added Tax Act and sections 138, 139, 203,204, 205, 206, 207, and 208 of the Income Tax Act are hereby repealed.

SCHEDULE

- 1. Customs and Excise Act 1982
- 2. Income Tax Act 1993
- 3. Sales Tax Act 1995
- 4. Value Added Tax 2001

NOTE

1. Act No. 10 of 1982
2. Act No. 9 of 1993
3. Act No. 9 of 2001
4. Act No. 14 of 2001





