

THE LAND TAX ORDER

Date of commencement: 1st June, 1975.

Date of Assent: 14th November, 1974.

A King's Order-in-Council to provide for the establishment of a Land Taxation Board with power to impose a tax on undeveloped or underdeveloped land.

Short title

- 1 This King's Order-in-Council may be cited as the Land Tax Order, 1974.

Interpretation.

2. In this Order unless the context otherwise requires —

"Board" means the Land Taxation Board established under section 3;

"land" does not include any land or part thereof which is subject to taxation under any law relating to the taxation of mineral rights in land nor any land or part thereof which is vested in the King in terms of the Vesting of Land in King Order, No. 45 of 1973 or in the Ngwenyama in trust for the Swazi Nation or in his personal capacity;

"Minister" means the Minister for Finance and Economic Planning;

"owner" means the registered owner or concessionary of any land in Swaziland;

"rural land" means all land other than urban land;

"tax" means the annual tax imposed by the Board under section 5;

"urban land" means land situate in an area declared to be a municipality or town under the Urban Government Act No. 8 of 1969.

Establishment of Land Taxation Board.

3. (1) There is hereby established a Land Taxation Board which shall be constituted and have the functions as provided for in this Order.

(2) The Board shall consist of five persons who shall be appointed by the Minister for such period and on such conditions, including their remuneration, as he deems fit.

(3) In making any appointment to the Board the Minister shall as far as practical select persons who are experienced in the agricultural and industrial development of Swaziland.

(4) The power of the Minister to make any appointment to the Board shall include the power to fill any vacancy in the Board caused by any reason whatsoever.

(5) Three members of the Board shall constitute a quorum of the Board.

(6) The Minister shall appoint one member of the Board as Chairman, who shall preside at all meetings of the Board and who shall, in addition to a deliberative vote, have a casting vote in the event of an equality of voting on any matter before the Board for its decision.

(7) In the absence of the Chairman of the Board, the members present at any meeting shall appoint one of them as Chairman for such meeting but he shall not have a casting vote.

Disqualification of members of Board.

4. (1) No person shall be qualified to be appointed by the Minister as a member of the Board or continue to be a member, if he —

- (a) is an unrehabilitated insolvent having been adjudged or otherwise declared an insolvent under any law for the time being in force in Swaziland or any other country;
- (b) is certified as insane or otherwise adjudged to be of unsound mind under any law for the time being in force in Swaziland; or
- (c) has at any time been convicted in any court in Swaziland or any other country for an offence involving dishonesty in respect of which he has been sentenced to undergo a period of imprisonment, including imprisonment the operation of which has been suspended by order of any court.

(2) A member of the Board who, either personally or through his wife or any member of his or her family, has any interest in the land, the subject of a hearing by the Board, shall disclose such interest to the Chairman of the Board and recuse himself from taking any part whatsoever in the hearing and the determination of the Board.

(3) Any person who, with knowledge that he is disqualified from acting as a member of the Board in terms of subsection (1) or (2), takes part or attempts to take part in any of the proceedings of the Board shall be guilty of an offence and liable on conviction to a fine of three hundred emalangeni or imprisonment for six months or both.

Board to decide on the imposition of a tax on the owner of land.

5. (1) The Minister for Agriculture in the case of rural land, or the Minister for Local Administration in the case of urban land, may by written notice served on an owner of land

call upon such owner to appear before the Board at a fixed date, time and place to show cause why an annual tax should not be charged, levied and paid by him in respect of any land of which he is the owner and the rate of such tax.

(2) The notice referred to in subsection (1) shall be substantially in such form as shall be prescribed by the Minister by regulation.

(3) On the date and time and at the place stated in such form the owner or his duly authorised representative shall appear before the Board:

Provided that if the owner does not appear before the Board in terms of such notice, it may, unless he has offered a reasonable explanation for his failure to appear, come to a decision in his absence.

(4) The Board shall, after having heard any evidence or representations made on behalf of the Minister for Agriculture, or the Minister for Local Administration, as the case may be, or the owner, determine whether any tax shall be imposed on the owner in respect of such land and, subject to section 6, if it determines that such tax should be imposed, the rate thereof.

(5) In coming to its decision in terms of subsection (4), the Board shall have regard to the following circumstances —

- (a) the extent of any development of the land;
- (b) the date when the owner acquired the land, either as owner or under any other title;
- (c) the cost of such land to the owner;
- (d) the amount of capital expenditure incurred by the owner from the time of his acquisition thereof, either as owner or under any other title;
- (e) the best use to which the land could have been put, and the reasons, if any, for the failure so to use it;
- (f) the potentiality of proper development of the land;
- (g) the annual income accruing to the owner from such land.

(6) Notwithstanding anything in any other law, the Board shall be entitled to require the owner to produce any income tax or company returns made by him to the Collector of Income Tax in Swaziland.

(7) The tax shall be payable annually to the Collector of Income Tax and shall become due from a date to be fixed by the Board.

(8) Any person who knowingly makes any false representations, whether written or oral, to the Board or produces an income tax or company return which is to his knowledge false, shall be guilty of an offence and liable on conviction to a fine of five hundred emalangeni or imprisonment for twelve months, or both.

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(9) Any person who fails to pay such tax on the due date fixed by the Board shall pay interest thereon calculated at the rate of 12 per centum per annum and reckoned from such due date to the date of payment.

The rate of tax.

6. (1) The rate of tax which a Board is entitled to impose under section 5 shall be based upon a rate per hectare of the area of the land:

Provided that such rate shall not be less than 50 cents per hectare:

And provided further that the Board may impose such tax in respect of the whole or any portion of the land.

(2) In deciding whether to impose the tax on the whole or on a portion of the land, the Board shall have regard to the extent, if any, that the land has been developed and shall as far as practical not impose any tax in respect of any portion of the land which in its opinion has been adequately developed.

Board may alter or revoke its decision.

7. (1) The Board may on the application of an owner revoke or alter its decision arrived at under section 5 or 6, if it is satisfied that the owner has since the imposition of the tax developed the land in respect of which the tax had been imposed:

Provided that if the Board comes to the conclusion that such application was made frivolously and without any just cause, it may order the applicant to pay to the Government a penalty not exceeding five hundred emalangeni.

(2) Notice of any application made under subsection (1) shall in the case of rural land be served on the Minister for Agriculture and in the case of urban land on the Minister for Local Administration.

(3) The provisions of section 5 shall *mutatis mutandis* apply to an application made under sub-section (1).

Application of the Commissions of Enquiry Act, 1963.

8. (1) Save in so far as any of its provisions may be inconsistent with this Order, the Commissions of Enquiry Act No. 35 of 1963 shall be applicable to the hearing by the Board of any matter referred to it in terms of section 4 or 7.

(2) Notwithstanding section 3(2) of the Commissions of Enquiry Act No. 35 of 1963, the hearings of the Board shall not be held in public without the consent of the owner of the land.

Appeal.

9. (1) For the purposes of this section "Ministers" means the Minister for Finance and Economic Planning, the Minister for Agriculture and the Minister for Local Administration.

(2) Any owner who is aggrieved at any decision of the Board may, within fourteen days after such decision has come to his notice, lodge an appeal against it in writing to all the Ministers.

(3) The notice of appeal shall state fully the grounds of appeal and a copy thereof shall be served on the Chairman.

(4) The Chairman of the Board shall, within ten days of the receipt by him of a copy of the notice of appeal, deliver to each of the Ministers a statement setting out the reasons of the decision arrived at by the Board, and shall at the same time cause a copy of such statement to be served on the owner who has appealed.

(5) The Ministers may, after having considered the evidence given before the Board, the reasons for the decision contained in the Chairman's statement and any representations made to him on behalf of the owner —

- (a) summon and examine any witnesses, whether or not they have given evidence before the Board;
- (b) refer the matter back to the Board for reconsideration or for the purpose of hearing any further evidence;
- (c) dismiss the appeal in whole or in part; or
- (d) vary the decision of the Board in such manner as they think just.

(6) The decision of the Ministers shall be final and not be subject to appeal to any court.

Recovery of tax etc.

10. (1) Within 14 days of having reached a decision to impose a tax on any land or to impose any penalty in terms of section 7(1), the Chairman of the Board shall in writing advise the Collector of Income Tax of its determination as to the value of the land and the rate of the tax; if any, imposed in respect of such land, and the amount of any penalty.

(2) In the event of an appeal to the Ministers in terms of section 9, the Minister for Finance and Economic Planning shall advise the Collector of Income Tax on his decision on such appeal.

(3) The provisions of section 60(1), (2) and (3) of the Income Tax (Consolidation) Act, No. 84 of 1959 shall *mutatis mutandis* apply to the recovery of any tax or interest due under this Order or any penalty imposed by the Board in terms of section 7(1).

Regulations.

11. The Minister may make regulations for —

- (a) the procedures to be followed by the Board;
- (b) the prescribing of any forms necessary to carry out the purpose of this Order;
- (c) fees to be paid by the owner in respect of any appeal by him, including provision for the refund of any portion of such fees should the appeal be successful in whole or in part;
- (d) the enforcement of any decision by the Board or the Ministers on appeal.