

THE TOBACCO ACT

An Act to regulate the tobacco trade.

Short title.

1. This Act may be cited as the Tobacco Act, 1933.

Interpretation.

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

“co-operative organisation” means a co-operative agricultural society* or co-operative agricultural company registered under the Co-operative Societies Act, No. 28 of 1964 which by its regulations or under any law is authorised to receive, sell or manufacture tobacco;

“export” means to export to any country, territory or region beyond the borders of Swaziland other than Rhodesia, Zambia, Lesotho, the Republic of South Africa, Botswana or South West Africa;

“grower” in relation to any tobacco, means the person by whom or on whose behalf such tobacco was grown, or the person to whom such tobacco was supplied as the consideration or a part of the consideration for the right to use the land on which it was grown, or the person to whom such tobacco was supplied as the consideration for services rendered;

“manufacture” means to cut, twist or otherwise prepare for purposes of trade, but does not include curing by drying or sweating; and “manufacturer” bears a corresponding meaning;

“Minister” means the Minister for Agriculture;

“tobacco” means tobacco belonging to one of the classes mentioned in section 16 which has not been manufactured;

“tobacco trader” means the holder of a tobacco trader’s licence or any person doing any act for which such licence is required in terms of section 4;

“water-moistened leaf tobacco” means tobacco moistened with water only to which no buck-ashes or any other chemical whatsoever has been added.

Power to control import.

3. The Minister may by notice in the Gazette prohibit, control or regulate the importation of tobacco or any class of tobacco.

* Compulsory sale of tobacco through the Swaziland Co-operative Tobacco Company Limited is regulated under Act 28 of 1964(2).

Tobacco trader's licence.

4. (1) After the expiry of one month from the commencement of this Act, no person shall purchase or otherwise acquire and no co-operative organisation shall receive, any tobacco from the grower thereof, and no person shall import any tobacco, and no grower shall manufacture any tobacco nor sell any tobacco directly to the consumer unless he is the holder of a tobacco trader's licence.

(2) Such licence shall be required in addition to and not in substitution for any licence required under any other law.

(3) Every tobacco trader shall take out a separate licence in respect of each separate set of premises at which he carries on business.

Conditions of issue.

5. (1) Every tobacco trader's licence shall be issued by an officer appointed by the Minister by notice published in the Gazette to issue such licences.

(2) A fee of fifty cents shall be payable in respect of every tobacco trader's licence.

(3) Every tobacco trader's licence shall expire and cease to be effective on the thirty-first day of March following the date of its issue.

(4) The fee payable for every such licence shall be a debt due to the Government and recoverable by action in any competent court from any person doing any act for which a licence is required in terms of section 4.

Notice to be affixed.

6. Every tobacco trader shall affix and maintain in good order in a conspicuous place outside and near the main entrance to the premises in which he carries on business as such, and, where he so carries on business more sets of premises than one, outside and near the main entrance to each set of premises, a sign setting forth in letters which are clearly legible his name and the words "Licensed as a Tobacco Trader under the Tobacco Act".

Record of purchases.

7. Every tobacco trader shall each day in a book kept in a prescribed form record the name and address of every person from whom he has during that day purchased or otherwise acquired any tobacco, the weight of each class of tobacco purchased or otherwise acquired by him during that day from every such person, the name and address of every person to whom he has during that day sold or otherwise disposed of any tobacco and the weight of each class of tobacco sold or otherwise disposed of by him during that day to every such person:

Provided that if the quantity of tobacco acquired or disposed of (as the case may be) by a tobacco trader during any one day does not exceed fifty pounds weight, it shall be a sufficient compliance with this section if he records in such book the total weight of each class of tobacco acquired or disposed of (as the case may be) by him during that day, and the number of persons from or to whom tobacco was acquired or disposed of during that day.

Examination.

8. (1) Any prescribed officer may, at all reasonable hours enter upon the premises of, or any land or place occupied by, any tobacco trader or any person who is suspected of contravening or of having contravened section 4 and may examine all books, accounts and documents there and require an explanation of any entries or documents referring or suspected to refer to transactions in tobacco, and seize any such books, accounts or documents as may afford evidence of any contravention of this Act and may make extracts from any copies of all such entries or documents as may afford evidence of any such contravention, disregard or disobedience.

(2) Any prescribed officer may at all reasonable hours enter upon the premises of, or any land or place occupied by, any tobacco trader, or upon any premises, land or place in or on which any tobacco is kept in stock by any tobacco trader, and may examine all such tobacco and ascertain the weight of each class of tobacco which is so kept in stock, and may decide to which class any such tobacco belongs, and every such decision by any such officer shall be deemed to be correct.

Returns.

9. (1) Within fourteen days after every calendar month every grower who is licensed as a tobacco trader shall furnish such official, in such manner and in such form as may be prescribed, a return stating the weight of each class of tobacco which he had in stock on the last day of the preceding calendar month, the weight of each class of tobacco manufactured by him during that month, and the name and address of every person to whom he has during that month sold or otherwise disposed of any tobacco, and the weight of each class of tobacco sold or otherwise disposed of by him during that month to every such person.

(2) Within fourteen days after every calendar month every tobacco trader (other than a grower who has not purchased or otherwise acquired from any other grower any tobacco during the preceding calendar month) shall furnish such official, in such manner and in such form as may be prescribed, a return stating the weight of each class of tobacco which he had in stock on the last day of the preceding calendar month, the name and address of every person from whom he has during that month purchased or otherwise acquired any tobacco, the weight of each class of tobacco purchased or otherwise acquired by him during that month from every such person, the name and address of every person to whom he has during that month sold or otherwise disposed of any tobacco and the weight of each class of tobacco sold or otherwise disposed of by him during that month to every such person.

(3) Where, in accordance with the proviso to section 7, no record has been kept by a tobacco trader of the details of any transactions, he shall be deemed to comply with this section if in such return he states the total weight of each class of tobacco which he acquired or disposed of (as the case may be) by those transactions, and the number of persons from or to whom that tobacco was acquired or disposed of.

Export quota percentage.

10. (1) Between the first day of April and the last day of November in any year the Minister may, upon such information as may be available to him, by notice in the Gazette fix a percentage to be known as the tobacco export quota percentage, in respect of any or every class of tobacco for the period of twelve months ending the thirty-first day of March next after the date of publication of such notice.

(2) The Minister may fix different percentages in respect of different classes of tobacco, and may fix a percentage in respect of one or percentages of some only of the several classes of tobacco.

(3) Notwithstanding sub-section (1), no tobacco export quota percentage shall apply to any tobacco which is lawfully disposed of in the Republic of South Africa.

Duty to export.

11. (1) Save as provided in section 10(3) every tobacco trader who purchases or otherwise acquires from any grower or anyone not being a tobacco trader, or imports any tobacco of a class in respect of which a tobacco export quota percentage has been or is thereafter fixed for the period during which the tobacco so purchased, acquired or imported is received, shall, on or before such date as may be fixed by the Minister by notice in the Gazette in respect of tobacco of that class so received during any particular calendar month included in that period, export such weight of that class of tobacco so received by him during that calendar month which corresponds with the tobacco export quota percentage fixed in respect of that class of tobacco for the period in question.

(2) Any tobacco trader who in terms of sub-section (1) is required to export any weight of any class of tobacco may relieve himself of that obligation by entering into an agreement with a co-operative organisation, whereby that organisation undertakes to export it; and thereupon that organisation shall be subject to such obligation and liable to any penalty provided for the failure to fulfil the quota.

(3) Notwithstanding any law, any such organisation may, provided it is the holder of a tobacco trader's licence, receive from any such tobacco trader any such tobacco and export it or an equal weight of tobacco of the same class.

(4) The Minister may, in his discretion, permit any tobacco trader who is required in terms of this section to export any weight of any class of tobacco to withdraw that tobacco from trade in lieu of exporting it.

(5) The Minister may attach such conditions as he thinks fit to any such permission and may from time to time in his discretion alter such conditions.

(6) All tobacco exported or withdrawn from trade in accordance with this section shall comply in all respects with every regulation made under section 15 relating to the export of tobacco, and with every other law or regulation relating to such export.

(7) The Minister may at any time require any tobacco trader to submit proof to his satisfaction that the weight of any class of tobacco which, in terms of this section, it was his duty to export, has, within the proper period, actually been exported or withdrawn from trade by him under any permission granted under sub-section (4).

(8) Notwithstanding any law, the liquidator of any company (whether the winding-up is voluntary or by the court), the trustee of any insolvent estate, and the executor of the estate of any deceased person shall, in respect of the export of tobacco or the withdrawal of tobacco from trade, be subject to the same obligations and have the same rights as the company, the insolvent or the deceased had at the commencement of the winding-up or at the time of sequestration or death, respectively.

Inspection.

12. Any officer designated thereto by the Minister may at any time inspect any tobacco which a tobacco trader is exporting or proposes to export or purports to have withdrawn from trade under any permission granted under section 11(3), and if in the opinion of such officer the tobacco so inspected is not tobacco of the class which the trader is required to export or withdraw from trade, such officer shall forthwith notify the trader of his opinion and may take such samples of the tobacco so inspected by him as he deems necessary for the purpose of establishing the class to which such tobacco belongs:

Provided that any officer designated by the Minister of Agriculture of the Republic of South Africa under section 10 of the Tobacco Control Act, No. 19 of 1932, of the Republic of South Africa shall be recognised as having been designated under this section.

Offences and penalties.

13. (1) Any person who —
- (a) fails to render any information, return or explanation required by him by or under this Act;
 - (b) knowingly makes a false statement in any such information, return or explanation;
 - (c) obstructs any person in the performance of any duty under section 8 or 12;
 - (d) except for the purposes of this Act or upon the order of any court, discloses any information obtained by him through, or in consequence of, any examination or inspection made under section 8 or 12;
 - (e) contravenes or fails to comply with any condition attached to any permission granted under section 11(4);
 - (f) fails in compliance with section 11, to export or withdraw from trade any tobacco; or
 - (g) contravenes or fails to comply with any other provision of this Act;

shall be guilty of an offence and liable on conviction, in the case of an offence under paragraph (e) or (f), to a fine not exceeding one thousand rand plus the amount of any profit which the court may estimate he made in consequence of the contravention or non-compliance of which he has been convicted, and, in the case of any other offence, to a fine not exceeding two hundred rand.

(2) Notwithstanding any other law, magistrate's courts of the first class shall have jurisdiction to impose any penalty prescribed by this Act.

Classes of tobacco.

14. The classes of tobacco referred to in this Act, and to which this Act applies, are the following:

- (a) Turkish tobacco;
- (b) flue-cured tobacco; and
- (c) all other tobacco not included in (a) or (b).

Regulations.

15. The Minister may make regulations in regard to any matter which in terms of this Act may be prescribed by regulation, and regulations in regard to —

- (a) the carrying out of any prohibition, control or regulation under section 3;
- (b) the form and manner in which application for a tobacco trader's licence shall be made, and the particulars to be furnished by an applicant;
- (c) the form and manner in which information to be furnished under this Act by tobacco traders shall be rendered;
- (d) the officers by whom any powers conferred by this Act shall be exercised;
- (e) the classification of tobacco according to kind, grade, standard or quality;
- (f) the prohibition, control or regulation of the export of tobacco of any category defined by regulation made under paragraph (e) or by any other law relating to the export of tobacco, and the withdrawal from trade of tobacco of any such category under any permission granted under section 11(4).
- (g) the imposition, and obtaining of any information necessary to enable the imposition or collection of, such levies on tobacco produced and marketed in any area of the Kingdom of Swaziland for the purpose of furthering the interests of tobacco development, including the use of such levy for the purpose of creating and conducting a Tobacco Hail Insurance Scheme.

(Added K. 0-I-C. 4/1974.)

Power to suspend.

16. The Minister may, by notice in the Gazette, suspend the operation of all or any of the provisions of this Act for such period as may be fixed in such notice.