

CHAPTER 23:05

FISCAL APPEAL COURT ACT

Acts 6/1965, 25/1965, 34/1966 (s. 14), 36/1969 (s.8), 23/1974, 15/1981, 29/1981, 12/1986 (s.9), 24/1986, 17/1999, 22/2001 (s. 4), 12/2002 (s. 85), 14/2002 (s. 31), 5/2010 (s. 21), 11/2014 (s. 30).

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AN ACT to establish a court for the purpose of hearing and determining appeals against decisions made under certain Acts; to give persons the right to appeal against such decisions and to provide for the manner in which such persons may so appeal; and to provide for matters connected with the foregoing.

[Date of commencement: 9th April, 1965.]

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Fiscal Appeal Court Act [*Chapter 23:05*].

2 Interpretation

In this Act—

“Court” means the Fiscal Appeal Court established by this Act;

“rules” means rules of court made in terms of section *four*.

PART II

FISCAL APPEAL COURT

3 Establishment of Fiscal Appeal Court

(1) For the purpose of hearing and determining appeals in terms of this Act there is hereby established a court which shall be a court of record and shall be known as the Fiscal Appeal Court.

(2) The Court shall consist of a President, who shall be a person who is qualified in terms of subsection (3) and appointed as President of the Court in terms of subsection (1) of section 92 of the Constitution:

Provided that, if no person has been so appointed, the President of the Court shall be—

- (a) the person for the time being holding the office of President of the Special Court for Income Tax Appeals established in terms of section 64 of the Income Tax Act [*Chapter 23:06*]; or
- (b) a judge or acting judge of the High Court appointed by the Chief Justice, after consultation with the Judicial Service Commission, if the person referred to in paragraph (a) is for any reason unable to serve as President of the Court.

(3) A person shall not be qualified for appointment in terms of subsection (2) unless—

- (a) he is a former judge of the Supreme Court or the High Court; or
- (b) he is qualified for appointment as a judge of the Supreme Court or the High Court.

(4) A person appointed in terms of subsection (2) may be appointed—

- (a) from time to time to deal with any particular matter coming before the Court; or
- (b) for a particular period:

Provided that a judge or acting judge appointed by the Chief Justice in terms of paragraph (b) of the proviso to subsection (2) shall preside over the Court for such period as the Chief Justice may specify.

(5) Subject to subsection (2) of section 92 of the Constitution, the conditions of service of a President of the Court shall be as determined from time to time by the President.

(6) The Court shall sit at such times as may be fixed by the President of the Court and at such places as may be appointed by the Judge President of the High Court.

(7) The Registrar of the High Court shall be the Registrar of the Court and shall ensure the proper functioning of the court.

[Subsection substituted by Act 5 of 2010]

(8) The Judicial Service Commission shall, in accordance with the Judicial Service Act [*Chapter 7:18*] (No. 10 of 2006), assign to the service of the Court such persons employed in the Judicial Service as may be necessary for the proper functioning of the Court.

[Subsection inserted by Act 5 of 2010]

4 Procedure of Court

(1) The President of the Court shall make rules for regulating the procedure of the Court, which shall be as simple and informal as reasonably possible.

(2) Rules made in terms of subsection (1) may provide for—

- (a) the practice, procedure and rules of evidence to be followed by the Court, including the determination of any preliminary point in any appeal;
- (b) the service of notices and other documents required for the purpose of any appeal;
- (c) the forms to be used for the purpose of any appeal;
- (d) the condonation by the Court or the President of the Court, on good cause shown or with the agreement of the parties, of any non-compliance with the rules;
- (e) any other matter which this Act requires to be provided for in rules or which the President of the Court considers should be provided for in rules in order to ensure or facilitate the proper dispatch and conduct of the business of the Court.

(3) Rules made in terms of subsection (1) shall not have effect until they have been approved by the Minister responsible for finance, and published in the *Gazette*.

(4) In any case not provided for in the rules the Court shall act in such manner and on such principles as it considers best fitted to do substantial justice.

5 Representation of parties

At any hearing before the Court any person may appear in person or by any person appointed by him in writing or represented by a legal practitioner.

6 Summoning and privileges of witnesses

(1) The Court shall have power to summon witnesses, to call for the production of and grant inspection of books and documents and to examine witnesses on oath.

(2) A subpoena for the attendance of witnesses or the production of books or documents shall be signed by the registrar of the Court and served in the same manner as if it were a subpoena for the attendance of a witness at a civil trial in a magistrates court.

(3) Any person subpoenaed to give evidence or to produce any book or document or giving evidence before the Court shall be entitled to the same privileges and immunities as if he were subpoenaed to attend or were giving evidence at a trial in the High Court.

7 Witness failing to attend or refusing to be sworn or to give evidence

(1) If any person who has been subpoenaed to give evidence or to produce any book or document before the Court fails to attend or to remain in attendance until duly excused by the Court from further attendance, the President of the Court may—

- (a) if he is satisfied upon oath or by the return of the person charged with the service of the subpoena that the subpoena was duly served upon such person; and
- (b) if no sufficient cause for such failure seems to him to exist;

issue a warrant, signed by him, for the arrest of such person, and such person shall thereupon be apprehended by any police officer to whom such warrant is delivered and shall be brought before the Court to give his evidence or to produce the book or document.

(2) If any person who has been subpoenaed to give evidence or to produce any book or document before the Court refuses without sufficient cause, the onus of proof whereof shall rest upon him, to be sworn as a witness or, having been sworn, to answer fully and satisfactorily a question lawfully put to him, or to produce any such book or document, the President of the Court may order that person to be removed and detained in custody as if he were a prisoner awaiting trial until the determination of the matter before the Court or until he sooner consents to do what is required of him.

(3) Nothing in this section shall prevent the Court from giving judgment in any case or otherwise disposing of the same in the meantime according to any other sufficient evidence taken but, if such judgment be given or the case be otherwise disposed of, any person committed to prison in terms of subsection (2) shall thereupon be released.

(4) No person shall be bound to produce any document or thing not specified or otherwise sufficiently described in the subpoena unless he actually has it in the Court.

(5) Every person who refuses or fails to comply with subsection (1) or (2) shall be liable, in addition to being committed to prison in terms of subsection (2), to be sentenced summarily by the President of the Court to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Section substituted by section 4 of Act 22 of 2001]

8 Witness giving false evidence

Any witness who, after being duly sworn, makes a statement of fact material to the question under consideration by the Court, knowing such statement to be false or not knowing or believing it to be true, shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Section amended by section 4 of Act 22 of 2001]

9 Contempt of Court

If any person wilfully insults the Court or any member thereof during any sitting of the Court or wilfully interrupts the proceedings of the Court or otherwise wilfully disturbs the peace or order of such proceedings, the President of the Court may order that person to be removed and detained in custody as if he were a prisoner awaiting trial until the rising of the Court and such person shall be liable, in addition to such removal and detention, to be sentenced summarily by the President of the Court to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Section substituted by section 4 of Act 22 of 2001]

10 Costs

The Court shall not make any order as to costs unless it is of the opinion that the decision appealed against is grossly unreasonable or that the grounds of appeal therefrom are frivolous; but in either event it may make such order as to costs as it thinks fit.

11 Appeals from decisions of Court

An appeal from any decision of the Court shall lie to the Supreme Court in accordance with the law and rules of court for the time being governing appeals from the High Court to the Supreme Court in civil cases.

[Section amended by section 31 of Act 14 of 2002]

PART III

APPEALS RELATING TO STAMP DUTIES AND SALES TAX

12 Interpretation in Part III

In this Part—

“tax”, in relation to—

- (a) the Value Added Tax Act [*Chapter 23:12*], includes any penalty imposed by that Act, not being a penalty imposed by a court on conviction for a contravention of that Act;
- (b) the Stamp Duties Act [*Chapter 23:09*], means a duty as defined in that Act;

“tax Act” means—

- (a) the Value Added Tax Act [*Chapter 23:12*]; or

(b) the Stamp Duties Act [*Chapter 23:09*];
as the case may be.

[Section amended by section 85 of Act 12 of 2002]

13 Appeals from decisions of Commissioner

(1) Any person who is dissatisfied with a decision of a Commissioner given in terms of a tax Act may appeal to the Court against that decision.

[Subsection amended by s. 36 of Act 17/1999]

(2) Every such appeal shall be noted and prosecuted within the period and in the manner prescribed by rules: Provided that the Court may, on good cause being shown or by agreement of the parties, extend the said period.

(3) On the hearing of any appeal in terms of this section the Court may confirm, vary or set aside the decision appealed against.

14 Payment of tax pending appeal

The obligation to pay and the right to receive and recover any tax, additional tax, penalty or interest chargeable under this Act shall not, unless the Commissioner so directs, be suspended by any appeal in accordance with section 11 or 13 or pending the decision of the court, but if any assessment is altered on appeal or in conformity with any such decision or a decision by the Commissioner to concede the appeal to the court, a due adjustment shall be made, amounts paid in excess being refunded with interest at the prescribed rate and calculated from the date proved to the satisfaction of the Commissioner to be the date on which such excess was received, and amounts short-paid being recoverable with penalty and interest.

[Subsection substituted by Act 11 of 2014]

15 Burden of proof

In any appeal in terms of this Part the burden of proof that any amount is exempt from or not liable to tax or is subject to any refund, rebate, remission or deduction shall be upon the person claiming that fact.

16 Adjustment of tax following decision

Subject to sections *eleven* and *fourteen*, any decision of the Court or the Supreme Court, as the case may be, on an appeal in terms of this Part shall be binding on the parties, and in accordance with such decision—

(a) any amount of tax short paid shall be recoverable and the provisions of the tax Act concerned shall have effect as if such decision were the decision of the Commissioner concerned; and

[Paragraph amended by s. 36 of Act 17/1999]

(b) any amount of tax paid in excess shall be refunded from moneys received in terms of the tax Act concerned.

PART IV

APPEALS RELATING TO CUSTOMS AND EXCISE

17 Interpretation in Part IV

Expressions when used in this Part shall have the same meaning as they have when used in the Customs and Excise Act [*Chapter 23:02*].

18 Appeals from classifications of Director of Customs and Excise

(1) Any importer or intended importer of any goods who considers that the Commissioner has incorrectly classified or varied or confirmed a classification of those goods in terms of section 87 of the Customs and Excise Act [*Chapter 23:02*] may appeal to the Court against that classification.

[Subsection amended by s. 36 of Act 17/1999]

(2) Any manufacturer or intended manufacturer of any goods liable to excise duty who considers that the Commissioner has incorrectly classified or varied or confirmed the classification of those goods in terms of section 96 of the Customs and Excise Act [*Chapter 23:02*] may appeal to the Court against that classification.

[Subsection amended by s. 36 of Act 17/1999]

(3) Subject to subsections (4), (5) and (6), an appeal in terms of this section shall be noted and prosecuted within the period and in the manner prescribed in the rules.

(4) Before noting an appeal in terms of this section, an importer or manufacturer or intended importer or intended manufacturer, as the case may be, shall either pay the amount demanded as duty by the Commissioner or furnish security to the satisfaction of the Commissioner for the due payment of the amount.

[Subsection amended by s. 36 of Act 17/1999]

(5) On good cause being shown or with the agreement of the parties, the Court may extend the period for the noting or prosecution of an appeal in terms of this section.

(6) At least one month before the hearing of an appeal in terms of this section, the President of the Court shall cause notice of the date of the hearing to be published in the *Gazette*, and any person who imports into Zimbabwe or manufactures within Zimbabwe goods of the class or kind to which the appeal relates may be heard in the appeal if he enters an appearance within the period and in the manner prescribed in the rules.

[Subsection amended by section 31 of Act 14 of 2002]

(7) On any appeal in terms of this section, the Court may confirm or set aside the classification appealed against and, if it sets aside the classification, shall refer the matter back to the Commissioner to make a further classification.

[Subsection amended by s. 36 of Act 17/1999]

19 Adjustment of duty following reference back by Court

If the effect of any further classification made by the Commissioner as a result of a reference back to him in terms of subsection (7) of section *eighteen* is that a lesser or no amount of duty was properly payable in respect of the goods concerned, the Commissioner shall refund any amount overpaid to the importer or manufacturer, as the case may be, in accordance with section 125 of the Customs and Excise Act [*Chapter 23:02*].

[Section amended by s. 36 of Act 17/1999.]