



# **WATER RESOURCE TAX ACT 2008**

*Revised up to 31<sup>st</sup> October 2019*

## **DISCLAIMER**

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## Table of Amendments

Water Resource Tax Act 2008 (No 30 of 2008)<sup>1</sup> commenced on 1 January 2009, as amended by:

<b>Amending Legislation</b>	<b>Date of Commencement</b>
Water Resource Tax (Budget Amendment) Decree 2011 (No 2 of 2011)	21 January 2011
Water Resource Tax (Amendment) Decree 2011 (No 14 of 2011)	1 April 2011
Water Resource Tax (Amendment) (No 2) Decree 2011 (No 20 of 2011)	21 January 2011
Water Resource Tax (Budget Amendment) Act 2016 (No 19 of 2016)	1 August 2016
Revised Edition of the Laws (Consequential Amendments) Act 2016 (No 31 of 2016)	1 December 2016
Water Resource Tax (Budget Amendment) Act 2017 (No 23 of 2017)	1 August 2017

<sup>1</sup> This was promulgated as Promulgation 30 of 2008. In accordance with section 3 of the Interpretation Act 1967, the word "Promulgation" used with reference to any such "Promulgation" in the title or provisions of any written law or in any document or legal proceeding may be replaced with the word Table of Amendments

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## PART 1 PRELIMINARY (Sections 1, 2)

### [Section 1] Short title and commencement

(1) This Act may be cited as the Water Resource Tax Act 2008 and comes into force on 1 January 2009.

(2) This Act must be read together with the Customs Act 1986.

### [Section 2] Interpretation

In this Act, unless context otherwise requires—

<b>accountable person</b>	means the owner, manager, director, sole precedent partner and, otherwise the person who is responsible for the day to day management of the business;
<b>approved meter</b>	means a meter as approved by the Department of National Trade Measurement and Standards and the law that administers the water meter;
	<small>[def am Act 31 of 2016 s 226, effective 1 December 2016]</small>
<b>enforcement officer</b>	means any customs officer, an officer of the Department of Mineral Resources, an officer of the Department of National Trade Measurement and Standards designated in writing by his or her respective Minister as an enforcement officer for the purpose of this Act;
	<small>[def am Act 31 of 2016 s 226, effective 1 December 2016]</small>
<b>Minister</b>	means the Minister responsible for finance;
<b>proper officer</b>	means the officer authorised by the Comptroller under the Customs Act 1986 and the provision of this Act; and
<b>water resource tax</b>	means the tax imposed under section 5(1).

## **PART 2 ADMINISTRATION**

### **(Sections 3-4)**

#### **[Section 3] Functions of Comptroller and officers**

(1) The Comptroller is responsible for the administration of this Act subject to any directions given to the Comptroller by the Minister.

(2) The Minister may give the Comptroller general or special directions on the administration of this Act, not inconsistent with this Act.

(3) An officer shall perform their duties and follow procedures in accordance with the Comptroller's instructions.

(4) The Comptroller may authorise an officer—

- a) to exercise a power conferred; or
- b) to perform a duty imposed, by this Act on the Comptroller.

(5) An officer employed on a duty or service relating to this Act by the order or with the concurrence of the Comptroller is deemed to be the proper officer for that duty or service.

#### **[Section 4] Authority to be produced by officer**

If an officer is acting against a person under this Act and is not in uniform, he or she shall, on being asked to do so by that person—

- a) declare their office; and
- b) produce to that person such document establishing his or her identity as the Comptroller directs to be carried by that officer.

## **PART 3 LEVY OF WATER RESOURCE TAX (Sections 5–10)**

### **[Section 5] Levy and payment of water resource tax**

(1) Subject to the provisions of this Act, a tax at the rate or rates prescribed by regulations made under this Act shall be levied upon the extraction of water in its natural state, including artesian water, natural mineral and spring water, from an underground water table or deposit and emerging from a spring tapped at one or more natural or bore exits.

[subs (1) am Decree 14 of 2011 s 2, effective 1 April 2011 ; Decree 20 of 2011 s 2, effective 21 January 2011 ; Act 23 of 2017 s 2, effective 1 August 2017]

(2) The water resource tax is payable by any business extracting water in its natural state.

[subs (2) am Decree 14 of 2011 s 2, effective 1 April 2011 ; Decree 20 of 2011 s 2, effective 21 January 2011]

(3) The tax is payable by the person extracting water subject to the water resource tax.

(4) The volume of water extraction shall be measured by an approved meter on a monthly basis.

### **[Section 6] Water resource tax to be paid and returns made to Comptroller**

(1) The accountable person shall—

a) within 7 working days or such longer period as the Comptroller may approve of the close of each month pay the Comptroller any water resource tax that has been payable since the previous month;

[subs (1) am Decree 14 of 2011 s 3, effective 1 April 2011]

b) deliver together with such payment a duly signed account of—

- i. the total volume of natural water extracted in the month; and
- ii. the monthly production figures for finished product.

[subs (1) am Decree 14 of 2011 s 3, effective 1 April 2011 ; Decree 20 of 2011 s 3, effective 21 January 2011]

(2) If water resource tax is not paid in accordance with subsection (1), the accountable person is liable to a penalty at a rate of 10% of the unpaid water resource tax in addition to the water resource tax, and if the default continues an additional 2.5% penalty per month of default shall be added to the 10% penalty if the default continues for more than one month after the due date for payment.

### **[Section 7] Assessment of water resource tax**

(1) The proper officer may, measure or otherwise examine the volume of water extraction for the purpose of ascertaining the amount of tax leviable on them.

- (2) When a measurement of the volume of water extraction has been made by the proper officer, that measurement shall be presumed to be correct unless the contrary is proved.
- (3) Necessary operations relating to measuring and examination of the volume of extracted water under subsection (1) shall be performed by or at the expenses of the person liable to the tax.
- (4) The approved meter and its maintenance and up-keep shall be provided at the expense of the person liable to the tax.

#### **[Section 8] Refunds — general**

- (1) Where—
  - a) any water resource tax has been levied and paid and repayment of water resource or any portion of it is claimed on the ground that it was levied or paid through inadvertence or from any other error; and
  - b) the Comptroller is satisfied that the claim is correct, the excess water resource tax shall be refunded and any sum to be so refunded is a charge on the Consolidated Fund.
- (2) A repayment referred to under subsection (1) shall not be made by the Comptroller where the claim in respect of the refund is made more than one year after the date of the payment.
- (3) If a refund is erroneously made under subsection (1) the Comptroller may within one year of the date of the refund demand repayment of that refund.
- (4) If such refund under subsection (3) is not paid within the time period of demand repayment, the Comptroller may recover the amount of the refund as a debt due to the Government in a court of competent jurisdiction.

#### **[Section 9] Recovery of water resource tax**

The correct amount of water resource tax due and payable under this Act may be demanded by the Comptroller within one year of the date when that water resource tax, should have been paid and shall constitute a debt payable to the Government from the person liable for the tax, and may be sued for in a court of competent jurisdiction in the name of the Comptroller.

#### **[Section 10] Disputes as to water resource tax payable**

If a dispute arises as to the proper rate or amount of water resource tax, the person liable for the tax shall deposit with the Comptroller the water resource tax demanded and the amount so paid or received shall be deemed to be the proper water resource tax unless the Court of Review, upon application to it by that person within 3 months after that deposit or receipt, otherwise decides.

## **PART 4 POWER OF THE COMPTROLLER (Sections 11–14A)**

### **[Section 11] Access to premises**

(1) The proper officer shall for the purposes of this Act during daylight hours have access to the premises of the person liable for the tax.

(2) Where the proper officer enters any premises in accordance with subsection (1) he or she may—

- a) require the person liable for the tax to produce, either forthwith or at a time to be fixed by the officer, any book, document, computer or other electronic storage device or thing, which relate to the production of bottled water;
- b) examine a book, document, computer or other electronic storage device or thing referred to in paragraph (a) and take copies of it;
- c) seize and detain a book, document, computer or other electronic storage device or thing referred to in paragraph (a), if, in their opinion, it may afford evidence of the commission of any offence under this Act;
- d) require the that person or the employer to answer questions relating to a book, document, computer or other electronic storage device or thing referred to in paragraph (a), or to an entry in such a book or document, or relating to the production of bottled water;
- e) require a container, envelope, or other receptacle, in the premises to be opened;
- f) lock up, seal, mark or otherwise secure—
  - i. a building, room, place, receptacle, or item of plant, in the factory; and
  - ii. goods or materials in a factory.

(3) Where the proper officer, acting in accordance with this section, is unable to obtain free access to premises referred to in subsection (1) or to a receptacle contained in those premises, he or she may, at any time, enter those premises, and open the receptacle, in such manner, if necessary by force, as he or she thinks necessary.

### **[Section 12] Powers of entry, detention and seizure without search warrant**

When an officer observes an act being committed which is an offence under this Act, that officer may enter a building or place where that offence is being committed, using whatever force may be necessary to secure entry, and may—

- a) detain any person found to be in the building or place who may be reasonably suspected of being involved in the commission of the offence;

- b) seize any goods which may be the subject of the offence; and
- c) seize any documents relating to the goods which are the subject of the offence.

**[Section 13] Power to require certificate of audit**

(1) The Comptroller may require the person liable for the tax to submit annually, a certificate of audit by a chartered accountant.

(2) A certificate of audit submitted under subsection (1) shall certify the correctness of all the books and records required by or under this Act to be kept by the person liable for the tax.

(3) The person liable for the tax is guilty of an offence if, without reasonable excuse, he or she fails to submit a certificate of audit in accordance with subsection (1), and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years or to both.

[subs (3) am Act 23 of 2017 s 3, effective 1 August 2017]

**[Section 14] Assistance to be afforded to officers**

(1) The person liable for the tax shall, when requested to do so by an officer, provide safety equipment to enable the officer to ascend to and examine a vessel or utensil in the factory or any other premises, or to gauge or ascertain the contents or capacity of any such vessel or utensil.

(2) The person is guilty of an offence if he or she fails to comply with a request made under subsection (1), and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years or to both.

[subs (2) am Act 23 of 2017 s 4, effective 1 August 2017]

**[Section 14A] Officer may be stationed at business premises**

(1) The Comptroller may station a proper officer in the premises of a business that is extracting water from its natural state for the purpose of bottling or packaging for sale, to—

- a) watch the process of such business from the point of extracting water from its natural state up to the bottling and packaging for sale of that water; and
- b) enforce compliance with this Act.

(2) If requested to do so by the Comptroller, such businesses shall provide office accommodation to the Comptroller's satisfaction at or adjacent to the premises of such businesses for such use of a proper officer referred to in subsection (1).



(3) Any business falling under this Act is guilty of an offence if it fails to comply with a request made to them in accordance with subsection (2) and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years or to both.

[subs (3) am Act 23 of 2017 s 5, effective 1 August 2017]

[s 14A insrt Decree 14 of 2011 s 4, effective 1 April 2011 ]

## **PART 5 GENERAL OFFENCES AND PENALTIES**

### **(Sections 15–18)**

#### **[Section 15] Penalty for making incorrect statements and falsifying documents**

A person is guilty of an offence if he or she—

- a) wilfully makes, orally or in writing, or signs a statement, certificate or other document required for the purposes of this Act, which is untrue or incorrect in any particular;
- b) wilfully makes, orally or in writing, or signs a statement or document, for consideration of an officer on an application which is untrue or incorrect in any particular;
- c) wilfully counterfeits or falsifies, or uses, when counterfeited or falsified; a document which is or may be required under this Act or a document used in a transaction of any business or matter relating to the administration of this Act ;
- d) fraudulently alters a document or counterfeits the seal, signature, initials or other mark of, or used by, an officer for the verification of a document or for the security of goods or any other purpose in the conduct of business relating to the administration of this Act; or
- e) knowingly obtains a remission or refund, of water resource tax which he or she is not entitled to obtain,

and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years or to both.

[s 15 am Act 23 of 2017 s 6, effective 1 August 2017]

#### **[Section 16] Penalty for refusing to answer questions etc**

A person is guilty of an offence if he or she refuses—

- a) to answer a question lawfully as required under this Act; or
- b) to give information, which it is in their power to give, in response to a question lawfully as required under this Act,

and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years or to both.

[s 16 am Act 23 of 2017 s 7, effective 1 August 2017]

## **[Section 17] Obstruction of officers etc**

A person is guilty of an offence if he or she—

- a) obstructs, hinders, molests or assaults or uses threatening language to, or attempts to intimidate or endeavours to bribe a person duly engaged in the performance of a duty or the exercise of a power imposed or conferred by this Act or a person acting in that person's aid;
- b) does anything which impedes or is intended to impede the carrying out of a search for anything liable to be forfeited under this Act or the detention, forfeiture or removal of any such thing;
- c) rescues, damages or destroys anything liable to be forfeited, under this Act, or does anything intended to prevent the procuring or giving of evidence as to whether or not anything is so liable to be forfeited; or
- d) prevents the arrest of a person by a person duly engaged in the performance of a duty or the exercise of a power imposed or conferred by this Act or a person acting in that person's aid, or rescues a person so arrested,

and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years or to both.

[s 17 am Act 23 of 2017 s 8, effective 1 August 2017]

## **[Section 18] Penalty for abuse of authority**

An officer or other person employed in the administration of this Act is guilty of an offence if he or she—

- a) (a) accepts or agrees to accept a bribe, gratuity, recompense or reward for the neglect or non-performance of their duty;
- b) (b) conspires or connives with another person to do an act or thing whereby the water resource tax is or may be defrauded, or which is contrary to this Act or the proper execution of their duty;
- c) (c) knowingly demands from another person an amount in excess of the authorised water resource tax;
- d) (d) withholds for their own use or otherwise, the whole or any portion of the amount of any water resource tax collected;
- e) (e) renders a false return, whether orally or in writing, of the amount of water resource tax collected or received;
- f) (f) defrauds another person, embezzles money, or otherwise abuses their position; or
- g) (g) not being authorised under this Act to do so, collects or attempts to collect water resource tax,

and is liable on conviction to a fine not exceeding \$25,000, or to imprisonment for a term not exceeding 10 years or to both.

[s 18 am Act 23 of 2017 s 9, effective 1 August 2017]

## **PART 6 APPEALS TO THE COURT OF REVIEW (Section 19)**

### **[Section 19] Court of Review to hear dispute**

The Minister may appoint a person of legal knowledge and experience for the purpose of hearing and determining appeals from the decisions of the Comptroller upon any of the matters specified in section 10 and the person so appointed shall hold a Court of Review in accordance with Part 23 of the Customs Act 1986.

## **PART 7 MISCELLANEOUS (Sections 20–22)**

### **[Section 20] Limitations on methods of extraction and storage and instruments to be kept**

(1) There may be prescribed—

- a) standards and methods of—
  - i. extraction; and
  - ii. marking and storing, taxable goods; and
- b) implements and materials used in the filling of bottled water.

(2) The person liable for the tax shall keep in their factory such reasonable and necessary apparatus and instruments for measuring, weighing and testing volume of extracted water; and permit an officer to use the apparatus and instruments for the purpose of measuring, weighing or taking account of volume of extracted water.

(3) The person liable for the tax is guilty of an offence if he or she—

- a) uses, or allows to be used, false, or insufficient apparatus or instruments in respect of volume of extracted water; or
- b) practises or allows to be practised any art, device or contrivance by which an officer may be hindered or prevented from taking a just and true measure or account of volume of extracted water,

and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years or to both.

[subs (3) am Act 23 of 2017 s 10, effective 1 August 2017]

(4) Any false apparatus and instruments used in connection with an offence under subsection (2) are liable to be forfeited.

### **[Section 21] Enforcement Officers**

Enforcement officers shall be responsible for the proper and efficient administration and control of the provisions of this Act.

### **[Section 22] Regulations**

The Minister may make regulations to give effect to the provisions of this Act.

Schedules]

# SCHEDULE

## Progressive Resource Tax on Extraction of Water

[Sch rep Act 23 of 2017 s 11, effective 1 August 2017]

# SUBSIDIARY LEGISLATION

## WATER RESOURCE TAX REGULATIONS 2017

### Table of Amendments

Water Resource Tax Regulations 2017 (LN 54 of 2017) commenced on 1 August 2017, as amended by:

<b>Amending Legislation</b>	<b>Date of Commencement</b>
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**[Regulation 1] Short title and commencement**

- (1) These Regulations may be cited as the Water Resource Tax Regulations 2017.
- (2) These Regulations come into force on 1 August 2017.

**[Regulation 2] Interpretation**

- (1) In these Regulations, unless the context otherwise requires, “Act” means the Water Resource Tax Act 2008.
- (2) In these Regulations, words and phrases have the same meaning as under the Act unless the context otherwise requires.

**[Regulation 3] Rates of tax and levies**

For the purposes of section 5 of the Act—

- a) the rates of tax are specified in the Schedule; and
- b) the rate of tax applied is determined by the volume of water extracted by the person or business in a month.

**SCHEDULE  
(Regulation 3) -Rates of Tax**

Volume of water extracted in a month by the person or business (litres)	Applicable rate (\$ per litre)
0 — 9,999,999	\$0.01
10,000,000 and above	\$0.18

For the avoidance of doubt, where a person or business extracts 10,000,000 litres of water or more in a month, that person or business must pay water resource tax at the rate of \$0.18 for every litre of water extracted in that month and not only for the litres extracted over 10,000,000 litres.