

DEPARTMENT OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT

NO. R. 2725

11 November 2022

**MARKETING OF AGRICULTURAL PRODUCTS ACT, 1996
(ACT No. 47 OF 1996)****ESTABLISHMENT OF STATUTORY MEASURE AND DETERMINATION OF LEVIES
ON MACADAMIA NUTS**

I, Angela Thoko Didiza, Minister of Agriculture, Land Reform and Rural Development, acting under sections 13 and 15 of the Marketing of Agricultural Products Act, 1996 (Act No. 47 of 1996), hereby -

- (a) establish the statutory measure set out in the schedule hereto; and
- (b) determine the guideline price for macadamias (recent average domestic growers' selling price, Nut In Shell, 1.5% kernel moisture), as R75.04 per kg.

**MRS AT DIDIZA, MLP
MINISTER OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT**

SCHEDULE

Definitions

1. In this Schedule any word or expression to which a meaning has been assigned in the Act shall have that meaning, and unless the context indicates otherwise:

“bonded warehouse activity” means activities in relation to imported macadamias which have been wholly exempted from the payment of taxes in the manner envisaged in section 19 of the Customs and Excise Act;

“commercial production” means any production undertaken for purposes other than household use or consumption;

“consolidator” means a person that receives macadamias from growers for the purpose of preparing and packing for sale such macadamias, and/or any person that buys macadamias from growers and/or acts as an agent for the sale of macadamias and/or acts as an agent or contractor in respect of the dehusking of NIS; and further includes growers that sell macadamias to traders, exporters, wholesalers, retailers, consumers and/or other purchasers (but specifically excludes any bonded warehouse activity);

“Customs and Excise Act” means the Customs and Excise Act, 1964 (Act no. 91 of 1964);

“exporter” means any person that exports macadamias for his own account or acts as an agent on behalf of producers, consolidators, processors and/or packers of macadamias in relation to the export of macadamias;

“grower” is synonymous with the term “producer” and means any person engaging, in a proprietary capacity, in the commercial production of macadamias inclusive of persons or entities who process, produce or, trade with their own macadamias and/or who grow and/or sell macadamia trees;

“grower’s returns” means any remuneration, consideration and/or proceeds payable to

a grower in respect of the applicable macadamias;

“**importer**” means an entity who imports macadamias into South Africa for any purpose (other than storage and processing in a bonded warehouse activity) and includes persons organizing imports on behalf of or in the name of another person or entity;

“**inspector**” means an inspector appointed by the Minister of Agriculture, Land Reform and Rural Development in terms of section 21 of the Act;

“**kernel**” means the edible seed of the macadamia;

“**levy**” has the meaning ascribed thereto in the Act;

“**macadamias**” means the fruits of the macadamia tree including but not limited to NIH, NIS or kernel;

“**macadamia industry**” means all participants and role players in the South African macadamia industry;

“**NIH**” means nut in husk;

“**NIS**” means nut in shell;

“**NIS industry standard**” means notwithstanding the actual form and volume of the applicable macadamias, NIS with a kernel moisture content of 1.5% (determined by way of utilization of prevailing macadamia industry standards, provided such standards are reasonably acceptable to SAMAC);

“**person**” means any natural or juristic person and includes a partnership, association or statutory body;

“**Prescribed Rate of Interest Act**” means the Prescribed Rate of Interest Act, 1975 (Act no. 55 of 1975);

“**processor**” means a person that sorts, cleans cracks and/or processes macadamias, excluding growers that dehusk and dry their own macadamias;

“**SAMAC**” means Macadamias South Africa Non-Profit Company with registration number 2017/656242/08;

“**statutory measure**” has the meaning ascribed thereto in the Act; and

“**the Act**” means the Marketing of Agricultural Products Act, 1996 (Act no. 47 of 1996), as amended.

Purpose and aims of statutory measure and the relation thereof to the objectives of the Act

2. The purpose and aims of this statutory measure are to provide financial support for the following activities in the interest of the South African macadamia industry as a whole:
 - (a) Collection, processing and dissemination of reliable production and market information;
 - (b) Production, post-harvest, product, and market development research;
 - (c) Technology transfer;
 - (d) Determination of quality standards;
 - (e) Stimulation of increased consumption of macadamias;
 - (f) Liaison with local and international governments, organisations and interested groups;
 - (g) Promotion of co-operation between growers, handlers, processors and other macadamia industry role players;

- (h) Promotion of market access including gaining, retaining and optimising markets;
- (i) Medical and other research to promote the health benefits of macadamia consumption;
- (j) Benchmarking and determination of best practice; and
- (k) Facilitation of transformation within the macadamia industry.

The statutory measure will not be detrimental to the number of employment opportunities in the macadamia industry or fair labour practice.

The statutory measure will be administered by SAMAC.

Products to which the statutory measure applies

3. This statutory measure shall apply to macadamias.

Area in which measure shall apply

4. This statutory measure shall apply in the geographical area of the Republic of South Africa.

Imposition of levy

5. A levy is hereby imposed on (subject to clause 7) all macadamias received from a grower, by an exporter, importer, processor or consolidator (which for the avoidance of doubt includes a “grower” who falls within the definition of the term “consolidator”) of macadamias.

Amount of levy

6. The amount of the levy is (notwithstanding the form of the macadamia) to be determined by way of utilisation of the NIS industry standard and shall be as follows (excluding VAT):

Period	15/11/2022	1/03/2023	1/03/2024	1/03/2025	1/03/2026
	to 28/02/2023	to 28/02/2024	to 28/02/2025	to 28/02/2026	to 28/02/2027
Levy per kg NIS at NIS industry standard	R0.68	R0.68	R0.70	R0.72	R0.74

Persons / entities who shall pay the levy

7. (1) The levy imposed under clauses 5 and 6 shall –
- (a) be payable by an exporter, importer, processor or consolidator of macadamias that receives macadamias from a grower (or as relates to a grower that falls within the definition of the term “consolidator”, in respect of the grower’s own macadamias), regardless of whether such an exporter, importer, processor or consolidator buys the macadamias from the grower or acts as a marketing agent;
 - (b) be a grower’s levy, deducted from the grower’s returns by the exporter, importer, processor or consolidator of macadamias;
 - (c) extend to and includes persons or entities who process, produce or trade in macadamias; and
 - (d) be payable by an exporter, importer, processor or consolidator in the instance where kernel is received from another exporter, importer, processor or consolidator of NIS macadamias and no guarantee is received by means of an affidavit or warranty that a levy has not been paid on the specific consignment. In such instances a levy shall be determined by converting the kilograms of kernel to a NIS basis by dividing the kilograms of kernel by 0.25 and applying the levy as stated in clause 6.

- (2) It is the responsibility of the grower to ensure that the levy referred to in this statutory measure is deducted and paid to SAMAC, provided an exporter, importer, processor or consolidator of macadamias may also be held liable for failure to ensure payment of the levy to SAMAC in the manner envisaged in this statutory measure.
- (3) Where a dispute arises in relation to a definition, classification or responsibility of an entity or person which has a bearing on the payment of the levy envisaged in this statutory measure, the inspector shall make a determination as to who is responsible for the payment of the levy envisaged herein.

Payment of levy

8. (1) Payment of the levy shall be made by no later than 90 days following the last day of the month in which the macadamias contemplated in clause 5 were received.
- (2) Any levy which is not paid on the due date therefore shall attract interest at the rate prescribed in the Prescribed Rate of Interest Act from the due date to date of final payment, both days inclusive.
- (3) Payment shall be made by means of an electronic funds transfer and be paid into the bank account nominated by SAMAC for this purpose.

Administration of levies

9. The statutory measure envisaged herein shall be administered by SAMAC, and the statutory levies will be used as follows:
 - (1) Approximately 70% of the levy income derived from this statutory measure will be spent on activities set out in 2(a) to 2(k) above;
 - (2) Not more than 10% of the levy income derived from this statutory measure will be spent on administration of levies; and

- (3) At least 20% of the levy income derived from this statutory measure will be spent on transformation activities in the macadamia industry.

The levies shall be accounted for in a manner and to the extent acceptable to the Auditor-General, separately from other funds or assets under the control of SAMAC. Annual audited financial statements will be submitted to the National Agricultural Marketing Council and the Auditor-General, with the percentage allocated towards transformation clearly indicated and accompanied by a report stating how the objectives of the levy have been met. Any deficit at the date of termination of this statutory measure shall be for the account of SAMAC. The Minister of Agriculture, Land Reform and Rural Development shall decide on the application of any surplus levies at the date of termination of the statutory measure.

Failure to comply with the statutory measures in this schedule

10. Upon a failure by any person to comply with the statutory measures as set out herein resulting in legal action being implemented by SAMAC and/or any other duly authorised person for purpose of enforcing compliance with the provisions of this statutory measures, such persons shall be liable for the legal costs so incurred by SAMAC and/or any other duly authorised person, on the scale as between attorney and own client.

Commencement and period of validity

11. This statutory measure shall come into operation on the date of publication and will lapse on 28 February 2027.