

GAZETTE EXTRAORDINARY

The Malawi Gazette Supplement dated 25th July, 2017 containing
Acts (No. 6C)

MALAWI GOVERNMENT

(Published 25th July, 2017)

Act

No. 20 of 2017

I assent

PROF. ARTHUR PETER MUTHARIKA
PRESIDENT
20th July, 2017

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Amendment of s. 82 of the Customs and Excise Act

An Act to amend the Customs and Excise Act

ENACTED by the Parliament of Malawi as follows—

1. This Act may be cited as the Customs and Excise (Amendment) Act, 2017, and shall come into operation on 1st July, 2017. Short title and commencement

2. Section 82 of the Customs and Excise Act is amended by deleting paragraph (f) and replacing with a new paragraph (f) as follows— Amendment of s. 82 of Cap. 42:01

“(f) in respect of airtime, television subscriptions, gaming and betting, including lotteries, excise duties in accordance with the provisions of an Excise Tariff prescribed by the Minister.”.

Passed in Parliament this twenty third day of June, two thousand and seventeen.

FIONA KALEMBA
Clerk of Parliament

MALAWI GOVERNMENT

(Published 25th July, 2017)

Act

No. 24 of 2017

I assent

PROF. ARTHUR PETER MUTHARIKA

PRESIDENT

20th July, 2017

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Amendment of section 84C of Cap. 41:01
3. Amendment of section 105 of the principal Act
4. Replacement of section 112 of the principal Act
5. Replacement of section 115 of the principal Act
6. Replacement of section 116 of the principal Act
7. Replacement of section 116A of the principal Act
8. Replacement of section 116B of the principal Act
9. Replacement of section 117 of the principal Act
10. Replacement of section 127A of the principal Act
11. Replacement of the Eleventh Schedule to the principal Act
12. Amendment of the Fourteenth Schedule to the principal Act

An Act to amend the Taxation Act

ENACTED by the Parliament of Malawi as follows—

1. This Act may be cited as the Taxation (Amendment) Act, 2017, and shall come into operation on 1st July, 2017.

Short title and commencement

2. The Taxation Act (hereinafter referred to as the “principal Act”) is amended in section 84C by deleting paragraph (b) and replacing therefor a new paragraph (b) as follows—

Amendment of section 84C of Cap. 41:01

“(b) on the other hand, the aggregate of—

- (i) the provisional tax paid under section 84A;

Amendment
of section 105
of the
principal Act

- (ii) the withholding tax paid under section 102A; and
(iii) any one or any combination of (i) and (ii).”
3. Section 105 of the principal Act is amended by—

(a) deleting subsection (5) and replacing therefor a new subsection (5) as follows—

“(5) If tax is not paid on or before the dates provided in subsections (1), (2) or (3), a penalty and interest shall be charged as prescribed in subsection (6)”; and

(b) deleting subsection (6) and replacing therefor a new subsection (6) as follows—

“(6) The penalty and interest referred to in subsection (5) shall be—

(i) an additional sum of 20 *per centum* of the amount of tax which was due to be paid in the first month or part thereof; and

(ii) a further interest charged on the outstanding amount of tax at the prevailing bank lending rate plus 5 per cent per annum for each month or part thereof during which the tax remains unpaid,

and such additional sums together with the amount of the tax shall be summarily recovered by Commissioner General in his own name:

Provided that the Commissioner General may reduce or waive the amount of such additional sums if a satisfactory explanation for the delay is given.”

Replacement
of section 112
of the
principal Act

4. Section 112 of the principal Act is deleted and replaced as follows—

“Liability for
penalties

112.—(1) Any person who—

(a) fails to comply with any notice served on him by the Commissioner General under this Act or any rules made thereunder;

(b) gives any incorrect information or omits any relevant information from any statement required to be made to the Commissioner General;

(c) fails to keep records, books or accounts required to be kept under section 54;

(d) fails to comply with any of the provisions of section 67 relating to the appointment of public officers;

(e) fails to furnish any other person with a as required under section 87(3),

commits an offence and shall be liable to a penalty of K200,000 for companies and K50,000 for individuals for the first month or part thereof, and a further penalty of K50,000 for companies and K10,000 for individuals for each month or part thereof during which the failure continues.

(2) Any person who—

(a) fails to furnish or makes default in furnishing to the Commissioner General, with a return of income in respect of any year of assessment; or

(b) fails to furnish the Commissioner General with a return of payments made to shareholders as required under section 68(1);

(c) fails to file with the Commissioner General a copy of the memorandum and articles of association or any amendments thereto as required under section 68(2);

(d) being an officer of a company, fails to furnish to the Commissioner General documents and particulars relating to the notification of dividend declared, as required under section 69; or

(e) fails to furnish to the Commissioner General returns or particulars relating to persons employed by him as required under section 85,

commits an offence and shall be liable to a penalty of K300,000 for companies and K75,000 for individuals for the first month or part thereof, and a further penalty of K50,000 for companies and K10,000 for individuals for each month or part thereof during which the failure continues.

(3) Any person who—

(a) omits from his return of income in respect of any year of assessment, any amount which should have been included therein;

(b) in his return of income in respect of any year of assessment, deducts or sets off any amount the deduction or setting off of which is not allowed under the Act;

(c) claims any allowance in respect of any year of assessment, which he is not entitled to claim under this Act; or

(d) fails to deduct the tax due, or to remit tax deducted, under section 76A,

shall be liable to pay to the Commissioner General—

(i) an additional sum of 20 *per centum* of the amount of tax which he has failed to pay in the first month or part thereof; and

(ii) a further interest charged on the outstanding amount of tax at the prevailing bank lending rate plus 5 per cent per annum for each month or part thereof during which the tax remains unpaid,

and such additional sums together with the amount of the tax shall be summarily recovered by Commissioner General in his own name:

Provided that the Commissioner General may reduce or waive the amount of such additional sums if a satisfactory explanation for the delay is given.

(4) Any person who with intent to defraud—

(a) commits any of the acts or omissions referred to in subsections (2) and (3);

(b) makes any false statement or gives any false information when complying with any notice served on him under this Act;

(c) in relation to any year of assessment, prepares, maintains, or authorizes or causes the preparation or maintenance of any false books or accounts or other records, or falsifies or authorizes or causes the falsification of any books, accounts or other records; or

(d) makes any false claim for repayment of any tax for any year of assessment,

commits an offence and shall be liable —

(i) to a penalty imposed by the Commissioner General of K200,000 or twice the difference between the amount of the tax with which he ought to be charged and the amount of the tax, if any, with which he has been charged for such year of assessment, whichever is the greater; or

(ii) upon conviction, to imprisonment for one year.”.

5. Section 115 of the principal Act is deleted and replaced as follows—

Replacement
of section 115
of the
principal Act

“Assisting in
making
incorrect
returns

115. Any person who assists in or induces the making or delivery for any purposes, of income, tax of any return, accounts, statement or declaration which he knows to be incorrect, shall be liable to a penalty of K200,000 for the first month or thereof, and a further penalty of K10,000 for each month or part thereof during which the penalty is not paid.”.

6. Section 116 of the principal Act is deleted and replaced as follows—

Replacement
of section 116
of the
principal Act

“Obstruction of
officers

116. Any person who obstructs or hinders an officer in the discharge of his duty under the Act shall be liable—

(i) to a penalty imposed by the Commissioner General of MK1,000,000; or

(ii) upon conviction, to imprisonment for twelve months.”.

7. Section 116A of the principal Act is deleted and replaced as follows—

Replacement
of section
116A of the
principal Act

“Forceful
rescue of
seized property

116A. Any person who forcibly rescues or attempts to rescue any property, article, or object which has been taken, detained, or seized by any officer pursuant to this Act commits an offence and shall be liable —

(i) to a penalty imposed by the Commissioner General of MK1,000,000; or

(ii) upon conviction, to imprisonment for one year.”.

8. Section 116B of the principal Act is deleted and replaced as follows—

Replacement
of section
116B of the
principal Act

“Physical
assault of
officers

116B. Any person who physically assaults an officer discharging his duties under this Act commits an offence and, on conviction, shall be liable to a fine of K1,000,000 or to imprisonment for twelve months.”.

9. Section 117 of the principal Act is deleted and replaced as follows—

Replacement
of section 117
of the
principal Act

“Inciting a
person to refuse
to pay tax

117. Any person who, without lawful justification or excuse, incites any person to refuse to pay any tax

payable by him under this Act, commits an offence and shall be liable—

(a) to a penalty imposed by the Commissioner General of MK1,000,000; or

(b) upon conviction, to imprisonment for twelve months.”

Replacement of section 127 A of the principal Act follows—

“Transfer to defraud and artificial transactions

10. Section 127A of the principal Act is deleted and replaced as follows—

127A.—(1) For the purposes of this Act, where—

(a) a person liable to tax in Malawi engages directly or indirectly in one or more transactions, operations or schemes, in this section referred to as a transaction with a related person or “a controlled transaction; or

(b) a person not liable to tax in Malawi engages directly or indirectly in one or more transactions with a related person not liable to tax in Malawi where the transaction is in relation to a permanent establishment in Malawi of one of the two related persons,

the amount of each person’s taxable income shall be determined in a manner that is consistent with the arm’s length principle.

(2) The amount of such taxable income in subsection (1)(b) shall be consistent with the arm’s length principle if the conditions of those transactions do not differ from the conditions that would have applied between independent persons in comparable transactions carried out under comparable circumstances.

(3) Where the conditions of a transaction between related persons “controlled transaction” to which subsection (1) applies are not consistent with the arm’s length principle and the effect of that inconsistency is reducing or postponing the liability to tax of any person for any year of assessment, the taxable income of that person shall be computed as though the conditions of the transaction are consistent with the arm’s length principle.

(4) The determination of whether the conditions of a controlled transaction are consistent with the arm’s length principle and of the quantum of any adjustment

made under subsection (3), shall be in the manner as prescribed by the Minister.

(5) For purposes of this section—

(a) two persons are considered to be related where—

(i) one person participates directly or indirectly in the management, control or capital of the other; or

(ii) a third person participates directly or indirectly in the management, control or capital of both.

(b) A person participates directly or indirectly in the management, control or capital of another person where the person—

(i) owns, directly or indirectly, more than 50% of the share capital of the other person; or

(ii) has the practical ability to control the business decisions of the other person;

(c) The rights or powers attributed to the person include the rights or powers of any person associated to the person by marriage, consanguinity or affinity.

(6) The provisions of subsections (1) and (2) shall also apply where a person—

(a) liable to tax in Malawi engages in one or more transactions with another person located in a tax jurisdiction that, according to criteria set out in the regulations, provides that other person with a beneficial tax regime, whether or not such person is a related person; or

(b) located in a tax jurisdiction that, according to criteria set out in the regulations, provides that person with a beneficial tax regime when the person engages in one or more transactions that relates to a permanent establishment of a non-resident person in Malawi, whether or not such a person is a related person.

(7) Notwithstanding the provisions of subsections (1), (2) and (3), where—

(a) a person liable to tax in Malawi engages directly or indirectly in a transaction with a related person; or

(b) a non-resident person engages directly or indirectly in a transaction relating to a permanent establishment in Malawi with a related person,

for the export or import, involving grains, oil seeds, other agricultural products obtained from the land, hydrocarbons and derivatives thereof, and, in general, goods where prices can be obtained at the date of the transaction from an international or domestic commodity exchange market, or from recognised and transparent price reporting or statistical agencies, or from governmental price-setting agencies, or from any other index but excluding all auctions in Malawi trading coffee, macadamia nuts, tea or tobacco, that is used as a reference by unrelated parties to determine prices in transactions between them (hereinafter referred to as the "publicly quoted price"), the monthly average of that publicly quoted price of the month in which the goods are shipped, regardless of the means of transport, shall be, without considering the price that was agreed upon with the related person, the sale price used for the purposes of computing the taxable income of that person unless the person provides all of the evidence needed to show that adjustments are appropriate to that quoted price to be consistent with the arm's length principle:

Provided that in the case of goods exported from Malawi where the price agreed upon between the person and the related person is higher than the publicly quoted price at the above-mentioned date, the agreed price in this case will be considered as the sale price for the purposes of computing the seller's taxable income in Malawi.

(8) Every person who engages in a transaction to which this section applies shall keep documentation in the prescribed manner as may be required by regulations.

(9) The regulations made pursuant to this section may provide for—

(i) the production of documentation, and the form and time within which such documentation shall be provided; and

(ii) the penalties for non-compliance with transfer pricing requirements.

(10) This section shall not apply in respect of transactions between related persons who are both liable to tax in Malawi where the persons are able to satisfy the Commissioner General that the value of all of the transactions between those persons in the year of assessment is less than the threshold specified by the regulations, unless the Commissioner General directs the taxpayer in writing, prior to the year of assessment, that this section shall apply.

(11) This section shall apply to the attribution of profit to a permanent establishment on the assumption that the permanent establishment and other parts of a legal person are treated as separate enterprises. No deduction shall be allowed in respect of amounts, if any, paid or payable, otherwise than towards reimbursement of actual expenses, by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment.

(12) For the purposes of subsection (11), an enterprise refers to any commercial or business activity carried on by any person.

(13) To the extent that there is a difference between—

(a) any amount that is, after taking subsection (2) into account, applied in the calculation of the taxable income of any resident person that is a party to a controlled transaction; and

(b) any amount that would, but for subsection (2), have been applied in the calculation of the taxable income of the resident person contemplated in paragraph (a),

the amount of that difference shall, for purposes of subsection (2), be deemed to be a dividend that has been distributed for the purposes of section 70A.”

11. The Eleventh Schedule to the principal Act is deleted and replaced by the new Schedule as follows—

Replacement
of the
Eleventh
Schedule to
the principal
Act

**“ELEVENTH SCHEDULE
RATES OF INCOME TAX**

Income tax shall be charged, subject to the Appendix to this schedule as follows—

(a) in the case of individual income other than employment income, at the rates laid down in paragraph A of the Appendix to this Schedule;

(b) in case of employment income, at the rates laid down in paragraph B of the Appendix to this Schedule;

(c) in the case of ecclesiastical, charitable or educational institutions of a public character or of trusts, at 30 per cent of the taxable income;

(d) in the case of all companies other than companies engaged in mining operations under a licence issued under Mines and Minerals Act, 30 per cent of taxable income except that in the case of companies operating in priority industries, so designated by the Minister for this purpose by order published in the *Gazette*, the applicable rate shall be either—

(i) 0 per cent for such period, not exceeding 10 years, as the Minister may grant in the order; or

(ii) 15 per cent:

Provided that an additional tax of 5 per cent of taxable income shall be charged in respect of all companies not incorporated in Malawi;

(e) in the case of a taxpayer in respect of their mining project—

(i) 30 per cent of taxable income:

Provided that an additional tax of 5 per cent of taxable income shall be charged in respect of all such taxpayers who, if a company, are not incorporated in Malawi, and who, if other than a company, are not resident in Malawi;

(ii) An additional resource rent tax at a minimum rate of 15 per cent on after tax project resource rent in respect of their mining project determined by using the formula—

where—

$$r = \frac{40.5-t}{100-t} \times 100$$

“r” is the rate of RRT, expressed as a percentage; and

“t” is the rate applicable for income tax on companies.”

(f) in the case of life assurance business, at 30 per cent of the taxable income;

(g) in the case of fringe benefits, at 30 per cent of the taxable value of fringe benefits;

(h) in case of Turnover Tax, at the rate of 2 per cent of the taxable turnover;

(i) in the case of earnings on investment of pension funds, at 15 per cent.

APPENDIX

A.—TABLE OF RATES OF INCOME TAX ON TAXABLE INCOME OTHER THAN EMPLOYMENT INCOME

Annual Taxable Income	Rate
First K360,000	0%
Next K60,000	15%
Excess of K420,000	30%

B.—TABLE OF RATES OF INCOME TAX ON EMPLOYMENT INCOME

Annual Taxable Income	Rate
First K360,000	0%
Next K60,000	15%
Next K35,580,000	30%
Excess of K36,000,000	35%.”.

12. The Fourteenth Schedule to the principal Act is amended by —

(a) deleting paragraph (j) and replacing therefor a new paragraph as paragraph (j)—

“(j) interest 5 20%”.

(b) deleting Note 5 and replacing it as follows —

“5. Excludes—

(a) interest payable to a person exempt from income tax under the First Schedule; and

(b) interest payable to a person, not being a person resident in Malawi, whose income is liable to non-resident tax under section 76A.”.

Amendment
of the
Fourteenth
Schedule to
the principal
Act

Passed in Parliament this twenty third day of June, two thousand and seventeen.

FIONA KALEMBA
Clerk of Parliament

MALAWI GOVERNMENT

(Published 25th July, 2017)**Act****No. 25 of 2017****I assent****PROF. ARTHUR PETER MUTHARIKA****PRESIDENT****20th July, 2017****ARRANGEMENT OF SECTIONS****SECTION**

1. Short title and commencement
2. Amendment of section 34 to the Cap.42:02
3. Replacement of section 38 to the principal Act
4. Amendment of the First Schedule to the principal Act

An Act to amend the Value Added Tax Act**ENACTED** by the Parliament of Malawi as follows—

1. This Act may be cited as the Value Added Tax (Amendment) Act, 2017, and shall come into operation on 1st July, 2017.

Short title and commencement

2. The Value Added Tax Act (hereinafter referred to as the "principal Act") is amended in section 34 by deleting subsection (8) and replacing therefor a new subsection (8) as follows—

Amendment of Section 34 of Cap. 42:02

"(8) A taxable person who, without lawful excuse or justification, fails to submit to the Commissioner General his return on the due date shall be liable to a penalty of K300,000 for companies and K75,000 for individuals for the first month, and a further penalty of K50,000 for companies and K20,000 for individuals for each month or part thereof during which the failure continues."

Replacement of Section 38 to the principal Act

3. Section 38 of the principal Act is deleted and replaced as follows—

"Payment of interest on outstanding Value Added Tax

38.—(1) A taxable person who fails to pay any Value Added Tax payable by the due date shall be liable to pay to the Commissioner General—

(a) an additional sum of 20 *per centum* of the amount of tax which he has failed to pay in the first month or part thereof; and

(b) a further interest charged on the outstanding amount of tax at the prevailing bank lending rate plus 5 per cent per annum for each month or part thereof during which the tax remains unpaid,

and such additional sums together with the amount of the tax shall be summarily recovered by Commissioner General in his own name:

Provided that the Commissioner General may reduce or waive the amount of such additional sums if a satisfactory explanation for the delay is given.

(2) Any interest charged under this section and any penalty payable that remains unpaid shall be recoverable as a civil debt by the Commissioner General."

Amendment of First Schedule to the principal Act

4. The First Schedule to the principal Act is amended as follows—

(a) deleting paragraph 2(c) and replacing therefor with a new paragraph as paragraph 2(c)—

"2 (c) dairy produce, birds' eggs, natural honey and infant milk under Customs Tariff Subheadings 0401.10.00; 0401.20.00; 0401.40.00; 0401.50.00; 0407.11.00 to 0407.90.00, 0409.00.00 and 1910.10.10";

(b) inserting immediately after paragraph 3(g) the following new paragraph (ga)—

"(ga) animal or vegetable fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes under Customs Tariff Subheadings 1501.00.00 to 1522.00.00; and"

Passed in Parliament this twenty third day of June, two thousand and seventeen.

FIONA KALEMBA
Clerk of Parliament