NOTICE

The following Bills, for introduction in Parliament, are published for general information.

LILONGWE 25th June, 2015.

R. L. GONDWE
Acting Clerk of Parliament

VALUE ADDED TAX (AMENDMENT) BILL, 2015

MEMORANDUM

This Bill seeks to amend the Value Added Tax Act in order to——

(a) improve efficiency in the administration of Value Added Tax;

(b) bring clarity by restricting issuance of tax invoice to an electronic fiscal device generated tax invoice;

(c) align offences created by regulations with the principal Act;

(d) adjust penalties for contravention of sections 49 and 51 of the principal Act;

(e) introduce offences and provide for penalties for contravention of section 57; and

(f) introduce new section in order to exempt the regulations made under the Act from the limitations of fines and sentences prescribed under the General Interpretation Act (Cap. 1:01 of laws of Malawi).
VALUE ADDED TAX (AMENDMENT) BILL, 2015

ARRANGEMENT OF SECTIONS

SECTION
1. Short title and commencement
2. Amendment of section 2 of Cap. 42:02
3. Amendment of section 25 of the principal Act
4. Amendment of section 38 of the principal Act
5. Replacement of section 46 of the principal Act
6. Insertion of new sections 46A to 46F into the principal Act
7. Amendment of section 49 of the principal Act
8. Amendment of section 51 of the principal Act
9. Insertion of new section 51A into the principal Act
10. Replacement of section 57 of the principal Act
11. Amendment of section 63 of the principal Act

A BILL

entitled

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, 2015, and shall come into operation on 1st July, 2015.

2. The Value Added Tax Act (hereinafter referred to as the “principal Act”) is amended, in section 2, by inserting, in the correct alphabetical order, the following definitions—
“bank lending rate” means the rate of interest which the Reserve Bank of Malawi charges interest on its loans to commercial banks;

“customer” means a person that buys goods or services from a business;

“tax invoice” means a fiscal receipt or invoice generated by electronic fiscal device upon supply of taxable goods or services in accordance with this Act and regulations made under this Act;

“user” means a person who is owner or employee who is required to use electronic fiscal device and includes the persons registered under this Act.”.

3. Section 25 of the principal Act is amended—

(a) by inserting, at the beginning of subsection (1), the words “Subject to section 11A,”;

(b) by deleting, immediately after the word “invoice” appearing in subsection (1), the words “in such form as shall be prescribed”;

(c) by inserting, immediately after the words “person,” appearing in subsection (2), the word “shall”;

(d) by inserting a comma immediately after the first appearance of the word “invoice” in subsection (2);

(e) by deleting, in subsection (2), the word “shall” immediately appearing after the first appearance of the word “invoice”;

(f) by deleting, in subsection (2), the words “of the tax invoice” appearing after the word “copy”; and

(g) by inserting, immediately after subsection (3), the following subsection—

“(3) Notwithstanding subsection (1), the Commissioner General may, on application in writing by a taxable person, allow the person to issue an invoice other than a tax invoice where, owing to the nature of the business or malfunctioning of the electronic fiscal device as may be certified by the approved technician, or loss of the device, it is impracticable for the person to issue a tax invoice.”.

4. Section 38 of the principal Act is amended, in subsection (1), by deleting, immediately after the word “charged”, paragraphs (a) and (b), and substituting therefor the words “interest on the unpaid amount of tax at the bank lending rate prevailing plus five percent per annum.”.

5. Section 46 of the principal Act is repealed and replaced with the following section—

B. No. 17
46. A person who fails to issue a tax invoice as required under section 25 for goods supplied or services rendered commits an offence, and shall—

(a) be liable to a penalty imposed by the Commissioner General of ten times the value of Value Added Tax invoiced in the transaction or K500,000, whichever is greater; or

(b) upon conviction, be liable to a fine of twenty times the value of the Value Added Tax invoiced in the transaction or K1,000,000, whichever is the greater, and to imprisonment for two years.”.

6. The principal Act is amended by inserting, immediately after section 46, the following new sections as sections 46A, 46B, 46C, 46D, 46E, and 46F—

46A. A user of an electronic fiscal device or any person who is required to use an electronic fiscal device, who fails to do so without approval, commits an offence, and shall—

(a) be liable to a penalty imposed by the Commissioner General of K500,000; or

(b) upon conviction, be liable to a fine of K1,000,000 and to imprisonment for two years.

46B. A person who, with intent to defraud, takes steps to use electronic fiscal device in a manner that is aimed at misleading, deceiving, or manipulating information sent to a system or the Commissioner General, commits an offence and shall, in addition to payment of tax which is payable—

(a) be liable to a penalty imposed by the Commissioner General of twenty times the value of Value Added Tax or K5,000,000, whichever is greater; or

(b) upon conviction, be liable to a fine of K10,000,000 and to imprisonment for five years.

46C. A person who tampers with or causes electronic fiscal device to perform improperly, commits an offence and shall—

(a) be liable to a penalty imposed by the Commissioner General of K500,000; or

(b) upon conviction, be liable to a fine of K1,000,000, 000 and to imprisonment for two years.
46D. A person who violates any obligation as a user or local supplier under this Act or the Value Added Tax (Electronic Fiscal Devices) Regulations, 2014, commits an offence and shall be liable to a penalty imposed by the Commissioner General of K500, 000.

46E.—(1) A person who, after purchasing goods or services, fails to demand and retain a fiscal receipt or fails to report a refusal by a user to issue a fiscal receipt as required under this Act or the Value Added Tax (Electronic Fiscal Devices) Regulations, 2014, commits an offence and shall be liable to a penalty imposed by the Commissioner General of the three times the tax payable.

(2) A person who, after selling goods or services, fails to issue and retain a duplicate fiscal receipt or fiscal invoice or refuses to issue a fiscal receipt or invoice upon demand as required by this Act or the Value Added Tax (Electronic Fiscal Devices) Regulations, 2014, commits an offence and shall—

(a) be liable to a penalty imposed by the Commissioner General of K500, 000; or

(b) upon conviction, be liable to a fine of K1,000, 000 and to imprisonment for two years.

46F. A person who commits an offence under this Act or the Value Added Tax (Electronic Fiscal Devices) Regulations, 2014, for which no specific penalty is provided shall—

(a) be liable to a penalty imposed by the Commissioner General of a minimum K500, 000 and a maximum of K1,000,000; or

(b) upon conviction, be liable to a fine of K2, 000, 000 and to imprisonment for three years.”.

Amendment of s. 49 of the principal Act

7. Section 49 of the principal Act is amended—

(a) by deleting subsection (1) and replacing it with the following subsection as subsection (1)—

“(1) A person who is knowingly concerned in, or takes steps with a view to fraudulently evade Value Added Tax payable by him or her or any other person, commits an offence and shall, on conviction, be liable to a fine of not less than twenty times but not more than thirty times the amount of Value Added Tax evaded or
MK5,000,000, whichever is the greater, and to imprisonment for five years."; and
(b) by deleting subsection (2) and replacing it with the following subsection as subsection (2)—

"(2) A person who acquires possession of or deals with any goods, or accepts the supply of any goods or services having reason to believe that Value Added Tax on the supply of the goods or services has not been, or will not be paid or that Value Added Tax has been, or will be, falsely reclaimed, commits an offence and is liable on conviction to a fine of not less than twenty times but not exceeding thirty times, the amount of Value Added Tax involved or MK1,000,000, whichever is greater, and to imprisonment for two years."

8. Section 51 of the principal Act is amended by deleting the words "K20,000" and substituting therefor the words "K500,000".

9. The principal Act is amended by inserting, immediately after section 51, the following section as section 51A—

"Obstruction, etc., of a customer

51A. A person who assaults, abuses, resists, obstructs, hinders or interferes with, a person who is buying taxable goods or services under this Act commits an offence and shall, on conviction, be liable to a fine of MK500,000, and to imprisonment for twelve months."

10. Section 57 of the principal Act is repealed and replaced with the following section—

"Power to seal off premises

57.—(1) The Commissioner General or an officer authorized in writing by the Commissioner General, may seal off, lock up premises, or in any physical manner prevent any person from entering or gaining access to the premises of any person or taxable person who, there is a reasonable ground to believe—

(a) has failed to account for Value Added Tax;
(b) has not remitted Value Added Tax due;
(c) has made a false claim for refund of Value Added Tax;
(d) has failed to procure and use the electronic fiscal device;
(e) has failed, deliberately or not, to pay penalties

B. No. 17
for offences previously committed; or

(f) despite not being a convict for offences under this Act, there is proof that he has committed various offences related to the use of an electronic fiscal device.

(2) Where the Commissioner General or an officer authorized by the Commissioner General intends to lock the premises, the Commissioner General, or the officer authorized by him, may give seven days' notice to the concerned taxpayer before sealing off or locking up premises.

(3) The Commissioner General or an officer authorized by the Commissioner General in writing shall deliver to the taxpayer the sealed off or locked up premises, or allow access to the premises in subsection (1) upon the taxpayer—

(a) accounting for the Value Added Tax;
(b) remitting the Value Added Tax due;
(c) correcting the claim for refund;
(d) procuring for use the electronic fiscal device;
(e) paying all the outstanding penalties for the offences committed; or

(f) having committed various offences, complying with or fulfilling the conditions the Commissioner General may prescribe.

(4) In the performance of his duties under this section, the Commissioner General or an officer authorized by him may seek the assistance of the police.”.

11. The principal Act is amended, in section 63, by inserting, immediately after subsection (2), the following subsection as subsection (3)—

“(3) Notwithstanding section 21(e) of the General Interpretation Act, the regulations made under this Act may create offences in respect of any contravention to the regulations, and may for any such contravention impose a fine not exceeding the maximum fine imposable under the Act and to imprisonment for up to five years.”.

OBJECTS AND REASONS

The object of this Bill is to amend the Value Added Tax Act in order to—

B. No. 17
(a) improve efficiency in the administration of Value Added Tax;
(b) bring clarity by restricting issuance of tax invoice to an electronic fiscal
device generated tax invoice;
(c) align offences created by regulations with the principal Act;
(d) adjust penalties for contravention of sections 49 and 51 of the principal
Act;
(e) introduce offences and provide for penalties for contravention of section
57; and
(f) introduce new section in order to exempt the regulations made under the
principal Act from the limitations of fines and sentences prescribed under
section 21(e) of the General Interpretation Act (Cap. 1:01 of laws of Malawi).

KALEKENI KAPHALE
Attorney General
CUSTOMS AND EXCISE (AMENDMENT) BILL, 2015

MEMORANDUM

This Bill seeks to amend the Customs and Excise Act in order to—
(a) define the word “bank lending rate”; and
(b) adjust penalties for offences under the Customs and Excise Act.
CUSTOMS AND EXCISE (AMENDMENT) BILL, 2015

ARRANGEMENT OF SECTIONS

1. Short title and commencement
2. Amendment of section 2 to Cap.42:01
3. Amendment of section 93 of the principal Act
4. Amendment of section 128 of the principal Act
5. Amendment of section 142 of the principal Act
6. Amendment of section 143 of the principal Act
7. Amendment of section 175 into the principal Act

A BILL

entitled

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, 2015, and shall come into operation on 1st July, 2015.

2. The Customs and Excise Act (hereinafter referred to as the “principal Act”) is amended, in section 2, by inserting therein immediately after the definition of the words “authorized agent” the following new definition—

"bank lending rate" means the rate of interest which the Reserve Bank of Malawi charges on its loans to commercial banks."

3. Section 93 of the principal Act is amended, by deleting subsection (2), and substituting therefor the following new subsection (2)—

B. No. 18
“(2) The interest payable under subsection (1) shall be charged on the tax that remains unpaid at the prevailing bank lending rate prevailing plus five percent per annum.”.

4. Section 128 of the principal Act is amended, by inserting, immediately after subsection (3), the following new subsections as subsections (4) and (5), as follows—

“(4) The Commissioner General may suspend, or issue an administrative penalty to, a customs agent who has violated any condition attached to his licence.

(5) The Commissioner General may revoke a licence that was issued to a customs agent where he has established that such agent has violated the condition attached to his licence.”.

5. Section 142 of the principal Act is amended, in subsection (1), by deleting paragraphs (a), (b) and (e) and substituting therefor the following new paragraphs (a), (b) and (e)—

“(a) in the case of dutiable goods which are not prohibited goods, be fined not less than three times and not more than ten times the amount of the duty, or K100,000, whichever is the greater, and shall be liable to imprisonment for three years;

(b) in the case of prohibited goods, be fined not less than three times and not more than five times the amount of the duty, or K100,000 whichever is the greater, and shall be liable to imprisonment for three years;

(e) in the case of taxable goods or taxable services, to be fined not less than three times and not more than ten times the amount of the duty, or K100,000 whichever is the greater, and shall be liable to imprisonment for three years.”.

6. Section 143 of the principal Act is amended, by deleting the words “K10,000” and substituting therefor the words “K100,000”.

7. Section 175 of the principal Act is amended, by—

(a) inserting after section designation “175.”, the subsection designation “(1)”; and

(b) inserting, immediately after subsection (1) as numbered, the following new subsection as subsection (2)—

“(2) Notwithstanding the provisions of section 21(e) of the General Interpretation Act, any regulations made under subsection (1) may impose a fine not exceeding ten times the duty payable and imprisonment for not more than three years.”.
OBJECTS AND REASONS

The object of this Bill is to amend the Customs and Excise Act in order to—

(a) define the word “bank lending rate”; and

(b) adjust penalties for committing offences under the Customs and Excise Act.

KALEKENI KAPHALE
Attorney General
MEMORANDUM

This Bill seeks to amend the Taxation Act in order to—

(a) provide clarity on the provisions used for charging interest on outstanding taxes;

(b) introduce the debt equity ratio in order to regulate terms of equity accepted in an investment and prevent over claiming of interest;

(c) amend section 15 to exempt capital gain tax on transfer of assets from an individual to a trust, and also to increase tax rate on income for a trust;

(d) provide clarity on what constitutes re-organization and qualified re-organization of a company;

(e) adjust fines and penalties for tax offences;

(f) exempt the Taxation Act and regulations from the ceiling for penalties prescribed in section 21 (e) of the General Interpretation Act; and

(g) adjust percentage of taxable income for ecclesiastical, charitable or educational institutions or trusts from twenty five per cent to thirty per cent.

B. No. 19
TAXATION (AMENDMENT) BILL, 2015

ARRANGEMENT OF SECTIONS

SECTION
1. Short title and commencement
2. Amendment of section 2 of Cap. 41:01
3. Amendment of section 15 of the principal Act
4. Amendment of section 27 of the principal Act
5. Replacement of section 70F of the principal Act
6. Amendment of section 105 of the principal Act
7. Replacement of section 127A of the principal Act
8. Insertion of new section 127B of the principal Act
9. Amendment of section 146 of the principal Act
10. Amendment of the Eleventh Schedule to the principal Act

A BILL

entitled

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, 2015, and shall come into operation on the 1st July, 2015.

2. Section 2 of the Taxation Act (hereinafter referred to as the "principal Act") is amended by—

(a) inserting, immediately after the definition of the term "assessed loss", the following new definition—

"bank rate" means the rate of interest which the Reserve Bank of Malawi charges on its loans to commercial banks;

B. No. 19
(b) inserting, immediately after the definition of the word "collector", the following new definition—

"Commercial rate of interest" means the average rate of interest at which commercial banks lend money to the public";

(c) inserting immediately after the definition of the word "company" the following new definition—

"Debt" means the total of long term or short term interest bearing loans, or non-interest bearing loans or trade credit"; and

(d) inserting immediately after the definition of the word "employer" the following new definition—

"Equity" refers to—

(a) total share capital including reserves and retained earnings or profits;

(b) for a company, its minimum paid up capital while it existed during the year; and

(c) for a trust, the corpus of the trust".

3. Section 15 of the principal Act is amended in subsection (1) by inserting, immediately after paragraph (d), the following new paragraph as paragraph (e)—

"(e) from an individual to a trust."

4. Section 27 of the Taxation Act is amended by inserting, immediately after subsection (7), the following new subsections as subsections (8) and (9)—

"(8) Any interest not charged on a loan by a lender to another person shall be deemed as income to have accrued from a source within Malawi.

(9) The Commissioner General shall determine the amount of interest forgone in subsection (8) by using a prevailing commercial rate per annum.".

5. Section 70F of the principal Act is repealed and replaced with the following new section 70F—

70F—(1) For the purposes of this Act—

qualified reorganization" means a reorganization of a company or companies resident in Malawi pursuant to a written plan undertaken for valid business purposes and which does not have as its purpose, tax avoidance by any person who is a party to the reorganization;

"reorganization" means—

B. No. 19
(a) a mere change in a company's form;
(b) a recapitalization of a company;
(c) a combination of two or more companies into a single company;
(d) a division of a company into two or more companies;
(e) the acquisition of at least eighty per cent of the equity interests in a company in exchange solely for equity interests in the acquiring company; or
(f) the acquisition of at least eighty per cent, by value, of the assets of a company in exchange solely for equity interests in the acquiring company.”

(2) In determining whether a transaction is a qualified reorganization or not, the Commissioner General shall disregard the form of the transaction where the form is inconsistent with the substance of the transaction.

(3) In the case of a qualified reorganization of a company, as defined in subsection (1), the basis of an asset so acquired shall be determined by reference to the adjusted basis of the asset immediately before the reorganization.

(4) Except as otherwise provided in this Act, the acquiring company shall take into account the tax attributes of the acquired entity.

(5) Distributions of equity shares in a company, which is a party to a qualified reorganization, to any shareholder of any company, which is also a party to the same qualified reorganization, shall not be taxable to the receiving shareholder, but any other distributions of cash or other property shall be taxed to the recipient as consideration received in a sale or exchange.

(6) Any reorganization which is not a qualified reorganization shall be treated as a sale of the company and of all of its assets.

(7) For the purposes of this Act,

6. Section 105 is amended by deleting subsection (6) and replacing it with the following new subsection as subsection (6)—

“(6) The interest referred to in subsection (5) shall be charged on the outstanding amount of tax at the prevailing bank lending rate plus 5 per cent per annum:

B. No. 19
Provided the Commissioner General may, on good cause shown, make such arrangements as he considers appropriate with any taxpayer for payment of tax, and may remit the whole or part of the interest due under subsections (5) and (6), or may decide that no interest shall be charged.”.

7. Section 127A of the principal Act is repealed and replaced with the following new section as section 127A—

**127A.** (1) The liability of a taxpayer, on the basis of which a deduction arises for that taxpayer, shall be reduced in working out the taxpayer's deductions to an arm's length amount where the deduction arises under an arrangement and the amount of the liability is more than it would have been had all parties to the arrangement been dealing with each other on an arm's length basis in relation to the arrangement and the liability under it.

(2) The receipt, accrual or value to a taxpayer, on the basis of which an amount of income arises for that taxpayer, shall be increased in working out the taxpayer's income to an arm's length amount where the receipt, accrual or value arises under an arrangement, and the amount of the receipt, accrual or value is less than it would have been had all parties to the arrangement been dealing with each other on an arm's length basis in relation to the arrangement and the receipt, accrual or value under it.

(3) An arrangement includes any understanding or action, whether contractual or not, whether unilateral or not, and whether voluntary or not, for all parties, and includes action by only one party.

(4) Parties to an arrangement include each person who brings about the arrangement, or takes an action under it whether directly or indirectly, or who effects the terms of the arrangement whether directly or indirectly, and whether he effects the terms of the arrangement or not.

(5) Obligations of a taxpayer to withhold or to remit taxes, other than taxes in relation to the taxpayer's taxable income after the adjustments required by this section, arising from a payment by or to the taxpayer are not affected by this section.

(6) Liabilities, receipts, accruals and values arising from financing arrangements are subject to this section.
(7) The Commissioner General may require any party to an arrangement to provide information for the purpose of ascertaining whether the terms of the arrangement are other than they would have been had all parties been dealing with each other at arm's length in relation to those terms, or for the purpose of ascertaining what the arm's length amount would have been.

(8) Where a party fails to provide the information required under subsection (7) within a period as the Commissioner General may prescribe, information or evidence from that party about the arrangement shall not be admissible.”.

8. The principal Act is amended by inserting, immediately after section 127A, the following new section as section 127B—

>“(1) Where a person or enterprise incurs or accumulates a debt due from a related or connected party through direct or indirect financing or supply of goods or services, the ratio of debt to equity shall be as prescribed by the Minister by order published in the Gazette.

>“(2) Where the ratio of the debt to equity exceeds the one prescribed by the Minister, interest in excess of the proportion of debt to equity shall not be allowed as a deduction notwithstanding the provisions of section 28.”.

9. Section 146 of principal Act is amended by—

>“(a) inserting after section designation “146.”, the subsection designation “(1)”;

>“(b) inserting the following new subsection (2) as follows—

>“(2) Notwithstanding the provisions of section 21 (e) of the General Interpretation Act, the regulations made under this Act may create offences in respect of any contraventions to the regulations and may for any such contravention impose a fine of up to the maximum fixed amount or proportional amount imposable under the Act and to imprisonment for up to three years.”.

10. The Eleventh Schedule to the principal Act is amended by deleting paragraph (b) and substituting therefor the following new paragraph as paragraph (b)—
"(b) in the case of ecclesiastical, charitable or educational institutions or trusts, at thirty per cent of the taxable income."

OBJECTS AND REASONS

The object of this Bill is to amend the Taxation Act in order to provide clarity to the provisions; introduce the debt equity ratio in order to regulate terms of equity accepted in an investment and prevent over claiming of interest; provide clarity on what constitutes re-organization and qualified re-organization of a company; adjust fines and penalties for tax offences; and adjust percentage of taxable income for ecclesiastical, charitable or educational institutions or trusts from twenty five per cent to thirty per cent.

KALEKENI KAPHALE
Attorney General