

CHAPTER 39:07

MALAWI REVENUE AUTHORITY

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14 of 1998

26 of 2004

G.N. 4/2000

20/2001

24/2002

21/2007

An Act to provide for the establishment of the Malawi Revenue Authority as a main body responsible for the assessment and collection, on behalf of the Government, of specified revenue; for the administration and enforcement of laws relating to such revenue; and to provide for matters incidental thereto or connected therewith

[15TH FEBRUARY 2000]

PART I

PRELIMINARY

**1. Short title**

This Act may be cited as the Malawi Revenue Authority Act.

**2. Interpretation**

In this Act, unless the context otherwise requires—

“Authority” means the Malawi Revenue Authority established under section 3;

“Board” means the Board of the Authority established under section 9;

“Chairman” means the Chairman of the Board designated as such under section 9 (2);

“Commissioner-General” means the Commissioner-General of the Authority appointed under section 17 (1);

“Deputy Commissioner-General” means the Deputy Commissioner-General of the Authority appointed under section 17 (11);

“member” means a member of the Board;

“revenue” means the taxes, duties, fees, fines or other monies imposed by or collected under the written laws, or the specified provisions of the written laws, set out in the Schedule.

## PART II

### ESTABLISHMENT OF THE MALAWI REVENUE AUTHORITY

#### **3. Establishment of the Authority**

There is hereby established a body to be known as the Malawi Revenue Authority (in this Act otherwise referred to as the “Authority”) which shall be—

- (a) a body corporate with perpetual succession and a common seal;
- (b) in its corporate name, capable of suing and being sued;
- (c) capable of holding, purchasing and otherwise acquiring and disposing of any property, moveable and immoveable, for purposes of, or in the course of carrying out its functions; and
- (d) doing or performing all such acts and things as bodies corporate may by law do or perform.

#### **4. Functions of the Authority**

(1) The Authority shall be an agency of the Government responsible for the assessment, collection and receipt of specified revenue, and shall be accountable to and operate under the general supervision of the Minister.

(2) Without prejudice to the generality of the foregoing, the functions of the Authority shall be—

- (a) to administer and enforce the laws or the specified provisions of the laws set out in the Schedule;
- (b) to promote voluntary tax compliance to the highest degree possible;
- (c) to take such measures as may be required to improve the standards of service given to taxpayers with a view to improving efficiency and effectiveness and maximizing revenue collection;
- (d) to take such measures as may be required to counteract tax fraud and other forms of fiscal evasion;
- (e) to advise the Minister on matters of revenue policy and matters relating to the administration and collection of revenue under the laws listed in the Schedule; and
- (f) to perform such other functions in relation to revenue as the Minister may direct.

(3) The Minister may, by notice published in the Gazette, amend the Schedule.

#### **5. Powers of the Authority**

The Authority shall, in the discharge of its functions, have power—

- (a) to study revenue laws and identify amendments which may be made to any law for the purpose of improving the administration of, and compliance with, revenue laws;
- (b) to study the administrative costs, compliance costs and the operational impact of intended legislative changes, and to advise the Minister accordingly;
- (c) to collect and process statistics needed to provide forecasts of revenue receipts and the effect on yield of any proposals for changes in revenue laws, and to advise the Minister accordingly; and
- (d) to take such other measures as the Authority deems necessary or desirable for the achievement of the purposes or provisions of this Act.

**6. Taxpayer identification and exchange of information**

(1) The Authority shall, with the approval of the Minister, by notice in the Gazette, provide for the establishment, maintenance, and application of systems for the convenient and effectual identification of taxpayers for the purpose of co-ordinated administration of the revenue laws of Malawi.

(2) Without prejudice to subsection (1), it shall be lawful for officers in the revenue departments of the Authority to exchange or furnish each other with information or documents concerning any taxpayer and for the purposes of the discharge of functions under this Act.

**7. Duty of the Minister to determine fiscal policies, etc.**

Notwithstanding the provisions of this Part, it shall be the duty of the Minister—

- (a) subject to any written law, to determine and ensure the effective application of the fiscal policies of Malawi; and
- (b) to ensure the effective co-ordination of the policies for the collection and preservation of revenue accounts.

**PART III**

**ESTABLISHMENT OF THE BOARD OF THE AUTHORITY**

**8. Establishment of the Board**

(1) There is hereby established a Board of the Authority (in this Act otherwise referred to as the "Board") which shall be the governing body of the Authority and which shall consist of—

- (a) the Secretary to the Treasury;

- (b) the Secretary for Commerce and Industry;
- (c) the Accountant General;
- (d) the Governor of the Reserve Bank, who shall be a member of the Board notwithstanding section 12 (4) of the Reserve Bank of Malawi Act; Cap. 44:02
- (e) one member nominated by the Society of Accountants of Malawi, and appointed by the Minister;
- (f) one member nominated by the Malawi Chamber of Commerce and Industry, and appointed by the Minister; and
- (g) two other members appointed by the Minister from private sector, and who shall be appointed on the basis of their professional knowledge and experience in finance, commerce, legal or economic affairs.

(2) Every member appointed under subsection (1) (e) (f) and (g) shall be a person of high integrity and shall have no record of tax evasion.

(3) The Minister shall designate the Chairman of the Board from amongst the members of the Board and the members of the Board shall elect a Vice Chairman from amongst their number.

(4) An ex officio member of the Board or any person employed in the public service shall not be eligible to be designated Chairman or elected Vice Chairman of the Board, but shall have the right to vote on any matter at the meetings of the Board.

(5) Every member shall personally attend meetings of the Board, and where a member is unable to attend any meeting of the Board he may request that his apologies for failure to attend be registered.

(6) A member shall not, by virtue only of his appointment to the Board, be deemed to be an officer in the public service.

(7) A member, other than an ex officio member, shall hold office for a period of three years from the date of his appointment and shall be eligible for reappointment at the expiry of that period.

(8) The names of all members as first constituted, and every change in the membership thereof, shall be published in the Gazette.

## **9. Vacation of members from office**

(1) The office of a member, other than an ex officio member, shall be vacated—

- (a) upon the expiry of the period of his appointment;
- (b) upon his death;

- (c) if he is adjudged a bankrupt;
- (d) if he is sentenced for an offence—
  - (i) under section 11 (2);
  - (ii) against any written law to a term of imprisonment of, or exceeding six months;
- (e) if he is convicted of an offence involving fraud or dishonesty;
- (f) if he is absent, without the permission of the Board, from three successive meetings of the Board of which he has had notice;
- (g) upon notice in writing of his intention to resign his office;
- (h) if he becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member;
- (i) if any circumstances arise that, if he were not a member, would cause that member to be disqualified for appointment as a member; and
- (j) if, on the recommendation of the majority of members, the Minister so directs.

(2) Whenever there is a vacancy in the office of a member, the Minister shall, by notice published in the Gazette, appoint—

- (a) in the case of a member referred to in section 8 (1) (e) and (f), another person, nominated by the authority or institution which nominated the original member, to fill the vacancy; and
- (b) in the case of a member referred to in section 8 (1) (g) appoint another person to fill the vacancy.

(3) Subject to section 10 (4), the Board may act notwithstanding any vacancy in the membership of the Board.

## **10. Meetings of the Board**

(1) The Board shall meet at such place or places, and at such time or times, as the Chairman may determine, and shall meet at least once in every three months.

(2) An ordinary meeting of the Board shall be convened by at least fourteen days written notice to the members.

(3) The Chairman may, at his discretion, and shall at the written request of four or more members of the Board and within seven days of such request, cause an extraordinary meeting of the Board to be summoned at such place and time as he may appoint.

(4) The Chairman, or in his absence, the Vice Chairman shall preside at meetings of the Board, and the quorum at any meeting of the Board shall be four members.

(5) In the absence of both the Chairman and Vice Chairman, the members present and forming a quorum shall elect one of their number to preside over a meeting of the Board, and the member so elected shall exercise all the powers and perform all the duties of the Chairman.

(6) Subject to this Act, the Board may make standing orders for the regulation of its proceedings and business or the proceedings and business of any of its committees and may vary, suspend or revoke any such standing orders.

(7) Minutes of each meeting of the Board or a committee of the Board shall be kept by the secretary and shall be confirmed at the succeeding meeting.

(8) The decision of the Board at any meeting on any matter shall be that of the majority of the members present and voting, and at all meetings the person presiding shall have, in the event of an equality of votes, a casting vote in addition to his deliberative vote.

#### **11. Disclosure of interest**

(1) If a member acquires any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the Board at which the matter is the subject of consideration by the Board, he shall, as soon as practicable after the commencement of the meeting, disclose the fact to the Board, and shall not take part in the consideration or discussion of, or vote on any question with respect to, the matter.

(2) Any member who contravenes subsection (1) shall be guilty of an offence and liable to imprisonment for twelve months and a fine of K10,000.

#### **12. Invited persons**

(1) The Board may, in its discretion, at any time and for any length of period, invite any person to attend any meeting of the Board for the purpose of assisting or advising the Board in respect of any matter under consideration by the Board.

(2) Any person invited pursuant to subsection (1) may take part in the deliberations of the Board at any meeting he attends, but shall not be entitled to vote on any matter at any meeting of the Board.

#### **13. Committee of the Board**

(1) For the better carrying into effect of the purposes for which the Board is established, the Board may establish such number of committees as the Board shall deem appropriate to perform such functions and responsibilities as the Board shall determine.

(2) The Board shall appoint the Chairman of each committee from amongst the members.

(3) The provisions of section 10 relating to the meetings of the Board shall apply mutatis mutandis to the meetings of any committee.

#### **14. Remuneration and expenses of members**

(1) Members shall be paid from the funds of the Authority such allowances as the Board may, subject to the approval of the Minister, determine.

(2) The Board may make provision for the reimbursement of any reasonable expenses incurred by a member or a member of a committee of the Board in connexion with the business of the Board or the committee.

#### **15. Powers of the Board**

(1) In the discharge of its functions under this Act, the Board may—

(a) direct the Commissioner-General to furnish it with any information, reports or other documents which the Board considers necessary for the performance of its functions;

(b) give instructions and orders to the Commissioner-General in connexion with the management, performance and operational policies of the revenue departments of the Authority;

(c) formulate and devise a system for securing, through internal audit systems, and verifying the correct processing of various tax cases, and in accordance with the law the relevant directions of the Minister; and

(d) on the recommendation of the Commissioner-General, approve such organizational structures as the Commissioner-General may consider necessary for the discharge of the functions of the Authority.

(2) Notwithstanding any provision of this Act to the contrary, the Board shall have no power to intervene in the determination of any revenue assessment or revenue liability of any taxpayer.

#### **16. Exemptions, etc.**

(1) The Board shall recommend to the Minister—

(a) criteria or factors by reference to which any exemption, mitigation, deferment or remission of any revenue may be granted; and

(b) procedures to be followed in granting any exemption, mitigation, deferment or remission of revenue,

and the Minister shall by Order published in the Gazette specify the criteria or factors and the procedures so recommended.

(2) The Minister may, by Order published in the Gazette, exempt, mitigate, defer or remit any revenue in accordance with the criteria published pursuant to subsection (1).

(3) The Commissioner-General shall submit to the Board quarterly reports on the total amount of revenue remitted or foregone in respect of each of the criteria specified under subsection (1).

(4) The Board shall within three months of the end of the financial year of the Authority submit to the Minister a report setting out the total amount remitted or foregone in pursuant to subsection (2) and the report shall be published in the Gazette.

#### PART IV

#### ADMINISTRATION OF THE AUTHORITY

### **17. Appointment of Commissioner-General and Deputy Commissioner-General**

(1) There shall be a Commissioner-General of the Authority (in this Act otherwise referred to as "Commissioner-General") who shall be appointed by the Board on such terms and conditions as the Board shall determine.

(2) The appointment and terms and conditions of service of the Commission-General shall be subject to approval by the Minister.

(3) The Commissioner-General shall be the chief executive officer of the Authority and, subject to the general supervision and control of the Board, shall be responsible for—

- (a) the day to day operations of the Authority;
- (b) the management of the funds, property and business of the Authority;
- (c) the administration, organization and control of the other officers and staff of the Authority; and
- (d) the effective administration and implementation of the provisions of this Act.

(4) The Commissioner-General shall, subject to subsection (5), hold office for a period of four years and shall be eligible for reappointment for one additional term of four years.

(5) The Board may, subject to the approval of the Minister, terminate the appointment of the Commissioner-General for—

- (a) misconduct or misbehaviour in terms of the code of conduct of the Authority; or
- (b) inability, incapacity or incompetence to perform the duties of his office.

(6) The Commissioner-General shall devote his full time to the duties of his office and shall not, without the prior approval of the Board, hold any office of trust or profit, other than that of Commissioner-General, or engage in any occupation for reward outside the office of Commissioner-General.

(7) The Commissioner-General may, subject to this Act and to any general or specific directions of the Board, delegate any of his functions in relation to a revenue law to a revenue commissioner or any other commissioner or officer.

(8) The Commissioner-General or, in his absence such officer of the Authority as the Commissioner-General may designate in writing, shall attend meetings of the Board and any committee of the Board but shall not vote on any matter:

Provided that the person presiding at any meeting may, for good cause, require the Commissioner-General or such other officer to withdraw from the meeting.

(9) The Commissioner-General shall, on the instructions of the Chairman, convene meetings of the Board; and an officer of the Authority duly designated in writing by the Commissioner-General shall be secretary to the Board.

(10) An officer of the Authority duly designated in writing by the Commissioner-General shall be secretary to any committee of the Board, and shall, on the instructions of the chairman of the committee convene meetings of the committee.

(11) There shall be a Deputy Commissioner-General of the Authority who shall—

(a) be appointed by the Board on such terms and conditions as the Board shall determine; and

(b) perform such functions and duties as may be assigned to him by the Commissioner-General from time to time.

(12) The appointment and terms and conditions of service of the Deputy Commissioner-General shall be subject to approval by the Minister.

(13) The Deputy Commissioner-General shall—

(a) hold office for a period of four years, and shall be eligible for reappointment for one additional term of four years; and

(b) be eligible to be appointed Commissioner-General.

(14) Subsections (5) and (6) shall apply mutatis mutandis to the Deputy Commissioner-General.

## **18. Appointment of revenue commissioners, etc.**

(1) The Board may, on the recommendation of the Commissioner-General, and on such terms and conditions as the Board may determine, appoint on the basis of merit, such number and grades of revenue commissioners or other commissioners in relation to any revenue law as the Board may think necessary or desirable for the efficient and effective discharge of the business and purposes of the Authority.

(2) The Commissioner-General may, on such terms and conditions as the Board may determine, appoint other officers and staff of the Authority subordinate to the Commissioner-General as may be required for the performance of the functions of the Authority.

## PART V

### FINANCIAL PROVISIONS

#### **19. Revenue to be paid into the Consolidated Fund**

All revenue collected by, or due and payable to the Authority under this Act shall be paid into the Consolidated Fund.

#### **20. Funds of the Authority**

(1) The funds of the Authority shall consist of— G.N./ 20/2001, 21/2007

- (a) 3.0 per cent of the revenue estimated in the financial estimates for each financial year to be collected by the Authority under this Act;
- (c) 5.0 per cent of the revenue actually collected in each successive three-month period in the financial year in excess of the amount estimated to be collected during that period:

Provided that the amount payable under this paragraph and paragraph (a) shall not exceed 3.5 per cent of the actual amount collected in respect of any three-month period;

- (c) such moneys as may be received by the Authority under subsection (5); and
- (d) such moneys as may otherwise vest in or accrue to the Authority.

(2) The funds of the Authority—

- (a) specified in subsection (1) (a) shall be payable to the Authority in monthly installments on or before the beginning of each month; and
- (b) specified in subsection (1) (b) shall be payable to the Authority within one month after the end of the three-month period.

(3) The Minister may, on the recommendation of the Board, by order published in the Gazette, revise the percentages of revenue referred to in subsections (1) (a) and (b).

(4) Any funds received by the Authority in respect of a financial year which are not expended by the end of that financial year shall be placed in a reserve fund to be expended subject to the budget of the Authority for the ensuing financial year.

(5) The Authority may—

- (a) accept money by way of grants or donations from any source in or outside Malawi;
  - (b) subject to the approval of the Minister, raise by way of loans from any source in or outside Malawi, such money as it may require for the discharge of its functions; and
  - (c) charge and collect fees in respect of programmes, publications, seminars, documents, consultancy services and other services provided by the Authority.
- (6) The Authority may, subject to the approval of the Minister, invest in such manner as it thinks fit such of its funds as it does not immediately require for the performance of its functions.

## **21. Books and other records of accounts and audit**

- (1) The Authority shall cause to be kept proper books of accounts and other records relating to its accounts.
- (2) The accounts of the Authority shall—
- (a) be audited annually by independent auditors appointed by the Board and approved by the Minister; and
  - (b) be examined by the Auditor General before being presented to the Minister in accordance with section 22.

## **22. Annual reports**

- (1) The Authority shall as soon as practicable, but not later than three months after the expiry of each financial year, submit to the Minister a report concerning its activities during that financial year.
- (2) The report referred to in subsection (1) shall be in such form as the Minister shall approve, and shall include information on the financial affairs of the Authority and there shall be appended to the report—
- (a) an audited balance sheet;
  - (b) an audited statement of income and expenditure;
  - (c) the total amount of revenue remitted or foregone pursuant to section 16 (2); and
  - (d) such other information as the Authority may consider appropriate or as the Minister may direct.
- (3) The Minister shall, during the meeting of the National Assembly next following receipt by him of the report referred to in subsection (1), lay the report before the National Assembly, and the Authority may publish the report for sale to the public.

## **23. Financial Year**

The financial year of the Authority shall be a period of twelve months commencing on 1st July in each year, and ending on 30th June in the following year, or on such other dates the Minister may specify by Order published in the Gazette:

Provided that the first financial year of the Authority may be such shorter or longer period than twelve months as the Minister shall determine but being not less than six months nor more than eighteen months.

## PART VI

### MISCELLANEOUS PROVISIONS

#### **24. Confidentiality**

(1) Every member of the Board, revenue commissioner or any other person employed by the Authority in the carrying out of the provisions of this Act, shall regard and deal with as secret to any unauthorized person all documents and information relating to the income, expenditure or other financial dealings or status of any taxpayer or other person involved in any operations in furtherance of the purposes of this Act, and all confidential instructions in respect of the administration of this Act which may come into his possession or to his knowledge in the course of his duties.

(2) The provisions of the Taxation Act relating to the preservation of secrecy by officers and other persons discharging functions under that Act shall apply mutatis mutandis to persons discharging functions under this Act. Cap. 41:01

#### **25. Exemption from personal liability**

No member of the Board, any committee of the Board, or an employee of the Authority shall, in his personal capacity, be liable in civil or criminal proceedings in respect of any act or omission done in good faith in the performance of his duties or functions under this Act.

26. Regulations 26 of 2004(1) The Minister may, on the recommendation of the Board, make regulations for the carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations—

- (a) respecting the terms and conditions of service, including pensions, gratuities and other retirement benefits, of all members of staff of the Authority;
- (b) prescribing the procedure for the appointment of all members of the staff of the Authority;
- (c) prescribing the code of conduct and discipline of members of staff of the Authority;
- (d) respecting the administration and management of the funds of the Authority;

- (e) respecting the performance targets of the Authority; and
- (f) respecting the offer or order of such rewards as he may think fit to be paid to any officer or other person for services rendered in connexion with the detection of any offence against the revenue laws or in connexion with any seizure under the customs laws.

**27. Vesting of assets, liabilities, etc.**

(1) All property, except any such property as the Minister may determine, by notice published in the Gazette, which immediately before the commencement of this Act was vested in the Government for the use of the Department of Customs and Excise and the Department of Income Tax for purposes of the written laws set out in the Schedule, shall, on the commencement of this Act, and without further assurance, vest in the Authority, subject to all interests, liabilities, charges, obligations and trusts affecting such property.

(2) Except as otherwise provided in subsection (1) in relation to property, all contracts, debts, obligations and liabilities of the Government attributable to the Department of Customs and Excise and the Department of Income Tax before the commencement of this Act shall remain vested in the Government and may be enforced by or against the Government.

(3) All legal proceedings and claims which before the commencement of this Act are pending in respect of revenue to which the written laws set out in the Schedule apply shall be continued or enforced by or against the Authority in the same manner as they would have been continued or enforced before the commencement of this Act.

(4) Unless the Board otherwise determines, all persons who before the commencement of this Act are employed by the Government for the purposes of the written laws specified in the Schedule shall, on the commencement of this Act, be deemed to be on secondment to the Authority until they are employed in the service of the Authority in accordance with this Act or their secondment with the Authority otherwise ceases in accordance with the terms of the secondment.

**28. Construction and modification of other written laws**

On the coming into force of this Act— G.N. 24/2002

(a) all references to the Controller of Customs and Excise or the Commissioner of Taxes in any written law specified in the Schedule or any other law shall be construed as references to the Commissioner-General;

(b) any reference to Customs and Excise Department or Income Tax Department in the written laws specified in the Schedule or in any other law be deemed to be reference to the Authority;

(c) except as provided in paragraph (a) any reference to an officer of the Customs and Excise Department or Income Tax Department howsoever designated in the written laws specified in the Schedule or in any other law shall be deemed to be reference to such officer of the Authority.

SCHEDULE ss. 2 and 4

WRITTEN LAWS RELATING TO REVENUE G.N. 24/2002

1. Customs and Excise Act
2. Taxation Act
3. Value Added Tax Act