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**CHAPTER 41:01  
TAXATION****An Act to provide for the taxation of incomes and for purposes  
ancillary thereto**

46 of 1963  
12 of 1964  
(N)\*  
19 of 1964  
(N)\*  
37 of 1964  
(N)  
10 of 1964  
(M)  
5 of 1965  
33 of 1965  
11 of 1966  
7 of 1968†  
18 of 1898‡  
14 of 1969§  
16 of 1969  
19 of 1969||  
27 of 1970¶  
14 of 1971¶B  
6 of 1972  
25 of 1972  
15 of 1973  
10 of 1975  
1 of 1976  
5 of 1977  
4 of 1981  
4 of 1982  
10 of 1983  
1 of 1985  
12 of 1987  
20 of 1987  
4 of 1988  
1 of 1990  
1 of 1991  
7 of 1992  
10 of 1993  
2 of 1994  
1 of 1995  
2 of 1996  
5 of 1997  
23 of 1997  
8 of 1998  
18 of 1998  
G.N.  
219/1964N  
137/1966  
194/1967

[1st JANUARY, 1964]

**PART I**  
**PRELIMINARY**

1. This Act may be cited as the Taxation Act.
2. In this Act, unless inconsistent with the context-
- “adjusted basis”, in relation ‘to an asset, means the basis of the asset-
- (a) in the case of corporate shares, other than additional shares, increased by the amount of any contributions to the capital of the corporation made by the taxpayer who owns such shares;
- (b) in any other case, reduced by the amount of the initial allowance, investment allowance or annual allowance given to the taxpayer in respect of the asset, or increased by the cost of improvements and additions, excluding maintenance or repair costs, made to the asset by the taxpayer;
- “agent” includes any partnership, company or any other body of persons, corporate or unincorporate, when acting as an agent;
- “amount realized”-
- in the case of disposal of an asset by sale for cash, means the cash received or contracted to be received;
- in the case of an exchange of the asset for other property, means the open market price of such other property received on the date of exchange;
- in the case of an asset which is subject to a debt which is forgiven or assumed by another upon disposal of the asset, includes the amount of such debt; and
- in the case of an asset disposed of without any consideration, including disposal by gift, bequest or as a corporate distribution with respect to shares, means the open market price of the asset so disposed of on the date of disposal.
- “assessable income” means assessable income as defined in section 11;
- “assessed loss” means any amount by which the amounts allowed to be deducted under Part III, Division 2, and Part IV, from assessable income (as defined in Part III, Division 1) of any person exceed such income;
- “basis”, in relation to an asset, means (except as otherwise specified in this Act-
- in the case of an asset purchased or constructed by the taxpayer, the cost of that asset;
- (b) in the case of any other asset, the open market price of the asset on the date of its acquisition by the taxpayer;

**Short title****Interpretation of certain general terms**

12 of 1987

1 of 1990

1 of 1991

7 of 1992

10 of 1993

3 of 1994

6 of 2005

2 of 2007

Provided that the basis of any capital asset held by the taxpayer, other than an asset used in trade or business and in respect of which an initial allowance, investment allowance or annual allowance has been granted under this Act, shall-

be equal to its basis as determined in paragraph (a) or (b) adjusted by the consumer price index, published by the National Statistical Office at the date of disposal of the asset and applicable to the year in which the purchase or the construction of the asset was effected or completed, as the case may be; or

where the taxpayer so opts, be equal to the valuation value as of April 1, 1992, which was submitted to and accepted by the Commissioner by 30<sup>th</sup> September, 1995, adjusted by the Consumer Price Index published by the National Statistical Office at the date of disposal of the asset.”

“beneficiary with a vested right”, in relation to income the subject of a trust created by a trust instrument, means a person named or identified in the trust instrument who has at the time the income is derived an immediate certain right to the present or future enjoyment of the income;

“capital asset” means all property held by the taxpayer, whether or not connected with a trade or business, excluding-

stock in trade and property held primarily for sale to customers in the course of business, including timber and crops or other plants grown primarily for sale; and

7 of 1992

\*Ordinances No. 12 of 1964(N) and No. 19 of 1964(N) came into operation on 1st January, 1964 (see Ordinance No. 5 of 1965 s.18)

†The amendments of this Act sections 17, 26, 39 and 70, in the First Schedule and in the Eleventh Schedule have effect in respect of income tax for the year of assessment ending 31st March, 1968, and subsequent years of assessments. The amendments of this Act in the Appendix to the Eleventh Schedule have effect in respect of income tax for the year of assessment ending 31st March, 1969, and subsequent years of assessment.

±The amendments of this Act in section 16 and the Fifth Schedule have effect in respect of income tax for the year of assessment commencing 1st April, 1965, and subsequent years of assessment. The amendment of this Act, in section 124 and in the First Schedule have effect in respect on income tax for the year of assessment commencing 1st April, 1968, and subsequent years of assessment.

§The amendment to section 109 of this Act is deemed to have come into operation on the 1st of April, 1963. The amendments made by the Act to section 105 and the First Schedule have effect for the year of assessment commencing on the 1st of April, 1967, and all subsequent years. The provisions of the new section 29 added by the Act apply for the year of assessment commencing on the 1st of April, 1969. The amendment by section 22 (the repeal and re-enactment of Part X- Appeals-is effective from 1st May, 1969). Other amendments effected by the Act

apply to the year of assessment commencing on the 1st of April, 1969, and subsequent years.

The amendment effected by this Act to Sections 26, 28, 39, 72, 73 and to the Eleventh Schedule apply for the year of assessment commencing on the 1st of April, 1970, and all subsequent years. The amendment to paragraph 3 of the Third Schedule is deemed to have applied for the year of assessment commencing on the 1st of April, 1968, and to all subsequent years. The amendment to paragraph 2 of the Fifth Schedule is deemed to have applied to the year of assessment commencing on the 1st April, 1963, and for all subsequent years. The amendments to the Second Schedule and to paragraph 1(c) and 1(d) of the Eleventh Schedule apply for the year of assessment commencing on the 1st of April, 1969, and all subsequent years. The amendment to section 61 of the Principal Act, paragraph (b) of the First Schedule, subparagraph (1)(b) of the Eleventh Schedule, and the insertion of a new section 62, and the proviso to subparagraph (ix) of the First Schedule are effective from 1st August, 1969.

¶The amendments effected by this Act to section 56 and the First Schedule apply for the year of assessment commencing on the 1st of April, 1970, and all subsequent years, save that the amendment which inserted paragraph (ii), immediately following paragraph (i) is deemed to have come into operation on the 1st of July, 1966.

receivable accounts or notes acquired in the course of business in exchange for services rendered or property described in paragraph (a);

“capital gain” means the excess of the amount realized on disposal of a capital asset over its adjusted basis or, where there is no adjusted basis, over its basis;

“capital loss” means the excess of the adjusted basis, or where there is no adjusted basis the excess of the basis, of a capital asset over the amount realized on disposal of the capital asset;

“child” includes a step-child, a lawfully, adopted child, and a child for whom by custom an individual is responsible;

“collector” means a person other than a tax authority to whom the Commissioner has delegated any of the functions conferred or imposed upon then the Commissioner by this Act;

“company” includes any association wheresoever incorporated;

7 of 1992

“disposal”, in relation to an asset, means the transfer of ownership of the asset by any means whatsoever, including, but not limited to, sale, gift, bequest, distribution or exchange;

“dividend”, means any distribution, whether in cash or in property, by a company to a shareholder thereof with respect to the shareholder’s interest in the company, other than distributions in complete liquidation of the company, and for purposes of this Act the existence of a dividend shall be determined without regard to whether or not the company has current or accumulated profits:

“employee” or “employed person” means any person who has entered into or works under a contract or agreement, expressed or implied, oral or written, for any work or labour whatsoever;

“employer” includes any person or public authority who pays a wage or salary to an employee in Malawi;

“foreign currency” means a currency other than the Malawi currency;  
“foreign currency asset” means an asset denominated in, or the amount of which is otherwise determined by reference to, a foreign currency and includes the notes and coins of such foreign currency;

“foreign currency liability” means a liability denominated in, or the amount of which is otherwise determined by reference to, a foreign currency and includes the notes and coins of such foreign currency;

“foreign exchange gain” or “foreign exchange loss” means the amount determined in accordance with section 26;

“fringe benefit” means any asset, service or other benefit in kind provided by or on behalf of an employer to an employee, if such benefit includes an element of personal benefit to the employee; and

“fringe benefits tax” means tax payable by employers as provided in section 94A.

“functions” includes powers and duties;

“income” means income as defined in section 11;

“income tax” means tax payable under this Act;

“income the subject of a trust to which no beneficiary is entitled” means income the subject of a trust created by a trust instrument which-

is not paid to or applied to the benefit of-

a beneficiary with a vested right; or

a person who would but for-

the conferment on the trustee by the trust instrument of a discretion so to pay or apply the income; and

the happening of some event stipulated in the trust instrument other than the exercise of that discretion, be a beneficiary with a vested right; or

is not income deemed by virtue of section 72 to have been received or have accrued to or in favour of the person by whom the trust instrument was made; or

is not accumulated in terms of the trust instrument for the future benefit of a beneficiary with a vested right;

“pension fund” means-

a superannuation; pension, widows’ or orphans’ fund established by any enactment whatsoever, whether in force in Malawi or elsewhere;

a scheme or fund, other than a fund defined in paragraph (a), which the Commissioner approves or is deemed to have approved as a pension fund under section 65;

“insolvency” and “bankruptcy” shall be construed in accordance with any enactment in force in Malawi relating to insolvency and bankruptcy and as including an assignment to or arrangement or composition with creditors made in terms of any enactment in force in Malawi relating to those matters and “insolvent” and “bankrupt” shall be construed accordingly;

“involuntary conversion”, in relation to an asset, means the conversion of an asset by whatever means which, in the opinion of the Commissioner, is beyond the control of the taxpayer, including, but not limited to, destruction in whole or in part, theft, seizure, requisition, condemnation, or threat or imminence of destruction;

“Malawi currency” has the meaning assigned thereto in the Reserve Bank of Malawi Act; **Cap. 44:02**

“married woman” means a woman married by law or by custom who is not a woman referred to in paragraphs (c) and (d) of the definition of “spouse”;

“mineral” includes any valuable crystalline or earthly substance forming part of or found within the earth and produced or deposited there by natural agencies but does not include any clay (other than fire-clay), gravel, sand, stone (other than limestone) or other like substance ordinarily won by the method of surface-working known as quarrying;

“mining operations” means-

any operations for the purpose of winning a mineral from the earth;

(b) any operations for the purpose of winning a mineral from any substance or constituent of the earth which are carried on in conjunction with operations referred to in paragraph (a) by the person carrying on those operations; and

(c) such operations for the purpose of winning a mineral from any substance or constituent of the earth which are not carried on in conjunction with operations referred to in paragraph (a) or by a person carrying on those operations as

- the Commissioner may determine to be mining operations for the purposes of this Act; and “mine”, whether used as a noun or a verb, shall be construed accordingly;
- “minor child” means a child who is under twenty-one years of age and is unmarried;
- “open market price”, in relation to an asset, means the price which the asset would fetch if sold on the open market at the time of the event in question;
- “parent” includes a person liable by law or by custom to maintain a child;
- 16 of 1954(F) “period of assessment” means any period in respect of which any tax leviable under this Act is chargeable and includes for the purposes of the charging, levying and collection of tax in respect of any period ended on or before the 31st day of March, 1963, any period in respect of which tax was chargeable under the Income Tax Act, of the former Federation of Rhodesia and Nyasaland;
- 12 of 1987 “permanent establishment” includes an office or other fixed place of business through which business activity is carried on;
- “person” includes an individual, a partnership, a company, a corporation, a trust, a club, a society, an organization, a public authority and an association;
- 12 of 1987 “person resident in Malawi” includes-
- any individual present in Malawi for an aggregate of 183 or more days in the year of assessment;
  - any trust, estate or partnership established or otherwise organized under any written law of Malawi;
  - any company incorporated in Malawi;
- “previous law” means any law relating to income tax applicable in the former Nyasaland, or the former Federation of Rhodesia and Nyasaland, or in Malawi, which was in force before the coming into operation of this Act;
- “provident fund” means a fund approved by the Commissioner as a provident fund under section 65;
- “spouse” does not include-
- a husband who is separated from his wife under a judicial order or written agreement of separation; or
  - a husband who-
  - is living apart from his wife; and
  - is not wholly maintaining his wife; or

a wife who is separated from her husband under a judicial order or written agreement of separation; or

a wife who-

is living apart from her husband; or

(ii) is not wholly maintained by her husband;

“statutory corporation” means a body, other than a private society, incorporated by or in terms of a law in force in Malawi for special purposes specified in or under the law;

“tax” or “the tax” means the appropriate tax payable under this Act;

“taxpayer” means any person chargeable with tax, and, for the purposes of any provision relating to any return, includes every person required by this Act to furnish such return;

“taxable income” means income as defined in section 28 and is assessable income after deduction of allowable deductions;

“this Act” includes any rules made under this Act;

“trade” includes every profession, trade, business, employment, calling, occupation, or venture, including the letting of any property;

“trustee” includes-

the administrator or executor of a deceased estate; and

the trustee of an insolvent or bankrupt estate or assignee, person having the conduct of an order of composition or trustee under a deed of arrangement in an insolvent or bankrupt estate; and

the legal representative of any individual under a legal disability or other person having, whether in an official or private capacity, the possession, disposal, control or management of the property of an individual under a legal disability; and

the person having the administration or control of property subject to a *usufruct*, *fidei-cummissum* or other limited interest; and “trust”, “property the subject of a trust” and “income the subject of a trust” shall be construed accordingly;

“trust instrument” means a deed, will, contract of settlement or other disposition, including a verbal declaration, by which a trust is created;

“withholding tax” means the amount of tax deductible under section 102A;

“year of assessment” means any period of twelve months in respect of which the tax leviable under this Act is chargeable.

**Commissioner  
of Taxes**  
G.N. 194/1967

**3.-**(1) There shall be constituted the office of Commissioner of Taxes (hereinafter referred to as “the Commissioner”) which shall be a public office the holder of which shall be charged with the general administration of this Act.

(2) The Commissioner shall at all times conform with the general directions of the Minister.

## PART II ADMINISTRATION

**Delegation of  
functions by  
Commissioner**

14 of 1969

**4.-**(1) All officers appointed for the purpose of carrying out this Act shall be under the direction and control of the Commissioner and shall perform such duties as the Commissioner may direct, and the Commissioner may, in writing and subject to such limitations as he may think fit, delegate to such officers or to any administrative officer any of the functions conferred or imposed on him by this Act.

(2) Nothing in this section shall be deemed to confer upon any person other than the Commissioner any of the functions of the Commissioner under this section or section 5 or to prevent the exercise of any function by the Commissioner in person and the Commissioner shall have in relation to any act of any other officer the same powers as if the act had been done by himself.

(3) Any reference in this Act to the Commissioner shall be deemed to include in respect of matters as to which any other officer has exercised any function conferred upon him by this Act a reference to that other officer.

**Report by  
Commissioner**

**5.-**(1) The Commissioner shall furnish to the Minister annually for presentation to the National Assembly a report on the working of this Act.

(2) In such report the Commissioner shall draw attention to any breaches or evasions of this Act which have come under this notice.

**Officers to  
observe secrecy**  
10 of 1993

14 of 1969

**6.-**(1) For the purposes of this section, “officer” means a person who is or has been appointed or employed by the Government, and who by reason of that appointment or employment, or in the course of that employment, may acquire or has acquired information respecting the affairs of any other person, disclosed or obtained under this Act or any previous law and shall include a Special Arbitrator and any assessor appointed under section 98(3).

(2) Subject to this section, every officer shall preserve and aid in preserving secrecy with regard to all matters that may come to his

knowledge in the performance of his duties in connexion with this Act, and shall not communicate any such matter to any person whomsoever other than the taxpayer concerned, or his lawful representative, nor suffer or permit any person to have access to any records in the possession or custody of the Commissioner except in the performance of his duties under this Act:

Provided that the Commissioner may prepare and publish statistics showing the total amount of income or taxable income received by any class or classes of persons from all or any particular sources during any year of assessment as declared in returns made to the Commissioner.

(3) No officer appointed or employed in carrying out this Act shall be required to produce in any court any return, document or assessment or to divulge or to communicate to any court any matter or thing coming under this notice in the performance of his duties under this Act except as may be necessary for the purposes of carrying this Act into effect or for the purpose of any prosecution for an offence committed in relation to any tax on income:

Provided that nothing in this provision shall prevent such officer from being required to disclose such information relating to any taxpayer as that taxpayer may request or authorize to be disclosed.

(4) Where any agreement or arrangement with any other country with respect to relief for double taxation of income or profit includes provision for the exchange of information with that country for the purpose of implementing that relief or preventing avoidance of tax, the obligations as to secrecy imposed by this section shall not prevent the disclosure of such information to the authorized officers of the Government of such country.

(5) Notwithstanding anything contained in this section the Commissioner shall permit the Auditor General or any officer duly authorized in that behalf by the Auditor General to have such access to any records or documents as may be necessary for the performance of his official duties and the Auditor General and any such officer shall be deemed to be an officer employed in carrying out this Act for the purposes of this section.

(6) The Commissioner and every officer shall, before acting under this Act, take and subscribe, before a magistrate of commissioner for oaths, the appropriate oath of fidelity or secrecy set out in the Ninth Schedule.

(7) Every person who, in contravention of this section or of the true intent the oath of fidelity or secrecy taken by him and without lawful excuse, reveals to any person whomsoever any matter or thing which has come to his knowledge in the course of

his official duties, or suffers or permits any person to have access to any records in the possession or custody of the Commissioner, shall be liable to a fine of K1,000 and to imprisonment for two years.

(8) Any person who acts in the execution of his office before he has taken the oath prescribed in terms of this section shall be liable to a fine of K20.

**Forms  
14 of 1969**

7. The Commissioner may from time to time approve the form of returns, claims, statements, notices and all such other forms and may be required for the administration of this Act.

**Service of  
documents**

8. Any notice or document required or authorized under the Act to be served upon any person shall be sufficiently and effectively served-

if personally served upon him; or

if left with some adult person apparently resident at, occupying, or employed at his last known abode, office or place of business in Malawi; or

if sent by post addressed to such last known place of abode, water inside or outside of Malawi, office or place of business, or to any post office box rented in the name of such person or the employer of such person, in which case the term "post" means registered or unregistered post and, unless the contrary is proved, the service shall be deemed to have been effected at the time at which the notice would be delivered in the ordinary course of post;

if affixed at such last known place of abode, office or place of business in which case such person shall be deemed to have received the notice or document on the fourteenth day after the affixing.

**Service of  
oral notices**

9.-(1) Where a collector is of the opinion that by reason of the illiteracy or infirmity of any person, such person would not understand the meaning of any written notice, request, advice, decision, form or other document, he may direct that the substance of such document shall be communicated to such person in such manner as he may deem fit and section 8 shall not apply.

(2) A certificate in the prescribed form by any Chief, Sub-Chief, village headman, or by a messenger in the public service or in the employment of a Chief or a local authority that, in accordance with the direction of a collector, the effect of any such document has been communicated to such person shall be admitted as evidence that such communication was made on the date specified on the certificate without proof of the signature of the person signing it.

**10.**-(1) Notices given by the Commissioner under this Act may be signed by any officer authorized by him on his behalf and any notice purporting to be signed by order of the Commissioner shall be as valid and effectual as if signed by himself. **Validity of documents**

(2) Every form, notice, demand, or other document issued or given by or on behalf of the Commissioner or any other officer authorized under this Act shall be valid if the name of the Commissioner or officer by whom the same is issued or given is printed or written thereon.

### **PART III INCOME**

#### *Division 1-Determination of Assessable Income*

The income of a person shall include the total amount in cash or otherwise including any capital gain, received by or accrued to or in favour of the person in any year or period of assessment from a source within or deemed to be within Malawi and his assessable income shall be that income excluding any amount exempt from tax under this Act. **Income and assessable income 7 of 1992**

**12.**-(1) Income shall be deemed to have accrued to a person notwithstanding that such income has been invested, accumulated or otherwise capitalized by him or that such income has not been actually paid over to him but remains due and payable to him or has been credited in an account or re-invested or accumulated or capitalized or otherwise dealt with in his name or on his behalf, and a complete statement of all such income shall be included by any person in the returns by him under this Act. **Special circumstances in which income deemed to have accrued 1 of 1995**

Income, other than earned income (as defined in section 73), received by or accrued to or in favour of a married woman shall be deemed to be income received by or accrued to or in favour of her husband. **1 of 1995**

**13.**-(1) There shall be exempt from tax all that income specified in the First Schedule. **Exemption**

(2) Where any income is exempt from income tax, the exemption shall be limited to the specified or original recipient of the income and shall not extend to persons receiving payments from that recipient, although the payments may be made wholly or in part out of that income.

(3) The exemption of any income from income tax shall not exempt any person from furnishing any return or information which is required by the Commissioner.

**14.**-(1) The income of a taxpayer shall include the amount of any annuity, excluding, in the case of an annuity which has been **Income-annuities**

purchased, that part of the amount of the annuity which represents the undeducted purchase price.

(2) Subject to the next succeeding subsection, the amount to be excluded under the last preceding subsection from the amount of the annuity derived by a taxpayer during a year of assessment-

(a) in the case of an annuity payable until the death of the taxpayer or for a term that will not end before his death, is an amount ascertained by dividing the undeducted purchase price of the annuity by the number of years in the complete expectation of life of the taxpayer, as ascertained by reference to the applicable life tables, at the time when the annuity first commenced to be derived; and

in the case of an annuity payable for a term of years certain, is an amount ascertained by dividing the undeducted purchase price of the annuity by the number of years in the term.

(3) Where the amount of annuity derived by the taxpayer during a year of assessment is more than, or less than, the amount payable for the whole year the amount to be excluded from the amount so derived is the amount which bears to the amount which but for this subsection would be the amount to be so excluded the same proportion as the amount so derived bears to the amount payable for a whole year.

(4) For the purposes of this section “the undeducted purchase price” in relation to an annuity, means so much of the purchase price of the annuity paid by the taxpayer as has not been allowed and is not allowable as a deduction and in respect of which a rebate or abatement of income tax has not been allowed and is not allowable in assessments for income tax under this Act or any previous law.

4 of 1988

(5) Notwithstanding the foregoing provisions of this section, in the case of a pension, if a taxpayer has other income in addition to the pension, then income tax on the pension shall be calculated as if the pension was the only income of the taxpayer and that the pension shall not be taken into account in calculating income tax on such other income.

Non-  
recognition of  
capital gain or  
capital loss in  
certain cases  
7 of 1992  
10 of 1993  
3 of 2006

**15.**-(1) No capital gain and no capital loss shall be recognized for the purposes of this Act in respect of the transfer of any capital asset-

(a) between spouses; or

(b) between former spouses; or

(c) to a spouse from the estate of a deceased spouse;

(d) to a child from the estate of a deceased parent;

and the adjusted basis, if any, of such asset in the hands of the transferor shall be the basis of the asset in the hands of the

transferee.

“(2) No capital gain and no capital loss shall be recognized upon the disposal of the principal residence of an individual and for this purpose an individual shall be taken to have not more than one principal residence at a time, and the determination of the Commissioner with respect to any issue relating to the principal residence of an individual shall be final.”

**10 of 1993  
5 of 1997**

**15A.-(1)** Where an asset of a taxpayer is involuntarily converted -

(a) into an asset similar to, or related in service or use to, the asset so converted, no capital gain shall be recognised;

(b) into an asset not similar to, or related in service or use to, the asset so converted, or into money, capital gain, if any, shall be recognized, subject to subsection (2) and (3).

**Involuntary  
conversion of  
assets**

Where a taxpayer whose asset has been involuntarily converted makes a valid and timely election and timely acquires an asset that is similar to, or related in service or use to, the asset so converted (hereinafter referred to as the “qualifying replacement asset”), capital gain, if any, shall be recognized only to the extent that the amount realised as a result of such conversion exceeds the cost of the qualifying replacement asset.

The election by a taxpayer whose asset has been involuntarily converted to limit any capital gain recognized as a result of such conversion shall be valid if the taxpayer, in a timely filed income tax return for the taxable year during which the conversion occurred -

briefly describes the type of involuntary conversion;

identifies the asset so converted;

indicates the adjusted basis of the asset;

states an intention to acquire a qualifying replacement asset.

For purposes of the section-

(a) the acquisition of a qualifying replacement asset shall be timely if such acquisition is made within two years after the close of the first year of assessment in which any of capital gain is realized.

\*See section 3 of Act No. 11 of 1966 for transitional provisions in respect of 14 of 1969 contract gratuities in the year of assessment ended 31st March, 1966 and between 1st April and 31st December, 1966.

(b) the basis of -

(i) a qualifying replacement asset received in the conversion shall be the adjusted basis of the asset so converted, less the open market value of any other asset and any money received by the taxpayer that was not spent on the qualifying replacement asset, plus an capital gain or less any capital loss recognized upon such conversion;

(ii) an asset received in the conversion that does not qualify as a replacement asset shall be equal to its open market value;

(iii) a qualifying replacement asset shall be equal to its cost less the amount of any capital gain not recognized.

Subject to the provisions of this Act, where the basis of the qualifying replacement asset exceeds the adjusted basis of the replaced asset, the investment allowance or the initial allowance shall be claimable on the difference.

This section shall not apply to motor vehicles not used in the business of transporting passengers or goods.”

**Capital gains  
on disposal of  
business assets**

**15B.**-(1) Subject to subsection (2), no capital gain shall be recognized on the disposal of a business asset, if the gain has been used to acquire a qualifying replacement asset similar to, or related in service or use to, the asset so disposed.

**3 of 2007**

(2) The taxpayer whose business asset has been disposed of, shall acquire the qualifying replacement asset within eighteen (18) months from the date the disposal occurred and shall declare in his return of income.

**Income  
payments for  
services**

**16.**-(1) The income of a taxpayer shall include any amount received or accrued in respect of services rendered or to be rendered whether due and payable under any contract of employment or service or not but, subject to subsection (3), shall exclude any contract gratuity.

**18 of 1968**

(2) For the purposes of this section-  
“contract gratuity” means a gratuity paid under a written contract of employment upon expiry, termination, renewal or extension of such contract, which is paid to an employee who is not during such employment a member of a pension fund other than a pension fund to which he is a voluntary contributor and in respect of which no contributions are payable by his employer out of which a pension will be paid to such employee in respect of such employment:

**25 of 1972  
1 of 1990**

Provided that, save as otherwise provided in contracts entered into before 1st April, 1990, a gratuity shall be excluded from income to the extent only of-

an amount equal to twenty-five per cent of the salary accrued over the period of employment; or

K40,000;

whichever amount is the lesser.

(3) No amount paid as a contract gratuity by an employer other than the Government shall be excluded from the assessable income of a taxpayer, unless the provision of the contract providing for the payment of such contract gratuity is similar to and comparable with such provision in contracts between the Government and its employees and has been approved by the Commissioner. The Commissioner shall not approve any provision for the payment of a contract gratuity contained in a contract entered into between a company and any person other than a person-

(a) whose time in the opinion of the Commissioner, is wholly or almost wholly occupied in the service of the company; and

(b) who is unable either directly or indirectly to control more than five per centum of the voting rights attaching to all classes of shares of the company.

17.-(1) Any amount received or accrued by reason of the cessation of the employment of a person of his withdrawal from or the winding-up of pension fund or in commutation of amounts due under a contract of employment or service which is not-

**Income-  
sums received on  
cessation of  
employment**

an amount referred to in section 16;

an annuity;

a payment in commutation of a pension made from a pension fund or from the public funds of the Government;

a payment on account of ill-health or disability;

an amount received or accrued by way of a terminal benefit to which the Fourth Schedule relates; or

**7 of 1968**

an amount received by or accrued to an employee from a provident fund,

shall be included in income.

(2) A single terminal payment to an employee in lieu of paid leave shall be assessed to tax as if such leave had been taken by the employee immediately after the cessation of the employment and he had been paid accordingly.

**14 of 1969**

<b>Sums payable by an employer for expenses of an employee 1 of 1991</b>	<p><b>18</b> Any sum paid by an employer to an employee in respect of expenses shall be treated as a prerequisite of the office or employment of that employee and shall be included in the employee's assessable income:</p> <p>Provided that the employee may claim as a deduction the amount of any such payment as is expended by him wholly and exclusively in performing the duties of his office.</p> <p><b>19.</b> <i>[Repealed by 1 of 1991]</i></p> <p><b>20.</b> <i>[Repealed by 1 of 1991]</i></p> <p><b>21.</b> <i>[Repealed by 1 of 1991]</i></p>
<b>Income- Passages</b>	<p><b>22.</b> Any amount paid by the Government to its employees in respect of or in connexion with leave passages to any country outside Malawi and any comparable amounts similarly paid by any other employer under a contract with an employee, which has been approved by the Commissioner, shall not be treated as a benefit within the meaning of section 18.</p>
<b>Premiums</b>	<p><b>23.</b> There shall be included in income any amount received or accrued from another person as a premium or like consideration paid by such other person for the right to use or occupation of land or buildings or for the right of use of plant or machinery or for the use of any patent, design, trade-mark or copyright or any other property which, in the opinion of the Commissioner, is of a similar nature.</p>
<b>Timber sales 14 of 1971</b>	<p><b>24.</b> Where land is sold or otherwise disposed of for valuable consideration and there is timber growing on such land which, in the opinion of the Commissioner, has been grown as timber for sale, the market selling value as defined in section 50 of such timber at the time such land is sold or so disposed of shall be included in income.</p>
<b>General 7 of 1992</b>	<p><b>25.</b> There shall be included in income any amount recovered or recouped during the year of assessment in respect; of amounts allowed as deduction under division 2 of this Part of this Act or under any previous law whether in that or any previous year of assessment.</p>
<b>Foreign exchange gain and foreign exchange loss 7 of 1968 19 of 1969 5 of 1977 4 of 1982 10 of 1983 1 of 1991 7 of 1992</b>	<p><b>26.</b>-(1) There shall be included in computing income for the purposes of this Act any foreign exchange gain and any foreign exchange loss, as determined in accordance with subsection (2), which arises from a source in Malawi.</p> <p>(2) The amount of foreign exchange gain or foreign exchange loss shall be determined in accordance with the following formula-</p> $a \times r_1 \text{ minus } a \times r_2,$ <p>where-</p> <p>“a” is the amount of foreign currency received, paid of otherwise computed with respect to a foreign currency asset or</p>

liability in the transaction in which the foreign currency asset or liability is disposed of, converted, repaid, or otherwise eliminated;

“*r1*” is the official rate of exchange for the foreign currency with respect to the Malawi currency at the date of which the foreign currency asset or liability was obtained or established by the taxpayer; and

“*r2*” is the official rate of exchange for the foreign currency with respect to the Malawi currency at the date of satisfying the transaction.

**27.**-(1) An amount shall be deemed to have accrued to any person from a source within Malawi whenever it has been received by or has accrued to or in favour of such person-

**Income deemed  
to have accrued  
in Malawi  
7 of 1992**

(a) as remuneration for any services rendered or work of labour done by such person in the carrying on in Malawi of any trade, whether the payment for such service or work or labour is made or is to be made by a person resident in or out of Malawi, and wherever payment for such services or work or labour is made or is to be made;

(b) by virtue of any pension or annuity granted to such person by-

(i) any person wheresoever resident; or

(ii) the Government for services rendered, wheresoever payment of such pension or annuity is made and wheresoever the funds from which payment is made are situated;

Provided that-

(i) no pension or annuity shall be deemed to be derived from a source within Malawi if the service or employment for which it was granted was performed wholly outside Malawi. For the purposes of this proviso the service or employment in respect of which a pension or annuity was granted shall be deemed to have been performed within Malawi if the remuneration for the service or employment was deemed to have accrued from a source within Malawi by virtue of paragraph (c);

(ii) if the service or employment in respect of which any pension or annuity (other than a pension or annuity granted in respect of employment by the Government or any local authority or any statutory corporation) was granted, was performed partly within Malawi and partly elsewhere, only a proportionate part

of such pension or annuity shall be deemed to be derived from a source within Malawi. Such proportionate part shall be calculated in accordance with the ratio that the period of service or employment within Malawi bears to the total period of service or employment in respect of which such pension or annuity was granted;

by virtue of any services rendered by such person to the Government or any local authority or any statutory corporation, notwithstanding that such services are rendered outside Malawi;

Provided that this provision shall apply only if the person rendering the services is resident outside Malawi solely for the purpose of rendering such services;

12 of 1987

(d) a person in or out of Malawi who may claim or would otherwise claim a deduction for such amount, in connexion with a permanent establishment in Malawi, as remuneration for services rendered or work of labour done, wherever such services, work or labour may have been rendered or done.

(2) Pensions payable to pensioners of the Government of the former Federation of Rhodesia and Nyasaland shall be deemed to arise or not to arise from a source within Malawi in accordance with the provisions contained in the Twelfth Schedule.

(3) Any interest paid by reason of the deferment of the payment of any amount or any part of any amount referred to in paragraph (r) of the First Schedule shall be deemed to have accrued from a source within Malawi notwithstanding that such interest shall have been paid outside Malawi from a source outside Malawi.

12 of 1987  
7 of 1992

(4) Any dividend attributable to taxable income of a company incorporated in Malawi shall be deemed to accrue from a source within Malawi.

7 of 1992

(5) Any amount incurred, claimed or claimable in connexion with a permanent establishment in Malawi shall be deemed to accrue from a source within Malawi, regardless of the place of residence of the recipient, or the place of payment, of such amount.

7 of 1992

(6) Any foreign exchange gain or foreign exchange loss realized in connexion with a permanent establishment in Malawi or arising in connexion with foreign currency assets or liabilities held in Malawi shall be deemed to accrue from a source in Malawi.

7 of 1992

Any capital gain or capital loss realized in respect of tangible property located in Malawi or property representing an interest in a company incorporated in Malawi shall be deemed to accrue from a source within Malawi.

*Division 2-Deductions**Determination of Taxable Income*

28.-(1) For the purpose of determining the taxable income of any taxpayer, there shall be deducted from the assessable income of such taxpayer the amounts of any expenditure and losses (not being expenditure of a capital nature) wholly and exclusively, and necessarily incurred by the taxpayer for the purposes of his trade or in the production of the income.

**Allowable  
deductions in  
determining  
taxable income  
1 of 1991  
7 of 1992  
1 of 1995**

(2) Where a taxpayer claims to deduct an amount which might be regarded as deductible under two or more headings by virtue of any of the provisions of this Act, he shall not be entitled to claim that such amount shall be deducted more than once but shall elect under which one of these heading he wishes to claim such amount as a deduction.

(3) For the purpose of determining the taxable income of any taxpayer, there shall be deducted from the assessable income of such taxpayer the amount of any capital loss realized by the taxpayer in the year of assessment, but to the extent only of either-

**7 of 1992**

(a) the capital loss; or

(b) any capital gain realized by the taxpayer in that year of assessment,  
whichever is the lesser;

Provided that any loss realized with respect to an asset used in a trade or business and in respect of which an initial allowance investment allowance or annual allowance has been given under this Act shall not be subject to the limitation under this subsection but shall be deducted in accordance with subsection (1).

(4) The whole or any part of the capital loss not deducted by reason of the limitation imposed under subsection (3) shall be carried forward to the following year of assessment and shall continue to be so carried forward until fully deducted from the taxpayer's assessable income in accordance with that subsection.

(5) The deduction of any foreign exchange loss shall be subject to the limitation that any realized foreign exchange loss shall not be deductible from assessable income of a taxpayer in the year of assessment to the extent of his unrealised foreign exchange gain which would otherwise be realised if all foreign currency assets and liabilities of the taxpayer were disposed of or satisfied on the last day of the taxpayer's year of assessment in which the loss was realised, and the whole or part of any such loss which is not deducted by reason of this limitation shall be carried forward to the following year of assessment and continue to be so carried forward until fully deducted from the taxpayer's assessable income in

accordance with the limitation imposed by this subsection.

(6) The limitation on the extent of deduction imposed by subsections (3) and (5) shall not apply in respect of the year of assessment in which the taxpayer dies or ceases to exist.

**29.** [Repealed by 10 of 1983]

**30.** [Repealed by 10 of 1983]

**31.** [Repealed by 10 of 1988]

**Allowable  
deductions-  
repairs**

**32.** Sums actually expended by the taxpayer during the year of assessment for repairs not being expenditure of a capital nature-

(a) to any premises or part of premises occupied for the purpose of his trade; or

(b) resulting from the letting of property; or

(c) of articles, implements, plant, machinery and utensils employed by him for the purpose of his trade,

shall be an allowable deduction.

**Allowable  
deductions-  
capital  
allowances  
1 of 1991**

There shall be allowed as a deduction from assessable income capital allowances as provided in the Second Schedule:

Provided that the Minister may, by regulations, determine ceilings of capital allowances deductible in any given year of assessment in respect of certain assets.

**Allowable  
deductions-  
premiums paid**

**34.**-(1) An allowance shall be made in respect of any premium or consideration in the nature of a premium paid by any taxpayer for the right of use or occupation of land or buildings, or for the right of use of plant or machinery, or for the use of any patent design, trade-mark, copyright or any other property which, in the opinion of the Commissioner, is of a similar nature, where such land, buildings, plant, machinery, patent, design, trade-mark, copyright, or property is used for the production of income or from which income is derived but such allowance shall not exceed for any year of assessment such portion of the amount so paid as is equal to the amount of the premium or consideration divided by the number of years for which the right of occupation or use is granted:

Provided that-

(a) where the period for which the right of occupation or use is granted exceed 25 years, the deduction shall be one twenty-fifth of such premium or consideration; and

(b) where the taxpayer acquires the ownership of land or buildings, plant or machinery, patent, design, trade-mark, or copyright or other property in respect of which an allowance has been made in terms of this paragraph, then from the date he

acquires such ownership he shall cease to be entitled to any allowance under this paragraph in respect thereof.

(2) For the purposes of this section, the amount of any premium or consideration in the nature of a premium shall be reduced by the total amount of any similar allowance made under any previous law.

**35.** There shall be allowed as a deduction bad debts proved to be such to the satisfaction of the Commissioner and which have become bad during the year of assessment if the amount of the debt is included in the current year of assessment or was included in any previous year in the taxpayer's assessable income either in terms of the Act or any previous law.

**Allowable  
deductions-  
bad debts**

**36.**-(1) There shall be allowed as a deduction doubtful debts to the extent that they are estimated to be doubtful if the amounts of such debts are included in the current year of assessment or were included in any previous year of assessment in the taxpayer's income either in terms of this Act or any previous law. Such allowance shall be included in the income of the taxpayer in the following year. For the first year of assessment under this Act any such allowance made for the last year of assessment in terms of any previous law shall be deemed to have been made in terms of this Act.

**Allowable  
deductions-  
doubtful debts**

(2) Where in any year of assessment a taxpayer receives an amount in respect of a debt for which a deduction has been allowed to him under this Act or any or any previous law, his assessable income shall include that amount.

**36A.**-(1) There shall be allowed as a deduction an amount (hereinafter referred to as an "export allowance") determined under section 14 of the Export Incentives Act in respect of exports made during the year of assessment.

**Allowable  
deductions-  
export allowance  
Cap. 39:04  
4 of 1988**

(2) No deduction of an export allowance shall be made unless the Commissioner is satisfied that the taxable income from which the deduction is to be made has been determined in accordance with the provisions of this Act.

**36B.** There shall be allowed as a deduction an amount paid by an employer, who is also a taxpayer, as payroll-levy determined under section 20 of the Technical, Entrepreneurial and Vocational Education and Training Act, 1999.

**Allowable  
deduction –  
payroll levy  
6 of 1999**

**37.** There shall be allowed as a deduction-

an amount to be determined in accordance with the provisions of the Fifth Schedule in respect of ordinary

**Allowable  
deductions-  
pension funds  
and**

**provident  
funds  
14 of 1969**

contributions as defined in that Schedule which are made in the year of assessment to a pension fund;

any contribution, other than any ordinary contribution as defined in the Fifth Schedule, by an employer to a pension fund which is made for the purpose of ensuring that the moneys in the fund are sufficient to meet all payments to be made in terms of the rule of the fund:

Provided that that Commissioner may direct that such a contribution by an employer to a pension fund shall be treated as an expense to be spread over such period of years as the Commissioner may determine;

**14 of 1969**

(c) an amount contributed by an employer to a provident fund; and

**4 of 1981**

(d) contributions to the Parliamentary Pensions Premium Fund made by a member of the National Assembly pursuant to section 11 of the Parliamentary Pensions (Enabling Provisions) Act.

**Cap. 2:06**

**Allowable  
deductions-  
sale of timber**

**38.** Where income arises from the sale of timber a deduction shall be allowed-

(a) in respect of such income from the sale of, or the sale the right to fell, timber which was growing on the land at the time of the acquisition of the ownership of such land by the taxpayer, an amount determined as follows-

(i) where such land was acquired by the taxpayer for valuable consideration, so much of the value of such consideration as the Commissioner thinks just and reasonable as representing the cost of the standing timber;

(ii) where no valuable consideration was given by the taxpayer for such land, an allowance fixed by the Commissioner as representing the value of the standing timber at the time that the taxpayer acquired such land;

where the taxpayer sells the timber the amount to be deducted for any year of assessment shall be the portion attributable to the timber sold during that year; and

(b) in respect of income from the sale by the taxpayer of timber, the right to fell and dispose of which was not acquired with the land on which the timber was grown, so much of the consideration for which the timber was acquired as is attributable to the amount of the timber sold by the taxpayer in the year of assessment.

**39.** There shall be allowed as a deduction-

the amount of any expenditure, not being expenditure of a capital nature, incurred by the taxpayer during the year of assessment on experiments and research relating to his trade;

any sum contributed by the taxpayer during the year of assessment to any scientific or educational society or institution or other body of a public character approved by the Minister if the taxpayer has stipulated that the sum must be utilized by such society, institution, or body, as the case may be, solely for the purpose of industrial research or scientific experimental work connected with the trade or the taxpayer;

(c) any sum contributed by the taxpayer during the year of assessment in the form of a grant, bursary, or scholarship to enable any other person to take a course of technical education related to the trade of such taxpayer at any educational institution approved by the Minister;

(d) individual donations of not less than K250 during the year of assessment by the taxpayer to any such charitable organization as the Minister may from time to time by notice published in the *Gazette* approve for the purposes of this paragraph; and

(e) individual donations of not less than K500 made during the year of assessment by the taxpayer to any such non-profit institution operated solely or principally for social welfare, civic improvement, educational development, or other similar purposes as the Minister may, from time to time, by notice published in the *Gazette* approve for purposes of this paragraph.

**Allowable  
deductions-  
research, etc.  
1 of 1990  
7 of 1992  
2 of 1996**

**1 of 990**

**40.** Any amount paid by way of annuity, allowance or pension during the year of assessment by any taxpayer-

(a) to a former employee who has retired from the taxpayer's employ on the grounds of ill-health, infirmity or old age; or

(b) to any person who is dependent for his maintenance upon a former employee of such taxpayer or (where such former employee of such taxpayer is deceased) was so dependent immediately prior to his death,

shall be allowed as a deduction:

Provided that the deduction under paragraph (b) shall not exceed in respect of persons so dependent on any one retired or deceased employee the sum of K1,200.

**Allowable  
deductions-  
annuity payment**

**Allowable deductions-  
new businesses  
initial  
expenditure**

**41.**-(1) In arriving at the taxable income of a taxpayer derived from a manufacturing business begun on or after the 1st day of April, 1993, there shall be allowed the amount of any expenditure which-

is incurred by the taxpayer, not more than eighteen months before beginning the business, in the course of establishing the business; and

would have been allowed as a deduction had it been incurred after the beginning of the business.

(2) For the purpose of this section a “manufacturing business” is one carried on in buildings within the definition of industrial building contained in paragraph 8 of the Second Schedule.

**Allowable deductions-  
training  
allowance  
7 of 1992**

**41A.** There shall be allowed as a deduction as additional fifty per centum of the costs incurred by a taxpayer during the year of assessment in the training of an employee of the taxpayer who is a Malawian to enable such employee attain a qualification at the degree, diploma or certificate level.

**Allowable deductions-  
transport  
allowance  
7 of 1992**

**G.N. 23/1990  
Cap. 39:04**

**41B.** There shall be allowed as a deduction and additional twenty-five per centum of the international transport costs incurred by the taxpayer for his exports, whether produced by manufacturing in bond or otherwise, but other than exports of products specified in the Schedule to the Export Incentives (Exclusion) Order, 1990, made under the Export Incentives Act.

**Allowance  
of losses-  
general**

**42.** From the amount of assessable income there shall be deducted any assessed loss arising solely out of trading operations in Malawi, whether determined under this Act or any previous law, incurred by the taxpayer in any previous year of assessment to the extent to which such assessed loss has not been allowed as a deduction from his income of a previous year of assessment;

Provided that-

**6 of 2005**

(a) a deduction under this section shall be made as far as possible in the first year of assessment after that in which the assessed loss was incurred and, in so far as it cannot be made, then-

(i) in the case of manufacturing, agricultural and mining industries, in the next year of assessment and so on; and

(ii) in the case of trading operations other than manufacturing, agricultural and mining industries, in the next year of assessment up to a period of six years.”

(b) no person who-

(i) has been adjudged or otherwise declared or become insolvent or bankrupt; or

(ii) has made a conveyance or assignment of his property or estate for the benefit of his creditors or an arrangement with his creditors releasing him, wholly or partially from his debts,

shall be entitled to carry forward an assessed loss incurred before the date he was adjudged or otherwise declared or became insolvent or bankrupt or made the conveyance, assignment arrangement, as the case may be;

(c) an assessed loss shall be reduced by the amount or value of any benefit received by or accruing to a person resulting from a concession granted by, or a compromise made with, any of his creditors whereby his liabilities have been reduced or extinguished, if such liabilities arose in the ordinary course of trade.

**43.**-(1) If during any year of assessment there is a change in the shareholding of a company with an assessed loss or in the shareholding of a company which directly or indirectly controls any company with an assessed loss and the Commissioner is satisfied that such change has been affected solely or mainly in pursuance of or in connexion with any scheme for taking advantage of such assessed loss no assessed loss incurred prior to that change shall be deductible.

**Allowance of losses- change in shareholding in company**

(2) For the purposes of this section a company shall be deemed to be controlled by another company if the majority of the voting rights attaching to all classes of its shares are held directly or indirectly by such other company.

**44.** If a company with an assessed loss (hereinafter referred to as the “old company”)-

**Allowance of losses- formation of new company**

(a) was incorporated outside Malawi; and

(b) carried on its principal business within Malawi; and

(c) is about to be wound up voluntarily in its country of incorporation for the purpose of the transfer of the whole of its business and property wherever situated to a company which will be or has been incorporated under Malawi law (hereinafter referred to as the “new company”) for the sole purpose of acquiring the whole of the business and property wherever situated of the old company;

(d) the sole consideration for the transfer referred to in paragraph (c) will be the issue to the members of the old company of shares in the new company in proportion to their shareholding in the old company; and

(e) no shares in the new company will be available for issue to any persons other than members of the old company,

the new company shall be allowed as a deduction after the transfer referred to in paragraph (c) has been effected the assessed loss of the old company to the extent to which that assessed loss has not been allowed as a deduction to the old company in a previous year of assessment.

**Deductions  
not to be made  
10 of 1983  
1 of 1991**

**45.** No deduction shall in any case be made in respect of any of the following matters-

the cost incurred by any taxpayer in the maintenance of himself, his family or establishment;

(b) domestic or private expenses of the taxpayer including the cost of travel between the taxpayer's residence and place of work;

(c) any loss or expense which is recoverable under any insurance contract or indemnity;

(d) tax upon the income of the taxpayer or interest payable thereon whether charged in terms of this Act or any law of any country whatsoever;

(e) income carried to any reserve fund or capitalized in any way;

(f) any expense incurred in respect of any amounts received or accrued which are not included in the term "income" as defined in this Act;

save as is provided in section 37 any contribution made by a taxpayer to a fund established for the purpose of providing pensions for employees or the widows, children, dependants or nominees of deceased employees or for all or any of those purposes;

**14 of 1969**

(h) save as is provided in section 37 any contribution made by a taxpayer to a fund established for the purpose of providing sickness, accident, unemployment or other benefits for employees or the widows, children or nominees of deceased employees or for all or any of these purposes;

(i) any expense in respect of which a subsidy has been or will be received; and

**1 of 1991**

(j) fringe benefits tax and any penalty chargeable thereon.

**Deductions  
not admissible**

**46.** No deduction shall, as regards income derived from any trade, be made in respect of any of the following matters-

(a) the rent of, or cost of repairs to, any premises not occupied for the purposes of trade, or any dwelling house or domestic premises, except such part thereof as may be occupied for the purposes of trade; and

(b) interest which might have been earned on any capital employed in trade.

as regards  
income derived  
from trade

### *Division 3-Stock and Work in Progress*

**47.**-(1) Where a taxpayer carries on any business, the value, ascertained under this Division, of all trading stock and work in progress on hand at the end of any accounting year shall be taken into account in ascertaining whether or not the taxpayer has a taxable income.

Trading stock  
and work in  
progress to be  
taken into  
account

(2) Where the value of all trading stock and work in progress on hand at the end of the accounting year exceeds the value of all trading stock or work in progress on hand at the beginning of that year, the assessable income of the taxpayer shall include the amount at the excess.

Where the value of all trading stock and work in progress on hand at the beginning of the accounting year exceeds the value of all trading stock and work in progress on hand at the end of that year, the amount of the excess shall be an allowable deduction.

**48.** Trading stock and work in progress shall be valued on the basis of the cost price or market selling value of each item of trading stock or of all work in progress, as the case may be, at the end of the accounting year;

Valuation of  
stock and work in  
progress at end of  
year

Provided that, by agreement with the Commissioner, a taxpayer may elect to adopt any basis which conforms to recognized accountancy practice and is not contrary to this Act, but where such basis is elected the election shall be binding for future accounting periods unless the Commissioner otherwise agrees and any change shall be upon such terms and conditions as he may impose.

**49.** The value of trading stock and work in progress to be taken into account at the beginning of the accounting year shall be its value as ascertained under this Act or any previous law at the end of the immediately preceding accounting year.

Valuation of  
stock and work  
in progress at  
beginning of year

**50.** For the purpose of this Division-

“cost” means the historical cost of bringing the relevant item of stock to its existing condition and location;

Definition of cost  
and market  
selling value

“market selling value” means the expected realizable value of the relevant item of stock in the taxpayer’s normal selling market,

14 of 1971

the value of work in progress shall include overhead charges to the extent of the recognized accountancy practice for the type of business.

**Domestic consumption**

**51.** The value of trading stock taken by the taxpayer for his domestic or private consumption or use shall be-

(a) in the case of non-farming stock an amount equal to the cost price to the taxpayer or the market selling value of such stock at the time the stock was taken, whichever the taxpayer may elect;

in the case of farming stock an amount which the Commissioner accepts to be a fair and reasonable valuation at the time such stock was taken.

**Gifts and sales**

**52.** Where-

the taxpayer disposes by sale, gift or otherwise of property being trading stock, standing or growing crops or trees which have been planted and tended for the purpose of sale; and

that property constitutes or constituted the whole or part of the assets of a business which is or was carried on by the taxpayer; and

the disposal was not in the ordinary course of carrying on that business,

the market selling value of that property at the date of disposal shall be included in the assessable income of the taxpayer, and the person acquiring that property shall be deemed to have purchased at a price equal to that value.

**Valuation of livestock  
14 of 1971**

**53.** Livestock shall be valued at cost or market selling value and sections 47 to 52 inclusive shall apply.

*Division 4-Determination of Taxable Income  
Where Adequate Books and Records are kept*

**Books of accounts**

**54.**-(1) Every person carrying on a business shall keep sufficient records of his income and expenditure to enable his assessable income and allowable deductions to be readily ascertained and shall retain such records for at least seven years after the completion of the transaction, acts or operation to which they relate:

Provided that this subsection shall not require the preservation of any records-

(a) in respect of which the Commissioner has notified the taxpayer that their preservation is not required; or

(b) of a company which has gone into liquidation and which has been finally dissolved.

(2) If a taxpayer fails or refuses to keep books or accounts which, in the opinion of the Commissioner, are adequate for the purposes of this Act the Commissioner shall by notice in writing require such person to keep such records, books and accounts as the Commissioner considers to be adequate in such form and in such language as may be specified in the said notice. **14 of 1969**

**55.**-(1) Where a taxpayer makes up his accounts for a period of 12 months ending on some day other than the 30<sup>th</sup> June, the Commissioner may in his discretion accept such accounts for assessment in respect of the assessment year ending the 30<sup>th</sup> June prior or subsequent to the closing date of such accounts, and no part of such assessment shall be charged to tax in any other year of assessment. Any return in respect of which accounts have been so accepted shall be deemed for all purposes of this Act to be a return for such year of assessment: **Period of accounts 5 of 2006**

Provided that where the accounts of any taxpayer have been accepted for a year or period ending on some date other than the 31<sup>st</sup> March, either under this Act or any previous law, all subsequent accounts of such taxpayer shall, unless the Commissioner otherwise agrees, and upon such terms and conditions as he may impose, be made up for each succeeding period of 12 months ending on such other date.

(2) Where a taxpayer whose accounts have been accepted in terms of subsection (1) cease to trade, there shall be returned for assessment accounts which shall include all income which has been received by or accrued to such taxpayer in the period between the closing date of the last accounts so accepted for the immediately preceding year of assessment and the date when such taxpayer ceased to trade.

(3) Where such period exceeds 12 months, separate accounts shall be rendered for a 12-month period ending on the date accepted as the closing date of his accounts under subsection (1) and for the balance of the period in excess of 12 months.

The taxable income determined on the basis of such accounts shall be charged to tax as follows-

(a) if the period is in excess of 12 months, the taxable income determined on the basis of the accounts rendered for 12 months as required in terms of subsection (3) shall be deemed to be the taxable income for the year of assessment succeeding that in which the taxable income based on the accounts for the immediately preceding year of assessment was assessed, and the taxable income for the remaining period shall be deemed to be taxable income for the following year of assessment;

(b) if the period is one of less than 12 months, the taxable income based on the accounts rendered in terms of paragraph (a) shall be deemed to be the taxable income of the year of assessment succeeding that in which the taxable income based on the accounts for the immediately preceding year was assessed:

Provided that, where a taxpayer has rendered accounts for assessment and the whole or part of the taxable income determined from such accounts has been charged to tax in more than one year of assessment, either under this Act or under any previous law, then when such taxpayer ceases to operate the taxable income for the last year of assessment shall be reduced by an estimate of the taxable income which has been so charged to tax in more than one year of assessment. If such estimate exceeds the taxable income for the last year of assessment the taxable income for the penultimate year of assessment shall be reduced by the amount of such excess.

The said taxable income shall be assessed as the taxable income of such taxpayer notwithstanding that such taxpayer may not have been in existence during any portion of such year of assessment.

**Profits of  
non-resident  
persons from  
sale of  
exported  
produce  
14 of 1971  
4 of 1995**

*Division 5-Business carried on Partly in and Partly out of Malawi  
and Businesses Controlled Abroad*

**56.**-(1) Where a non-resident person produces, grows, mines, creates, manufactures, fabricates, improves, packs, preserves, or constructs in whole or in part anything within Malawi, and exports the same without sale prior to the export thereof, he shall be deemed to have derived from a source within Malawi a taxable income corresponding to the proportionate part of any profit ultimately derived from the sale thereof outside Malawi.

(2) The taxpayer shall submit to the Commissioner proposals for the determination of the taxable income deemed to be derived from a source within Malawi.

(3) The Commissioner shall consider the proposals submitted under the provisions of subsection (2) and, if he is of the opinion that the taxable income calculated in accordance therewith approaches as closely as possible to that which might be expected to ensure if the general provisions of this Act were applied, he may accept the same, and the taxable income as determined for any year of assessment shall be deemed to be the taxable income of such person or company for that year.

(4) Should no such proposals be submitted, or if the Commissioner is not satisfied with the proposals so submitted, the Commissioner may determine the taxable income in such manner as appears to him most appropriate, having regard to the circumstances of the case.

(5) Where a person sells, exports, transfers or otherwise disposes of goods, property or services, to a person whether resident or not, who is directly or indirectly related to such person, at a price which is lower than the market value of such goods, property or service, he shall be required to include the market value of such goods, property or services in his assessable income.

(6) Where the Commissioner is of the opinion that any goods, property or services have been sold, exported, transferred, or disposed of at a value lower than the market value, the Commissioner may determine the market value of such goods, property or services in such manner as appears to him appropriate having regard to the circumstances of the case, and shall adjust the taxable income of such person accordingly.

(7) The foregoing provisions of this section shall apply *mutatis mutandis* to the determination of an assessed loss.

**57.**-(1) Where the trade of any person, other than a person carrying on the business of insurance, extends to any country outside Malawi and the Commissioner is satisfied that it is impossible or impracticable to ascertain the taxable income derived by such person from sources in Malawi in the manner otherwise provided in this Act, such person shall submit to the Commissioner proposals for the determination of his taxable income in some alternative manner.

**Persons carrying  
on business  
which extends  
beyond Malawi**

(2) The Commissioner shall consider the proposals submitted in terms of subsection (1) and, if of opinion that the taxable income calculated in accordance therewith approaches as closely as possible to that which might be expected to ensure if the general provisions of this Act were applied, may accept the same, and the taxable income so determined for any year of assessment shall be deemed to be the taxable income of such person or company for that year.

(3) Should no such proposals be submitted, or if the Commissioner is not satisfied with the proposals so submitted, the Commissioner may determine the taxable income in such manner as appears to him most appropriate, having regard to the circumstances of the case.

(4) The foregoing provisions shall apply, *mutatis mutandis*, to the determination of an assessed loss.

#### **PART IV SPECIAL TRADES AND CASES**

**58.**-(1) Notwithstanding anything contained in this Act, this section shall apply to the determination of the taxable income derived by any person (hereinafter referred to as a farmer) from

**Taxation of  
income derived  
from farming**

pastoral, agricultural, or other farming operations.

(2) There shall be admissible as a deduction in the determination of the taxable income derived by any farmer during any year of assessment expenditure incurred during that year of assessment on-

27 of 1970

(a) the stumping, levelling and clearing of lands;

(b) works for the prevention of soil erosion;

(c) boreholes;

27 of 1970

(d) wells

(e) aerial and geophysical surveys;

27 of 1970

(f) any water control work in connexion with the cultivation and growing of rice, sugar or such other crop as the Minister may approve.

For the purposes of this paragraph “water control work” includes any canal, channel, dyke, furrow and any flood control structure, whether of a permanent nature or otherwise.

14 of 1971

(3)-(a) In this subsection, unless inconsistent with the context-

“expenditure incurred”, in relation to the cost of any work done by any other person for which a farmer has become liable in terms of any law relating to natural resources, means the amounts actually paid by him during the year of assessment in respect of such costs;

“water conservation work” means any reservoir, water dam or embankment constructed for the impounding of water.

(c) Subject to this subsection there shall be admissible as a deduction in the determination of taxable income derived by any farmer any expenditure incurred by him on any water conservation work during the year of assessment, and any amounts paid by him during the year of assessment towards the cost of any water conservation work done by any person for which such farmer has become liable in terms of any Malawi law relating to natural resources.

(4)-(a) Any farmer who derives taxable income from the growing of timber may elect that such taxable income shall be determined in accordance with the following rules-

(i) the cost of planting the timber shall be carried forward until such time as the timber has reached maturity;

(ii) to the cost of planting mentioned in subparagraph (1) there shall be added annually until the timber has reached maturity an amount (hereinafter called the fixed percentage) equal to five per centum of such cost;

(iii) whenever timber which has been grown by such farmer is sold, there shall be deducted from the proceeds of such sale a proportionate part of the sum of the cost of planting and the total of the fixed percentage added annually, and the remaining amount shall be included in the taxable income or assessed loss, as the case may be, of such farmer;

(iv) there shall be added to the taxable income or deducted from the assessed loss, as the case may be, of such farmer in each year of assessment the amount of the annual fixed percentage determined under subparagraph (ii);

(v) there shall be deducted from the taxable income or added to the assessed loss, as the case may be, of such farmer all expenditure including deductions made under sections 33, and 34 and the Second Schedule incurred on the maintenance and upkeep of such timber;

(vi) any election made in terms of this subsection or under any similar provisions of any previous law shall be binding in respect of all subsequent years of assessment and may be made only in respect of timber planted after the 1st day of April, 1950.

(b) For the purposes of the first year of assessment under this Act the opening value of any timber to which this subsection applies shall be deemed to be the closing value in the last year of assessment under any previous law.

(5) Notwithstanding any provisions in this Act no expenditure incurred by a farmer shall be allowed as a deduction from assessable income or form the subject of capital allowances to the extent that it has been recovered by means of a subsidy.

**59.**-(1) The assessable income of any procedures' co-operative agricultural society registered under the provisions of any Malawi law relating to such society shall be exempt from income tax if such assessable income is derived from transactions or dealings carried out in furtherance of all or in the last year of any of the objects set out in the Sixth Schedule.

**Co-operative  
agricultural  
societies**

(2) Every producers' co-operative agricultural society registered under any Malawi law which is not exempt from income tax on certain of its assessable income under subsection (1) shall submit proposals to the Commissioner for the determination of its taxable income.

(3) The Commissioner shall consider the proposals submitted in terms of subsection (2) and, if of opinion that the taxable income calculated in accordance therewith approaches as

closely as possible to that which might be expected to ensue if the general provisions of this Act were applied, may accept the same, and the taxable income so determined for any year of assessment shall be deemed to be the taxable income of such society for that year.

(4) Should no such proposals be submitted, or if the Commissioner is not satisfied with the proposals so submitted, the Commissioner may determine the taxable income in such manner appears to him most appropriate having regard to the circumstances of the case.

(5) The foregoing provisions shall apply, *mutatis mutandis*, to the determination of an assessed loss.

**Consumers'  
co-operative  
societies  
16 of 1969**

**60.**-(1) The taxable income of any co-operative society other than a co-operative society within section 59 shall be liable to income tax notwithstanding that it arises from transactions of the co-operative society with its members.

(2) The taxable income of any co-operative society other than one within section 59 shall be deemed to be an amount equivalent to six and one-quarter per centum of the turnover of such co-operative society and shall be charged at the rate applicable to companies.

(3) No rebate or bonus based on purchases made by a member from a co-operative society to which this section applies shall be included in his assessable income except where the price of such purchases is allowable as a deduction in ascertaining his taxable income of any year of assessment.

(4) For the purposes of this section "turnover" means the total amount in cash or otherwise received by or accrued to the co-operative society in question from the sale of goods or from services rendered.

**Clubs, etc.  
formed, etc.  
for pleasure  
or recreation**

**61.**-(1) The taxable income of any club, society or association formed, organized or operated solely or principally for pleasure or recreation shall be liable to income tax notwithstanding that it arises from transactions of such club, society or association with its members.

(2) The taxable income of any such club, society or association shall be deemed to be an amount equivalent to six and one-quarter per centum of all receipts by, or accruals to, or in favour of it from sales of goods, cinematograph performances, stage plays, and gambling machines, and shall be charged at the rate applicable to companies. Receipts and accruals of the kind hereinbefore mentioned may be taken into account in determining the liability under this subsection of any such club, society or association notwithstanding that they are received by, or accrue to, or in favour of, any person in his capacity as a trustee for such clubs, society or association.

**19 of 1969**

(3) For the purposes of this section “stage play” includes any tragedy, comedy, play, opera, farce, revue, variety, burlesque, interlude, melodrama, pantomime, dialogue, prologue, epilogue or other dramatic entertainment.

(4) The Commissioner may make Rules with respect to the assessment, charge, collection and recovery of income tax in respect of all taxable income to which this section applies and, in particular, and without prejudice to the generality of the foregoing power, such Rules may include provision-

for determining when such income tax shall be payable;

for the production to, and inspection by, persons authorized by the Commissioner of documents and records for the purpose of satisfying themselves that such income tax has been, and is being, paid and accounted for in accordance with the Rules, and

(c) for appeals with respect to matters arising under the Rules which would not otherwise be the subject of an appeal.

**62.** Interest received from a building society registered in Malawi shall be included in the assessable income of the recipient.

**Building society  
interest**

**63.**-(1) The taxable income or assessed loss of any person carrying on the business of insurance, other than life assurance, including funeral insurance shall, insofar as it is derived from such business, be determined in accordance with the provisions of the Seventh Schedule;

**Insurance  
business  
4 of 1982  
10 of 1983**

Provided that where any such person derived income from any source other than insurance, the total taxable income or total assessed loss of such person shall, subject to the special determination of that part thereof which relates to the business of insurance; be determined in accordance with the general provisions of this Act.

(2) Income from investments, including the letting of any property, arising from any business of life assurance shall be liable to income tax.

**1 of 1985  
6 of 2006**

**64.** If any taxpayer has entered into any agreement with any other person in respect of any property the effect of which is that, in the case of moveable property, the ownership shall pass or, in the case of moveable property, transfer shall be effected from the taxpayer to that other person upon or after receipt by the taxpayer of the whole or a certain portion of the amount payable to the taxpayer under the agreement, the whole of that amount shall, for the purposes of this Act, be deemed to have accrued to the taxpayer

**Hire purchase or  
other agreements  
providing for  
postponement of  
ownership of  
property**

on the date on which the agreement was entered into:

Provided that-

in the case of movable property-

(i) the Commissioner, taking into consideration any allowance he has made under section 35 or section 36 may take such further allowance as under the special circumstances of the trade of the taxpayer seems to him reasonable in respect of all amounts which are deemed to have accrued under such agreement but which have not been received at the close of the taxpayer's accounting period;

(ii) any allowance so made shall be included as assessable income in his return for the following year of assessment and shall form part of the assessable income of the said taxpayer;

(iii) if any such agreement has been ceded or otherwise disposed of for valuable consideration by the taxpayer, then no such allowance shall be made by the Commissioner in the year of assessment in which cession or disposal took place;

in the case of immovable property-

the Commissioner shall deduct an allowance determined by the fraction which has as its numerator that portion of the amount deemed to have accrued under such agreement which is not receivable at the close of the taxpayer's accounting period, multiplied by an amount equal to the difference between the sum receivable under the agreement and the cost to the taxpayer of the immovable property so disposed of and as its denominator the sum receivable by the taxpayer under the agreement.

For the purposes of this subparagraph, "cost to the taxpayer of the immovable property" shall include such proportion of development and other charges as, in the opinion of the Commissioner, is fair and reasonable;

(ii) any allowance so deducted shall be included as assessable income in his return for the following year of assessment and shall form part of such income of the said taxpayer;

(iii) if any such agreement is ceded or otherwise disposed of for valuable consideration by the taxpayer, then no such allowance shall be made by the Commissioner in the year of assessment in which such cession or disposal took place.

**65.** The Commissioner may, subject to such limitations or conditions as he may determine, approve any pension fund or provident fund for the purposes of this Act if he is satisfied that the Third Schedule is complied with:

**Approval of  
pension fund  
or  
provident fund  
14 of 1969**

Provided that-

(a) pension funds approved on or before the 31st day of December, 1963 shall be deemed to have been approved under this section; and

(b) the Commissioner may withdraw his approval or may vary any limitations or conditions upon any alteration which in his opinion is material being made in any pension fund which he has approved.

## **PART V TAXATION OF COMPANIES**

### *Division 1-Income Tax*

**66.** Subject to this Act income tax shall be charged, levied and paid for each year of assessment upon income of every company at the company rate of income tax as specified in the Eleventh Schedule upon the taxable income of any company received or accrued from sources within or deemed to be within Malawi.

**Charge  
1 of 1990**

**67.**-(1) Every company which carries on a trade or has an office or other established place of business in Malawi shall at all times be represented by an individual residing therein.

**Public officers  
of companies**

(2) Such individual shall be a person approved by the Commissioner and shall be appointed by the company or by an agent or attorney who has authority to appoint such a representative for the purposes of this Act:

Provided that, in the event of any company being placed in voluntary or compulsory liquidation the receiver or liquidator duly appointed shall be required to exercise in respect of the company all the functions and assume all the responsibilities of a public officer under this Act during the continuance of such liquidation.

(3) The representative shall be called the public officer of the company and shall and be appointed in the case of a company which on the 1st day of January, 1964, so carried on a trade, or had an office or other established place of business in Malawi, within two months after such date and in case of a company which thereafter begins to carry on a trade, or establishes an office or other place of business in Malawi, within one month from the establishment of such office or other place of business.

(4) In default of any such appointment, the public officer of any company shall be such managing director, director, secretary or other officer of the company as the Commissioner may designate for that purpose.

(5) Every such company, within the period prescribed by subsection (3), shall also appoint a place within Malawi at which any notice or other instruments under this Act affecting the company may be served or delivered, or to which any such notice or documents may be sent.

(6) No appointment shall be deemed to have been made under subsection (3) or (5) until notice thereof specifying the name of the public officer and an address for service or delivery of notices and documents has been given to the Commissioner.

(7) Every such company shall the office of the public officer constantly filled and shall at all times maintain a place for the service or delivery of notice in accordance with subsection (5) and every change of public officer or of the place for the service delivery of notice shall be notified to the Commissioner within 30 days of such change taking effect.

(8) Every notice, process of proceeding which under this Act may be given to, served upon, or taken against any company may be given to, served up, or taken against its public officer, and if at any time there is no public officer then any such notice, process or proceeding may be given to, served upon, or taken against any officer or person acting or appearing to act in the management of the business or affairs of such company or as agent for such company.

(9) Every public officer shall be answerable for the doing of such acts, matters, or things as are required to be done under this Act by a taxpayer, and in the case of default shall be liable to the penalties provided in respect of defaults by a taxpayer.

(10) Everything done by any public officer which he is required to do in his representative capacity shall be deemed to have been done by the company which he represents.

(11) The absence or non-appointment of a public officer shall not exonerate any company from the necessity of complying with this Act, but the company shall in all respects be subject to and liable to comply with this Act, as if there were no requirement to appoint such officer.

(12) Any public officer appointed under the provisions of any previous law, and holding office on the 1<sup>st</sup> day of January, 1964, shall, provided that no objection to his continuance in office is raised by the Commissioner, be deemed to be a public officer appointed under this Act.

**68.**-(1) Every company incorporated or registered under any law which awards any bonus shares, debentures, or securities, or pays any liquidation dividends to shareholders in such company in respect of shares held by them, shall furnish to the Commissioner, upon such payment or award, a return giving the full name and address of each shareholder and the amount or value of such payment or award to each such shareholder.

**Duty of Companies to furnish returns**

(2) Every company shall file with the Commissioner a copy of the memorandum and articles of association constituting the company and copies of all amendments thereto.

**Notification of dividend declared 7 of 1968**

**69.** The public officer of a company incorporated in Malawi shall within 30 days of the declaration by the company of a dividend furnish to the Commissioner-

a copy of the resolution declaring the dividend; and

a statement containing in respect of each person to whom a dividend has accrued-

- (i) the name and address of the person;
- (ii) the amount of the dividend accrued; and
- (iii) the date on which the dividend was declared.

**70.** Where a company dealing in shares and liable to tax in respect of profits arising from such dealing (hereinafter referred to as "the first company") purchases a controlling interest in a company with an undistributed profit (hereinafter referred to as "the second company") and the second company declares a dividend payable to the first company, the shares of the second company then being sold by the first company at a loss, such loss shall not be deductible from the taxable income of the first company.

**7 of 1992**

**70A.**-(1) Every company incorporated in Malawi shall, upon distribution of any dividend, withhold 10 per cent of such dividend and remit the amount to the Commissioner within fourteen days from the date of distribution.

**Taxation of Dividends -  
7 of 1992  
2 of 1999  
2 of 2001  
2 of 2002**

Provided that where the dividend is distributed by a subsidiary or a holding company to a holding or related company and the income being distributed is derived from a dividend which was subject to withholding tax in first instance, no withholding tax shall be deducted.

(2) The amount of tax withheld from a dividend under subsection (1) shall be a final tax and the recipient of the dividend shall not be required to include the dividend received in his taxable income.

**Recognition of gain or loss on distribution of property with respect to shares**  
10 of 1993

**70B.** If property is distributed by a company to a shareholder with respect to his shares (whether as a dividend, a liquidating distribution or otherwise), the company shall recognize gain or loss in the same manner as if the property had been sold to that shareholder at its open market price.

**Effect of a distribution of shares of a company to its shareholders**  
10 of 1993

**70C.** Whether a distribution of the shares of a company to its shareholders is in a way which does not alter the proportionate ownership interest of any of its shareholders, then-

the distribution shall not be included in the income of the shareholders and shall not be treated as a dividend for purposes of this Act;

the overall basis of the shares of the shareholders, following such bonus issue of shares, shall remain unchanged; and

the basis of the old shares shall be allocated between the old and the new shares in proportion to their respective values.

**Distribution in complete liquidation of a company**  
10 of 1993

**70D.** In the case of a complete liquidation of a company, any distribution to shareholders shall be treated as if the shareholders had sold their shares in the company in exchange for the property or the cash received, but such distribution shall not be treated as a dividend and a gain or loss shall be recognized accordingly.

**No gain or loss on certain contributions to capital**  
10 of 1993

**70E.** No capital gain or loss shall be recognized upon the contribution by one or more persons of assets to the capital of a company where, upon such contribution, the contributing person or persons own at least eighty per cent of the equity interest in the company; and in such case, the basis of the contributed assets in the hands of the company shall be adjusted basis in the hands of the person or persons immediately prior to the contribution.

**Basis of assets in a qualified reorganization of a company**  
10 of 1993

**70F.**-(1) In the case of a qualified reorganization of a company, as defined in subsections (5) and (6), the basis of an asset so acquired shall be determined by reference to the adjusted basis of the asset immediately before the reorganization.

**Acquiring company assumes tax attributes of the acquired entity**

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

(3) Distributions of equity shares in a company which is a party to a qualified reorganization to any shareholder of any company which also is 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.

**Distributions as part of a qualified reorganization**

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

**Non-qualified reorganization to be treated as a sale of the company**

(5) For the purposes of this Act, “qualified reorganization” means a reorganization 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, and in determining whether a transaction is a qualified reorganization, the Commissioner shall disregard the form of the transaction where the form is inconsistent with the substance of the transaction.

**A “qualified reorganization” to have a written plan and to be for valid business purposes and not for tax avoidance**

(6) For the purposes of this Act, “reorganization” means-

**Meaning of “reorganization”**

(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; and

(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.

## PART VI INDIVIDUALS

**71.** Subject to this Act income tax shall be charged, levied and paid for each year of assessment upon the income of any individual received or accrued from a source within or deemed to be within Malawi upon that individual’s total taxable income ascertained under this Act at the rate specified in the Eleventh Schedule.

**Charge  
10 of 1983  
6 of 1972  
5 of 1995**

**72.**-(1) If, in pursuance or by reason of a gift, donation, settlement or other disposition taxable income accrues to or in favour of or is paid to or applied to the benefit of or is accrued for

**Deemed taxable income**

the future benefit of a minor child, whether legitimate or illegitimate, of the person by whom the gift, donation, settlement or other disposition was made, the taxable income so accruing, paid, applied or accumulated shall be deemed to be taxable income received by or accrued to or in favour of the person by whom the gift, donation, settlement or other disposition was made.

19 of 1969

(2) If-

(a) in pursuance or by reason of a gift, donation, settlement or other disposition made by a person taxable income accrues to or in favour of or is paid to or applied to the benefit of a minor child, whether legitimate or illegitimate, of some other person; and

(b) the parent or the spouse or a near relative of the parent of the child has made a gift, donation, settlement, or other disposition or given some consideration to or in favour of the person of the spouse or a near relative of the person by whom the gift, donation, settlement or other disposition referred to in paragraph (a) was made,

such income so accruing, paid, applied or accumulated, shall be deemed to be taxable income received by or accrued to or in favour of the parent of the child.

(3) If any person has made in any deed of gift, donation, settlement or other disposition, a stipulation to the effect that the beneficiaries thereof, or some of them, shall not receive the taxable income thereunder, or some portion of that income, until the happening of some event, whether fixed or contingent, so much of any taxable income as would, in consequence of the gift, donation, settlement or other disposition, but for such stipulation, be received by or accrued to or in favour of or be deemed to be received by or to accrue to or in favour of the beneficiaries, shall, until the happening of that event, or the death of that person, whichever first takes place, be deemed to be the taxable income of that person.

(4) If any deed of gift, donation, settlement or other disposition contains any stipulation that the right to receive any taxable income thereby conferred may, under powers retained by the person by whom that right is conferred, be revoked or conferred upon another, so much of any taxable income as in consequence of the gift, donation, settlement or other disposition, is received by or accrues to or in favour of or deemed to be received by or to accrue to or in favour of the person on whom that right is conferred, shall be deemed to be the taxable income only of that person by whom it is conferred, so long as he retains those powers.

73.—(1) Income deemed to be the income of a taxpayer under section 12(2) shall be included in his return of income required to be furnished by him under this Act.

**Income on  
married women  
and  
minor children  
19 of 1969  
1 of 1995**

(2) If the Commissioner thinks fit he may by notice in writing require a married woman to whose income the provisions of subsection (1) apply to furnish such information as he may require.

(3) Where a married couple has elected to file a joint return and the wife's income comprises in whole or in part the wife's earned income the liability to tax of such taxpayer shall, instead of being determined under the other provisions of this Act, be determined as if—

(a) his income does not include the wife's earned income; and

(b) there were added to the tax payable by him an amount equal to the tax which would be payable by him if his only income were the wife's earned income.

(4) In this section "wife's earned income" means—

(a) income derived from any business carried on by the wife in her own right and in which her husband is not employed and is not a partner;

(b) emoluments received by, or accrued to, the wife in respect of services rendered or to be rendered by her whether payable under any contract of employment or service or not and any amounts assessable under section 16, 17, 18, 19 or 20 other than any such emoluments or amounts accrued to, or received by the wife from, or paid to, or in favour of, the wife by—

(i) her husband;

(ii) a partnership in which her husband is a partner;

(iii) a company in which the husband is a director who controls either directly or indirectly more than five per centum of the voting rights attaching to all classes of shares of the company; or

**6 of 1995**

(iv) a company in which the wife is a director who controls either directly or indirectly more than five per centum of the voting rights attaching to all classes of shares of the company and in which the husband is employed, or is also a director.

(5) In the event of the death of the husband during any year in respect of which income of his wife is deemed his income, the income of the wife for the period elapsing between the date of such death and the last day of the year of assessment shall be returned as the separate taxable income of such wife.

(6) Every parent shall be required to include in his return-

6 of 1995

(a) any taxable income received by or accrued to or in favour of, or deemed to have been received by or accrued to or in favour of any of his minor children, either directly or indirectly, from the parent, together with such particulars thereof as may be prescribed or required by the Commissioner; and

any taxable income deemed to be his in terms of section 72.

Partnership

74. Persons carrying on any trade in partnership shall make a joint return as partners in respect of such trade, together with such particulars as may from time to time be prescribed and each partner shall be separately and individually liable for the rendering of the joint return, but the partners shall be liable to income tax only in their separate individual capacities. Separate assessments shall be made upon partners.

## PART VII TRUSTEES

Special provisions in connexion with income derived from assets in deceased and insolvent or bankrupt estates

75.-(1) In this section-  
“ascertained beneficiary”, in relation to assessable income received or accruing by virtue of an asset in a deceased estate or the proceeds or any part of the proceeds of an asset in a deceased estate, means a person named or identified in the will of the deceased person who, by reason of the provisions of the will, acquires on the death of the deceased person an immediate certain right to claim the present or future enjoyment of the assessable income so received or accruing;

“asset in a deceased estate” does not include a right to claim an amount which became due and payable before the death of the deceased person.

(2) So much of the assessable income received or accruing by virtue of an asset in a deceased estate or the proceeds or any part of the proceeds of an asset in a deceased estate during the period beginning immediately after the death of the deceased person and ending immediately before a person, other than a person who acquires the asset in pursuance of the realization of the assets in the deceased estate, becomes entitled to the transfer from the deceased estate of the asset or the proceeds or part of the proceeds of the asset, as the case may be, as is received by or accrues to or in favour of an ascertained beneficiary shall be treated for the purposes of this Act as assessable income of the ascertained beneficiary and not as assessable income received in or accruing to the deceased estate.

(3) Assessable income received or accruing by virtue of an asset in a deceased estate or an asset in an insolvent or bankrupt estate or the proceeds or any part of the proceeds of an asset in a deceased or insolvent or bankrupt estate during the period beginning immediately after a person becomes entitled to the transfer from the deceased or insolvent or bankrupt estate of the asset or the proceeds or part of the proceeds of the asset, as the case may be, and ending immediately before the transfer from the deceased or insolvent or bankrupt estate of the asset or the proceeds or part of the proceeds of the asset, as the case may be, shall unless the effect of a condition governing the transfer is to provide that the assessable income so received or accruing shall continue to be assessable income of the deceased or insolvent or bankrupt estate, be treated for the purposes of this Act-

(a) in the case of assessable income which is not assessable income the subject of a trust to which no beneficiary is entitled as assessable income of the person who has immediately after the transfer an immediate certain right to the present "or future enjoyment of the assessable income so received or accruing; and

(b) in the case of assessable income the subject of a trust to which no beneficiary is entitled, as assessable income of the trust,

and not as assessable income received in or accruing to the deceased or insolvent or bankrupt estate.

(4) For the avoidance of doubt it is declared that-

an amount received or accruing by virtue of a right forming part of the assets in a deceased estate which did not become due and payable before the death of the deceased person shall, subject to paragraph (b), be assessable income for the purposes of this Act if the amount would have been assessable income of the deceased person had it been received or been deemed to have been received by him or accrued or been deemed to have accrued to him or in his favour in his lifetime; and

an amount received in a deceased estate which would have been assessable income of a deceased person had it been received or been deemed to have been received by him or accrued or been deemed to have accrued to him or in his favour in his lifetime shall not be assessable income for the purposes of this Act if-

(i) the deceased person had no right to claim the amount in his lifetime; and

(ii) the amount is received *ex gratia* or in pursuance of a gratuitous promise made after the death of the deceased person; and

an amount received or forming part of the assets in a deceased estate-

which became due and payable before the death of the deceased person; and

which the deceased person had a right to claim in his lifetime,

shall be assessable income received by or accruing to or in favour of the deceased person on the date the amount became due and payable if the amount would have assessable income of the deceased person had it been received by him in his lifetime.

**Tax payable  
by trust  
1 of 1990**

**76.** Tax shall be payable by a trust for each year of assessment at the rate specified in the Eleventh Schedule.

#### **PART VIIA NON-RESIDENTS**

**Liability for  
non-resident  
tax  
12 of 1987  
2 of 1987  
1 of 1990**

**76A.**-(1) Subject to subsection (3), any income payable to a person, not being a person resident in Malawi, arising from a source within Malawi and not attributable to a permanent establishment of that person in Malawi shall be liable to a final tax at the rate of 15 per cent of the gross amount of such income.

**Representative  
taxpayers**

(2) The tax payable under subsection (1) shall be deducted from the amount referred to therein upon-

(a) accrual of the amount to such person; or

**1 of 1990**

(b) payment of the amount to such person whether directly to him or to his account in or outside Malawi; or

(c) remittance of the amount to such person; or

**2 of 1996  
5 of 1997  
8 of 1998**

(d) crediting of the amount or of the value thereof in favour of such person,

and it shall be the responsibility of the person from whom the amount is due to deduct the tax and to remit it forthwith to the Commissioner.

(3) The tax payable under subsection (1) is not payable in respect of-

**5 of 1997  
18 of 1998  
G.N. 24/1996**

(a) income and other amounts exempt from tax under the provisions of the First Schedule; and

(b) any pension or annuity payment.

**PART VIII**  
**REPRESENTATIVE TAXPAYERS**

**77.**-(1) For the purpose of this Act-  
“representative taxpayer” in relation to the assessable or taxable income-

**Representation  
taxpayers**

of a company, means the public officer of the company;

of a trust, means the trustee;

controlled or managed by an agent, including an agent to whom the provisions of section 81 relate, means the agent;

(d) remitted or paid by a person in Malawi to a person temporarily or permanently absent from Malawi, means the person remitting or paying such income; and

(e) paid under a decree or order of a court or judge to a receiver or other person, means the receiver or other person whether or not-

the receiver or other person is entitled to the benefit of such income; or

(ii) such income is receivable by or accrues to the beneficiary on a contingency or on the happening of an uncertain event; and

(f) in any year of assessment of a person whose property becomes the subject of a trust during that year by reason of his death or his becoming subject to a legal disability or of that person in any other year of assessment in respect of which a return was not made to the satisfaction of the Commissioner, means the trustee.

(2) Nothing contained in subsection (1) shall be construed as releasing a person of any liability, responsibility or duty imposed upon him by this Act.

**78.**-(1) Subject to section 76 every representative taxpayer, in respect of the assessable or taxable income to which he is entitled in his representative capacity, or of which in such capacity he has the management, receipt, disposal, remittance, payment, or control shall be subject in all respects to the same duties, responsibilities and liabilities as if such income were received by or accruing to or in favour of him beneficially and shall be liable to assessment in his own name in respect of such income, but any such assessment shall be deemed to be made upon him in his representative capacity only.

**Liability of  
representative  
taxpayer  
15 of 1973**

(2) Any allowance, deduction, exemption, or right to deduct a loss which could be claimed by the person represented by him shall be allowed in the assessment made upon the representative taxpayer in his representative capacity.

(3) Any tax payable in respect of any assessment shall, save in the case of an assessment upon the public officer of a company, be recoverable from the representative taxpayer, but to the extent only of assets belonging to the person whom he represents which are in his possession or under his management, disposal or control.

Any tax payable in respect of any assessment made upon a public officer of a company in his capacity as such shall be recoverable from the company of which he is the public officer.

**Protection  
for certain  
trustees  
15 of 1973**

**78A.** A trustee who has authorized the receipt of profits arising from trust property by, or by the agent of, the person entitled thereto, shall not, if-

that person or agent actually received the profits under that authority; and

the trustee makes the return as required by section 84(1) of this Act,

be required to do any other act for the purpose of the assessment to that person to income tax.

**Right and  
personal  
liability of  
representative  
taxpayer**

**79.**-(1) Every representative taxpayer who as such pays any tax shall be entitled to recover from the person on whose behalf it is paid, or to retain out of any moneys that may be in his possession or may come to him in his representative capacity, so much as is required to indemnify him for payment.

(2) Every representative taxpayer shall be liable personally for any tax payable by him in his representative capacity, if, while it remains unpaid-

he alienates, charges or disposes of taxable income in respect of which the tax is chargeable; or

he disposes, or parts with, any funds or money which is in his possession or comes to him after the tax is payable when from or out of such funds or money the tax could lawfully have been paid.

**Company  
regarded as  
agent for  
absent  
shareholder**

**80.** Where a shareholder or member of a company is absent from Malawi, such company shall, for the purposes of this Act, be deemed to be the agent for such shareholder or member and in respect of any income received by or accruing to him or in his favour as shareholder or member, have and exercise all the powers, duties and responsibilities of an agent for a taxpayer absent from Malawi.

**81.**-(1) The Commissioner may, if he thinks it necessary, declare any person to be the agent of any other person, and the person so declared an agent shall be the agent of such other person for the purposes of this Act, and may be required to pay any tax due from any moneys, whether pensions, salaries, wages or any other assets of any kind whatsoever, which may be held by him for, or due by him to, the person whose agent he has been declared to be.

**Power to appoint agent**

(2) For the purposes of facilitating the assessment of the taxable income of any person residing in the United Kingdom, and the collection of any tax payable by such person, the Commissioner may appoint an agent in the United Kingdom who shall perform such duties as may be assigned to him by the Commissioner.

**82.** Against all property of any kind vested in or under the control or management of any agent or trustee the Commissioner shall have the same remedies and in as full and ample a manner as he has against the property of any other person who is liable to pay tax.

**Remedies of Commissioner against agent and trustee**

**83.** For the purposes of section 81 and 82 the Commissioner may require any person to give him information in respect of any moneys, funds, or other assets which may be held by him for, or due by him to, any other person.

**Power to require information**

## **PART IX**

### **RETURNS, PROVISIONAL TAX AND ASSESSMENTS**

**84.**-(1) Every person chargeable with income tax under this Act, shall within 180 days from the end of the year of assessment, as defined in this Act, or such longer time as the Commissioner may allow, prepare and deliver to the Commissioner a return of income in the form approved by the Commissioner for such year of assessment computed in accordance with the provisions of this Act, provided that a married couple may elect to make a joint return of income.

**Return of income**  
**1 of 1985**  
**4 of 1988**  
**1 of 1990**  
**1 of 1991**  
**2 of 1994**  
**7 of 1995**

Provided that in the case of an individual chargeable with income tax under this Act in respect only of his income from employment or pension or from both and in relation to which income P.A.Y.E. tax has been deducted, he shall not, except of his own volition, be required to prepare and deliver to the Commissioner a return in respect of such income.

(2) The Commissioner may, by notice in writing require any person to prepare and deliver to him, within 30 days of the date of issue of such notice, or such longer time as the Commissioner may allow, a return of income in the form approved by him for a year of assessment.

(3) Any person signing any such return of income shall be deemed for all purposes in connexion with this Act to be cognizant of all statements therein.

(4) All returns of income required to be furnished under this Act shall be delivered at or sent by post to the address given in the approved form.

1 of 1991

(5) Every person chargeable with income tax who-

(a) is required to prepare and deliver a return of income; or

(b) is not required to prepare and deliver a return of income but opts to do so under the provisions of this Act,

shall apply in the prescribed form to, and obtain from, the Commissioner a permanent taxpayer identification number for use in all correspondence for the purpose of this Act:

Payment of  
provisional tax  
4 of 1988  
1 of 1990  
18 of 1998  
6 of 2005

**84A.**-(1) Subject to the other provisions of this Act, every person chargeable with income tax under this Act shall, at the beginning of every year of assessment, estimate the total amount of income tax (herein referred to as "provisional tax") payable by him in respect of that year of assessment and shall, save as otherwise provided in subsection (2) in respect of seasonal income, pay such tax in quarterly instalments within 30 days after the end of each quarter of that year of assessment.

(2) A person whose income for the year of assessment in question is estimated to include 75 per cent or more of seasonal income shall, before the end of the first quarter of that year of assessment, notify the Commissioner in writing of the time or times within that year when he shall pay his provisional tax either in whole or in part; but so, however, that the Commissioner may, either generally or specially having due regard to the circumstances in which the seasonal income in question is received, specify the date by which every such person shall be deemed able to pay a substantial part of his provisional tax; and notwithstanding any written notification to the Commissioner, every such person shall, within 14 days from the date specified by the Commissioner, pay his provisional tax in accordance with subsection (3).

(3) The aggregate of the instalments of provisional tax payable under subsection (1) or the total amount of provisional tax payable under subsection (2), as the case may be, shall be an amount equal to not less than 90 per cent of the actual tax liability for the year of assessment.

(4) In this section-

"seasonal income" means income that is ordinarily received from a given source during any period of six consecutive months of the year of assessment of the person receiving such income.

**84B.** Section 84A shall not apply to any individual whose taxable income for the year of assessment in question is estimated-

not to exceed K84,000;

to exceed K84,000 but the whole of the income is from employment or from pension or from both employment and pension and in relation to which P.A.Y.E. tax is being deducted; and

(c) to exceed K84,000 and to include non-employment or non-pension income of not more than K84,000.

**Exemption from provisional tax**  
**4 of 1988**  
**7 of 1992**  
**3 of 2002**  
**7 of 2006**  
**4 of 2007**

**84C.** When submitting a return of income under section 84, the person submitting the return shall pay the difference, if any, between-

(a) the amount of tax calculated on the total taxable income as computed and disclosed in the return being submitted, on the one hand; and

(b) on the other hand, the aggregate of-

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

(ii) the P.A.Y.E. tax paid under section 102;

(iii) or the withholding tax paid under section 102A;

(iv) and any one or any combination of (i), (ii), and (iii).

**84D.** Every person not otherwise covered by section 84C, except the person whose taxable income substantially comprised income from which P.A.Y.E. tax has been deducted, shall, at the time of submitting a return of income under section 84, pay income tax calculated on the total taxable income as computed and disclosed in the return being submitted.

**Payment of tax**  
**4 of 1988**

**84E.**-(1) Subject to subsection (2), a person who fails to pay any amount of tax in accordance with sections 84A, 84C or 84D shall be liable to a penalty as follows-

*If the amount of tax unpaid, as*

*a percentage of total tax*

*liability-*

*Penalty*

(a) does not exceed 10 per cent .. ..

Nil

(b) exceeds 10 percent but does not exceed 50 per cent .. ..

25 per cent of the unpaid amount of tax

(c) exceeds 50 per cent .. ..

30 per cent of the unpaid amount of tax.

**Penalty for failure to pay taxes**  
**4 of 1988**  
**7 of 1992**  
**18 of 1998**

(2) The Commissioner may reduce or waive the amount of penalty chargeable under subsection (1) if in his opinion a satisfactory explanation for failure to pay the tax is given.

**Duty to furnish returns as to employees, their earnings and other matters**  
14 of 1969

**85.**-(1) Every person shall, if required by notice in writing by the Commissioner, furnish to him, in such form and at such time as may be prescribed or as the Commissioner may require, returns of all or any particular class of persons employed by him, and the earnings, salaries, wages, allowances, or pensions whether in money or otherwise, paid or allowed to each person so employed.

(2) Every person carrying on a trade in Malawi shall, in such manner and form and at such times as may be prescribed, furnish to the Commissioner returns showing-

(a) all payments made to any person in respect of any share or interest in such trade;

(b) all moneys received by him from any person on deposit for any fixed time or period, with or without interest, and any amount of interest received or paid by him; and

(c) all such other information in his possession with regard to the income received by or accruing to or in favour of himself or any other person as may be prescribed or may be required by the Commissioner.

**G.N. 41/1995**  
**Tax clearance certificate**  
**5 of 1997**  
**8 of 2006**

**85A.**-(1) Notwithstanding anything to the contrary contained in any other written law, the conclusion of any transaction specified in the Fifteenth Schedule shall be subject to a tax clearance certificate to be issued by the Commissioner.

(2) A person requiring a tax clearance certificate shall apply in writing for such certificate either by himself or through his representative or agent to the Commissioner stating the reasons thereof.

(3) A tax clearance certificate shall be issued by the Commissioner only where conditions as may be prescribed by the Commissioner are satisfied, and such conditions shall include evidence that-

the applicant is a registered taxpayer, except where the applicant is not subject to, or is exempt from, income tax;

the income tax returns of the applicant that are due have been submitted to the Commissioner; and

the applicant has no outstanding income tax.

(4) Any person who concludes, or causes the conclusion of, a transaction referred to in subsection (1) without a tax clearance certificate shall be liable to a penalty of K50,000, in addition to any other penalty that may be prescribed under this Act.

**86.**-(1) Notwithstanding anything to the contrary contained in any law relating to post offices or to post office savings banks or any other law, any officer in the public service of Malawi (in this section referred to as an officer in the public service) having in his custody any registers, books, accounts, records, returns, papers, documents, or proceedings, the inspection whereof may tend to secure any tax or to give proof or lead to the discovery of any fraud, offence, or omission in relation to any tax, shall, without fee or charge, permit the Commissioner, or any person authorized by the Commissioner, to inspect for such purpose such registers, books, accounts, records, returns, papers, documents, or proceedings, and to take such notes and extracts as he may deem necessary.

**Commissioner to have access to all public records**

(2) Every officer in the public service shall, if required by the Commissioner, furnish to him in such form and at such time as the Commissioner may require, such information as such officer in the public service is able to give from the registers, books, accounts, records, returns, papers, documents, or proceedings in his custody.

(3) In any legal proceedings, under this Act, civil or criminal, any such document as is referred to in subsection (1) which purports to be signed by the taxpayer or the accused, as the case may be, may on its mere production be received in evidence, unless such taxpayer or accused raises an objection that the signature is not his signature, in which case the court, before receiving such document in evidence, shall hear evidence as to whether or not the signature is that of the taxpayer or the accused, as the case may be:

Provided that no such document shall be tendered in evidence unless the taxpayer or accused, as the case may be, has been given not less than 10 days' written notice of the intention so to produce such document and an opportunity to inspect the same and make a copy thereof.

(4) Notwithstanding anything to the contrary contained in any law relating to post offices or to post office savings banks, in any legal proceedings under this Act whether civil or criminal, evidence may, if relevant to the inquiry, be admitted in regard to the transactions with any savings bank, of the spouse or minor children of the taxpayer or accused, as the case may be.

**87.**-(1) Every return required to be rendered by a taxpayer under this Act shall be accompanied by all such balance sheets, trading accounts, profit and loss accounts, and other accounts of whatsoever nature, as are necessary to support the information contained in the return, and all such accounts shall be authenticated by the signature of the person rendering the return.

**Duty of person submitting accounts in support of return or preparing account for other persons**

If any person submits in support of any return furnished by him under this Act any balance sheet, statement of assets and liabilities, or account prepared by any other person, he shall, together with such balance sheet, statement, or account, submit a certificate or statement by such other person recording the extent of the examination by such other person of the books of account and of the documents from which the books of account were written up.

(3) Any person who has prepared any balance sheet, statement of assets and liabilities, or account for any other person shall furnish such other person with the certificate or statement required under subsection (2).

**Production of  
documents and  
evidence on  
oath  
14 of 1969**

**88.**-(1) For the purpose of obtaining full information in respect of any part of the income of any person, the Commissioner may by notice in writing require any person to produce for examination by the Commissioner, or by any person appointed by him for that purpose, at such time and place as may be appointed by the Commissioner for that purpose any deeds, plans, instruments, books, accounts, trade lists, stock lists, or documents which the Commissioner may deem necessary for the purposes of this Act. Any person so producing any deed, plan, instrument, book, account, trade list, stock list or document which is not a ledger, cash book, journal, paid cheque, bank statement, deposit slip, stock sheet, invoice or other book of account required by this Act to be kept and retained by a person whose assessable income does not consist of salary, wages or similar compensation for personal services, may be allowed by the Commissioner any reasonable expenses necessarily incurred in producing it or obtaining and producing a copy of it.

(2) (a) The Commissioner may, by reasonable notice in writing, require any person entitled to or in receipt of any income, whether on his own behalf or as the representative of any person, or any person whom the Commissioner may deem able to furnish information, to attend at a time and place to be named by the Commissioner for the purpose of being examined on oath respecting the income of any such person, or any transactions or matters affecting the same, or any of them, or any part thereof.

(b) Where any statement has been made by any person as a result of his being examined on oath under this subsection, such statement shall be recorded in writing and shall be read over to or by the person making it, who, after making such corrections therein as he may think necessary, may sign it.

(3) If any officer engaged in carrying out this Act who has, in relation to the affairs of a particular person, been authorized thereto by the Commissioner in writing or by telegram, satisfies a magistrate by statement made on oath that there are reasonable grounds for

**14 of 1969**

suspecting that such person has rendered himself liable to a penalty under this Act, the magistrate may authorize such officer by warrant to exercise the following powers-

(a) without previous notice, at any reasonable time during the day enter any premises whatsoever and on such premises search for any moneys, books, records, accounts, or documents;

(b) in carrying out any such search, open or cause to be removed and opened any article in which he suspects any moneys, books, records, accounts or documents to be contained;

(c) seize any such books, records, accounts, or documents as in his opinion may afford evidence which may be material in assessing the liability of any person for any tax;

(d) retain any such books, records, accounts or documents for as long as they may be reasonably required for any assessment or for any criminal or other proceedings under this Act.

(4) Any officer authorized in accordance with subsection (3), when exercising any power under such subsection, shall on demand produce the warrant issued to him thereunder.

(5) The person to whose affairs, any books, records, accounts or documents seized under subsection (3) relate shall be entitled to examine and make extracts from them during office hours such further hours as the Commissioner may, in his discretion, allow and under such supervision as the Commissioner may determine.

(6) The Commissioner, or any person authorized by him in writing, may administer oaths to persons examined in terms of this section. Any person who, after having been duly sworn, wilfully makes a false statement on any matter relevant to the inquiry, knowing such statement to be false or not knowing or believing it to be true, shall be liable to a fine of K400 and to imprisonment for one year.

**89.**-(1) In the following cases, namely where in respect of a year of assessment-

**Estimated income  
14 of 1969**

(a) a taxpayer makes default in furnishing any return or information; or

(b) the Commissioner is not satisfied with the return or information furnished by a taxpayer; or

(c) the Commissioner has reason to believe that a taxpayer is about to leave Malawi without furnishing a return or satisfactory return,

the Commissioner may estimate the taxpayer's taxable income or assessed loss, notice whereof shall be given to the taxpayer.

(2) If it appears to the Commissioner that any taxpayer is unable from any cause to furnish an accurate return of income, the Commissioner may accept the taxpayer's estimate of the amount of his taxable income.

**Assessment to  
tax  
10 of 1983**

**90.**-(1) The Commissioner shall proceed to assess the liability to tax of every taxpayer as expeditiously as possible after the expiry of the time allowed to such taxpayer under section 84 for the delivery of a return of income.

(2) Where the Commissioner has estimated the taxable income or assessed loss of a taxpayer under section 89(1) he may assess his liability to tax on the basis of such estimation.

(3) Where the Commissioner accepts the taxpayer's estimate under section 89(2) he may assess him on such estimate, but may subsequently adjust such assessment upon the taxpayer submitting a satisfactory return of income.

**Additional  
assessment  
14 of 1969**

**91.**-(1) If the Commissioner discovers or is of the opinion at any time that any taxpayer has not been assessed or has been assessed at a less amount than that which ought to have been charged he may within the year of assessment or within six years after the expiration thereof and as often as may be necessary assess such person at such amount or additional amount as according to the best of his judgment ought to have been charged, and the provisions of this Act as to notice of assessment, appeal and other proceedings under this Act shall apply to such assessment or additional assessment and to the tax charged thereunder.

(2) Where any fraud or wilful default has been committed by or on behalf of any person in connexion with or in relation to tax for any year of assessment the Commissioner may, for the purpose of making good to the revenue of Malawi any loss of tax attributable to the fraud or wilful default, exercise the powers conferred by this section at any time, whether before or after the expiration of the period specified in this section:

**14 of 1971**

Provided that where the person by or on whose behalf the fraud or wilful default was committed has died an assessment on his personal representatives to tax for any year of assessment ending not earlier than six years before his death shall be made at any time before the end of the third year next following the year of assessment in which he died.

**92.**-(1) All assessments required to be made under this Part shall, subject to section 4, be made by the Commissioner or under his direction. **Assessments and notices thereof.**

(2) Notice of assessment and of the amount of tax payable, where tax is payable, shall be given to the taxpayer assessed.

(3) The Commissioner shall, in the notice of assessment, give notice to the taxpayer that any appeal against the assessment must be sent to him within 30 days after the date of such notice.

**93.** Complete copies of all notices of assessment made under this Part shall be filed in the office of the Commissioner and shall constitute the register of assessments for the purposes of this Act. **Register of assessments**

**94.** The register of assessments shall not be open to public inspection, but every taxpayer shall be entitled to copies certified by or on behalf of the Commissioner of his own notice of assessment. **Inspection of register**

#### **PART IXA**

**1 of 1991**

#### **TAXATION OF FRINGE BENEFITS**

**94A.**-(1) Every employer, other than the Government, who provides fringe benefits to any of his employees shall be liable to pay fringe benefits tax on the total taxable value of such fringe benefits at the rate specified in the Eleventh Schedule subject to and in accordance with regulations made under this Act. **Liability of employers to pay fringe benefits tax**

(2) Regulations made with respect of the payment of fringe benefits tax may include provisions-

(a) for requiring any employer to whom this Part applies to calculate the total taxable value of all fringe benefits to his employees in receipt thereof and to pay fringe benefits tax on such value in accordance with this Act or regulations made under this Act;

(b) requiring the production to, and inspection by any person authorized by the Commissioner of records and other documents for purposes of verifying that correct taxable values are being calculated and tax is being paid on those taxable values;

(c) rendering employers liable to a penalty for delayed payment of fringe benefits tax payable under this Act.

**94B.** Section 94A shall not apply to fringe benefits provided to an employee whose annual taxable income does not exceed K60,000. **Section 94A not to apply in certain cases**

**2 of 1994  
6 of 2005**

**Employee defined**

**94C.** In this Part, “employee” includes a “director”.

**Fringe benefits tax not to be imposed on employees**

**94D.** For the avoidance of doubt, nothing in this Act shall be construed to impose liability for fringe benefits tax on an employee in receipt of any fringe benefit in respect of which his employer is liable to fringe benefits tax.

**PART X  
APPEALS**

**Burden of proof 14 of 1969**

**95.** In any appeal under this Act the burden of proof that any amount is exempt from or not liable to income tax, or is subject to any deduction or allowance in accordance with this Act shall be upon the person claiming such exemption, non-liability, deduction or allowance.

**Procedure on appeals**

**96.**-(1) An appeal under this Act shall be made in accordance with the provisions of this Part and of the Eighth Schedule.

(2) The President may, from time to time, by order, amend the Eighth Schedule.

**Appeal to Commissioner**

**97.**-(1) A taxpayer who is aggrieved by-

(a) any assessment made upon him by the Commissioner under this Act;

(b) any decision of the Commissioner in relation to an assessment; or

(c) the determination of a reduction of tax under section 123 or section 124,

may appeal to the Commissioner against such assessment, decision or determination in the prescribed manner.

(2) Where an appeal is made to the Commissioner under subsection (1) he-

(a) may amend the assessment, decision or determination or disallow the appeal;

(b) shall send to the appellant written notice of his decision on the appeal;

(c) shall record any amendment of the assessment in the assessment register.

**Appeal to Special Arbitrator**

**98.**-(1) A taxpayer aggrieved by a decision of the Commissioner under section 97 may appeal in the prescribed manner to a Special Arbitrator appointed either generally or specifically for the purpose by the President.

(2) A Special Arbitrator shall have the powers of the High Court to summon and enforce the prompt attendance of witnesses, hear and take evidence, and to control proceedings before it.

(3) A Special Arbitrator may appoint assessors to advise at any hearing but such assessors shall act solely in an advisory capacity and shall have no right of decision.

(4) Proceedings before a Special Arbitrator shall not be public and a Special Arbitrator shall exclude or require to withdraw from the place of hearing all or any persons whose attendance is not considered by him to be necessary, and shall take appropriate measures to preserve the anonymity of the taxpayer.

(5) A Special Arbitrator shall have power on an appeal duly made to him to amend the assessment, decision or determination in respect of which the appeal is made, may refer the matter back to the Commissioner for further investigation, or may disallow the appeal.

(6) A Special Arbitrator shall set out his findings of fact and decisions on points of law in a written judgement, a copy of which shall be supplied to the taxpayer and to the Commissioner on application and payment of any prescribed fee.

(7) The findings of fact contained in a judgment of a Special Arbitrator shall be final and conclusive:

Provided that the High Court, in the course of an appeal under section 101, may require the Special Arbitrator to make such further findings of fact as may be necessary for the determination of the appeal.

(8) The register of assessment shall be amended where necessary to give effect to the decision of a Special Arbitrator on an appeal.

**99.**-(1) A Special Arbitrator may authorize the publication in such form as he may determine of any points of law or procedure decided by him. Particulars of the identity of the taxpayer and so far as possible of any information relating to his private affairs shall be excluded from any such publication.

**Publication of  
decisions of  
Special  
Arbitrator**

(2) Any person who, without the authority of the Special Arbitrator, publishes any report of the proceedings before him shall be guilty of an offence and liable to a fine of K1,000.

**100.**-(1) Notwithstanding the provisions of sections 97 and 98, an appeal by a taxpayer who is aggrieved by-

**Appeals from  
assessments, etc.,  
by administrative  
officers**

(a) any assessment made upon him by an administrative officer under powers delegated to him under this Act; or

(b) any decision of such administrative officer in relation to an assessment,

shall lay in the first place to the administrative officer concerned and the administrative officer shall have the same powers in respect of such appeal as are conferred on the Commissioner under section 97(2).

(2) A taxpayer aggrieved by a decision of an administrative officer under subsection (1) may appeal in the prescribed manner to the Traditional Appeal Court exercising jurisdiction in the District concerned.

(3) In relation to appeals to a Traditional Appeal Court under subsection (2) the provisions of subsections (3), (4), (5), (6), (7) and (8) of section 98 and the provisions of section 99 shall apply with all necessary modifications as though for the references to "Special Arbitrator" there were reference to "Traditional Appeal Court".

**Appeal to  
High Court**

**101.**-(1) Either party to proceedings before a Special Arbitrator under section 98 or a Traditional Appeal Court under section 100 may appeal in the prescribed manner to the High Court on a point of law:

Provided that in appeals from a Traditional Appeal Court the Commissioner shall replace the administrative officer as a party thereto.

(2) Proceedings before the High Court under this section shall not be public and the High Court shall exclude or require to withdraw from the place of hearing all or any persons whose attendance is not considered necessary, and shall take appropriate measures to preserve the anonymity of the taxpayer.

(3) The High Court may on an appeal-

(a) affirm, reverse or amend the decision on the point of law in respect of which the appeal is made;

(b) give such directions as it considers proper to ensure that effect is given to its decision;

(c) refer the matter back to the Special Arbitrator or Traditional Appeal Court from which the appeal was made, for further investigation and further findings of fact; and

(d) make such order as to costs as it deems fit.

(4) The register of assessments shall be amended where necessary to give effect to the decision of the High Court on the appeal.

(5) The High Court may authorize publication in such form as it may determine of any points of law or procedure decided by it. Particulars of the identity of the taxpayer and, so far as possible, of any information relating to his private affairs shall be excluded from

any such publication.

(6) Any person who, without the authority of the High Court, publishes any report of the proceedings before it shall be guilty of an offence and liable to a fine of K1,000.

## PART XI COLLECTION AND RECOVERY OF TAX

### *Division 1-Withholding Taxes*

**102.**-(1) On the making of any payment of, or on account of, any emolument at a rate exceeding K72,000 per annum received or accrued in respect of services rendered, whether payable under any contract of employment or service or not, whether paid or payable weekly or monthly or at other intervals, and including any amounts assessable under sections 16, 17 and 18, income tax shall, subject and in accordance with any regulations made by the Minister under section 146, be deductible by the person making the payment, notwithstanding that when the payment is made no assessment has been made in respect of the emoluments and notwithstanding that the emoluments are in whole or in part emoluments for some year or period of assessment other than the year or period during which the payment is made.

**Deduction of tax  
from salaries and  
wages - Pay As  
You Earn  
6 of 1972  
1 of 1985  
1 of 1990  
2 of 1994  
9 of 2006**

(2) Regulations made with respect to the assessment, charge, collection and recovery of income tax in accordance with this section may in particular include provision for-

(a) requiring any person making any payment of, or on account of, emoluments to which this section applies, when he makes the payment to make a deduction calculated by reference to tax tables prepared by the Commissioner, and for rendering persons who are required to make any deduction accountable to the Commissioner;

(b) the production to and inspection by persons authorized by the Commissioner of wages sheets and other documents and records for the purpose of satisfying themselves that tax has been and is being deducted and accounted for in accordance with the regulations;

(c) the collection and recovery, whether by deduction from emoluments paid in a later period or otherwise of tax in respect of emoluments to which this section applies, which has not been deducted or otherwise recovered during the year;

(d) the personal liability of an employer to pay to the Commissioner the amount of any tax which the employer may fail to deduct contrary to this section or any regulation in respect thereof, and for the recovery by such employer of the amount of any tax so paid from the employee in respect of

**10 of 1983**

whose emoluments that amount was so paid,  
and any such regulations shall have effect notwithstanding anything  
in this Act relating to other methods of assessment and collection of  
income tax.

**10 of 1983**

(3) The tax tables referred to in subsection (2)(a) shall be constructed so as to show that the income tax payable in respect of the year of assessment at the rates for the time being specified in the Eleventh Schedule and that the income tax payable in respect of any week or month of that year is one fifty-second or one twelfth, respectively, of the income tax payable for that year.

**9 of 2000**

(4) The year of assessment for income tax payable under this section (otherwise referred to as P.A.Y.E.) shall be the year ending the 30<sup>th</sup> June in each year.

**Deduction of  
tax from  
certain  
payments  
1 of 1985  
4 of 1988  
8 of 1995  
5 of 1997  
23 of 1997  
18 of 1998**

**102A.**-(1) Every person who makes any payment specified in the Fourteenth Schedule to any other person shall, before making such payment withhold tax in accordance with the rates specified in that Schedule subject to and in accordance with any regulations made by the Minister under section 146, notwithstanding that the recipient has not been assessed in respect of the amount in question:

Provided that where the recipient produces a valid withholding tax exemption certificate issued by the Commissioner, withholding tax shall not be deducted but so, however, that no exemption from payment of withholding tax shall be granted in respect of bank interest and rent, royalties, fees, commissions and payment of casual labour, payment to contractors and subcontractors, and the expression "bank interest" shall have the meaning assigned to it in the Fourteenth Schedule.

**4 of 1988  
2 of 2003**

(2) Regulations made with respect to deduction of tax (otherwise referred to as withholding tax) from certain payments in accordance with this section may include provision for-

requiring any person making any payment to which this section applies to deduct tax in the manner provided and for rendering persons required to withhold tax accountable to the Commissioner;

the production to and inspection by persons authorized by the Commissioner of records and other documents for the purpose of satisfying themselves that tax is being withheld and accounted for in accordance with the regulations; and

the personal liability of any person required to withhold tax to pay to the Commissioner the amount of any tax which that person may fail to withhold contrary to this section or any regulation in respect thereof.

**103.** Every sum required to be deducted under sections 102 and 102A shall be a first charge on the payment to the recipient and shall be deducted prior to any other deduction whether such other deduction be deductible under any court order or under any other law.

**Priority of  
tax deduction  
at source  
1 of 1985**

**104.** No assessment need be made on a person in respect of his emoluments for any period during which tax was deducted from his emoluments if the tax deducted each week or month was the correct amount to be deducted in accordance with the tables and regulations prescribing their use:

**Formal  
assessment  
to be unnecessary  
6 of 1972  
10 of 1983**

Provided that if such deductions were incorrect in whole or in part with the result that tax has been over-paid the error may be corrected by means of an assessment and the tax over-paid shall be repaid to that person.

**104A.** Where withholding tax has been deducted under sections 102 and 102A, the tax so deducted shall be allowed as a credit against tax charged on assessments issued under sections 90 and 91.

**Credit for  
tax deducted  
at source  
1 of 1985**

*Division 2-Assessments raised by the Commissioner*

**105.**-(1) Any tax chargeable under this Act is payable by the due date as provided in this Act.

**14 of 1969  
1 of 1985  
10 of 1993  
18 of 1998  
10 of 1993**

(2) Notwithstanding that an appeal against an assessment has been made under section 97 the tax shall be paid as provided in subsection (1) unless the Commissioner otherwise directs:

Provided that, if the Commissioner has reason to believe that the taxpayer may attempt to leave Malawi without intending to return without settling his liabilities under this Act, the Commissioner may require the taxpayer to pay the whole of such tax forthwith.

(3) When an appeal is settled any balance of tax shall be due and payable upon notification of settlement of the appeal.

**10 of 1993**

(4) Where the assessment is reduced on appeal with the result that too much tax has been paid under subsection (2) the excess shall be refunded.

(5) If tax is not paid on or before the dates provided in subsection (1), (2) or (3) interest at the rate provided in subsection (6) shall be payable.

**14 of 1969  
10 of 1993**

(6) The interest referred to in subsection (5) shall be-

**14 of 1969  
10 of 1993**

(a) where the tax unpaid does not exceed K22, twenty-five per centum of the amount of such unpaid tax;

14 of 1969

(b) where the tax unpaid exceeds K22, the rate of interest referred to in subsection (5) shall be three-quarters per centum per month in respect of the first month or part thereof, with the addition of one-quarter per centum per month for each additional month or part thereof and the final rate of interest shall apply for the whole period during which any tax has remained unpaid, so however that in no case shall the total interest payable be less than K5.50:

Provided that the Commissioner may on good cause shown make such arrangements as he thinks fit with any taxpayer for payment of tax and may remit the whole or any part of the interest due under subsection (5) and (6) or may decide that no interest shall be charged.

(7) Any interest payable under subsections (5) and (6) shall be recoverable as if it was tax payable under this Act and shall not be allowable as a deduction in computing taxable income.

(8) Where a payment of tax has been made by cheque and the cheque is dishonoured by the bank, a penalty equal to 30 per centum of the amount on the cheque shall be charged, and collected summarily together with amount of tax in cash.

**105A.**-(1) If the Commissioner has, in accordance with any arrangement made with the Government of any other country or by an agreement entered into in accordance with section 122 with a view to rendering reciprocal assistance in the collection of taxes, received a request for the collection from any person in Malawi of an amount alleged to be due by him under the income tax laws of such other country, the Commissioner may, by notice in writing, call upon such a person to state, within a period specified in the notice, whether or not he admits liability for the said amount or for any lesser amount.

(2) The Commissioner may-

(a) if such person so admits liability; or

(b) if such person fails to comply with the notice or in answer to the notice denies his liability for the said amount or for any part thereof, and a Special Arbitrator has certified that he has afforded the person concerned an opportunity of presenting his case, and that on the information submitted to him by the Commissioner and by such person, if any, the amount specified in the certificate appears to be payable by such person in terms of a final determination under the income tax laws of such other country,

by notice in writing, require such person to pay the amount for which he has admitted liability or the amount so specified, as the case may be, on a date, at a place and to a person specified in the notice, for transmission to the proper authority in such other country.

(3) If such person fails to comply with the notice under subsection (2) the amount in question may, subject, in the case of any amount to which any such certificate relates, to the outcome of any proceedings which such person may institute in such other country for determining his liability to the said amount, be recovered for transmission to the said authority as if it were a tax payable by such person under this Act.

(4) No steps taken in any other country under any arrangement referred to in subsection (1), for the collection of an amount alleged to be due by any person in pursuance of such arrangement in such other country for any such amount, shall effect his right to have his liability for any such amount determined in Malawi in accordance with the provisions for the relevant law.

**106.** Subject to this Act the tax shall be payable-

**Persons by whom  
the tax is payable**

by a representative taxpayer in respect of any taxable income received or controlled by him in such representative capacity;

in respect of every other taxable income and all other cases by the person by whom the taxable income is received or is deemed to have been received or to whom or in whose favour it accrues or is deemed to accrue or who is legally entitled to the receipt thereof:

Provided that any person may recover so much of the tax paid by him under this Act as is due to the inclusion in his taxable income of any such income deemed to have been received by him or to be such income of his, as the case may be, in terms of section 72(1), (2), (3) or (4) from the person entitled, whether on his own behalf or in a representative capacity, to the receipt of the taxable income so included.

**107.**-(1) Any tax shall when it becomes due or is payable, be deemed to be a debt due to the Malawi Government and shall be payable to the Commissioner in the manner and at the place prescribed, and may be sued for and recovered by the Commissioner in any court of competent jurisdiction.

**Recovery of tax  
10 of 1993**

(2) Notwithstanding anything contained in any Malawi law relating to magistrates courts any amount whatsoever due and payable under this Act shall be recoverable by action in the court of the magistrate having jurisdiction in respect of the person by whom such amount is payable under this Act.

(3)(a) If any person neglects or refuses to pay any tax due and payable upon demand made by the collector, the collector may, upon the authority of a certificate by the Commissioner

that such tax is due and payable, for non-payment thereof distrain such person by any of his property, both real and personal without any further authority than such certificate and his warrant of appointment.

(b) A distress levied by the collector shall be kept by the collector for five days at the costs and charges of the person neglecting or refusing to pay, and if the person aforesaid does not pay the sum due, together with the costs and charges, with the said five days, the distress shall be sold by public auction for payment of the sum due and all costs and charges. The costs and charges of taking, keeping and selling the distress shall be retained by the collector, and any overplus coming by the distress, after the deduction of the costs and charges and of the sum due, shall be restored to the owner of the goods distrained.

(4) If any tax due and payable by a man in respect of the income of a woman which is deemed in terms of section 12(2) to be income accrued to him during a period while he was married to that woman is outstanding after his assets in Malawi have been distrained or otherwise attached in any manner whatsoever, that woman shall be chargeable with such tax and, after a notification to her by the Commissioner for the purposes of section 105(1) that outstanding tax shall become due and payable by her in accordance with such notification and that man shall be released from the payment of the amount of such outstanding tax as is recovered by the Commissioner from such woman.

(5)(a) If any tax due and payable by a partner in any business, which is referable to the taxable income derived from the partnership business is outstanding after his assets in Malawi, other than his interest in the assets of the partnership, have been distrained or otherwise attached in any manner whatsoever, the partnership shall be chargeable with such tax, and after a notification to it by the Commissioner for the purposes of section 105(1), that outstanding tax shall become due and payable by it in accordance with such notification and that partner shall be released from the payment of the amount of such outstanding tax which is recovered by the Commissioner for the partnership:

Provided that the amount of tax recoverable from the partnership shall not exceed the value of such partner's interest in the assets of the partnership.

(b) The amount of tax so referable in terms of paragraph (a) shall be the proportion of the total tax due by the partner determined in accordance with the ratio that the partner's taxable income derived from the partnership business bears to his total income.

(6) So much of any tax payable by any person under this Act as is due to the inclusion in his income of any income deemed to have been received by or accrued to him or to be his income, as the case may be, in terms of section 72(1), (2), (3) or (4), may be recovered by the Commissioner from the assets by which the income so included was produced.

**107A.**-(1) If any person liable to pay tax imposed by this Act neglects or refuses to pay the tax after it has become due and payable, the amount (including any interest, additional charge or penalty, together with any costs that may accrue in addition thereto) shall constitute a lien in favour of the Government on all the property, both real and personal, belonging to that person.

**Creation of a lien  
10 of 1993**

(2) If in the opinion of the Commissioner it is in the best interest of the Government so to do, he may cause to be filed a notice of the lien created under subsection (1) in the appropriate public records.

(3) Upon filing, a lien shall be valid against all other rights, and have priority, over all subsequently filed liens.

(4) Upon satisfaction of the tax obligation, the Commissioner shall promptly issue a release of the lien.

**108.**-(1) Proceedings in any court for the recovery of any tax shall be deemed to be proceedings for the recovery of a debt validly acknowledged in writing by the debtor.

**Form of  
Proceedings**

(2) In any action or proceedings for the recovery of any tax it shall not be competent for the defendant to question the correctness of any assessment, notwithstanding that an appeal may have been lodged thereto.

**109.** The production of any register of assessments or of any document under the hand of the Commissioner or of any officer duly authorized by him purporting to be a copy of, or extract from, any such register of assessments shall be conclusive evidence of the making of any assessment referred to therein and, except in the case of proceedings on appeal against an assessment, shall be conclusive evidence that the amount and all the particulars of such assessment appearing in such register or document are correct.

**Production of  
register of  
assessments  
14 of 1969**

**110.**-(1) Any person who shall leave or attempt to leave Malawi by land, water or air without intending to return without settling his liabilities under this Act or making such arrangements for the payment of any tax which is or may become due as are satisfactory to the Commissioner shall be liable to a penalty of K1,000.

**Payment of tax  
by persons  
leaving Malawi**

(2) The Commissioner shall give a tax clearance certificate to any such person when either he has settled his liability

or made satisfactory arrangements for the payment of tax.

**Security for  
payment of tax  
14 of 1969**

**111.**-(1) For the purpose of securing the payment of tax a taxpayer who is the owner of any land situated in Malawi may, by notice in writing to the Commissioner, request that his interest in such land be the subject of security for tax of an amount specified therein.

(2) If the Commissioner in his discretion accepts such security for the payment of such tax he may, by notice in writing, notify the Registrar responsible for the registration of titles to such land and encumbrances thereover of such request and such Registrar shall, without fee, register such notification as if it were an instrument of mortgage over or charge on, as the case may, such land duly made in accordance with the laws of Malawi and thereupon such notification shall, subject to subsection (3) and any prior mortgage or charge, operate as a legal mortgage over or charge on such land to secure such amount.

(3) On being satisfied that any such tax has been paid or that security therefore is no longer required, the Commissioner shall notify the Registrar responsible of the cancellation of such notification and such Registrar shall, with fee, record such cancellation and thereupon such notification shall cease to operate as a mortgage over or charge on such land.

## PART XII PENALTIES

**Liability for  
penalties  
14 of 1969  
1 of 1990  
10 of 1993  
2 of 1994  
18 of 1998  
4 of 2002**

**112.**-(1) Any person who-

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

gives any incorrect information or omits any relevant information from any statement required to be made to the Commissioner under section 20;

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

being a public officer of a company, fails to furnish to the Commissioner documents and particulars relating to the notification of dividend declared, as required under section 69;

fails to furnish to the Commissioner returns or particulars relating to persons employed by him as required under section 85; or

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

**1 of 1990**

fails to deduct the tax due, or to remit to the Commissioner tax deducted, under section 76A,

shall be liable to a penalty not exceeding K30,000. **18 of 1998**

(2) Any company which-

fails to comply with any of the provisions of section 67 relating to the appointment of public officers; or

(b) fails to furnish to the Commissioner a return of payments made to shareholders as required under section 68(1) or fails to file with the Commissioner a copy of the memorandum and articles of association or any amendments thereto as required under section 68(2),

shall be liable to a penalty not exceeding K30,000 **18 of 1998**

(3) Any taxpayer who-

fails to furnish or makes default in furnishing to the Commissioner a return of income in respect of any year of assessment; or

omits from his return of income in respect of any year of assessment any amount which should have been included therein; or

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, or

claims any allowance in respect of any year of assessment, which he is not entitled to claim under this Act,

shall be liable to a penalty not exceeding K30,000 and shall in addition be liable to a penalty not exceeding an amount equal to 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. **18 of 1998**

(4) Any taxpayer who with intent to defraud-

**14 of 1969**

commits any of the acts or omissions referred to in subsection (3); or

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

in relation to any year of assessment prepares or 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

makes any false claim for repayment of any tax for any year of assessment,

10 of 1993  
18 of 1998  
4 of 2002

shall be liable to a penalty not exceeding K10,000 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 and to imprisonment for three years.

**Imposition of penalty**

**113.**-(1) Any penalty incurred under this Act shall be imposed by the Commissioner and any such imposition of a penalty shall be subject to the same rights of appeal as if it were an assessment under this Act, and all the provisions of this Act relating to assessments, appeals and the collection and recovery of tax shall apply such imposition and penalty.

(2) Payment of a penalty imposed under this Act shall in no way operate as a discharge of the liability of a taxpayer to pay the full amount of tax chargeable under this Act.

**Accounts deemed to have been submitted by person**  
14 of 1969

**114.** For the purposes of section 112 of this Act, any accounts submitted on behalf of any person shall be deemed to have been submitted by him unless he proves that they were submitted without his consent or connivance.

**Assisting in making incorrect returns**  
5 of 2002

**115.** Any person who assists in or induce the making or delivery for any purposes of income tax of any return, accounts, statement or declaration which knows to be incorrect shall be liable to a fine or K30,000.

**Obstruction of officers**  
10 of 1993  
6 of 2002

**116.** Any person who obstructs or hinders an officer in the discharge of his duty under the Act or the rules shall be liable to a fine of K50,000.

**Forceful rescue of seized property**  
10 of 1993  
7 of 2002

**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 under the authority of this Act shall be guilty of an offence and liable to a fine of K50,000 and to imprisonment for one year.

**Physical assault of officers**  
10 of 1993  
8 of 2002

**116B.** Any person who physically assaults an officer discharging his duties under this Act shall be guilty of an offence and liable to a fine of K50,000 and to imprisonment for two years.

**Inciting a person to refuse to pay tax**  
2 of 1996  
9 of 2002

**117.** Any person who without lawful justification or excuse incites any person to refuse to pay any tax payable by him under this Act shall be liable to a fine of K50,000.

**118.**-(1) Proceedings for the recovery of any penalty incurred under this Act in connexion with or in relation to assessment of income tax made by the Commissioner may be commenced at any time within six years next after the date on which it was incurred:

**Time limit for  
penalty  
proceedings  
14 of 1969**

Provided that where the amount of the penalty to which a person is liable under this Act is to be determined by reference to tax charged in an assessment for any year, proceedings for the recovery of the penalty shall not be out of time by reason that they are commenced after such period if they are commenced within three years from the first determination of the amount of that tax.

(2) The time limited by subsection (1) for commencing proceedings for the recovery of any penalty from any person in connexion with or in relation to any income tax covered by any assessment shall, where any form of fraud or wilful default has been committed by him or on his behalf in connexion with or in relation to that tax, be extended so as to authorize the commencement of such proceedings at any time within three years from the final determination of the amount of tax covered by the assessment.

**14 of 1969**

For the purposes of this subsection, the amount of the tax covered by any assessment shall not be deemed to be finally determined until the assessment can no longer be varied, whether on appeal or by the order of any court.

(3) Nothing in subsection (2) shall extend the time for the bringing of any proceedings against the personal representatives of any person by whom or on whose behalf any form of fraud or wilful default has been committed.

**119.** Where a company is liable to a penalty under this Act every person who, at the time of the act or omission rendering the company liable to such penalty was a public officer, director, general manager, secretary or other similar officer of such company or was purporting to act in such capacity shall also be liable to the same penalty unless he proves that such act or omission was done or omitted without his knowledge or consent and that he exercised due diligence to prevent such act or omission having regard to the nature of his functions in such capacity and in all the circumstances.

**Liability of  
officers of  
company  
14 of 1969**

**120.** Where in consequence of a person's fraud, wilful default or negligence, any tax has been repaid which ought not to have been repaid the amount thereof may be recovered by assessment, but without prejudice to the right of the Commissioner to recover such tax by means of civil proceedings.

**Recovery of tax  
repaid in  
consequence of  
fraud or  
negligence**

**121.**-(1) Save as is otherwise provided, none of the provisions of this Act, including the imposition of penalties shall affect or be a bar to criminal proceedings for any offence.

**Saving for  
criminal  
proceedings etc.**

14 of 1969

(2) Statements made or documents produced to the Commissioner by or on behalf of any person for the purposes of this Act, shall be admissible in any criminal proceedings against such person for any form of fraud in connexion with or in relation to income tax, or in any proceedings for the recovery of any penalty.

### PART XIII

#### GENERAL

**Relief from  
double taxation**

**122.**-(1) If the Minister by Order declares that arrangements specified in that Order have been made with the Government of any country with a view to the prevention, mitigation or discontinuance of the levying under the laws of Malawi and of such other country of taxes in respect of the same income, or to the rendering of reciprocal assistance in the administration of this Act or any previous law and taxes on income levied under the laws of such other country, and that it is expedient that those arrangements should have effect, the arrangements shall have effect notwithstanding anything in this Act.

(2) The Commissioner may make rules for carrying out any arrangements having effect under this section.

(3) An order made under subsection (1) may have retrospective effect.

**Reduction of  
tax payable as  
a result of  
agreements  
entered into  
in terms of  
section 122**

**123.**-(1) This section shall apply where, under any agreement entered into with any other country or territory in terms of section 122 the tax (hereinafter referred to as "foreign tax") payable to that other country or territory in respect of any income (hereinafter referred to as "foreign income") is to be allowed as credit against tax chargeable in terms of this Act in respect of such foreign income.

(2) Subject to subsection (3), the amount of the tax chargeable under this Act in respect of such foreign income shall be reduced by the amount to be allowed as a credit in terms of any agreement.

(3) Any reduction granted in terms of subsection (2) shall be subject to the provisions set out in this subsection-

a reduction in the income tax, shall not exceed an amount arrived at by applying the formula-

$$\frac{A \times B}{C}$$

in which-

**A** is the amount of the foreign income included in the taxable income; and

14 of 1969

**B** is the income tax which would have been payable in terms of this Act had no reduction been granted; and

C is the taxable income.

the total reduction to be allowed to any person for any year of assessment shall not exceed the total tax chargeable in terms of this Act in respect of that year of assessment;

(c) where the amount of any reduction given in terms of any such agreement is rendered excessive or insufficient by reason of any subsequent adjustment of the amount of any foreign tax applicable to such foreign income or any tax chargeable in terms of this Act in respect of such foreign income, nothing in this Act limiting the time for the raising of additional assessments, the reduction of an assessment, or of the granting of refunds shall prevent a subsequent adjustment of the amount of such reduction, and any tax underpaid as a result of such adjustment shall be recoverable and any tax overpaid shall be refundable.

**124.** If any person in or any person outside Malawi who is deemed to have derived income from a source within Malawi in terms of section 27(1)(c) who has paid or is liable to pay tax for any year of assessment on income which is derived from a country or territory which has not entered into an agreement with Malawi in terms of section 122 proves to the satisfaction of the Commissioner that he has paid tax on the same income in the country or territory from which such income was derived and requests relief in respect of that tax then the tax chargeable under this Act in respect of such income shall be reduced by the amount of foreign tax paid or payable on such income as if section 123(3) was applicable thereto. For the purpose of this section, tax in respect of such income, which is deducted from such income in such country or territory, shall be deemed to be tax paid by such persons.

**Relief from double taxation in cases where no agreements have been made under section 122 18 of 1968**

**125.**-(1) If a taxpayer who has paid tax for any year of assessment alleges that any assessment made upon him for that year was excessive by reason of some error or mistake in the return, statement or account made by or on behalf of such taxpayer for the purposes of the assessment, he may at any time not later than six years after the end of the year of assessment within which the assessment was made, make an application in writing to the Commissioner for relief

**Error or mistake**

(2) On receiving any such application the Commissioner shall enquire into the matter and shall give by way of repayment of tax such relief in respect of the error or mistake as appears to be reasonable and just:

Provided that no relief shall be given under this section in respect of an error or mistake as to the basis on which the liability

of the applicant ought to have been computed where the return, statement or account was in fact made on the basis or in accordance with the practice generally prevailing at the time when the return, statement or account was made.

(3) A determination by the Commissioner under this section shall be final and conclusive.

**Repayment of tax**

**126.**-(1) Save as is otherwise expressly provided in this Act, no claim for repayment of tax shall be allowed unless it is made in writing within six years after the end of the year of assessment to which it relates.

(2) The Commissioner shall give a certificate of the amount of tax to be repaid under any of the provisions of this Act or under any order of a court of competent jurisdiction and shall issue a repayment order to the person to be repaid.

**Transfers to defraud, and artificial transactions**

**127.**-(1) Where, when any proceedings are pending under this Act, any taxpayer creates a charge on or parts with the possession by way of sale, mortgage, exchange or any other mode of transfer whatsoever of any of his assets in favour of any other person with the intention to defraud the Government such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by such taxpayer as a result of the completion of such proceeding:

Provided that such charge or transfer shall not be void if made for valuable consideration and without notice of the proceedings pending under this Act.

**14 of 1969**

(2) Where the Commissioner is of the opinion that the main purpose or one of the main purpose for which any transaction or transactions was or were effected (whether before or after the passing of this Act) was the avoidance or reduction of liability to tax for any year, or that the main benefit which might have been expected to accrue from the transaction or transactions was the avoidance or reduction of liability to tax, he may, if he determines it to be just and reasonable, direct that such adjustments shall be made as respects liability to tax as he considers appropriate to counteract the avoidance or reduction of liability to tax which would otherwise be effected by the transaction or transactions:

Provided that no such direction shall require that adjustments shall be made as respects liability to tax for any year of assessment prior to the year of assessment commencing on the 1<sup>st</sup> April, 1968.

(3) Without prejudice to the generality of the powers conferred by subsection (2) the powers conferred thereby extend-

(a) to the charging with tax of persons who, but for the adjustments, would not be chargeable with any tax or would

not be chargeable to the same extent;

(b) to the charging of a greater amount of tax than would be chargeable but for the adjustments; and

(c) to the giving of a direction under this section by reason of the fact that in the case of any company no distribution of dividends has been made or only a smaller distribution has been made than might have been made without detriment to the development of the business of the company:

Provided that-

(i) where a charge is made under this section on any company in respect of adjustments which relate to the liability of any shareholder, such company shall be entitled to recover from such shareholder the amount of tax attributable to the adjustment made in respect of such shareholder; and

(ii) where an adjustment made under this section relates to any distributable profits of a company and such profits are subsequently distributed the proportionate share therein of any shareholder shall be excluded in computing the income of such shareholder.

(4) Any direction of the Commissioner under this section shall specify the transaction or transactions giving rise to the direction and the adjustments as respects liability to tax which the Commissioner considers appropriate.

(5) Any person aggrieved by any direction of the Commissioner made under subsection (2) may appeal therefrom either on the grounds that no direction ought to have been given or that the adjustments directed to be made are inappropriate; and all the provisions of this Act relating to appeals against assessments, shall, so far as they are applicable, have effect with respect to any such appeal as if such appeal were an appeal against an assessment:

Provided that any direction made under subsection (2) shall not be the subject of any appeal except under this subsection.

**128.**-(1) No assessment, warrant or other proceeding purporting to be made in accordance with this Act shall be quashed, or deemed to be void or voidable for want of form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of this Act, and if the person assessed or intended to be assessed or affected thereby is designated therein according to common intent and understanding.

**Errors, etc., in assessment and notice may be rectified, and Commissioner may remit tax**

(2) An assessment shall not be impeached or affected by reason of any variance between the assessment and the notice thereof, or by reason of a mistake therein as to-

the name of a taxable person or of a person in whose name a taxable person is chargeable;

the description of any income; or

the amount of tax charged or shown to be payable:

Provided that in cases of assessment the notice thereof shall be duly served upon the taxable person intended to be charged or the person in whose name such taxable person is chargeable, and such notice shall contain in substance and effect the particulars on which the assessment is made.

(3) The Commissioner may remit, in whole or in part, any tax outstanding which he is of opinion cannot be recovered:

Provided that this power shall be exercised by the Commissioner in person and shall not be delegated.

#### **PART XIV**-[Repealed by 2 of 1994]

#### **PART XV REGULATIONS**

##### **Regulations by Minister**

**146.** The Minister may make regulations for the better carrying out of the purposes and provisions of this Act, and without prejudice to the generality of the foregoing such regulations may make provision for-

(a) any matter for which the Act provides for regulations to be made;

(b) prescribing anything to be or which may be prescribed under this act; and

(c) appeals in respect of any matters arising under the Act or any regulations made thereunder for which provision for appeals has not already been made.

##### **Savings**

**147.** All subsidiary legislation made under the Taxation Act (now repealed) shall, until replaced or revoked under this act, continue in operation as if they were regulations made by the Minister under powers conferred upon him under this Act.

ss. 13 and 27(3)  
7 of 1968  
18 of 1968  
14 of 1969  
16 of 1969  
27 of 1970

#### **FIRST SCHEDULE GENERAL EXEMPTIONS**

There shall be exempt from income tax-

the revenues of local authorities;

- the receipt and accruals of-
- (i) land and agricultural banks specifically constituted by any law of Malawi, any board or other body constituted under any such law having as its main object the fostering or controlling of the primary production, manufacture, or marketing of any commodity, or the stabilizing of the price of any commodity;
    - 10 of 1983
    - 12 of 1987
    - 20 of 1987
    - 4 of 1988
    - 7 of 1992
    - 10 of 1993
    - 1 of 1995
    - 5 of 1997
  - (ii) a registered trade union;
  - (iii) agricultural, mining, and commercial institutions or societies not operating for the private pecuniary profit or gain of the members;
  - (iv) clubs, societies and associations, not being clubs, societies or associations to which the provisions of section 61 apply, formed, organized or operated solely or principally for social welfare, civic improvement or other similar purposes, if such receipts or accruals; whether current or accumulated, may not be divided amongst or credited to or accrued to the benefit of any member or shareholder;
    - 16 of 1969
  - (v) pension and provident funds and such benefit funds as the Minister may approve;
    - 6 of 2005
    - 5 of 2007
  - (vi) building societies and friendly societies;
  - (vii) employees' saving schemes or funds approved by the Commissioner;
  - (viii) statutory corporations and bodies and associations as may be specified by the Minister by notice published in the Gazette;
  - (ix) ecclesiastical, charitable and educational institutions of a public character, and trust of a public character:
- Provided that this subparagraph shall not apply to receipts or accruals derived from the carrying on of any business;
  - 16 of 1969
- (c) any amount received as a war disability pension or war widows pension, or as an old age pension paid out of public funds, or as an award, benefit, or compensation paid under any law of Malawi in respect of injury, disease or disablement suffered in employment;
  - (d) interest on Savings Certificates issued by the Government or interest on so much of any tax reserve certificate as is accepted in payment of income tax or any other tax the assessment and collection of which is vested in the Commissioner.
    - 5 of 1997
  - (e) interest received by or accrued to or in favour of any person from any public loan raised by the Government and issued subject to a condition that such interest shall be exempt from income tax in the hands of such person;
  - (f) interest received by or accrued to or in favour of any person from any stock or bonds issued by the Government which the Minister has directed shall be exempt from tax under the powers vested in him by section 26 or the Finance and Audit Act to the extent that he shall so direct;
    - Cap. 37:01

(g) interest received by or accrued to or in favour of any person from Malawi Development Bonds;

(h) interest received by or accrued to or in favour of any person not being a resident of Malawi from 4.5 per centum African Development Loan (Registered Bond) issued on the 1<sup>st</sup> day of July, 1960;

4 of 1988  
3 of 2001

(ha) interest up to K10,000 received by or accrued to or in favour of an individual-

Cap. 32:01  
Cap. 44:01

(i) on any sums deposited with an institution registered under the Building Societies Act or the Banking Act;

(ii) from stock, bonds or promissory notes raised by or on behalf of the Government;

4 of 1988

(hb) interest received by or accrued to or in favour of any person on any sums deposited with such institution, and held by that institution on an account of such type, as may be specified by the Minister by Order published in the *Gazette*; and the Minister may, in such Order, prescribe the minimum amount which may be held on an account for the purposes of the exemption granted under this paragraph;

9 of 1995

(hc) gains from sale of shares traded on the stock exchange if those shares are held by taxpayer for not less than one year;

7 of 1992  
5 of 1997  
6 of 2005

(hd) capital gains realized by an individual on the disposal of personal and domestic assets not used in connexion with any trade;

(i) the gratuity, pension and other benefits granted by Government to a former President or a former Vice President;

(j) the salary and emoluments of the President and a Vice President received from the Government in respect of their offices as President and Vice President, respectively;

(k) any amount payable to any person or his dependants or heir on account of his injury or sickness by any benefit fund or any trade union or under any policy of insurance covering accident or sickness;

(l) the interest received by, or accrued to, or in favour of the Commonwealth Development Corporation or any other similar body which the Minister by notice published in the *Gazette* may specify on loans made by those bodies to the Government or to any corporate body established by a law of Malawi;

(m) the salaries and emoluments payable in respect of their offices to such officers in the service of such Government of countries outside Malawi or such agencies of such Governments or of such international organizations as the Minister may by notice published in the *Gazette* approve;

(n) the value of any education allowance and the passages connected therewith paid by the Government in respect of its employees;

(o) the salaries and emoluments payable in respect of their offices to any members of the United Kingdom Armed Forces serving in Malawi which are subject to income tax in the United Kingdom;

(p) such foreign service allowances as may from time to time for this purpose be specified by the Minister, paid by the Government to any member of a Government mission outside Malawi;

(q) such allowances made to members of the National Assembly as may from time to time be specified by the Minister for the purposes of this Schedule;

(r) any amount paid for loss of career or concomitant disturbance made by the Government to a member of its permanent pensionable staff, not being an amount paid by way of interest by reason of the deferment of the payment of any such amount or any part of such amount;

(ra) up to K50,000 of any amount paid by any employer to an employee who has been declared redundant, not being notice pay or commutation of leave. **5 of 1997**

(s) such income payable to any person as is, pursuant to any arrangement, agreed to be exempted. **25 of 1972**

In this paragraph the term "arrangement" means any arrangement between the Government and any other Government, or any international organization, institution or body, or any person;

(t) [*Repealed by 3 of 2001*] **7 of 1992**  
**3 of 2001**

(u) any scholarship, exhibition, bursary or similar educational endowment paid to a person receiving full-time instruction at a university, college, school or other educational establishment approved by the Minister, and such allowances connected therewith as may be approved by the Minister; **14 of 1969**

(v) where an agreement is in force between the Government and the government of any other country whereby the income or part thereof derived from the business of air transport is agreed to be exempt from tax, the income of such business as are specified in the agreement to the extent provided in the agreement; **27 of 1970**

(w) the receipts and accruals of life assurance companies or societies or of life departments of companies carrying on both life and non-life business as such, except as provided in section 63(2); **4 of 1982**

(x) any income arising from the rendering international transport service by, and payable to, a resident of a country which exempts from tax any amount payable to residents of Malawi for rendering similar service; **12 of 1987**

- 4 of 1981 (y) amounts received and credited by the Trustees of the Parliamentary Pensions Premium Fund for the account of that Fund in furtherance of the objects specified in section 4 of the Parliamentary Pensions (Enabling Provisions) Act;
- Cap. 2:06
- 4 of 1981 (z) amounts received by a member of the National Assembly or any dependant of his as a pension, lump sum benefit or refund of contributions, in accordance with any pension scheme or other scheme formulated by the Trustees of the Parliamentary Pensions Premium Fund under the provisions of the Parliamentary Pensions (Enabling Provisions) Act.
- Cap. 2:06

ss. 25, 33, 41 and  
58(4)(v)  
1 of 1991  
7 of 1992  
18 of 1998

## SECOND SCHEDULE CAPITAL ALLOWANCES

### PART 1

#### GENERAL

- Initial allowance** 1.-(1) Subject to this Schedule where the taxpayer so elects an allowance (hereinafter called an initial allowance) shall be made in respect of capital expenditure incurred by the taxpayer during the year of assessment on the construction of new farm improvements, farm fencing, industrial buildings, railway lines, or additions to alterations to existing farm improvements, farm fencing, industrial buildings, railway lines, as the case may be and in respect of articles, implements, machinery, or utensils purchased and used by the taxpayer for the purpose of his trade or for farming purposes:
- 14 of 1970
- 19 of 1969

- 18 of 1998 Provided that no initial allowance shall be made in respect of private passenger motor vehicle and an asset upon which investment allowance has been claimed under paragraph 4.

For the purpose of this paragraph, "private passenger vehicle" includes any saloon, sedan, station wagon, double cabin pick-up, and vehicles generally known as land cruiser, pajero, prado and any such other make of a similar nature, excluding those used for hiring purposes.

(2) The initial allowances shall be-

in respect of farm improvements, industrial buildings, railway lines a sum equal to ten *per centum* of the capital expenditure incurred by the taxpayer;

in respect of articles, implements, machinery, and utensil a sum equal to twenty *per centum* of the cost thereof to the taxpayer;

in respect of farm fencing, a sum equal to thirty-three and one third *per centum* of the cost thereof to the taxpayer;

(3) An initial allowance may be made to a person in respect of any machinery or plant notwithstanding that it appears that, during the period during which the machinery or plant will be used for the purposes of the trade, it will also be used for other purposes, but the allowance in any such case shall be so much only of the allowance that would be made if the machinery or plant were to be used only for the purposes of the trade as may be just and reasonable having regard to all the relevant circumstances of the

case and, in particular, to that extent to which it appears that the machinery or plant is likely to be used for the said other purposes during that period.

2.-(1) Subject to this Schedule an allowance (hereinafter called an annual allowance) shall be made in respect of capital expenditure incurred in respect of-

**Annual Allowances**

(a) farm improvements, farm fencing, industrial buildings, newly constructed commercial buildings, railway lines; and **14 of 1971**

(b) articles, implements, machinery and utensils belonging to and used by the taxpayer for the purposes of his trade, the value of which, in either case, has been diminished by reason of wear and tear and such allowance shall be subject to, and calculated in accordance with, paragraph 3 in the case of articles, implements, machinery and utensils. **19 of 1969**

(2) An annual allowance may be made in respect of any asset for any year of assessment notwithstanding that the asset is also used in that year for purposes other than those of the trade, but where, in the year of assessment, the asset is used for purposes other than those of that trade, the annual allowance to be made in respect thereof shall be so much only of the allowance that otherwise would be made as may be just and reasonable having regard to all the relevant circumstances of the case and, in particular, to the extent of the use for the said other purposes during the said basis period.

(3) Where an initial allowance has been made to a person in respect of any machinery or plant but the amount thereof has been reduced under paragraph 1(3) on the ground that the machinery or plant will be used for purposes other than those of the trade, any annual allowance falling to be made in respect of that machinery or plant to that person shall be calculated as if the reduction had not been made.

(4) In the case of any asset ranking for annual allowance in respect of which capital expenditure was incurred prior to the 1st day of April, 1963, and which was not the subject of a similar allowance under any previous law, the allowance in the year of assessment ended on the 31st day of March, 1964, shall be made on the original cost of such assets reduced as if the allowance had been made each year in terms of this Act since the expenditure was incurred and thereafter on the balance of the original cost which remains after the sum allowed in the previous year or years as the case may be have been deducted therefrom. If for any reason such original cost cannot be ascertained such original cost shall be deemed to be such sums as the Commissioner shall determine.

3.-(1) The annual allowance in respect of an asset for any year of an assessment shall be computed by reference to the amount by which the capital expenditure of the person to whom the allowance is to be made in providing the asset exceeds the total amount of any initial allowance or investment allowance, as the case may be, and any annual allowances made to him in respect of that asset for previous years of assessment and shall be the percentage of that amount specified in subparagraph (2).

**Methods of  
computing annual  
allowances  
4 of 1988**

(2) The said percentage is-

(a) in the case of farm improvements, railway lines and industrial building five per centum;

14 of 1971

(b) in the case of farm fencing ten per centum;

6 of 2005

(c) in the case of newly constructed commercial buildings whose cost is One hundred million Kwacha or above, two and half per centum

(d) in all other cases such percentage as may be determined by the Commissioner to be appropriate to be applied for the purposes of this section in relation to assets of the class in question for the year of assessment in question:

Provided that it shall not be necessary for the Commissioner to redetermine every such percentage yearly and any determination of a percentage under this subsection for any year of assessment shall apply also to subsequent years except so far as it is superseded by any subsequent determination.

Investment  
allowance  
4 of 1988  
7 of 1992  
6 of 2007

4.-(1) Subject to this Schedule an allowance (hereinafter called the Investment Allowance) shall be given to a taxpayer who is also a manufacturer equal to one hundred per centum (100%) of the cost of new and unused industrial buildings, and plant or machinery and equal to forty per centum(40%) of the cost of used industrial buildings and plant or machinery which, in either case-

(a) is brought into use by the taxpayer during the year of assessment; and

(b) is used by the taxpayer in the process of manufacture for the purpose of his business of a manufacturer:

Provided that for the purpose of this paragraph-

(i) plant and machinery shall not include motor vehicle intended or adapted for use or capable of being used on roads; and

(ii) manufacturer shall include the owner of a business carried on in buildings within the definition of "industrial building" contained in paragraph 8 and the owner of a plantation producing tea, coffee, tobacco, sugar, cocoa, or such other crop as the Minister may approve.

7 of 1992

(2) A taxpayer who is eligible for the investment allowance under subparagraph (1) shall, in addition, be given an allowance equal to fifteen per centum for investment in an area designated for the purpose of such additional allowance by the Minister by order published in the *Gazette*.

5. [Repealed by 7 of 1992]

6.-(1) In this Schedule except where the context otherwise requires-

Definitions

"open market price" in relation to any asset means the price which that asset would have fetched if sold in the open market at the time of the event in question;

“sale, insurance, salvage, or compensation moneys” means in relation to an event which gives rise or might give rise to a balancing allowance or a balancing charge to or on any person, or is material in determining whether any, and if so, what, annual allowance is to be made to a person in terms of the Second Schedule-

(a) where the event is a sale of any asset, the net proceeds to that person of the sale;

(b) where the event is the coming to an end of an interest in any asset, any compensation paid to that person in respect of that asset;

(c) where the event is the demolition or destruction of any asset, the net amount received by him for the remains of such asset together with any insurance moneys received by him in respect of the demolition or destruction and any other compensation of any description received by him in respect thereof, in so far as that compensation consists of capital sums; or

(d) where the event is that an asset ceases to be used altogether or is put out of use, any compensation of any description received by him in respect of that asset, in so far as that compensation consists of capital sums.

(2)(i) Where the event is an event referred to in paragraph 5(a) and there are no sale, insurance, salvage or compensation moneys, or where the amount of the capital expenditure of the person in question on the provision of the asset still unallowed as at the time of the event exceeds those moneys, a balancing allowance shall be made and the amount thereof shall be the amount of the expenditure still unallowed or, as the case may be, of the excess thereof over the said moneys.

(ii) If the sale, insurance, salvage or compensation moneys exceed the amount, if any, of the said expenditure still unallowable as at the time of the event, a balancing charge shall be made, and the amount on which it is made shall be an amount equal to the excess or, where the said amount unallowed is nil, to the said moneys.

(iii) When the event is an event referred to in paragraph 5 (b), (c), (d) or (e) for the purpose of determining whether a balancing allowance or balancing charge falls to be made and, if so, the amount of the allowance or, as the case may be, the amount on which the charge is to be made, the event shall be treated as if it had given rise to sale, insurance, salvage, or compensation moneys of an amount equal to the open market price of the asset.

(iv) Where any asset which has been used by a person for the purpose of a trade carried on by him has also been used by him for other purposes, then, in determining whether a balancing allowance or balancing charge falls to be made to, or on him, and in determining the amount of such allowance or, as the case may be, the amount on which the charge is to be made, regard shall be made to all relevant circumstances of the case and, in particular, to the extent of the use for the said other purposes, and the said allowance shall be of such an

amount, or, as the case may be, a charge on such an amount, as may be just and reasonable.

**Sales of assets**

7.-(1) Where assets in respect of which capital allowances have been given are sold for a lump sum the seller and the buyer shall furnish the Commissioner with a statement in writing giving details of the allocation of the agreed price between the various assets sold.

(2) Where-

(a) the buyer is a body of persons over whom the seller has control, or the seller is a body of persons over whom the buyer has control, or both the seller and the buyer are bodies of persons and some other person has control over them; and

(b) it appears with respect to the sale, or with respect to transactions of which the sale is one, that the sole or main benefit which apart from this Schedule might have been expected to accrue to the parties or any of them was the obtaining of an allowance under this Schedule, if the assets or any of them are sold at a price other than they would have fetched in the open market then-

(i) the sale shall be deemed to have taken place at the open market price or the original cost of the asset whichever is the less or; and

(ii) the initial allowance shall be due to the buyer.

**Meaning of  
Industrial  
building  
15 of 1973  
4 of 1982**

8.-(1) A building shall be deemed to be an industrial building for the purpose of this Schedule where it is in use for the purpose of-

(a) the making of any article or part of an article; or

(b) the subjection of goods or materials to any process including the breaking up or demolition of the article; or

(c) the adapting for sale of any article; or

(d) the generation or power; or

(e) a transport, dock, inland navigation, water refrigeration or electricity hydraulic power tunnel or bridge undertaking; or

(f) an hotel; or

(g) the processing and distributing of fish, including shellfish;

or

(h) any activity which the Minister declares in writing to be making an important contribution to national development.

(2) Notwithstanding anything in subparagraph (1) but subject to subparagraph (3), the expression "industrial building" does not include any building or structure in use as, or as part of, a dwelling house, retail shop, showroom, storehouse or office or for any purpose ancillary to the purposes of a dwelling house, retail shop, showroom, storehouse or office, but shall include an essential protective fencing enclosing any building deemed by subparagraph (1) to be an industrial building:

Provided that this subparagraph shall not apply in respect of a building or structure in use primarily for the purposes of trade which consists in the carrying on of an hotel, or in respect of any building to which subparagraph 1(h) applies.

(3) Where part of the whole of a building is, and part thereof is not, an industrial building, and the capital expenditure which has been incurred on the construction of the second mentioned part is not more than one-fifth of the total capital expenditure which has been incurred on the construction of the whole building, the whole building and every part thereof shall be treated as an industrial building.

**9.**-(1) For the purposes of this Schedule-

**Interpretation**

“farm improvement” means any building or structure or work of a permanent nature, including any water furrow which is used in the carrying on of farming operations, but does not include-

(a) any building, structure or work of a permanent nature to which section 58 applies;

(b) staff housing; or

(c) any building which is used by the taxpayer as the homestead of himself and his family;

“farm fencing” means fencing which is used in the carrying on of farming operations;

“railway lines” means the rails, sleepers and equipment pertaining thereto of any railway track, but does not include ballast, embankments, bridges, culverts and other railway constructions.

(2) Any reference to any initial allowances or any annual allowances made in respect of any asset includes any such allowances made under any previous law.

**10.**-(1) The capital allowances other than an investment allowance provided for by this Schedule shall be given to a taxpayer who is also a manufacturer or a person carrying on farming operations in respect of staff housing erected after the 1st day of April, 1965.

**Allowances for  
Staff Housing  
1 of 1991**

(2) The rates of allowances shall be those allowed for industrial buildings and paragraphs 5, 6 and 7 shall apply accordingly:

Provided that any expenditure on staff housing occupied by an employee other than an employee-

**14 of 1969**

(i) whose time, in the opinion of the Commissioner, is wholly or almost wholly occupied in the service of the company; and

(ii) who is unable either directly or indirectly to control more than five per centum of the voting rights attaching to all classes of shares in the company,

shall only rank for allowance as to one-third of such allowance.

(3) In this paragraph-

“staff housing” means any dwelling erected for occupation by an employee engaged in the business or farming operations, as the case may be, of the taxpayer who is also a manufacturer or a person carrying on farming operations;

“Manufacturer” shall include the owner of a business carried on in buildings within the definition of “industrial building” contained in paragraph 8 and the owner of a plantation producing tea, coffee, tobacco, sugar, cocoa, or such other crop as the Minister may approve.

## PART II

### MINING

Meaning of  
“mining  
expenditure”  
19 of 1969  
10 of 2006

**11.** In this Part “mining expenditure” means capital expenditure incurred in Malawi by a person carrying on or about to carry on mining operations in Malawi-

(a) in searching for or in discovering and testing or winning access to deposits of minerals;

(b) in the acquisition of or of rights in or over such deposits, other than the acquisition from a person who has carried on mining operations in relation to such deposits;

(c) in the provision of plant and machinery, and industrial buildings which would have little or no value to such person if the mine ceased to be worked;

(d) on the construction of any buildings or works which would have little or no value if the mine ceased to be worked;

(e) on development, general administration and management prior to the commencement of mining operations:

Allowance in  
respect of mining  
expenditure  
12 of 2006

**12.** Subject to this Part, where a person carrying on mining operations incurs mining expenditure in any year of assessment he shall be entitled to an allowance equal to 100 per cent of such expenditure in the first year of assessment.

Allowance  
apportioned on  
transfer,  
etc.

**13.** Where a person is entitled to an allowance under this Part in respect of any mining expenditure and his interest in the asset represented by such expenditure is transferred to some other person then-

(a) the amount of the allowance, if any, due for the year of assessment in which the transfer takes place shall be apportioned in such manner as the Commissioner may determine to be just and reasonable between the person from whom the interest is transferred and the person to whom the interest is transferred; and

(b) the transferee shall, to the exclusion of the transferor, be entitled to the allowance which but for the transfer would have been allowed to the transferor for any subsequent year of assessment.

**14.** Notwithstanding anything to the contrary provided in this Act, a person engaged in mining operations shall not be eligible to claim any export allowance or any transport allowance for goods, materials or products exported from Malawi.

**Ineligibility for export allowance and transport allowance 14 of 2006**

**15.**-(1) Any mining expenditure incurred after the first of November, 1969, for the purpose of mining operations before such operations commence shall be treated as incurred on the day on which such mining operations commence.

**When expenditure incurred before mining operations, etc**

(2) Where a person incurs expenditure to which this Part applies on searching for or on discovering and testing or winning access to deposits of minerals and without having carried on mining operations he sells any assets representing such expenditure, then, if the purchaser carries on mining operations in relation to those deposits such purchaser shall for the purposes of such operations be deemed to have incurred mining expenditure equal to the price paid by him for such assets.

**16.** Where under paragraph 15(2) the price paid is deemed to be mining expenditure of the purchaser that price shall, after deduction of any allowable expenditure attributable thereto, be deemed to be income of the vendor subject to tax under this Act:

**Expenditure recovered deemed income in certain circumstances**

Provided that on the request in writing of the vendor the Commissioner may apportion such net income over such period not exceeding six years as, having regard to the period during which the expenditure was incurred, he may think fit.

**17.**-(1) No allowance shall be made under this Part in respect of any expenditure on which an allowance is due under Part I:

**Exceptions**

Provided that allowances in respect of machinery to which paragraph 11(c) applies shall be made under this Part and not under Part I.

(2) No allowance shall be made under this Part in respect of any expenditure incurred before the 1st of November, 1969.

### **THIRD SCHEDULE PENSION FUNDS AND PROVIDENT FUNDS**

**1.** The Commissioner may, subject to such limitations or conditions as the Commissioner may determine, approve a fund as a pension fund for the purposes of this Act if the Commissioner is satisfied that-

**Approval of pension funds**

(a) the fund is a permanent fund *bona fide* established for the purpose of providing annuities for employees or retirement from employment or for widows, children, dependants or nominees of deceased employees or mainly for any of the said purposes; and

(b) either the fund was regarded or approved as a duly established pension fund under any previous law or the fund is one whose rules provide-

(i) that all current annual contributions to the fund shall be in accordance with specified scales;

(ii) that membership of the fund throughout the period of employment shall be a condition of the employment by the employer of all persons of the class or classes specified therein who enter his employment on or after the date upon which the fund comes into operation;

(iii) that persons who immediately prior to the said date were employed by the employer and who on the said date fall within the said class or classes may, on application made within a period of not more than twelve months as from the said date, be permitted to become members of the fund on such conditions as may be specified in the rules;

**1 of 1990  
10 of 2002  
7 of 2007**

(iv) that not more than one-third of the total value of the annuity or annuities to which any employee becomes entitled, may be commuted for a single payment, except where the annual amount of such annuity or annuities does not exceed K120,000;

for the administration of the fund in such a manner as to preclude the employer, except in the case of the Government or a local authority, from controlling the management or assets of the fund, and from deriving any monetary advantage from money paid into or out of the fund; and

that the Commissioner shall be notified of all amendments of the rules; and

**15 of 1973**

(c) the rules of the fund have been complied with. For the purposes of this paragraph, "employee" includes a director of a company whose time in the opinion of the Commissioner, is wholly or almost wholly occupied in the service of the company.

**Approval of  
other funds as  
pension funds**

**2.** The Commissioner may, subject to such limitations or conditions as the Commissioner may determine, approve a scheme or fund, other than a pension fund referred to in paragraph (1) as a pension fund for the purposes of this Act if the Commissioner is satisfied that-

(a) the scheme of funds has as its sole purpose the provision of pensions or annuities for-

(i) contributors on their ceasing to be engaged in their occupations; or

(ii) contributors on their ceasing to be engaged in their occupations and the widows of contributors;

(iii) contributors on their ceasing to be engaged in their occupations and the widows and children of contributors on their deaths; or

(iv) contributors on their ceasing to be engaged in their occupations and the children of contributors on their deaths; and

(b) the pensions or annuities referred to in paragraph (a) are payable by a person carrying on life insurance business as defined in paragraph 1 of the Seventh Schedule or out of moneys vested in an irrevocable trust by a body of persons engaged in a particular occupation or in one or other of a number of particular occupations; and **10 of 1983**

(c) the rules of the scheme or fund provide that-

(i) the Commissioner shall be notified of any amendment made to the rules; and

(ii) contributors shall make periodic contributions; and

(iii) not more than one-third of the total value of any pension or annuity shall be commuted for a single payment; and

(iv) no payment, which is not a commuted payment, shall be made to a contributor in his or her lifetime otherwise than by way of a pension or annuity for life; and

no payment, which is not a commuted payment or a payment such as is referred to in sub-paragraph (vi), shall be made to the widow or child of a contributor in his or her life time otherwise than by way of a pension or annuity for twenty or more years; and **15 of 1973**

(vi) if a pension or annuity is not payable to a contributor or to his widow or child, the only payment which shall be made to the estate of the contributor or to his widow or child shall be an amount not exceeding an amount representing the sum of all contributions made by the contributor together with reasonable interest and bonuses out of profits; and

(vii) no pension or annuity shall be paid to the widow or child of a contributor which is of a greater annual value than that of the pension or annuity which was paid or would, but for the death of the contributor, have been paid to the contributor; and

(viii) payment of a pension or annuity to a contributor shall not, unless the contributor becomes permanently incapable through infirmity of mind or body or engaging in his occupation or any other occupation for which he may be trained or fitted, begin-

(A) before the contributor attains the age of 55 years; or

(B) after the contributor attains the age of 70 years; and

(ix) the right to a pension or annuity shall not be surrendered, assigned or pledged.

Approval of  
 provident funds  
 14 of 1969  
 19 of 1969  
 1 of 1990

3. The Commissioner may, subject to such limitations or conditions as he may determine, approve a fund as a provident fund for the purposes of this Act if he is satisfied that-

the fund is established for the purpose of providing lump sums to employees on their leaving the service of the employer or to widows, dependants or nominees of such employees on their death; and

(b) the rules of the funds provide-

(i) that membership of the fund throughout the period of employment shall be a condition of the employment by the employer of all classes of persons specified therein who enter his employment after the date upon which the fund comes into operation;

that every employee who contributes to such fund shall have specific right to benefits therefrom and shall be informed of the nature of such benefits;

that no employee remunerated at a rate in excess of K2,400 per annum may become a member of the fund and that contributions by both employer and employee shall cease in the event of his remuneration exceeding that amount;

that ordinary annual contributions by employer and employee shall be in accordance with specified scales;

(v) that the contributions of the employer in respect of each employee may not exceed ten *per centum* of the remuneration of such employee;

(vi) that no employee shall be entitled to any benefit from the fund except on leaving the service of the employer in circumstances that are likely to be permanent:

Provided that in the event of the employee ceasing to be permitted to contribute to the fund, the transfer of the balance standing to his credit in the fund to an approved pension fund shall not be deemed to be a benefit within the meaning of this paragraph;

(vii) for the administration of the fund in such a manner as to preclude the employer from controlling the management or assets of the fund or from deriving any monetary advantage from the fund:

Provided that in the case of an employee who leaves the service of the employer in circumstances not entitling him to any part of the contributions made by the employer in respect of him, the employer may be entitled to receive that part;

(viii) that the moneys belonging to the fund shall, save with the approval of the Minister, be invested wholly within Malawi.

15 of 1973

For the purposes of this paragraph, "employee" includes a director of a company whose time, in the opinion of the Commissioner, is wholly or almost

wholly occupied in the service of the company.

4. In the event of the Commissioner refusing to approve a pension fund or provident fund or approving a pension fund or provident fund subject to any limitations or conditions to which the employer is not prepared to agree, the employer shall be entitled to appeal against such decision, and Part X shall apply with necessary modification to any such appeal.

**Right of approval  
14 of 1969**

#### FOURTH SCHEDULE

#### AMOUNTS RECEIVED OR ACCRUED BY WAY OF A TERMINAL BENEFIT WHICH SHALL NOT BE INCLUDED IN ASSESSABLE INCOME

s. 17(1)(e)  
10 of 1983  
1 of 1990

1.-(1) In this paragraph the expression “annuity on retirement” means, in relation to a person who was a member of a pension fund or to whom a contributory pension law applied, an annuity payable on or after the date from which a pension or other benefit-

**Terminal benefits  
from pension funds**

(a) first became payable to the beneficiary on the grounds of superannuation; or

(b) would, but for the cessation of the employment of the beneficiary or his withdrawal from or the winding-up of the pension fund of which he was a member, first have become payable to the beneficiary on the grounds of superannuation, the right to which cannot be commuted, surrendered, assigned or pledged.

(2) Where a terminal benefit is received from a pension fund-

(a) in the case of a terminal benefit which does not exceed K5,000, the terminal benefit; and

(b) in the case of a terminal benefit which exceeds K5,000, the sum of K5,000 and so much of the balance of the terminal benefit as is used by the beneficiary to acquire a right in an annuity on retirement from a life assurance office in Malawi, shall not be included in the assessable income of the beneficiary.

2.-(1) In this paragraph the expression “appropriate rate of tax” means the rate of tax calculated by dividing the total tax payable on taxable income, excluding any amount of terminal benefit chargeable to tax after this Schedule has been applied, by that taxable income.

**Rate of taxation of  
remainder**

(2) So much of the terminal benefit as remains assessable shall be assessed to tax at the appropriate rate of tax of the beneficiary.

3. In this Schedule “terminal benefit” means, in relation to a person who was a member of a pension fund or to whom a contributory pension law applies, any amount other than-

**Meaning of  
“terminal benefit”  
8 of 2005**

(a) a payment in commutation of a pension; or

(b) a payment on account of ill health or disability, which is paid or will be payable to the beneficiary by reason of the

cessation of his employment or his withdrawal from or the winding up of a pension fund.

(c) employee contributions which were taxed at the time of making those contributions.

Remainder  
s. 37  
1 of 1990

## FIFTH SCHEDULE

### DEDUCTION IN RESPECT OF ORDINARY CONTRIBUTIONS TO PENSION FUNDS AND UNDER CONTRIBUTORY PENSION PROVISIONS

Interpretation  
14 of 1969

1. In this Schedule unless inconsistent with the context-

“annual emoluments” in relation to a member of a pension fund, other than a self-employed pension fund, or an officer, means-

so much of the emoluments of the member or officer in the year of assessment as are emoluments for the purposes of calculating the amount of ordinary contributions to the fund or the Government, as the case may be; or

such sum, exceeding the amount of his emoluments referred to in paragraph (a) as the Commissioner may, in the case of the member or officer fix;

“ordinary contribution”, in relation to a member of a pension fund or an officer, means a contribution to the fund or the Government, as the case may be, which-

is not an arrear contribution;

is made by or in connexion with the member or the officer as the case may be;

is not revocable by the contributor; and

(d) is required to be made at intervals fixed by the rules of the fund or at a rate and at intervals fixed by a pensions law of Malawi, as the case may be;

“pensions law of Malawi” means a law applicable to Malawi the provisions of which required a person in the service of the Government to contribute to the funds of the Government for the purpose of securing a pension for himself, his widow or children;

“self-employed pension fund” means a pension fund approved in terms of paragraph 2 of the Third Schedule.

Ordinary  
contributions  
by employer  
to pension funds

2. The amount to be allowed as a deduction to an employer of an employee who is a member of one or more pension funds in any one year of assessment shall be-

#### NOTE

\*The amendment to this paragraph contained in Section 6 of Act No. 18 of 1968 applies in respect of income tax for the year of assessment commencing 1st April, 1965, and for subsequent years.  
(section 4 of Act of 1969)

- |   |                                       |
|---|---------------------------------------|
| (a) the total of the employer's contributions;  | <b>19 of 1969</b><br><b>1 of 1990</b> |
| (b) the difference between twenty-four per centum of the annual emoluments of the employee for that year of assessment and the amount of the contribution (if any) allowable as a deduction to the employee; or | <b>9 of 2005</b>                      |
| (c) K9,000,   |                                       |
| (d) Whichever is the lesser amount.   | <b>1 of 1990</b>                      |

### SIXTH SCHEDULE

#### APPROVED OBJECTS FOR A CO-OPERATIVE AGRICULTURAL SOCIETY

1. To dispose of the agricultural products or livestock of its members in the most profitable manner.
2. To manufacture or treat the agricultural or livestock products of its members and dispose of the products so manufactured or partly manufactured in the most profitable manner.
3. To purchase or otherwise acquire on behalf of and to supply to its members agricultural implements and machinery, livestock, feeding stuffs, seeds, fruit trees, manure or other farming requisites.
4. To manufacture or treat feeding stuffs, manure or other farming requisites.
5. To purchase, hire, or otherwise acquire, and to work on behalf of its members, agricultural implements or machinery.
6. To purchase, hire, or otherwise acquire, and to use and control on behalf of its members, breeding stock.
7. To commence, acquire and carry on supply stores under a co-operative system for disposing of and supplying agricultural products.
8. To provide by purchase, hire, construction, or otherwise, cold storage for the products of its members.
9. To commence and carry on crop, produce or livestock insurance, orchard spraying or cleansing, fruit packing, ploughing and other farming operations for its members under a co-operative system.
10. To engage competent persons to carry out any of its objects and to give instruction and advice to its members on farming operations.
11. To acquire and distribute information as to the best manner of carrying on farming operations profitably.  
To acquire and distribute information on the markets of the world, and co-operation in general.
13. To acquire by lease, purchase, or donation, and to hold, any movable and immovable property for the better carrying on of any objects of the company.
14. To recruit and supply labourers for its members.

**15.** To acquire by purchase or otherwise shares in any central co-operative agricultural company formed under the provisions of any law for the time being in Great Britain or in any other co-operative agricultural company with limited liability or co-operative society registered under any Malawi law relating to such type of company or society.

s. 63, 112(1)  
and 3<sup>rd</sup> Sch.  
Para 2(b)

## SEVENTH SCHEDULE

### DETERMINATION OF TAXABLE INCOME OR ASSESSED LOSSES DERIVED OR INCURRED IN CARRYING ON INSURANCE BUSINESS

**1.** In this Schedule-

“life insurance business” means the business of assuring the obligations of an insurer under life policies but does not include funeral insurance;

“received in Malawi” means-

received at an office of an insurer in Malawi without the intervention of an agent; or

received by or through an agent of an insurer in Malawi;

“short term insurance business” means insurance business in Malawi which is not life insurance business.

**2.** Nothing in this Schedule shall be construed as relieving an insurer from-

the obligation of rendering returns of income which is not derived from insurance business; or

any liability to tax in respect of income referred to in subparagraph (a).

**3.** An insurer shall specify separately in a return rendered in respect of his insurance business in Malawi the gross income derived by the insurer from-

fire insurance business;

accident insurance business, including employers’ liability insurance business;

marine insurance business;

funeral insurance business;

fidelity or guarantee insurance business; and

all classes of insurance business other than those specified in subparagraphs (a) to (e) inclusive:

Provided that this paragraph shall not apply to any income derived from life assurance business.

**4.** The taxable income or assessed loss of an insurer in respect of short

term insurance business other than life assurance shall be determined by charging the losses, expenses and deductions in respect of his short term insurance business which are specified in paragraph 5 against the sum of-

premiums received in Malawi in respect of his short term insurance business; and

(b) amounts, other than premiums, received in Malawi from the carrying on of his short term insurance business; and

(c) the amount of a reserve allowed as a deduction in the previous year of assessment for unexpired risks at the percentage for such risks adopted by the insurer in relation to his short term insurance operations as a whole.

5. The losses, expenses and deductions in respect of short term insurance business of an insurer to which paragraph 4 relates shall be-

premiums paid on reinsurance;

actual losses in Malawi less losses recoverable on reinsurance;

(c) expenses of management in Malawi other than those of a capital nature;

(d) commission in Malawi, that is to say, net commission after deduction of commission received on reinsurance;

(e) expenditure, other than expenditure of a capital nature, expenses referred to in sub-paragraph (d), which is incurred in Malawi in the production of income;

(f) an allowance of such an amount as the Commissioner may approve in respect of expenses incurred outside Malawi in connexion with premiums and other amounts referred to in paragraph 4(a) and (b); and

the amount of a reserve for unexpired risks at the percentage adopted for such risks by the insurer in relation to his insurance operations as a whole which is set aside by the insurer at the end of the year of assessment.

6. In calculating the taxable income of an insurer there shall be deducted any assessed loss arising solely out of short-term insurance business in Malawi, whether determined under paragraph 5 or the corresponding provisions of any previous law, incurred by the insurer in any previous year of assessment, not being earlier than the year of assessment which commenced on the 1<sup>st</sup> day of April, 1945, to the extent to which such assessed loss has not been allowed as a deduction from his income of a previous year of assessment; and sections 42, 43 and 44 of this Act shall apply thereto.

## **EIGHTH SCHEDULE**

### **SECTIONS 96-101**

### **RULES OF PROCEDURE FOR APPEALS**

#### **PART I**

**PROCEDURE FOR APPEAL TO THE COMMISSIONER OR AN  
ADMINISTRATIVE OFFICER**

- |   |   |
|---|---|
| <b>Written state-<br/>ment required</b> | <b>1.</b> A taxpayer who wishes to appeal under section 97 or section 100 shall within 30 days from the date when notice of the assessment, decision or determination of reduction was despatched to him by the Commissioner or administrative officer cause to be delivered to the office of the Commissioner or administrative officer, as the case may be, a statement in writing specifying the grounds on which the appeal is made. The Commissioner or administrative officer may, before or after the expiration of the 30 days, extend the time for appealing if satisfied that reasonable grounds exist for delay. |
| <b>Attendance<br/>of appellant</b>      | <b>2.</b> On receipt of such written statement the Commissioner or administrative officer may require the personal attendance of the appellant.   |
| <b>Failure<br/>to attend</b>            | <b>3.</b> If an appellant who has been required to attend fails to do so the appeal may be dealt with in his absence.   |
| <b>Further<br/>procedure</b>            | <b>4.</b> Save as is provided in this Ordinance the Commissioner or administrative officer shall decide his own rules of procedure.   |

**PART II**

**PROCEDURE FOR APPEAL TO A SPECIAL ARBITRATOR OR TO A  
TRADITIONAL APPEAL COURT**

- |                              |   |
|------------------------------|---|
| <b>Notice of appeal</b>      | <b>5.</b> A taxpayer wishing to appeal against a decision of the Commissioner given under section 97 shall, within 21 days of the date of the written notice issued under section 97(2), give written notice to the Commissioner of his intention to appeal, specifying also his address for service.   |
| <b>Grounds<br/>of appeal</b> | <b>6.</b> Within 42 days of the date of the written notice issued under section 97(2) the taxpayer shall lodge with the Commissioner in duplicate a statement containing his grounds of appeal. Such statement shall be in English, and in typescript on foolscap paper of good quality. The grounds of appeal shall be set out in numbered paragraphs and shall contain the contentions of fact and the arguments in law upon which the taxpayer will rely at the hearing of the appeal. The grounds of appeal shall not, without leave of the Special Arbitrator, include any grounds not included in the statement delivered to the Commissioner under rule 1. |
| <b>Reply</b>                 | <b>7.</b> Within 42 days of receiving the appellant's grounds of appeal, the Commissioner shall lodge with the Special Arbitrator the appellant's grounds of appeal and the Commissioner's reply, which shall state which of the appellant's arguments in law and contentions of fact are admitted, and which are denied, and shall set out all such other facts and arguments as the Commissioner considers relevant and material to the determination of the appeal. A copy of the reply shall be sent by registered post to the appellant at his address for service.  |
|                              | <b>8.</b> Upon receipt of the grounds of appeal and reply the Special Arbitrator shall notify the Commissioner and the appellant of the date and place of   |

hearing. Such notice of hearing may be served personally or may be sent

by registered post to the address for service specified by the appellant in his notice of appeal, and to the address of the Commissioner.

**9.** At the time and place specified in the notice of hearing, the Special Arbitrator shall call on the appeal, and if any party is not present the Special Arbitrator may decide the appeal in his absence.

**Failure to attend**

**10.** Either party may appear in person or by legal practitioner; either party may apply in writing to the Special Arbitrator at least 7 days before the hearing for leave to be represented by a named person other than a legal practitioner. The Special Arbitrator may grant or refuse such application, and his decision shall be final.

**Representation of parties**

**11.** Proceedings before the Special Arbitrator shall be in English; all documents, books and accounts produced to the Special Arbitrator shall be in English or shall have attached to them a translation into English certified on oath as correct.

**Language**

**12.**-(1) The taxpayer shall address the Special Arbitrator, shall explain the grounds of his appeal and shall call his witnesses if there is any dispute as to the fact. The Commissioner shall have the right to cross-examine and the appellant the right to re-examine. The Commissioner shall then call his witnesses who shall be examined in like manner. Witnesses shall give their evidence on oath or affirmation.

**Sequence to be followed**

(2) A party may, at least three days before the date of hearing, apply to submit evidence on affidavit, having supplied a copy of such affidavit to the other party, and the Special Arbitrator may, in his discretion permit the submission of such affidavit.

(3) The Special Arbitrator may at any stage re-call any witness called by one of the parties.

(4) When the Commissioner has called his witnesses, the Special Arbitrator shall call on the Commissioner and then on the taxpayer to address; he may call on either party for further argument.

(5) The Special Arbitrator shall be bound by the rules of evidence normally applying in a court of law.

(6) The Special Arbitrator may adjourn the proceedings of his own motion, or at the request of the parties at any time.

(7) When the Special Arbitrator has heard all the evidence, and the submission of the parties, he may reserve his decision. If the decision is reserved to an unspecified date notice shall be given to the parties of the date when the decision will be read out and the place.

**13.** The Special Arbitrator shall not make any order as to costs, save when the grounds of appeal are held to be frivolous or the reply unreasonable.

**Costs**

**14.** Save as is provided in this Act the Special Arbitrator shall decide his own rules of procedure.

**Further procedure**

**Appeals to**

**15.** Where a taxpayer wishes to appeal from a decision of an

**Traditional  
Appeal Court**

administrative officer under section 100 the provisions of this Part shall apply with necessary modifications to such appeal as though for references to the Commissioner there were references to the administrative officer concerned, and for references to the Special Arbitrator there were references to the Traditional Appeal Court exercising jurisdiction in the District concerned.

**PART III****PROCEDURE ON APPEAL TO THE HIGH COURT****Notice of appeal**

**16.**-(1) A party to proceedings before a Special Arbitrator or a Traditional Appeal Court who desires to appeal to the High Court shall within 21 days from the date when the decision of the Special Arbitrator or Traditional Appeal Court was given lodge with the High Court in triplicate a notice of his intention to appeal. Such notice shall specify an address for service. The address so specified shall not consist of a Post Office box but a place of residence or business. A Post Office box may in addition be specified and if specified shall be deemed an agreement to the despatch of any document by post addressed to that Post Office box being equivalent to service at the address for service. If the appellant is the Commissioner he shall in the notice of intention to appeal specify the address for service of the taxpayer concerned in the appeal specified under rule 5.

**Grounds of  
appeal**

**17.** Within 42 days from the date when the decision of the Special Arbitrator or Traditional Appeal Court was given the appellant shall lodge with the High Court in quintuplicate a statement in writing to be headed "Grounds of Appeal". The grounds of appeal shall specify the points of law which the appellant considers were wrongly decided by the Special Arbitrator or the Traditional Appeal Court and the grounds upon which the appellant will rely in support of his appeal. Except by special leave of the High Court the appellant shall not be entitled at the hearing of the appeal to rely upon any ground not specified in such written statement.

**Service of notice  
and grounds of  
appeal**

**18.** Upon receipt of a notice of appeal lodged under rule 16 and upon receipt of grounds of appeal lodged under rule 17 the High Court shall cause a copy of the notice or the grounds, as the case may be, to be served on the respondent at his address for service. Delivery at the address for service shall be sufficient service and personal service shall not be necessary.

**Reply**

**19.** Within 42 days of the service on the respondent of the grounds of appeal the respondent shall lodge with the High Court in quintuplicate a statement in writing to be headed "Reply" and the reply shall specify the grounds upon which the respondent will rely on the hearing of the appeal. Except by special leave of the High Court the respondent shall not be entitled to rely upon any ground not specified in such written statement.

**Service of reply**

**20.** Upon receipt of a reply lodged under rule 19 the High Court shall cause a copy of the reply to be served on the appellant at his address for service. Delivery at the address for service shall be sufficient service and personal service shall not be necessary.

**21.** Save as provided in this Part the normal rules of procedure **Normal rules of**

relating to appeals to the High Court shall apply.

procedure

**NINTH SCHEDULE**

s. 6(6)

**DECLARATIONS**

**PART I**

*Form of declaration to be made by the Commissioner*

I, A.B., do solemnly declare that I will truly, faithfully, impartially and honestly, according to the best of my skill and knowledge, execute the powers and authorities vested in me by the Taxation Act, and that I will exercise the powers entrusted to me by the said Act in such manner only as shall appear to me necessary for the due execution of the same; and that I will judge and determine upon all matters and things which shall be brought before me under the said Act without favour, affection, or malice; and that I will not disclose any particular contained in any schedule, statement, return or other document delivered with respect to any tax charged under the said Act or any evidence or answer given by any person who shall be examined, or shall make affidavit or deposition, respecting the same, in pursuance of the said Act, except to such persons only as shall act in the execution of the said Act and where it shall be necessary to disclose the same to them for the purposes of the said Act or in order to facilitate, or in the course of, a prosecution for perjury committed in such examination, affidavit or deposition.

**PART II**

*Form of declaration to be made by officers*

I, .....  
do solemnly and sincerely declare that I shall regard and deal with all documents and information relating to matters dealt with by me in the course of my duties and all confidential instructions in respect of the administration of the Taxation Act which may come into my possession or to my knowledge as secret, and that I shall not reveal any such document or information to any person nor permit any person to have access to any such document save in the circumstances permissible under the provisions of the said Act.

**TENTH SCHEDULE**

**PERSONAL ALLOWANCES**

*[Repealed by 10 of 1983]*

**ELEVENTH SCHEDULE**

1 of 1991  
7 of 1992  
1 of 1995  
5 of 1997  
4 of 2000  
10 of 2005

## RATES OF INCOME TAX

Income tax shall be charged, subject to the minimum amounts respectively specified in Part II and Part III of the Appendix to this Schedule, as follows-

ss. 66, 71 and 76

1 of 1990  
1 of 1991  
7 of 1992  
1 of 1995  
5 of 1997  
9 of 2000

(a) in the case of an individual, at the rates laid down in Part I of the Appendix to this Schedule;

(b) in the case of ecclesiastical, charitable or educational institutions of a public character or of trusts, at 25 per cent of the taxable income;

2 of 2001  
11 of 2006

(c) in the case of all companies other than companies engaged in mining operations under a licence issued under Mines and Mineral Act, 30 per cent of taxable income except that-

5 of 1997

(i) in the case of companies in an export processing zone, so designated by the Minister for this purpose by order published in the *Gazette*, the applicable rate shall be 0 per cent;

7 of 1992  
1 of 1995  
5 of 1997

(ii) 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-

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

(B) 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;

Cap. 61:01

(ca) in the case of companies engaged in mining operations under a licence issued under the Mines and Mineral Act-

(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 companies not incorporated in Malawi;

(ii) an additional resource rent tax of 10 per cent shall be levied on profits after tax, if the company's rate of return exceeds 20 per cent.

(d) in the case of life assurance business, at 21 per cent of the taxable income;

(e) in the case of fringe benefits, at 30 per cent of the taxable value of fringe benefits.

## APPENDIX

### A. TABLE OF RATES OF INCOME TAX ON TAXABLE INCOME

<i>Annual Taxable Income</i>							<i>Rate</i>
First K84,000	..	..	..	..	..	..	0%
Next K36,000	..	..	..	..	..	..	15%
Next K120,000	..	..	..	..	..	..	30%

1 of 1991  
7 of 1993  
2 of 1994  
1 of 1995  
5 of 1997  
3 of 1999  
9 of 2000  
4 of 2001  
11 of 2002  
10 of 2005  
11 of 2006  
8 of 2007

### B. TABLE OF RATES OF INCOME TAX FOR PENSION EARNERS

<i>Annual Taxable Income</i>							<i>Rate</i>
First K120,000	..	..	..	..	..	..	0%
Next K42,000	..	..	..	..	..	..	15%
Over K162,000	..	..	..	..	..	..	30%

## PART II

### SCALE OF MINIMUM AMOUNTS OF INCOME TAX FOR INDIVIDUALS

*[Repealed by 11 of 2006]*

## PART III

### SCALE OF MINIMUM AMOUNTS OF INCOME TAX FOR COMPANIES

*[Repealed by 11 of 2006]*

## TWELFTH SCHEDULE

s. 27(2)  
10 of 1983

### ASSESSMENT OF FEDERAL PENSIONERS

1.-(1) Pensions payable to pensioners of the Government of the former Federation of Rhodesia and Nyasaland in respect of service with that Government notwithstanding anything in section 27 of this Act to the contrary shall be deemed to arise from a source in Malawi where-

the pensioner retired as a result of the dissolution of the former Federation and was ordinarily resident in Malawi on 31st day of March, 1964;

the pensioner retired as a result of the dissolution of the former Federation, is not ordinarily resident in either Zambia or Zimbabwe and Malawi was his home territory;

the pensioner retired prior to the dissolution of the former Federation and he served in the Public Service of Malawi prior to joining the former Federal Public Service; or

the pensioner retires at some future date and he is then serving in the Public Service of Malawi.

10 of 1983

(2) Pensions deemed under subparagraph (1) to arise from a source in Malawi shall be assessable at the appropriate rate of tax applicable to the individual, which shall be calculated by dividing the total tax payable on his taxable income, excluding any such pension, by that taxable income.

2. In the case of an officer who was born in the area of the former Federation of Rhodesia and Nyasaland, his “home territory” shall be the Territory of his birth:

Provided that if an officer was serving with the Government of a Territory other than that in which he was born immediately prior to his joining the Public Service of the former Federation of Rhodesia and Nyasaland then that Territory shall be taken as being his “home territory”.

3. In the case of an officer who was not born in the area of the former Federation of Rhodesia and Nyasaland, his “home territory” shall be the Territory in which he has had the longest Government service whether in the Public Service of the former Federation of Rhodesia and Nyasaland or in the Public Service of a Territory:

Provided that-

(a) where an officer’s length of service in two Territories differs by less than twelve months and his service, if any, in the third Territory is less than his service in either of those two Territories he may choose either of those two Territories as his “home territory”; or

(b) where an officer joined the Public Service of a Territory before he joined the Public Service of the former Federation of Rhodesia and Nyasaland, he may choose the Territory whose service he originally joined as his “home territory”.

4. In this Schedule “Territory” means Malawi, Zambia or Zimbabwe.

1 of 1990

### THIRTEENTH SCHEDULE

#### TABLE OF RATES OF GRADUATED TAX

[Repealed by 12 of 2006]

s. 102A

1 of 1985

4 of 1988

1 of 1990

7 of 1992

2 of 1996

5 of 1997

8 of 1998

5 of 2001

3 of 2003

2 of 2005

9 of 2007

### FOURTEENTH SCHEDULE

#### WITHHOLDING TAX - RATE OF DEDUCTION

<i>Nature of payment</i>	<i>Notes</i>	<i>Rates of Withholding Tax on gross payment</i>
Royalties .. ..	-	20%
Rents .. ..	1	10%
Payment of over K60,000 per annum for any supplies to traders and institutions.		

(i) foodstuff	..	..	-	7%
(ii) other	..	..	-	10%
Commissions			-	20%
Payment of carriage and haulage	..	..	-	10%
(f) Payment of over K60,000 for tobacco and other products	..	..	-	7%
(g) Payment to contractors in the building and construction industries	..	..	3	4%
Payment for public entertainment	..	..	4	20%
Payment of over K500 for casual labour or services			-	20%
Bank interest of over K10,000	..	..	5	20%
Fees	..	..	2	10%

## NOTES:

1. Includes rent for moveable and immoveable property, whether paid under a lease or otherwise, but excludes rent payable by an individual whose source of income is only from employment and the rent is payable in respect of property used as a dwelling house and at a rate not exceeding K6,000 per annum.
2. Excludes fees and commissions on which P.A.Y.E. is being operated, but includes technical fees and management fees to the extent they do not relate to reimbursement of expenses.
3. Includes contractors and subcontractors of any category.
4. Includes payment to musicians, radio and television artist, athletes and theatres, but excludes payments to radio and television artists which are subject to P.A.Y.E.
5. Includes-
  - (a) interest payable by an institution registered under the Building Societies Act or the Banking Act on deposits held on accounts with such institution;
  - (b) interest on treasury bills, stock, bonds or promissory notes raised by, or on behalf of the Government under sections 24 and 26 of the Finance and Audit Act;
 but does not include-
  - (aa) interest, however arising, payable by any person to an institution referred to in paragraph (a), and any institution registered under the Capital Market Development Act;
  - (bb) interest payable to a person exempt from income tax under the First Schedule;
  - (cc) interest payable to a person, not being a person resident in Malawi, whose income is liable to non-resident tax under section 76A.

[Subsidiary]

*Appointment of Special Arbitrator/Income Tax (P.A.Y.E.)  
(Deduction and Payment) Rules*

5 of 1997  
18 of 1998  
G.N. 24/1996

**FIFTEENTH SCHEDULE**

List of transactions in respect of which a tax clearance certificate is required-

1. Transfer of land and building.
2. Renewal of Certificate of fitness for commercial vehicles.
3. Renewal of Business Residence Permit.

G.N.  
196/1964 (N)  
136/1980

**SUBSIDIARY LEGISLATION**  
**APPOINTMENT OF SPECIAL ARBITRATOR**

*under s. 98*

The Minister has appointed as the Special Arbitrators for the purposes of the Act the persons for the time being performing the duties of-

Chief Resident Magistrate;  
Principal Resident Magistrate, and  
Senior Resident Magistrate.

G.N.  
243/1965  
172/1967  
33/1983

**INCOME TAX (P.A.Y.E.) (DEDUCTION AND PAYMENT)  
RULES**

*under s. 102(2)*

**Citation**

**1.** These Rules may be cited as the Income Tax (P.A.Y.E.) (Deduction and Payment) Rules.

**Application of Rules**

**2.** These Rules shall apply to all emoluments to which section 102 of the Act applies.

**Deduction of income tax**

**3.**-(1) Every employer, whether he be registered under the Income Tax (P.A.Y.E.) (Information) Rules, or not, shall deduct income tax at the rates specified in tax tables prepared by the Commissioner from the emoluments of every person in his employment to whom these Rules apply.

(2) If an employer fails to deduct income tax under subrule (1) he shall be personally liable to pay the Commissioner the amount of any tax which he shall have failed to deduct:

Provided that such employer shall be entitled to recover any amount paid by him under this subrule from any remuneration payable to the employee in respect of whom the payment was made.

4.-(1) The Commissioner is authorized to permit an employer to vary the amount of deductions under rule 3(1) in the case of any employee in circumstances of exceptional hardship.

**Variation in  
amount of  
P.A.Y.E.  
deductions  
G.N.**

33/1983

(2) The Commissioner is authorized to repay to an employee any amount of income tax deducted under rule 3(1) as varied under subrule (1) of this rule.

**Objections  
during tax year**

5. Without prejudice to the right of appeal conferred under the Act after the end of a year of assessment, any employee who is dissatisfied with the amount of any deduction made under rule 3(1) may make an objection thereto to the Commissioner during the currency of a year of assessment and the decision of the Commissioner with regard to any objection made under this rule shall be final and not subject to appeal until the end of the year of assessment in respect of which the objection is made.

6.-(1) Every employer of an employee to whom this Part applies shall keep a record showing-

**Records to be  
maintained  
24/1996**

the emoluments paid or payable to such employee;

the amount of income tax deducted from the emoluments of such employee under rule 3(1),

in such form as the Commissioner may approve.

(2) The record maintained under subrule (1) shall be available for inspection by the Commissioner, or by any public officer authorized in that behalf by the Commissioner at any reasonable time.

(3) Every employer of an employee to whom this Part applies shall, within fourteen days after the end of each month, or within such further time as the Commissioner may in any case allow, furnish to the Commissioner a statement in a form approved by the Commissioner setting forth the name and address of every employee, the emoluments paid or payable to him and the total amount of tax deducted from such emoluments.

7.-(1) The Commissioner shall supply to every employer of an employee to whom this Part applies a sufficient supply of Tax Deducted (P.A.Y.E.) Certificates for the purposes of this rule.

**Tax deduction  
certificates]**

(2) Every employer shall complete a Tax Deduction (P.A.Y.E.) Certificate in respect of each employee to whom this Part applies and shall dispose of such certificates in the manner specified therein.

(3) A copy of the Tax Deduction (P.A.Y.E.) Certificate maintained in respect of him shall be handed to the employee by the employer on the date of the cessation of his employment or within

[Subsidiary]

*Income Tax (P.A.Y.E.) (Deduction and Payment) Rules*

twenty-one days from the end of the year of assessment to which it relates, whichever is the later.

(4) No employer shall furnish to any employee any document purporting to show the amount of tax deducted under rule 3(1) other than a certificate supplied under subrule (1).

(5) No employer shall furnish a duplicate of a copy of a Tax Deduction (P.A.Y.E.) Certificate to an employee except with the consent of the Commissioner.

(6) Every employer to whom Tax Deduction (P.A.Y.E.) Certificates are supplied under subrule (1) shall be required to account for the disposal thereof to the Commissioner within twenty-one days of the end of the year of assessment in respect of which they are supplied and shall return to the Commissioner every unused certificate.

**Death of an employee**

**8.** Where an employee to whom this Part applies dies, his employer shall not pay any emoluments due and payable to the estate of that employee until the Commissioner has been notified of the amount so to be paid and he has given his direction as to the amount of income tax, if any, to be deducted from such emoluments.

**Liability for income tax on total income**

**9.** Where any income tax has been deducted by an employer under rule 3(1), the amount of such tax shall be deemed to have been actually received by the person from whose emoluments such tax was deducted at the time that it was deducted.

**Payment to Commissioner of income tax deducted**  
G.N.

33/1983  
24/1996  
23/2006

**10.**-(1) Every employer shall pay to the Commissioner the amount of any income tax deducted under rule 3 within fourteen days of the end of the month in which it was deducted or should have been deducted.

(2) Any employer who fails to comply with subrule (1) shall pay to the Commissioner-

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

(b) a further additional sum of five *per centum* per any additional month or part thereof for the period during which the amount of the tax remains unpaid,

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

Provided that the Commissioner may reduce the amount of such additional sums if a satisfactory explanation of the reasons for delay are made.

(3) The additional amount imposed under subrule (2) shall be borne personally by the employer and no part thereof shall be recoverable from any employee in respect of whom income tax was not paid by an employer contrary to subrule (1) and not part of such additional sum shall be deemed to have been suffered by the employee for credit against any assessment for income tax.

**11.** Any person who-

(a) makes any false declaration in any form, record or return completed, kept or made for the purposes of this Part;

(b) fails to comply with rule 3;

(c) fails to pay the amount of any income tax deducted under rule 3 in accordance with rule 10;

(d) fails to provide copies of Tax Deduction (P.A.Y.E.) Certificates to employees in accordance with rule 7(3);

(e) fails to account for and return to the Commissioner every unused Tax Deduction (P.A.Y.E.) Certificate;

fails to make the returns required under rule 6;

fabricates or uses any colourable imitation of any form, record, return or certificate approved by the Commissioner for the purposes of this Part;

alters, without reasonable cause, any form, record, return or certificate approved by the Commissioner for the purposes of this Part,

shall be liable to a fine of K1,000.

**Offences**

**G.N. 23/2006**

**NOTE**

*Orders under section 122 providing for relief from double taxation are not published here.*

*Orders have been made in respect of the following countries-*

<i>The United Kingdom</i>	..	..	<i>G.N. 108/1964(M)</i>
<i>as amended by</i>	..	..	<i>G.N. 164/1968</i>
<i>Sweden</i>	..	..	<i>G.N. 167/1967</i>
<i>Denmark</i>	..	..	<i>G.N. 168/1967</i>
<i>Switzerland</i>	..	..	<i>G.N. 169/1967</i>
<i>Norway</i>	..	..	<i>G.N. 170/1967</i>
<i>France</i>	..	..	<i>G.N. 210/1967</i>
<i>United States of America</i>	..		<i>G.N. 167/1968</i>
<i>Kingdom of the Netherlands</i>	..		<i>G.N. 30/1970</i>
<i>Kenya</i>	..	..	<i>G.N. 269/1970</i>
<i>Republic of South Africa</i>	..		<i>G.N. 254/1971</i>

[Subsidiary]

*Income Tax (Furnishing of Certificate) Rules*

*United Kingdom of Great Britain  
And Northern Ireland . . . . . G.N. 105/1978*

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G.N. **INCOME TAX (FURNISHING OF CERTIFICATE) RULES**  
192/1969

*under s. 146*

**Citation**                    **1.** These Rules may be cited as the Income Tax (Furnishing of Certificate) Rules.

**Furnishing of certificate**                    **2.** The certificate furnished under section 87(2) of the Act shall-

(i) specify the nature of the books of account and documents produced to the person signing the certificates;

(ii) state the extent of the examination and verification thereof undertaken by the person who signs the certificate; and

(iii) state whether, and subject to what reservations, if any, the person signing the certificate considers that such accounts present a true and fair view of all transactions of the business or of the person to which the accounts refer, for the period stated in the certificate.

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G.N. **INCOME TAX (P.A.Y.E.) (INFORMATION) RULES**  
25/1964(N)  
34/1983

*under s. 146*

**Citation**                    **1.** These Rules may be cited as the Income Tax (P.A.Y.E.) (Information) Rules.

**Interpretation**                    **2.** In these Rules, unless the context otherwise requires-

“employee” means any individual to whom remuneration is paid or payable in the period of assessment;

“employer” means-

any person who is liable to pay remuneration to any other person; and

in the case of remuneration by way of pension or superannuation payable on behalf of another person by a life insurance company, the life insurance company, but does not include the person on whose behalf such remuneration by way of pension or superannuation is paid or payable;

*Income Tax (P.A.Y.E.) (Information) Rules*

[Subsidiary]

“employer’s representative” means a person approved as such a representative by the Commissioner for the purposes of paying remuneration, and includes an employer;

“remuneration” means any amount of taxable income which is paid or payable to an employee as salary, leave pay, an allowance, wages, overtime pay, a bonus, a gratuity, a commission, a fee, an emolument, pension, superannuation, a retiring allowance or a stipend, whether in cash or otherwise and whether in respect of services rendered or otherwise, and, without prejudice to the generality of the foregoing, includes-

any amount included in taxable income under sections 18, 19, 20 and 21 of the Act;

any amount paid or payable by a trustee in bankruptcy appointed under the Bankruptcy Act, an administrator or an executor in respect of remuneration.

Cap. 11:01

but does not include-

(i) any amount paid or payable in respect of services rendered or to be rendered by any person in the course of any trade conducted by him independently of the person by whom such amount is paid or payable;

(ii) any amount paid or payable to any director of any company in respect of services rendered or to be rendered to the company by the director as such director, unless the Commissioner otherwise directs;

(iii) any amount paid or payable to any employee wholly in reimbursement of expenditure actually incurred by such employee in the course of his employment;

(iv) any amount of alimony or similar allowance paid or payable under any order of a court of competent jurisdiction, or under any written agreement of separation or under any decree or order of divorce;

(v) such other amounts as the Commissioner may direct.

3.-(1) For the purposes of subrule (2), “employer” means a person who is liable to pay remuneration of or exceeding K72,000 in any year and who has not at any time previously furnished information to the Commissioner in the Form P.1 of the Schedule.

**Duty of  
employers  
to furnish  
information  
G.N. 34/1983  
25/2006**

[Subsidiary]

*Income Tax (P.A.Y.E.) (Information) Rules*

(2) Every employer shall furnish the information in the Form P.1 of the Schedule to the Commissioner within twenty-one days of his becoming an employer.

**Duty of employers to notify change of circumstances**  
G.N. 34/1983

4. Every employer who has at any time previously furnished information to the Commissioner in the Form P.1 of the Schedule shall, in the Form P.3 of the Schedule, notify him of any circumstance affecting the accuracy of that information and shall do so within fourteen days of the happening of such circumstance.

**Disqualification of employer's representative**

5. No person shall be or continue to be an employer's representative if he is not resident in Malawi.

6. [Revoked by G.N. 34/1983].

7. [Revoked by G.N. 34/1983].

**Penalty**  
G.N. 34/1983  
25/2006

8. Every employer who fails to comply with rule 3 or 4 and every employer who employs any person as an employer's representative who is disqualified as such under rule 5 shall be liable to a fine of K1,000 or, in default of payment, to imprisonment for three months.

**SCHEDULE**

rr. 3 and 4  
G.N. 34/1983

FORM P.1

*For official use*

**MALAWI GOVERNMENT**  
**DEPARTMENT OF TAXES**

P.A.Y.E.: REGISTRATION OF EMPLOYERS  
WITH EMPLOYEES PAID AT A RATE IN  
EXCESS OF K6,000 PER ANNUM

Regd. No.	
P.3	
A/C	

(Please read the notes before completing this form)

1. DETAILS OF EMPLOYER (OR BRANCH EMPLOYER)

- (a) Trade name .....
- (b) Name(s) of employer (*in full*) .....
- (c) Business address .....
- .....
- (d) Postal address .....
- .....
- (e) Business telephone number .....

2. EMPLOYER'S REPRESENTATIVE (*See note 2*)

- (a) Name (*in full*) .....
- (b) Address .....

Income Tax (P.A.Y.E.) (Information) Rules

[Subsidiary]

3. BRANCHES OF EMPLOYER'S ACTIVITIES (See note 3)

..... Will each branch be registered as a separate employer?  
.....

YES	NO

.....  
.....  
.....  
.....

Tick the answer which is applicable

If you have no branches write "NIL" above.

If the answer is "YES" complete a separate form P.1 for each branch and submit with the main form.

4. (This section to be completed only where a "Branch Employer" is separately registered.)

State trade name and address of Head Office .....  
.....

SCHEDULE

FORM P.1

For official use

MALAWI GOVERNMENT  
DEPARTMENT OF TAXES

P.A.Y.E.: REGISTRATION OF EMPLOYERS  
WITH EMPLOYEES PAID AT A RATE IN  
EXCESS OF K6,000 PER ANNUM

Regd. No.	
P.3	
A/C	

(Please read the notes before completing this form)

1. DETAILS OF EMPLOYER (OR BRANCH EMPLOYER)

Trade name .....  
Name(s) of employer (in full) .....  
Business address .....  
.....  
Postal address .....  
.....  
Business telephone number .....

2. EMPLOYER'S REPRESENTATIVE (See note 2)

(a) Name (in full) .....  
(b) Address .....

[Subsidiary]

Income Tax (P.A.Y.E.) (Information) Rules

3. BRANCHES OF EMPLOYER'S ACTIVITIES (See note 3)

(a) ..... Will each branch be registered as a separate employer?  
.....

(b) .....  
.....

YES	NO

(c) .....  
.....

Tick the answer which is applicable

If you have no branches write "NIL" above.

If the answer is "YES" complete a separate form P.1 for each branch and submit with the main form.

4. (This section to be completed only where a "Branch Employer" is separately registered.)

State trade name and address of Head Office .....  
.....

5. EMPLOYEES (See note 4)

State the approximate number of employees in your employ who will be paid at a rate of or exceeding K60,000 per year.

.....

I declare that the information given above is correct and complete.

Date ....., 19.....

.....  
*Employer or Employer's Representative*

This form is to be returned to the Inspector of Taxes, P.O. Box 250, Blantyre.

**NOTES TO BE READ BEFORE COMPLETING THE FORM**

1. The form should be completed by all employers commencing business after 1<sup>st</sup> April, 1983, who pay any of their employees' salaries or wages at a rate of or exceeding K6,000 per year, within 21 days of commencing business.

2. EMPLOYER'S REPRESENTATIVE

(a) The person chosen can be the employer himself if he wishes. If any person other than the employer is chosen, he should be the person who is responsible for the payment of salaries and wages, such as the manager, for example. In the case of a company, the "Employer's Representative" would normally be the public officer of the company.

(b) The “Employer’s Representative” (the approval of whose appointment will be at the discretion of the Department of Taxes) will be the person who is responsible for the operation of the P.A.Y.E. scheme, the deduction of the tax due, and the remittance of such tax to the Inspector of Taxes at weekly or monthly intervals.

(c) The “Employer’s Representative” will be responsible for keeping the information filed with the Department of Taxes up to date. Any changes of address, etc., or the cessation of the employer’s activities should be notified (on the Form P.3 which will be provided) within 14 days of any such change.

3. BRANCHES OF EMPLOYER’S ACTIVITIES

If you have a branch of branches of your business at separate address from your main centre, you may arrange for the payment of salaries and wages from a central point, in which case *only one* form P.1 should be completed. If, however, each branch is responsible for the payment of its own salaries and wages, a *separate Form P.1* should be completed for each branch, with a separate “Employer’s Representative” for each branch.

4. EMPLOYEES

Enter in question 5 overleaf the approximate number of employees in your employ who are expected to receive salaries or wages *of or exceeding K6,000 per year.*

FORM P.3

*For official use*

**MALAWI GOVERNMENT**  
**DEPARTMENT OF TAXES**

P.1	
A/C	

(P.A.Y.E. CHANGE OF REGISTERED PARTICULARS  
OF AN EMPLOYER

Reference No.

--	--	--	--	--	--

1. EXISTING PARTICULARS

The following particulars are on record at your office-

Trade Name .....  
Name of Employer .....

[Subsidiary]

*Income Tax (P.A.Y.E.) (Information) Rules*

Name of Employer's Representative (*in full*) .....

.....

Business Address .....

.....

Postal Address .....

.....

Business Telephone Number .....

\*Please change these particulars as indicated in Paragraph 2 below  
or

\*Delete these particulars as I ceased to be an Employer on  
..... and I return herewith Tax  
Tables and Forms .....

2. NEW PARTICULARS

(a) New Trade Name .....

(b) Name of Employer .....

(c) Name of Employer's Representative (*in full*) .....

.....

\*Delete whichever is not applicable

(d) New Business Address .....

.....

(e) New Postal Address .....

.....

New Business Telephone Number .....

I declare that the information given above is correct and complete.

Date ..... 19 .....  
*Employer/Employer's Representative*

To the Inspector of Taxes, P.O. Box 250, Blantyre.

G.N. 50/1990

**TAXATION (STATUTORY BODIES) (EXEMPTION SPECIFICATION) NOTICE**

*under First Schedule para. (b) (iii)*

**Citation**

**1.** This Notice may be cited as the Taxation (Statutory Bodies) (Exemption Specification) Notice.

**Exemption from and liability for, tax: statutory bodies**

**2.** The receipt and accruals of any statutory body, except those named in the Schedule hereto, shall be exempt from income tax.

*Taxation (Statutory Bodies) (Exemption Specification) Notice/Interest on Government  
Loan (Exemption) Notice*

[Subsidiary]

**SCHEDULE**

**G.N. 50/1990  
14/1991**

Agricultural Development and Marketing Corporation  
Air Malawi Limited  
Blantyre Water Board  
Electricity Supply Commission of Malawi  
Lilongwe Water Board  
Malawi Book Service  
Malawi Dairy Industries Corporation  
Malawi Development Corporation  
Malawi Housing Corporation  
Malawi Railways Limited  
Mining Investment and Development Corporation Limited  
Wood Industries Corporation Limited

**INTEREST ON GOVERNMENT LOAN (EXEMPTION)  
NOTICE**

**G.N. 129/1967**

*Under First Schedule para. (k)*

The Minister, under paragraph (k) of the First Schedule to the Act, has specified the KREDITANSTALT FUR WIEDERAUFBAU to be a body to which such provision applies so that the interest received or accrued to or in favour of such body on any loan made by such body to the Malawi Government or to any corporate body established by a law of Malawi shall be exempt from income tax.

**APPROVAL OF INTERNATIONAL ORGANIZATIONS  
AND AGENCIES OF GOVERNMENTS FOR THE  
EXEMPTION OF THE OFFICERS THEREOF FROM  
INCOME TAX**

**G.N. 199/1964(N)**

*Under First Schedule para. (l)*

The Minister, under paragraph . (l) of the First Schedule to the Act, has approved the international organizations and agencies of Governments of countries outside Malawi set out in the Schedule.

**SCHEDULE**

All Agencies of the United Nations Organization  
The United States Peace Corps  
The United States Agency for International Development  
Voluntary Service Overseas

*Approval of International Organizations and Agencies of Governments for the Exemption of the Officers thereof from Income Tax/Specification of Persons Exempted from Income Tax/Taxation (Withholding Tax) (Information, Deducted and Payment) Regulations*

G.N.  
109/1980

**SPECIFICATION OF PERSONS EXEMPTED FROM  
INCOME TAX**

*Under First Schedule para. (s)*

The Minister, under paragraph . (s) of the First Schedule to the Act, has specified the names of persons named in the Schedule hereto as being persons whose income shall be exempt from income tax.

**SCHEDULE**

Leland Dresser  
Barbara Campbell

G.N.  
28/1985  
43/1985  
24/2006

**TAXATION (WITHHOLDING TAX) (INFORMATION,  
DEDUCTION AND PAYMENT) REGULATIONS**

*under s. 146*

**Citation**

**1.** These Regulations may be cited as the Taxation (Withholding Tax) (Information, Deduction and Payment) Regulations.

**Application of  
Regulations**

**2.** These Regulations shall apply to all payments to which section 102A of the Act applies.

**Deduction of  
Withholding  
Tax**

**3.**-(1) A person who makes any payment specified in the Fourteenth Schedule to the Act shall deduct withholding tax in accordance with the rates specified in that Schedule and shall, for the purposes of these Regulations, make an application to the Commissioner for a supply of withholding tax certificates under regulation 4.

(2) A person who fails to deduct withholding tax pursuant to subregulation (1), shall himself be personally liable to pay to the Commissioner the amount of any withholding tax which he has failed to deduct plus an additional penalty as determined under regulation 6(4).

**Withholding  
Tax Certificate  
First Schedule**

**4.**-(1) The Commissioner shall, on application, supply to every person to whom section 102A applies a sufficient number of withholding tax certificates, which certificates shall be in the form set out in the First Schedule.

(2) Every person supplied with withholding tax certificates shall complete a withholding tax certificate in respect of each payment and shall forward or retain the copies thereof in the manner specified therein:

*Taxation (Withholding Tax) (Information, Deduction and Payment) Regulations*

Provided that where it is anticipated that several payments may be made to the same recipient in one month, only one withholding tax certificate may be completed in respect of all those payments.

(3) Except with the approval of the Commissioner, no person shall use any document, not being a withholding tax certificate supplied under subregulation (1), for the purpose of showing or in purporting to show the amount of withholding tax withheld under regulation 3(1), and any document so used shall not be valid for what it purports to show.

5. Any amount deducted from any payment to any person as withholding tax shall be deemed to have been actually received by that person as part of the whole payment.

**Amount deemed to have been received by recipient of payment**

6.-(1) Subject to subregulation (3), a person who, under regulation 3(1), has deducted from a payment to any other person an amount representing withholding tax shall remit such amount to the Commissioner within thirty days from the end of the month in which such deduction was made.

**Remittance of withholding tax to the Commissioner**

(2) Every remittance to be made to the Commissioner under subregulation (1) shall be accompanied with all withholding tax certificates completed during the month to which the remittance relates together with a summary, in the form set out in the Second Schedule, summarizing the particulars of all deductions of withholding tax made in that month.

*Second Schedule*

(3) No withholding tax shall be deducted from any payment to a person who is a holder of a valid withholding tax exemption certificate issued under regulation 7 and who produces the certificate to the person making the payment; but so however that the person making the payment shall, nonetheless, furnish the Commissioner with a summary required under subregulation (2) containing such applicable particulars as are required therein.

(4) A person who fails to remit the amount of withholding tax within the time specified in subregulation (1) shall himself be personally liable to pay to the Commissioner an additional sum equal to twenty per cent of the amount of withholding tax he has failed to pay and such additional sum together with the amount of the withholding tax shall become payable forthwith:

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

[Subsidiary]

*Taxation (Withholding Tax) (Information, Deduction and Payment) Regulations***Withholding  
tax exemption  
certificate  
Third Schedule**

7.-(1) Subject to subregulation (2), the Commissioner may, on applications, issue a withholding tax exemption certificate, in the form set out in the Third Schedule, to any person who has fulfilled all or any of the following conditions, that is to say-

(a) that the applicant has submitted a return of income for the penultimate year of assessment;

(b) that the applicant's returns of income and supporting documents for the two consecutive years prior to the penultimate year of assessment have been accepted by the Commissioner:

Provided that where the applicant proves to the satisfaction of the Commissioner that prior to the penultimate year of assessment, the returns of income submitted and accepted by the Commissioner were for a period of less than two years, the returns of income shall be those relating to the actual period;

(c) that the applicant has made arrangements satisfactory to the Commissioner for the statement of any income tax which may be outstanding at the time of application;

(d) that the applicant is tax exempt; or

(e) that the applicant has complied with any special or general directions, or has fulfilled any conditions, which the Commissioner considers necessary to give or impose having regard to the circumstances of the application.

(2) The issue of a withholding tax exemption certificate does not exempt the holder from being taxable on the income upon which the certificate is issued but authorizes payment to the holder without the need to deduct withholding tax.

(3) A withholding tax exemption certificate shall be issued for a particular year of assessment or for such other period as the Commissioner may determine:

Provided that the Commissioner may, by notice in writing, order the withdrawal or cancellation of any withholding tax exemption certificate and upon such notice, any person in possession of such certificate shall surrender it to the Commissioner within such period as the Commissioner shall specify in the notice.

(4) A withholding tax exemption certificate may be renewed from time to time.

G.N. 25/2006

**8. Any person who-**

(a) fails to comply with regulation 3(1);

Taxation (Withholding Tax) (Information, Deduction and Payment) Regulations

[Subsidiary]

(b) fails to pay the amount of withholding tax deducted under regulation 3(1); **Offences**

(c) fails to comply with regulation 4(2);

(d) fails to remit withholding tax in accordance with regulation 6;

(e) fails to surrender to the Commissioner a withholding tax exemption certificate which the Commissioner has ordered to be withdrawn or cancelled under regulation 7(3);

(f) uses a withholding tax exemption certificate otherwise than for the purposes for which it is issued,

shall be guilty of an offence and, in addition to any other penalty prescribed under these Regulations, be liable to a fine of K1,000.

**FIRST SCHEDULE**

**MALAWI GOVERNMENT - DEPARTMENT OF TAXES**

**WITHHOLDING TAX CERTIFICATE**

**W.T.F. 1  
reg. 4(1)**

Gross amount due	K	_____
Less withholding tax at .....%	K	_____

Withholding tax as shown above has been deducted from-  
 .....  
 due to the recipient named below.

*Full Particulars of Recipient*

(Name in full): .....  
 Postal Address: .....

Income Tax Ref. No.: .....

Paid by: .....  
 (Signature)

On behalf of: .....  
 .....

Date: .....

*\*Describe nature of payment or nature of service for which payment is made.*

**NOTES:** 1. The amount of tax withheld must be paid to the Inspector of Taxes, P.O. Box 250, Blantyre, within fourteen from the end of the month in which such withholding tax was deducted.

[Subsidiary]

*Taxation (Withholding Tax) (Information, Deduction and Payment) Regulations*

2. The tax withheld is not final but will be credited against total tax liability of the recipient upon submission of his income tax return for the year in question.
3. This Certificate is to be distributed as follows-
  - Copy A - To accompany remittance to the Inspector of Taxes, P.O. Box 250, Blantyre.
  - Copy B - To be handed to recipient.
  - Copy C - To be retained by payer.

**SECOND SCHEDULE****MALAWI GOVERNMENT - DEPARTMENT OF TAXES****SUMMARY OF WITHHOLDING TAX****PART I****PERIOD**

Return for the month of ..... or for the period  
from ..... to .....

W.T.F. 2  
reg. 6(2)

**PART II****ORGANIZATION REMITTING**

Name of the organization remitting withholding tax .....

Address .....

**PART III****TOTAL AMOUNT**

Amount of withholding tax being remitted with this form is K .....

**PART IV****PARTICULARS**

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>	<i>Column 6</i>	<i>Column 7</i>
Name of recipient	Nature of payment	Gross payment due	Tax withheld	Net payment made	Withholding tax certificate No.	Withholding tax exemption certificate No.*

\*The withholding tax exemption certificate number must be quoted in cases where no withholding tax has been made.

Taxation (Withholding Tax) (Information, Deduction and Payment) Regulations

[Subsidiary]

**THIRD SCHEDULE****MALAWI GOVERNMENT - DEPARTMENT OF TAXES****WITHHOLDING TAX EXEMPTION CERTIFICATE**

Valid only for payment made between ..... to .....

Name of holder: .....

Postal Address: .....

Signature  
of holder or  
on behalf of  
holder

.....

Designation where applicable .....

Income Tax Reference Number .....

Nature of income in respect of which this exemption is issued:

(a) .....

(b) .....

(c) .....

(d) .....

Issued this ..... day of ....., 19..... by:

Name of issuing officer .....

Signature of issuing officer .....

*Official Date Stamp*W.T.F. 3  
reg.7  
G.N. 43/1985

**NOTES:** 1. This certificate authorizes payment to the holder of the full amount of the payment to which section 102A of the Act applies without deduction therefrom of withholding tax.

2. This certificate is property of the Malawi Government and, if found, it should be sent to the Inspector of Taxes, P.O. Box 250, Blantyre.

**TAXATION (PROVISIONAL TAX) (INFORMATION AND PAYMENT) REGULATIONS**

G.N. 66/1988

*under s. 146*

**1.** These Regulations may be cited as the Taxation (Provisional Tax) (Information and Payment) Regulations.

**Citation**

**2.** These Regulations shall apply in relation to payment of provisional tax under Part IX of the Act.

**Application**

**3.-(1)** Where the amount of provisional tax for the relevant year of assessment-

**Amounts of quarterly instalments of provisional tax**

(a) is based on the income tax actually paid for the

[Subsidiary]

*Taxation (Provisional Tax) (Information and Payment) Regulations*

previous year of assessment in accordance with section 84A(3)(a), the quarterly instalments of provisional tax shall be in equal amounts;

(b) is based on the taxpayer's own estimate of taxable income for that year of assessment in accordance with section 84A(3)(b)-

(i) the first quarterly instalment shall be an amount not less than one fifth of the amount of provisional tax as initially estimated;

(ii) the second or any subsequent quarterly instalment may be varied to an amount greater or lesser than the amount of the first or previous instalment in accordance with variations in the income from time to time estimated by the taxpayer to be earned for the year of assessment in question.

(2) For the avoidance of doubt, a taxpayer may, from time to time during the year of assessment, review the estimate of provisional tax made at the beginning of that year or subsequent thereto and may, for the purposes of subregulation (1)(b)(ii), vary the amount of his quarterly instalments accordingly; but so, however, that at the end of the year of assessment he shall have complied fully with the provisions of section 84A(3)(b).

**Provisional tax forms** *Schedule*

**4.**-(1) Every payment of provisional tax instalment shall be accompanied with a complete provisional tax payment form in Form PTF 1 set out in the Schedule

(2) In calculating the amount of any instalment of provisional tax, a taxpayer may make such calculation in accordance with the particulars prescribed in Form PTF 2 set out in the Schedule.

**Transitional arrangements**

**5.**-(1) Notwithstanding any other provision of these Regulations, in the first four years of assessment from the commencement of these Regulations, the total amount of provisional tax for the year of assessment specified in *Column 1* of the Table set out hereunder shall-

if the provisional tax is based on the income tax actually paid for the previous year of assessment in accordance with section 84A(3)(a), be an amount equal to the percentage specified, in relation to that year, in *Column 2* of that Table;

(b) if the provisional tax is based on the taxpayer's own estimate of taxable income for that year of assessment in

*Taxation (Provisional Tax) (Information and Payment) Regulations*

[Subsidiary]

accordance with section 84A(3)(b), be an amount equal to the percentage specified, in relation to that year, in *Column 3* of that Table:

Provided that in either case a taxpayer may in his discretion opt to make payments of larger amounts for the purpose of sooner liquidating his tax liability.

(2) The total amounts of provisional tax specified under subregulation (1) shall be paid in quarterly instalments in accordance with the provisions of the Act and of these Regulations.

**TABLE OF PROVISIONAL TAX TRANSITIONAL ARRANGEMENTS**

In this Table, "First Year" means the year of assessment beginning on or after 1st April, 1988, or having at least the last two of its quarters beginning on or after 1st April, 1988.

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
Year of Assessment	If under s. 84A(3)(a) (% of the income tax actually paid for the previous year of assessment)	If under s. 84A(3)(b) (% of the provisional tax estimated for the year of assessment)
First Year ..	25%	20%
Second Year ..	50%	40%
Third Year ..	75%	60%
Fourth Year and subsequent years	100%	80%

**SCHEDULE**

**FORM PTF 1**

**MALAWI GOVERNMENT - DEPARTMENT OF TAXES**

**PROVISIONAL TAX PAYMENT FORM**

(To be completed in duplicate and original copy to be sent to the Commissioner of Taxes, P.O. Box 250, Blantyre, accompanying your payment of provisional tax instalment).

For the year of assessment ending ....., 19 .....

1. Taxpayer's identification number

--	--	--	--	--	--	--	--	--	--

2. Name(s) (in print and, in case of individuals, surname first

.....  
 .....  
 .....

[Subsidiary]

Taxation (Provisional Tax) (Information and Payment) Regulations

3. Address (*in print*) .....  
 .....  
 .....

<p>4. Basis of calculation of instalment (<i>mark with x in box as applicable</i>)</p> <p>(a) Previous year's tax</p> <div style="border: 1px solid black; width: 100px; height: 40px; margin: 5px auto;"></div> <p>(b) Current year's estimated tax</p> <div style="border: 1px solid black; width: 100px; height: 40px; margin: 5px auto;"></div> <p>5. Accounting date ..... (e.g. 31.12)</p>	<p>6. Instalment number 1 2 3 4 (<i>circle the number</i>)</p> <p>7. Amount of this instalment</p> <div style="border: 1px solid black; width: 100px; height: 40px; margin: 5px auto;"></div> <p>8. Totals:</p> <p>(a) previous instalments (excluding this one)</p> <div style="border: 1px solid black; width: 100px; height: 40px; margin: 5px auto;"></div> <p>(b) Instalments to date (<i>i.e. amount at 7 plus amount at 8(a)</i>)</p>
--	--

**FORM PTF 2**

**MALAWI GOVERNMENT - DEPARTMENT OF TAXES**

**CALCULATION OF PROVISIONAL TAX INSTALMENTS**  
 (This form *need not* be sent to the Commissioner of Taxes)

Year of assessment ending . . . . .	
A. For use by persons basing provision tax instalments on previous year's income tax liability	
1. Amount of income tax liability for the year of assessment . . . . .	1.
2. Enter 25 per cent of line 1 . . . . .	2.
3. Amount of quarterly instalments ( <i>enter line 2</i> ) . . . . .	3.
B. For use by persons basing provisional tax instalments on their estimated income tax liability for the current year of assessment.	
1. Taxable income expected in the year . . . . .	1.
2. Income tax thereon . . . . .	2.
3. Estimated credits . . . . .	3.

Taxation (Fringe Benefits) (Information and Payment) Regulations

[Subsidiary]

4. Estimated tax ( <i>line 2 minus line 3</i> ) .. .. .	4.	
5. Total amount of previous instalments .. .. .	5.	
6. Balance of estimated tax ( <i>line 4 minus line 5</i> ) .. (If line 6 is zero or below, do not continue)	6.	
7. Number of remaining quarterly instalments ..	7.	
8. Amount of each instalment ( <i>line 6 divided by line 7</i> ) ..	8.	
9. Amount of instalment being made now ( <i>enter line 8</i> ) ..	9.	

**TAXATION (FRINGE BENEFITS TAX) (INFORMATION AND PAYMENT) REGULATIONS**

G.N. 54/1991  
30/1995

*under s. 146*

**1.** These Regulations may be cited as the Taxation (Fringe Benefits Tax) (Information and Payment) Regulations.

**Citation**

**2.** These Regulations shall apply in relation to payment of fringe benefits tax by employers to whom Part IXA of the Act applies.

**Application**

**3.** In these Regulations-  
“employer” means an employer to whom Part IXA of the Act applies.

**Interpretation**

**4.** Every employer shall, within the month in which he begins to provide fringe benefits to employees, register with the Commissioner for the purposes of these Regulations and shall do so by completing a fringe benefits tax form in Form F.B.T.1 set out in the Schedule obtainable upon application therefore by the employer:

**Compulsory registration of employers**  
*Schedule*

Provided that in the case of an employer already providing fringe benefits to employees at the date of publication of these Regulations he shall apply for registration and be registered within fourteen days from that date and, in any event, not later than 31st May, 1991.

**5.** Calculation of taxable values of fringe benefits for the purpose of arriving at the total thereof on which fringe benefits tax, at the rate specified in paragraph (e) of the Eleventh Schedule to the Act, is payable under section 94A shall be as follows-

**Calculation of taxable value of fringe benefits**  
G.N. 30/1995

(a) for housing accommodation, the taxable value shall be-

[Subsidiary]

*Taxation (Fringe Benefits) (Information and Payment) Regulations*

(i) for property owned by the employer-

(aa) the open market value for the use (rental value) of such property; or

(bb) 10 per cent of the employee's salary where unfurnished housing accommodation is provided; or

(cc) 12 per cent of the employee's salary where furnished housing accommodation is provided,

whichever is greater:

Provided that the taxable value so determined under this subparagraph may be reduced by 50 per cent;

(ii) for property rented by the employer, the taxable value shall be-

(aa) the rental paid by the employer; or

(bb) 10 per cent of the employee's salary where unfurnished housing accommodation is provided; or

(cc) 12 per cent of the employee's salary where furnished housing accommodation is provided,

whichever is the greater;

(b) for motor vehicles the taxable value shall be 15 per cent of the original cost of each vehicle;

G.N. 59/1998

(c) for school fees and related expenses paid by the employer directly to institutions, the taxable value shall be 50 per cent of the cost to the employer;

(d) for other fringe benefits, including but not limited to-

(i) utilities such as electricity, water and telephone;

(ii) household items of any kind;

(iii) vacations, travel and any other provisions,

(iv) domestic services of any kind, such as gardeners, maids, cooks, nannies and housekeepers, security guards and watchmen,

the taxable value shall be the entire cost to the employer:

Provided that where the property is owned by the employer the cost of a gardener, security guard and watchman shall not constitute a taxable benefit.

The taxable values determined in this paragraph shall be reduced by an amount equal to the contribution made by the employee in respect thereof;

(e) where the interest rate charged on a loan given to an employee is lower than the commercial rate, the difference shall be a taxable benefit.

Taxation (Fringe Benefits) (Information and Payment) Regulations

[Subsidiary]

6. The sums due as fringe benefits tax shall be paid to the Commissioner in quarterly instalments not later than fourteen days after the end of each quarter of a period of twelve months ending 31<sup>st</sup> March each year and the remittance of such sums shall be accompanied with a duly completed fringe benefits tax return in Form FBT 2 set out in the Schedule.

Payment of fringe benefits

Schedule

Records

7.-(1) Every employer shall keep and maintain proper records showing-

the nature of the fringe benefits provided;

the names of employees to whom the fringe benefits are provided; and

the taxable values of fringe benefits as determined in accordance with these Regulations,

and such records shall be made available by the employer for inspection at any reasonable time by the Commissioner or by any public officer authorized in that behalf by the Commissioner.

Penalty

8. An employer who fails to register in accordance with regulation 4 or delays or fails to pay fringe benefits tax due in accordance with these Regulations shall be liable to a penalty of 20 per cent of the fringe benefits tax due and such penalty shall become payable together with the fringe benefits tax due:

Provided that the Commissioner may reduce or waive the amount of the penalty if, in his opinion, a satisfactory explanation for delayed payment is given.

SCHEDULE regs. 4 and 6
FRINGE BENEFITS TAX FORMS FORM FBT 1
MALAWI GOVERNMENT
DEPARTMENT OF TAXES
FRINGE BENEFITS TAX REGISTRATION FORM
Employer's Taxpayer Identification Number (TPIN)

- 1. Name of employer ..... [ ]
2. Address .....
.....
3. Location of offices .....
.....

[Subsidiary]

*Taxation (Fringe Benefits) (Information and Payment) Regulations*

4. Nature of fringe benefits provided (*tick as appropriate*)

- Housing
- Motor Vehicle
- Other (specify)
- .....
- .....
- .....
- .....

5. Approximate number of employees to whom fringe benefits are provided

.....

Date ..... Signature of employer's representative .....

.....

**FORM FBT 2**

**MALAWI GOVERNMENT  
DEPARTMENT OF TAXES**

**FRINGE BENEFITS TAX QUARTERLY RETURN AND REMITTANCE FORM**

Quarter ending ..... Number of Employees .....

<i>Nature of Benefit</i>	<i>Month 1 Taxable Value</i>	<i>Month 2 Taxable Value</i>	<i>Month 3 Taxable Value</i>	<i>Total Taxable Value</i>
1. Housing				
2. Motor Vehicles				
3. Other				
4. Total				
Tax (at ..... per cent of the total as shown at 4 above)				

I declare that this return contains the correct taxable values of fringe benefits provided by this employer.

Name of Employer .....

Address .....

Date ..... Signature of employer's representative .....

<i>Taxation (Graduated Tax) (Information, Deduction and Payment) Regulations</i>	[Subsidiary]
<b>TAXATION (GRADUATED TAX) (INFORMATION, DEDUCTION AND PAYMENT) REGULATIONS</b>	<b>G.N. 25/1990</b>
<i>under s. 146</i>	
<b>1.</b> These Regulations may be cited as the Taxation (Graduated Tax) (Information, Deduction and Payment) Regulations.	<b>Citation</b>
<b>2.</b> These Regulations shall apply in relation to deduction of graduated tax under <i>Division 2</i> of Part XIV of the Act.	<b>Application of Regulations</b>
<b>3.</b> In these Regulations- “employer” means an employer of a person liable to pay graduated tax; “tax year” means the period of twelve months beginning on 1 <sup>st</sup> April in each year and ending on 31 <sup>st</sup> March the following year.	<b>Definitions</b>
<b>4.</b> (1) Every employer of five or more employees, including domestic servants, shall register, in accordance with these Regulations, with the district tax office in the district of his locality (hereinafter referred to as the “local district tax office”) for purposes of deduction and payment of graduated tax.	<b>Registration of employers</b>
(2) Registration of every employer shall be in Form G.T.F.1 set out in the Schedule which shall be supplied to the employer by the local district tax office upon request by the employer and shall be completed by the employer and returned to the local district tax office.	<b>Schedule</b>
<b>5.</b> (1) Upon receipt by the local district tax office of the completed registration form, the employer concerned shall be deemed registered for the purposes of these Regulations and thereupon the district tax office shall enter, in a book kept at that office for the purpose, such particulars of that employer as the Commissioner may direct.	<b>Employer’s registration particulars and number</b>
(2) Every registered employer shall be allocated a registration number which shall be entered in the book referred to in subregulation (1) against the name of that employer and shall be notified to the employer.	
<b>6.</b> An employer with less than five employees, including domestic servants, may of his own volition, seek to be registered under these Regulations, and thereupon the local district tax office shall register such employer accordingly.	<b>Voluntary registration</b>
<b>7.</b> A registered employer shall remain registered notwithstanding that the number of his employees has become less than five or that his registration was voluntary registration under regulation 6, unless the Commissioner, either at his own instance or at the written request of the employer stating reasons therefore, otherwise directs.	<b>Duration of registration</b>
<b>8.</b> Every employer shall summarize all graduated tax deductions made in each period of charge on Form G.T.F. 2 set out in the Schedule and shall forward the total amount of the graduated tax deducted together with	<b>Deduction and payment of graduated tax by employers</b>

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*Taxation (Graduated Tax) (Information, Deduction and Payment) Regulations***Schedule**

the original copy of completed Form G.T.F. 2 to the local district tax office within 14 days from the end of the period of charge to which deductions refer:

Provided that where deduction of graduated tax is made at weekly intervals, payment of such tax by the employer to the local district tax office shall be made at monthly intervals.

**Employer's identification number**

**9.**-(1) Every registered employer shall assign an identification number to each of his employees and the number assigned to one employee shall not, during the period of his employment with that employer, be used by or assigned to another employee.

(2) The identification number of every employee shall be indicated against his name on the summary sheet in Form G.T.F. 2 forwarded under regulation 8.

**Payment of graduated tax by unregistered employers**

**10.**-(1) Every employer not required to be registered under these Regulations and who has not opted to be registered under regulation 6 shall once every month purchase graduated tax stamps for each of his employees equivalent in value to the graduated tax deducted and shall affix such graduated tax stamps on the appropriate spaces provide on graduated tax card maintained for each of his employees in accordance with regulation 12.

(2) Upon affixing graduated tax stamps as required by subregulation (1), the employer shall cancel the stamps by writing over them, with ink, the date on which the stamps were affixed to the graduated tax card.

**Graduated tax certificates Schedule**

**11.**-(1) Every registered employer shall complete a graduated tax certificate in Form G.T.F. 3 set out in the Schedule-

immediately an employee leaves the service of the employer;  
and

within 30 days after the end of each tax year for each of his employees.

(2) A graduated tax certificate shall not be valid unless authenticated by the local district tax office.

**Tax cards****Schedule**

**12.**-(1) Every employer not required to be registered under these Regulations and who has not opted to be registered under regulation 6 shall maintain for each of his employees a graduated tax card as in Part I of Form G.T.F. 4 set out in the Schedule.

(2) Within 30 days after the end of each tax year or immediately an employee leaves the service of the employer, the employer shall cause the graduated tax certificate as in Part II of Form G.T.F. 4 to be authenticated by the local district tax office, and unless so authenticated such certificate shall not be valid.

*Taxation (Graduated Tax) (Information, Deduction and Payment) Regulations*

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13. The authenticated graduated tax certificate shall be handed to the employee concerned and, in the case of graduated tax cards, the employer shall deliver the card to the local district tax office.

**Retention of graduated tax certificates**

14. An employer who fails to deduct graduated tax from any employee liable to pay graduated tax shall be personally liable to pay to the Commissioner the amount of the graduated tax which he has failed to deduct, and such amount shall be a civil debt recoverable by the Commissioner:

**Liability of employer to pay graduated tax not deducted**

Provided that the employer shall be entitled to recover any amount paid by him under this regulation from the employee concerned.

15. Every employer shall, on request by the Commissioner, permit the Commissioner to inspect any wages sheets, records and other documents kept by the employer for the purpose of the Commissioner satisfying himself that graduated tax has been or is being correctly deducted and accounted for in respect of all employees in accordance with the Act.

**Access by the Commissioner to employer's records**

16. Any person who-

being required to register under these Regulations, fail to do so;

**Offences and penalty**

being an employer or employer's representative, fails-

(i) to deduct or pay graduated tax in accordance with these Regulations;

(ii) to have graduated tax certificates authenticated or issued in accordance with these Regulations;

(iii) to cancel graduated tax stamps in the manner specified in regulation 10(2);

(c) for the purposes of the Regulations, falsifies any document,

shall be guilty of an offence and liable to a fine of K300 and to imprisonment for three months.

**SCHEDULE**

**MALAWI GOVERNMENT  
DEPARTMENT OF TAXES**

**regs. 4, 8, 11  
and 12  
G.T.F. 1**

**REGISTRATION OF AN EMPLOYER FOR THE OPERATION OF GRADUATED TAX**

*(Please return this Form after completion to the district tax office of the district of your locality or to the Collector of Taxes/District Commissioner of your area)*

1. Particulars of the employer-

(a) Trade name .....

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*Taxation (Graduated Tax) (Information, Deduction and Payment) Regulations*

(b) Full names (where applicable) .....

.....

Postal address .....

Year of commencement of business .....

Number of current employees .....

Do you operate a PAYE Scheme .....

If yes, state your Scheme No. ....

State your taxpayer identification No. ....

Place of business .....

.....

.....

(Plot No., Street, Trading Centre, etc.)

## 2. Employer's Representative

(a) Name .....

(b) Postal address .....

## 3. Frequency of Wage Payments (mark with ✓ whichever applies)

Monthly  Weekly  Fortnightly

## 4. Declaration:

I declare that the information given above is correct and complete.

.....

*Employer's Representative*

Date: .....

**NOTES:**

1. This form is to be completed by all employers who pay their employees wages at an annual rate not exceeding K2,400..
  2. If the total number of your employees is five (5) or more, you are required by law to be registered for purposes of deduction and payment of graduated tax by completing this form.
  3. If the total number of your employees is less than five (5), you may opt to be registered for purposes of deduction and payment of graduated tax by completing this form.
-

Taxation (Graduated Tax) (Information, Deduction and Payment) Regulations

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For official use only

Registration No. 

**MALAWI GOVERNMENT**  
**DEPARTMENT OF TAXES**

G.T.F. 2

## SUMMARY OF GRADUATED TAX DEDUCTED FOR THE MONTH OF .....

## NOTES:

- (1) To be completed in duplicate.
- (2) Top copy to accompany remittance.
- (3) Employer to retain duplicate.

Name of the employer .....

Address .....

Total amount of graduated tax deducted: K.....

1	2	3	4	5	6	7
<i>Employer's Number</i>	<i>Name of employee</i>	<i>Gross wages</i>	<i>Tax deducted</i>	<i>Cumu- lative wages</i>	<i>Cumu- lative tax</i>	<i>Certifi- cate number</i>
TOTALS						

\*Column 7 to be completed at the end of the tax year or during the year when an employee leaves employment and is given a graduated tax certificate.

G.T.F. 3

**MALAWI GOVERNMENT**  
**DEPARTMENT OF TAXES**

Employer's No. .... Certificate No. ....

Graduated Tax Certificate: Year ending 31<sup>st</sup> March .....

Name of employee .....

Address .....



*Taxation (Graduation) (Information, Deduction and Payment)  
Regulations/Taxation (Dividend Tax Account) (Establishment and  
Maintenance) Regulations*

[Subsidiary]

December																				
January																				
February																				
March																				
<b>TOTALS</b>																				

Employer's name .....

Address .....

**MALAWI GOVERNMENT  
DEPARTMENT OF TAXES  
PART II**

**GRADUATED TAX CERTIFICATE  
Year ending 31st March, .....**

Name of employee .....

Address .....

Home address (*where applicable*) .....

Village ..... Chief ..... District .....

Period of employment: From ..... to.....

Total tax deducted (*in words*) .....

Name of employer .....

Address .....

Name of Collector of Taxes .....

*Official Stamp of Collector  
of Taxes*

**NOTE:**  
This certificate is valid only if it bears the Official Stamp of a Collector of Taxes.

[Subsidiary]

*Taxation (Dividend Tax Account) (Establishment and Maintenance) Regulations*

**TAXATION (DIVIDEND TAX ACCOUNT)  
(ESTABLISHMENT AND MAINTENANCE)  
REGULATIONS**

*under s. 146*

Citation

**1.** These Regulations may be cited as the Taxation (Dividend Tax Account) (Establishment and Maintenance) Regulations.

Application of Regulations

**2.** These Regulations shall apply to every company which, in accordance with section 70A of the Act, is required to establish and maintain in its books of account a dividend tax account.

**Determination of opening balance of dividend tax account for 1992/1993 year of assessment**

**3.**-(1) Every company shall, in respect of the 1991/1992 year of assessment to that company, determine whether or not there is a retained profits account in the accounts of the company.

(2) Where the accounts of the of the company show no retained profits or show accumulated losses, the opening balance of the dividend tax account at the beginning of the 1992/1993 year of assessment of the company shall be zero, and shall be so recorded.

(3) Where the accounts of the company show retained profits, the opening balance of the dividend tax account at the beginning of the 1992/1993 year of assessment of the company shall be calculated at the rate of seven thirteenths of the retained profits, and the amount so calculated shall be recorded as the opening balance of the dividend tax account of the company.

**Balances of the dividend tax amount**

**4.** The balance of the dividend tax account of the company shall be increased or reduced, as the case may be, in accordance with subsection 70A(2) of the Act, and where any income tax has been refunded to the company, the balance of the dividend tax account shall further be reduced by an amount equal to the amount of income tax which has been refunded.

**5.** A dividend tax account shall be maintained on the basis of an accounting year or a year of assessment and, in accordance with subsection 70A(3) of the Act, shall be carried forward from year to year, but income tax paid in respect of income earned in any subsequent year of assessment shall not be used to increase a dividend tax account of a previous year of assessment.