

CUSTOMS AND EXCISE (AMENDMENT) BILL, 2018

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Amendment of s. 2 of Cap. 42:01
3. Amendment of s. 63 of the principal Act
4. Amendment of s. 64 of the principal Act
5. Amendment of s. 65 of the principal Act
6. Amendment of s. 65A of the principal Act
7. Amendment of s. 76 of the principal Act
8. Amendment of s. 77 of the principal Act
9. Insertion of s. 94A into the principal Act

A BILL

entitled

An Act to amend the Customs and Excise Act

ENACTED by the Parliament of Malawi as follows—

1. This Act may be cited as the Customs and Excise (Amendment) Act, 2018, and shall come into operation on 1st July, 2018. Short title and commencement
2. The Customs and Excise Act (hereinafter referred to as the “principal Act”) is amended, in section 2, by inserting therein, in the correct alphabetical order, a new definition of the word “excisable services” as follows— Amendment of section 2 of Cap. 42:01

B. No. 21

““excisable services” means any services in respect of which the full excise duties have not been paid.”.

Amendment of
s. 63 of the
principal Act

3. Section 63 of the principal Act is repealed and replaced with the following new section 63—

“Minister may
make
regulations

63. The Minister may make regulations providing for—

- (a) the manufacture and disposal of excisable goods;
- (b) the materials which may, or may not, be used in such manufacture;
- (c) the type, fitting, pattern, installation and placement of all premises, machinery, utensils, pipes and receptacles used in such manufacture;
- (d) the provision or supply of excisable services;
- (e) notices which the holder of an excise licence must give to the proper officer in respect of his intended operations; and
- (f) the method of taking account of excisable goods or services,

and different regulations may be made in respect of different excisable goods or services or in respect of different premises.”.

Amendment
of s. 64 of the
principal

4. Section 64 of the principal Act is repealed and replaced with the following new section 64—

“Excise licence

64. Except as otherwise provided in the customs laws, no person shall manufacture any excisable goods or provide or supply any excisable services either in whole or in part unless authorized by, and in accordance with the conditions of, a valid excise licence issued by the Commissioner General:

Provided that no such licence shall be required by—

- (a) a private individual in respect of excisable goods, other than spirits, manufactured by him for his own use or for the use of his family and not for sale or disposal for profit; or
- (b) a person authorized by the Commissioner General to manufacture excisable goods for experiment purposes and not for sale or disposal for profit subject to such conditions as the Commissioner General may direct.”.

VALUE ADDED TAX (AMENDMENT) BILL, 2018

MEMORANDUM

This Bill seeks to amend the Value Added Tax Act in order to provide for the-

- (a) registration of Value Added Tax withholding agents;
- (b) submission of Value Added Tax returns for imported services;
- (c) registration of mining exploration companies; and
- (d) manner of paying Value Added Tax and other payments.

VALUE ADDED TAX (AMENDMENT) BILL, 2018

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Amendment of s. 2 of Cap. 42:02
3. Amendment of s. 11 of the principal Act
4. Insertion of Part IIIA into the principal Act
5. Insertion of s. 19A into the principal Act
6. Amendment of s. 30 of the principal Act
7. Amendment of s. 34 of the principal Act
8. Amendment of s. 37 of the principal Act
9. Insertion of s. 37A into the principal Act
10. Amendment of s. 38 of the principal Act
11. Amendment of s. 46 of the principal Act
12. Amendment of s. 59 of the principal Act

A BILL

entitled

An Act to amend the Value Added Tax Act

ENACTED by the Parliament of Malawi as follows—

- | | |
|---|---------------------------------------|
| <p>1. This Act may be cited as the Value Added Tax (Amendment) Act, 2018, and shall come into operation on 1st July, 2018.</p> | <p>Short title and commencement</p> |
| <p>2. The Value Added Tax Act (hereinafter referred to as the “principal Act”) is amended, in section 2, by—</p> <p style="padding-left: 40px;">(a) deleting the definition of the word “business” and substituting therefor a new definition of “business” as follows—</p> | <p>Amendment of s. 2 of Cap 42:02</p> |

B. No. 22

CUSTOMS AND EXCISE (AMENDMENT) BILL, 2018

ARRANGEMENT OF SECTIONS

SECTION

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2. Amendment of s. 2 of Cap. 42:01
3. Amendment of s. 63 of the principal Act
4. Amendment of s. 64 of the principal Act
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B. No. 21

““excisable services” means any services in respect of which the full excise duties have not been paid.”.

Amendment of
s. 63 of the
principal Act

3. Section 63 of the principal Act is repealed and replaced with the following new section 63—

“Minister may
make
regulations

63. The Minister may make regulations providing for—

- (a) the manufacture and disposal of excisable goods;
- (b) the materials which may, or may not, be used in such manufacture;
- (c) the type, fitting, pattern, installation and placement of all premises, machinery, utensils, pipes and receptacles used in such manufacture;
- (d) the provision or supply of excisable services;
- (e) notices which the holder of an excise licence must give to the proper officer in respect of his intended operations; and
- (f) the method of taking account of excisable goods or services,

and different regulations may be made in respect of different excisable goods or services or in respect of different premises.”.

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principal

4. Section 64 of the principal Act is repealed and replaced with the following new section 64—

“Excise licence

64. Except as otherwise provided in the customs laws, no person shall manufacture any excisable goods or provide or supply any excisable services either in whole or in part unless authorized by, and in accordance with the conditions of, a valid excise licence issued by the Commissioner General:

Provided that no such licence shall be required by—

- (a) a private individual in respect of excisable goods, other than spirits, manufactured by him for his own use or for the use of his family and not for sale or disposal for profit; or
- (b) a person authorized by the Commissioner General to manufacture excisable goods for experiment purposes and not for sale or disposal for profit subject to such conditions as the Commissioner General may direct.”.

““business” means the carrying on of any form of commercial activity, by a corporate body, individual, partnership or any organization and includes the conduct of a mining project;”;

(b) deleting the definition of the words “taxable person” and substituting therefor a new definition of “taxable person” as follows—

““taxable person” means a person registered under section 11 and includes an individual, partnership, group of persons, company or corporation registered by the Commissioner General under that section and includes a person registered in relation to a mining project under that section, which shall be taken to be a separate taxable person from that person registered or on whose behalf another person is registered in any other respect;”;

(c) inserting therein, in the correct alphabetical order, the following new definitions—

““mining project” means—

(a) the holding of a mining permit;

(b) the conduct of activity under that permit including reconnaissance for, exploration for, and mining operations for minerals and including like operations for clay, sand, gravel, stone, or for any substance commonly won by quarrying;

(c) the financing of any of the activities in (a) or (b) whether by debt or by equity; and

(d) the supply by sale or otherwise of anything resulting from those activities or of anything used, created or acquired in those activities;”;

““mining permit” means—

Cap. 61:01 (a) a mineral tenement or an artisanal mining permit as defined under the Mines and Minerals Act; and

(b) where a mining permit covers an area taken from another mining permit while that permit was held by the taxpayer, the area of the other mining permit during the period before the later mining permit was taken from it;”;

““withholding agent” means any person, including an individual, partnership, group of persons, company or corporation, registered under section 14A.”.

3. Section 11 of the principal Act is amended, by deleting subsection (1) and replacing it with a new subsection (1) as follows—

Amendment
of s.11 of the
principal Act

“(1) A person is registrable as a taxable person—

(a) if he or she is a person who makes taxable supply of goods or services or conducts a mining project and, whose business turnover is, or exceeds, K10,000,000 per annum; or

(b) if he or she is a recipient of imported services whose value of imported services is, or exceed, K10,000,000 per annum.”.

4. The principal Act is amended, by inserting, immediately after Part III, the following new “PART IIIA” as follows—

Insertion of
Part IIIA into
the principal
Act

“PART IIIA—WITHHOLDING AGENTS

Withholding
Agent

14A.—(1) The Commissioner General may, appoint a person, being—

(a) a purchaser of taxable goods or services; or

(b) responsible for the payment for the taxable goods or services,

to be a withholding agent for Value Added Tax for the purposes of this section:

Provided that the Commissioner General may, at any time, revoke an appointment under this subsection if he deems it appropriate to do so for the protection of revenue.

(2) The Commissioner General shall register the person appointed under subsection (1) as a withholding agent for Value Added Tax.

(3) A person appointed and registered under subsections (1) and (2), respectively, shall, on purchasing or making payment for taxable goods or services, withhold the Value Added Tax payable thereon and remit it to the Commissioner General as specified under this Act.

(4) A person withholding Value Added Tax under subsection (3) shall issue a Withholding Value Added Tax Certificate, in a form as prescribed in the regulations, to the supplier at the time of making the payment for the supplies.

(5) For the avoidance of doubt, the withholding of Value Added Tax under subsection (3) shall not relieve the supplier of taxable goods or services of the obligation to account for Value Added Tax in accordance with this Act and the regulations.

(6) For purposes of this section, section 11 of this Act shall not apply.

(7) The Minister may, on the advice of the Authority, make regulations providing for the appointment, registration and administration of withholding agents.

Insertion of
s.19A into the
principal Act

5. The principal Act is amended, by inserting, immediately after section 19, a new section 19A as follows—

Taxable
person in
mining project

“19A. A taxable person in relation to a mining project makes a taxable supply—

(a) when any goods or services are used for purposes other than the mining project or are supplied to any other person, and that taxable supply is taken to be for consideration equal to the value of the goods and services so used or supplied;

(b) of all the assets of the mining project when no mining permit continues to apply to the project, and the person remains a taxable person in relation to that mining project for the purposes of this Act even though the mining project may otherwise cease to exist and the taxable supply is taken to be, for consideration, equal to the value of all the assets of the mining project so disposed of; or

(c) if control or effective control of the conduct of the taxpayer's mining project, or of the taxpayer, or of the benefit of the conduct of the taxpayer's mining project changes, whether by a transaction to which the taxpayer is a party or by some other transaction and the taxable supply is taken to be of the results of reconnaissance and exploration in relation to the mining project and the consideration for that supply is taken to be the value of the results of reconnaissance and exploration in relation to the project.”

Amendment of
s.30 of the
principal Act

6. The principal Act is amended, in section 30, by repealing subsection (1) and replacing therefor a new subsection (1) as follows—

“(1) At the end of the tax period, a taxable person may deduct from the output tax deductible due for the period, Value Added Tax on goods and services purchased in Malawi or goods and service imported by him or her used wholly, exclusively and necessarily in course of his or her business:

Provided that—

(a) the supply is a taxable;

(b) in respect of purchases made in Malawi, the taxable person is in possession of a tax invoice issued in accordance with section 25;

(c) in respect of importation or removal of goods from bonded warehouse, the taxable person is in possession of the relevant customs entries indicating that Value Added Tax was paid; and

(d) a taxable person is in possession of a withholding Value Added Tax Certificate issued under section 14A.”

7. Section 34 of the principal Act is amended—

Amendment
of s. 34 of the
principal Act

(a) in subsection (1), by inserting, immediately after the words “taxable person”, the words “or withholding agent”; and

(b) by repealing subsection (8) and replacing therefor a new subsection (8) as follows—

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

8. The principal Act is amended, in section 37, by inserting, immediately after subsection (3), a new subsection (4) as follows—

Amendment
of section 37
of the
principal Act

“(4) Where a withholding agent under this Act fails to withhold Value Added Tax, he shall himself be personally liable to pay to the Commissioner General the amount of the Value Added Tax that ought to have been withheld.”

9. The principal Act is amended, by inserting, immediately after section 37, a new section 37A, as follows—

Insertion of
s.37A into the
principal Act

“Manner of
paying Value
Added Tax

37A.—(1) A taxable person or any other person shall pay any tax chargeable by the due date as provided in this Act—

B. No. 22

(a) at any bank approved for this purpose by the Commissioner General;

(b) at any tax office; or

(c) in any other manner as the Commissioner General may prescribe.

(2) Where the person pays tax at a bank in accordance with subsection (1), the person shall notify the tax office where the person is registered as to the payment.

(3) The person shall pay tax in one of the following forms—

(a) if the payment is made at a tax office, in cash or bank certified cheque made payable to the Commissioner General; or

(b) if the payment is made through a bank, in cash, by bank certified cheque payable to the Commissioner General or by direct account transfer into an approved bank account for the Authority.

(4) Where the person purports to have made a payment towards a tax liability that is ineffective the Commissioner General may use all available powers to recover the tax.”.

Amendment
of section 38
of the
principal Act

10. The principal Act is amended, in section 38(1), by inserting, immediately after the words “A taxable person”, the words “or withholding agent”.

Amendment
of section 46
of the
principal Act

11. The principal Act is amended, by repealing section 46 and replacing therefor a new section 46 as follows—

“Failure to
issue a tax
invoice or
Withholding
Value Added
Tax Certificate

46.—(1) A person who fails to issue a tax invoice as required under section 25 for goods supplied or services rendered commits an offence and shall be liable—

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

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

(2) A withholding agent who fails to issue a Withholding Value Added Tax Certificate as required under section 14A(5) shall be liable to a penalty of K500,000.”.

12. The principal Act is amended, by repealing section 59(1) and replacing therefor a new section 59, as follows—

“Penalty for unauthorized collection or withholding of Value Added Tax

59.—Any person, whether a taxable person or not, who unlawfully charges and collects Value Added Tax on supply of goods or services or withholds Value Added Tax on payment to a supplier of taxable goods or services commits an offence and is liable on conviction to a fine ten times the amount of the Value Added Tax involved in the commission of the offence and to imprisonment for five years.”.

Amendment of section 59 of the principal Act

OBJECTS AND REASONS

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

- (a) registration of Value Added Tax withholding agents;
- (b) submission of Value Added Tax returns for imported services;
- (c) registration of mining exploration companies; and
- (d) manner of paying tax.

CHARLES MHANGO
Attorney General

TAXATION (AMENDMENT) BILL, 2018

MEMORANDUM

This Bill seeks to amend the Taxation Act (Cap 41:01) in order to—

- (a) provide for various definitions;
- (b) increase tax free bracket of Pay As You Earn (PAYE);
- (c) provide clarity to the applicability of the deemed interest provision;
- (d) limit allowable deductions on donations to approved charitable and non-profit making organizations;
- (e) bring clarity on treatment of penalties and fines as disallowable deductions;
- (f) provide for filing of returns for dividend tax;
- (g) provide for an accounting period for partnerships and individual partners;
- (h) provide for liability to payment of tax by persons required to withhold non-resident tax;
- (i) provide for registration of, and issuance of, taxpayer identification number to taxpayers, including employees and partnerships;
- (j) provide preparation and filing of provisional tax returns;
- (k) provide for access to taxpayer electronic records;
- (l) manner of paying Income Tax and other payments; and
- (m) prescribe a debt equity ratio.

TAXATION (AMENDMENT) BILL, 2018

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Amendment of s. 2 of Cap 41:01
3. Amendment of s. 27 of the principal Act
4. Amendment of s. 39 of the principal Act
5. Amendment of s. 45 of the principal Act
6. Amendment of s. 69 of the principal Act
7. Amendment of s. 70A of the principal Act
8. Amendment of s. 74 of the principal Act
9. Amendment of s. 76A of the principal Act
10. Amendment of the title to Part IX of the principal Act
11. Amendment of s. 84 of the principal Act
12. Amendment of s. 84A of the principal Act
13. Amendment of s. 86 of the principal Act
14. Amendment of s. 102A of the principal Act
15. Amendment of s. 105 of the principal Act
16. Amendment of s. 127B of the principal Act
17. Amendment of the *Second Schedule* of the principal Act
18. Amendment of the *Eleventh Schedule* of the principal Act
19. Amendment of the *Fourteenth Schedule* of the principal Act
20. Amendment of the *Sixteenth Schedule* of the principal Act

A BILL

entitled

An Act to amend the Taxation Act

ENACTED by the Parliament of Malawi as follows—

Short title and
commence-
ment

1. This Act may be cited as the Taxation (Amendment) Act, 2018, and shall come into operation on 1st July, 2018.

Amendment of
s. 2 of
Cap 41:01

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

(a) by inserting, immediately after the definition of the word “company”, the following new definitions—

““debt” means any loan, financial instrument, finance lease, financial derivative, or any arrangement that gives rise to interest, discounts, finance or other charges that are deductible in the computation of taxable income;” and

““document” means an account, assessment, book, certificate, claim, declaration, note, notice, order, invoice, record, return, ruling, or any other statement in writing, whether in electronic or other form;”;

(b) by inserting, immediately after the definition of the word “employer”, the following new definition—

““equity” includes—

(a) in case of a trust, the corpus of the trust; and

(b) in case of any other person, share capital, capital contributions, retained profits, interest-free loans or revaluation reserves;”;

(c) by inserting, immediately after the definition of the words “insolvency and bankruptcy”, the following new definition—

““interest” includes all financing costs associated with debt and qualify for deduction in the computation of taxable income, including but not limited to premiums for options, discounts, finance lease payments, payments and receipts under interest rate swaps;” and

(d) by inserting, immediately after the definition of the words “provident fund”, the following new definition—

““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—

(a) includes any amount included in taxable income under sections 18, 19, 20 and 21 of this Act;

(b) includes any amount paid or payable by a trustee in bankruptcy appointed under the Bankruptcy Act, an administrator or an executor in respect of remuneration; and Cap. 11:01

(c) excludes—

(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 General 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; and

(v) such other amounts as the Commissioner General may direct.”

3. The principal Act is amended, in section 27—

(a) by repealing subsection (8) and replacing therefor a new subsection (8) as follows—

Amendment
of s. 27 of the
principal Act

“(8) Where interest is charged at zero percent or no interest is charged on a loan by a lender to another person, interest shall be deemed to have accrued on the loan as income from a source within Malawi.”; and

(b) by inserting a new subsection (9) as follows—

“(9) For the purpose of calculating the interest referred to in subsection (8), the Commissioner General shall apply—

(a) in case of a domestic loan, the bank rate prevailing plus 5% per annum; and

(b) in case of a foreign loan, London Interbank Offered Rate prevailing plus 5% on the United States Dollar equivalent of the loan.”

Amendment of
s. 39 of the
principal Act

4. Section 39 of the principal Act is repealed and replaced with the following new section —

“Allowable
deductions —
research, etc

39.— (1) There shall be allowed as a deduction—

(a) 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;

(b) 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 whose total sum does not exceed the amount of K5,000,000 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 whose total sum does not exceed the amount of K5,000,000 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.

(2) The Minister may make regulations to provide for approval of charitable organizations and non-profit institutions under paragraphs (d) and (e) of subsection (1).”

5. Section 45 of the principal Act is amended—

Amendment
of s. 45 of the
principal Act

(a) in paragraph (d), by inserting, immediately after the word “interest”, the words “or penalties”;

(b) by deleting the word “and” appearing at the end of paragraph (i);

(c) by deleting the “full stop” at the end of paragraph (j), and replacing therefor the words “; and”; and

(d) by inserting a new paragraph (k), as follows—

“(k) fines payable whether charged in terms of this Act or any law.”.

6. Section 69 of the principal Act is repealed and replaced with a new section 69 as follows—

Amendment
of s. 69 of the
principal Act“Return of
dividend

69. The public officer of a company incorporated in Malawi shall, within 30 days of the declaration by the company of a dividend, furnish the Commissioner General with a return comprising —

(a) a copy of the resolution declaring the dividend; and

(b) a statement containing in respect of each person to whom a dividend has accrued—

(i) the name, taxpayer identification number and address of the person;

(ii) the amount of the dividend accrued; and

(iii) the date on which the dividend was declared.”.

7. Section 70A of the principal Act is amended, by repealing subsection (1) and replacing therefor a new subsection (1) as follows—

“(1) Every company incorporated in Malawi shall, within 180 days of the declaration of any dividend, withhold 10 per cent of such dividend and remit the amount to the Commissioner General:

Amendment
of s. 70A of
the principal
Act

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.”.

8. Section 74 of the principal Act is repealed and replaced with a new section 74 as follows—

Amendment
of s. 74 of the
principal Act

"Returns and
accounting
period for
partnerships

74.—(1) Persons carrying on any trade in a 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.

(2) Each of the partners referred to in subsection (1) shall, separately and individually, be liable for the rendering of the joint return.

(3) The partners shall be liable to income tax only in their separate individual capacities and separate assessments shall be made upon them.

(4) The accounting period for partnerships and the individual partners shall be twelve months beginning 1st July and ending 30th June of the following year."

Amendment of
s. 76A of the
principal Act

9. Section 76A of the principal Act is repealed and replaced with a new section 76A as follows—

"Liability for
non-resident
tax

76A—(1) Subject to subsection (4), 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—

(a) 15 per cent of the gross amount of such income;

(b) 15 per cent in relation to management fees; and

(c) 10 per cent in relation to income derived from a mining project by way of interest, royalty, payment for independent personal services or dividend.

(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;

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

(c) remittance of the amount to such person;

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

(e) receiving, processing, or handling payment of the amount to such person in any way, including providing a platform therefor, whether as a bank or otherwise, to the person directly or indirectly.

so, the Commissioner General shall register the taxpayer for one or more tax types, as is appropriate, under the circumstances and shall issue the taxpayer with a permanent taxpayer identification number.

(5) A 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 General may allow, prepare and deliver to the Commissioner General a return of income in the form approved by the Commissioner General, 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.

(6) 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, or his remuneration is in the zero per cent bracket under the *Eleventh Schedule*, shall not, except of his own volition, be required to prepare and deliver to the Commissioner General a return in respect of such income as required under subsection (5).

(7) The Commissioner General 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 General may allow, a return of income in the form approved by him for a year of assessment.

(8) 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.

(9) A return 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.

(10) A return of income prepared and delivered by a taxpayer in accordance with the provisions of this Act shall constitute a self-assessment by the taxpayer.

(11) Where a taxpayer has delivered a return of income, the Commissioner General may accept the return and deem the amount the taxpayer has declared as the self-assessment of the taxpayer."

without intending to return, without settling his liabilities under this Act, the Commissioner General may require the taxpayer to pay the whole of such tax forthwith.

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

(7) Where the assessment is reduced on appeal, with the result that too much tax has been paid under subsection (5), the excess shall be refunded.

(8) Where tax is not paid on, or before, the dates referred in subsection (1), (5) or (6), the penalty and interest shall be charged as prescribed in subsection (9).

(9) The penalty and interest referred to in subsection (8) shall be—

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

(b) a further interest charged on the outstanding amount in (a) at the prevailing bank lending rate plus 5 per cent per annum for the period during which the additional sum referred to in paragraph (a) remains unpaid, and such additional sums together with the amount of the tax shall be summarily recovered by Commissioner General in his own name:

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

(10) Any interest payable under subsections (8) and (9) shall be recoverable as if it was tax payable under this Act and shall not be allowable as a deduction in computing taxable income.

(11) 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 in the cheque shall be charged, and collected summarily together with the amount of tax in cash.”

16. Section 127B of the principal Act is repealed and replaced with the following new section 127B—

Amendment
of s. 127B of
the principal
Act

B. No. 23

without intending to return, without settling his liabilities under this Act, the Commissioner General may require the taxpayer to pay the whole of such tax forthwith.

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

(7) Where the assessment is reduced on appeal, with the result that too much tax has been paid under subsection (5), the excess shall be refunded.

(8) Where tax is not paid on, or before, the dates referred in subsection (1), (5) or (6), the penalty and interest shall be charged as prescribed in subsection (9).

(9) The penalty and interest referred to in subsection (8) shall be—

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

(b) a further interest charged on the outstanding amount in (a) at the prevailing bank lending rate plus 5 per cent per annum for the period during which the additional sum referred to in paragraph (a) remains unpaid, and such additional sums together with the amount of the tax shall be summarily recovered by Commissioner General in his own name:

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

(10) Any interest payable under subsections (8) and (9) shall be recoverable as if it was tax payable under this Act and shall not be allowable as a deduction in computing taxable income.

(11) 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 in the cheque shall be charged, and collected summarily together with the amount of tax in cash.”.

16. Section 127B of the principal Act is repealed and replaced with the following new section 127B—

Amendment
of s. 127B of
the principal
Act

B. No. 23

"Thin
capitalization
rule

127B— (1) This section applies where a person, or a permanent establishment of a person ("the borrower"), pays interest, or in the case of a permanent establishment, is credited interest expense or similar consideration including in the form of a discount, that is deductible in his calculation of taxable income, in respect of any form of debt, issued by a person who is an associated enterprise of the borrower, or attributed to a permanent establishment of person resident in Malawi.

(2) Notwithstanding the provisions of section 127A, where this section applies, the interest referred to in subsection (1) shall not be deductible in the computation of taxable income to the extent that it arises from excessive debt, as specified in subsection (3).

(3) For the purposes of this section, "excessive debt" means the amount of debt that exceeds the amount of equity in the borrower above a ratio of 3:1.

(4) Debt shall be treated as issued by an associated enterprise where it is issued by a lender that is not associated and an associated enterprise—

(a) provides an implicit or explicit guarantee to the lender; or

(b) deposits a corresponding and matching amount of funds with the lender."

Amendment
of the *Second
Schedule* to
the principal
Act

17. The *Second Schedule* to the principal Act is amended by deleting the following—

(a) paragraph (11);

(b) paragraph (12);

(c) paragraph (13);

(d) paragraph (15);

(e) paragraph (16); and

(f) paragraph (17).

Amendment of
the *Eleventh
Schedule* to the
principal Act

18. The *Eleventh Schedule* to the principal Act is amended—

(a) in paragraph (a), by deleting the words "employment income" and substituting therefor the word "remuneration";

“Thin capitalization rule

127B— (1) This section applies where a person, or a permanent establishment of a person (“the borrower”), pays interest, or in the case of a permanent establishment, is credited interest expense or similar consideration including in the form of a discount, that is deductible in his calculation of taxable income, in respect of any form of debt, issued by a person who is an associated enterprise of the borrower, or attributed to a permanent establishment of person resident in Malawi.

(2) Notwithstanding the provisions of section 127A, where this section applies, the interest referred to in subsection (1) shall not be deductible in the computation of taxable income to the extent that it arises from excessive debt, as specified in subsection (3).

(3) For the purposes of this section, “excessive debt” means the amount of debt that exceeds the amount of equity in the borrower above a ratio of 3:1.

(4) Debt shall be treated as issued by an associated enterprise where it is issued by a lender that is not associated and an associated enterprise—

(a) provides an implicit or explicit guarantee to the lender; or

(b) deposits a corresponding and matching amount of funds with the lender.”.

Amendment of the *Second Schedule* to the principal Act

17. The *Second Schedule* to the principal Act is amended by deleting the following—

(a) paragraph (11);

(b) paragraph (12);

(c) paragraph (13);

(d) paragraph (15);

(e) paragraph (16); and

(f) paragraph (17).

Amendment of the *Eleventh Schedule* to the principal Act

18. The *Eleventh Schedule* to the principal Act is amended—

(a) in paragraph (a), by deleting the words “employment income” and substituting therefor the word “remuneration”;

(b) in paragraph (b), by deleting the words "employment income" and substituting therefor the word "remuneration"; and

(c) by deleting the Appendix thereto and substituting therefor a new Appendix as follows —

"APPENDIX

A. TABLE OF RATES OF INCOME TAX ON TAXABLE INCOME OTHER THAN REMUNERATION

<i>Annual Taxable Income</i>	<i>Rate</i>
<i>First K420,000</i>	<i>0%</i>
<i>Next K60,000</i>	<i>15%</i>
<i>Excess of K480,000</i>	<i>30%</i>

B. TABLE OF RATES OF INCOME TAX ON REMUNERATION

<i>Annual Taxable Income</i>	<i>Rate</i>
<i>First K420,000</i>	<i>0%</i>
<i>Next K60,000</i>	<i>15%</i>
<i>Next K35,520,000</i>	<i>30%</i>
<i>Excess of K36,000,000</i>	<i>35%</i>

19. The *Fourteenth Schedule* to the principal Act is amended, in Note 5, by inserting a new paragraph (c) as follows—

Amendment
of the
*Fourteenth
Schedule* to
the principal
Act

“(c) interest, however arising, payable by any person to an institution registered under the Banking Act.”.

20. The principal Act is amended, in the *Sixteenth Schedule*, by deleting the following—

Amendment
of the
*Sixteenth
Schedule* to
the principal
Act

(a) paragraph (18);
(b) paragraph (19);
(c) paragraph (20); and
(d) paragraph (21).

OBJECTS AND REASONS

The principal objective of this Bill is to amend the Taxation Act in order to—

- (a) provide for various definitions;
- (b) increase tax free bracket of Pay As You Earn (PAYE);
- (c) provide clarity to the applicability of the deemed interest provision;
- (d) limit allowable deductions on donations to approved charitable and non-profit making organizations;
- (e) bring clarity on treatment of penalties and fines as disallowable deductions;
- (f) provide for filing of returns for dividend tax;
- (g) provide for an accounting period for partnerships and individual partners;
- (h) provide for liability to payment of tax by persons required to withhold non-resident tax;
- (i) provide for registration of, and issuance of, taxpayer identification number to taxpayers, including employees and partnerships;
- (j) provide preparation and filing of provisional tax returns;
- (k) provide for access to taxpayer electrons records;
- (l) removal of ordinary cheque from forms of payment for tax purposes; and
- (m) prescribe a debt equity ratio.

CHARLES MHANGO
Attorney General

(4) Where the person purports to have made a payment towards duty or any payment that is ineffective, the Commissioner General may use all available powers to recover the duty or payment.”.

OBJECTS AND REASONS

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

- (a) excise tax licensing provisions for services; and
- (b) the manner of paying duty and other payments.

CHARLES MHANGO
Attorney General

GAZETTE EXTRAORDINARY

The Malawi Gazette Supplement, dated 26th June, 2018, containing
Bills

NOTICE

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

LILONGWE 26th June, 2018.

FIONA KALEMBA
Clerk of Parliament

CUSTOMS AND EXCISE (AMENDMENT) BILL, 2018

MEMORANDUM

This Bill seeks to amend the Customs and Excise Act (Cap. 42:01) in order to
provide for—

- (a) excise tax licensing provisions for services; and
- (b) the manner of paying duty and other payments.

B. No. 21