

MALAWI GOVERNMENT

(Published 24th August, 2018)

Act

No. 28 of 2018

I assent

PROF. ARTHUR PETER MUTHARIKA

PRESIDENT

20th August, 2018

ARRANGEMENT OF SECTIONS

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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—

“(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. 27 of the
principal Act

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 Section 39 of the principal Act is repealed and replaced with the following new section —

Amendment
of s. 39 of the
principal Act

“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).”.

Amendment
of s. 45 of the
principal Act

5. Section 45 of the principal Act is amended—

(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

(ii) 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—

Amendment
of s. 70A of
the principal
Act

“(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:

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.

(3) The persons performing any of the actions referred to in paragraphs (a) to (e) shall bear the responsibility of deducting the tax and remitting it forthwith to the Commissioner General.

(4) A person who fails to deduct non-resident tax pursuant to subsection (3), shall, himself, be personally liable to pay to the Commissioner General the amount of any non-resident tax which he has failed to deduct plus an additional penalty as determined under section 112.

(5) The tax payable under subsection (1) is not payable in respect of—

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

(b) any pension or annuity payment.”.

10. The title to Part IX of the principal Act is amended, by repealing the words “RETURNS, PROVISIONAL TAX AND ASSESSMENTS” and replacing therefor the words “REGISTRATION, RETURNS, PROVISIONAL TAX AND ASSESSMENTS”.

Amendment
of the title to
Part IX of the
principal Act

11. Section 84 of the principal Act is repealed and replaced with the following new section—

Amendment
of s. 84 of the
principal Act

“Registration
and return of
income

84.—(1) A person who by reason of carrying on a business becomes potentially liable to tax under this Act, shall apply for registration, in the prescribed form, as a taxpayer from the date of registration of the business.

(2) A person whose economic activity does not fall within the provisions of subsection (1) but earns income or engages in an activity with the potential of earning income, including income from employment, shall apply for registration, in the prescribed form, within 15 days or such period as the Commissioner General may determine.

(3) The Commissioner General shall, within 15 days upon receipt of the application for registration, issue the applicant with a permanent taxpayer identification number for use in all correspondence for the purpose of this Act.

(4) Where a taxpayer that is obliged to register with the Commissioner General under this section fails to do 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.”

Amendment
of s. 84A of
the principal
Act

12. Section 84A of the principal Act is amended, by repealing subsection (1) and replacing therefor the following new subsection (1)—

“(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 not later than 25 days from the beginning of the first quarter of every year of assessment, furnish the Commissioner General with a return containing—

(a) an estimate of the chargeable income of the person for that year of assessment;

(b) an estimate of the tax due on the chargeable income of the person for that year of assessment; and

(c) a quarterly estimate of the tax due on the chargeable income,

and, save as otherwise provided in subsection (2), in respect of seasonal income, pay such tax in quarterly instalments within 25 days after the end of each quarter of that year of assessment.”.

13. Section 86 of the principal Act is amended, by repealing subsection (2) and replacing therefor a new subsection (2) as follows—

Amendment
of s. 86 of the
principal Act

“(2) Every officer in the public service, a bank, company or any other person shall, if required by the Commissioner General by notice, furnish to him in such form and at such time as the Commissioner General may require, such information as such officer in the public service, a bank, company or any other person is able to give from the registers, books, accounts, records, returns, papers, documents, or proceedings in his custody within 21 days of receiving the Commissioner General’s notice.”.

14. Section 102A of the principal Act is amended, by repealing subsection (1) and replacing therefor a new subsection (1) as follows—

Amendment
of s. 102A of
the principal
Act

“(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 General, withholding tax shall not be deducted

but so, however, that no exemption from payment of withholding tax shall be granted in respect of interest and rent, royalties, fees, commissions and payment of casual labour, payment to contractors and subcontractors, payment for tobacco and other products, and the expression "interest" shall have the meaning assigned to it in the *Fourteenth Schedule*."

Amendment
of s. 105 of
the principal
Act

15. Section 105 of the principal Act is repealed and replaced with the following new section 105—

"Payment of
tax on
assessment

105.—(1) A taxpayer shall pay any tax chargeable by the due date as provided in this Act—

(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 a taxpayer 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) A taxpayer 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 a taxpayer 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.

(5) 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, where 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 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

“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—

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

Amendment
of the
*Fourteenth
Schedule* to
the principal
Act

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

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

Amendment
of the
*Sixteenth
Schedule* to
the principal
Act

Passed in Parliament this twenty-ninth day of June, two thousand and eighteen.

FIONA KALEMBA
Clerk of Parliament