(Published 31st March, 2022)

Act

No. 6 of 2022

I assent

DR. LAZARUS MCCARTHY CHAKWERA
PRESIDENT
31st March, 2022

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of s. 2 to Cap 41:01
3. Amendment of s. 27 of the principal Act
4. Amendment of the First Schedule of the principal Act
5. Amendment of the Second Schedule of the principal Act
6. Amendment of the Eleventh Schedule of the principal Act
7. Replacement of the Fourteenth Schedule of the principal Act
8. Replacement of the Fifteenth Schedule of the principal Act

An Act to amend the Taxation Act

ENACTED by the Parliament of Malawi as follows—

1. This Act may be cited as the Taxation (Amendment) Act, 2022. Short title

2. The Taxation Act (hereinafter referred to as the "principal Act") is amended, in section 2, by deleting the definitions of the words "debt" and "equity". Amendment of s.2 to Cap. 41:01

3. The principal Act is amended, in section 27 by— Amendment of s. 27 of the principal Act

(*a*) deleting subsection (9) and substituting therefor, the following new subsection (9) —

"(9) For the purposes of calculating the interest referred to in subsection (8), the Commissioner General shall—

(*a*) in case of a domestic loan, apply the prevailing bank rate plus five percent per annum; and

(*b*) in case of a foreign loan, apply five percent per annum on the United States Dollar equivalent of the loan."; and

(*b*) deleting subsection (10) and substituting therefor the following new subsection (10)—

"(10) The Commissioner General shall determine the amount of interest forgone in subsection (9) by using a prevailing bank lending rate plus five percent per annum.".

Amendment of the First Schedule of the principal Act

4. The principal Act is amended, in the First Schedule, by deleting subparagraph (*b*) and substituting therefor, the following new paragraphs (*b*) and (*ba*)—

"(*b*) 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;

(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 ensure to the benefit of any member or shareholder;

(v) building societies and friendly societies;

(vi) employees' savings schemes or funds approved by the Commissioner;

(vii) statutory corporations and bodies and associations

as may be specified by the Minister by notice published in the *Gazette*;

(viii) ecclesiastical, charitable and educational institutions of a public character, and trusts of a public character:

Provided that this paragraph shall not apply to receipts or accruals derived from the carrying on of any business.

(*ba*) the receipt and accruals of—

(i) any payments of pension or annuity, whether paid as a lump sum or periodically;

(ii) a payment on account of ill-health or disability.".

Amendment of the Second Schedule of the principal Act

5. The principal Act is amended, in the Second Schedule, by inserting, immediately after subparagraph (2), the following new subparagraph (3)—

"(3) For the purposes of this paragraph, "commercial building" means a shopping centre with a collection of independent retail stores, services, and a parking area conceived, constructed and maintained by a management firm as a unit.".

Amendment of the Eleventh Schedule of the principal Act

6. The principal Act is amended, in the Eleventh Schedule, by—

(*a*) inserting in alphabetical sequence, the following new paragraph (i)—

"(i) in case of presumptive tax for commercial passenger carrying vehicles, at the following rates—

Type of vehicle	*Annual Rate*
Motor vehicles of up to sixteen seats, including a driver	K15,000.00
Motor vehicles of above sixteen seats and less than thirty-three seats, including the driver	K20,000.00"; and

(*b*) repealing the APPENDIX and replacing therefor, the following new APPENDIX as follows—

"APPENDIX

A—TABLE OF RATES OF INCOME TAX ON TAXABLE INCOME OTHER THAN EMPLOYMENT INCOME

Annual Taxable Income	*Rate*
First K1,200,000	0%
Excess of K1, 200,000	30%

B—TABLE OF RATES OF INCOME TAX ON EMPLOYMENT INCOME

Annual Taxable Income	*Rate*
First K1,200,000	0%
Next K2,760,000	25%
Next K32,040,000	30%"
Next K36,000,000	35%
Excess of K72,000,000	40%.".

Replacement of the Fourteenth Schedule of the principal Act

7. The principal Act is amended, by revoking the Fourteenth Schedule and replacing therefor, the following new Fourteenth Schedule—

"FOURTEENTH SCHEDULE

Table of Withholding Tax—Rate of Deduction

Nature of payment	*Notes*	*Rate of Withholding Tax on gross payment*
(*a*) Royalties		20%
(*b*) Rents	1	20%
(*c*) Payment for any supplies to traders and institutions—		
(i) Foodstuff		3%
(ii) Other		3%
(*d*) Commissions	2	20%
(*e*) Commissions for individual insurance agents and individual banking agents	3	1%
(*f*) Payment for carriage and haulage		10%
(*g*) Payment of tobacco and other farms products		
(i) Sale of tobacco by tobacco clubs	4	1%
(ii) Payment for tobacco and other farm produce		3%
(*h*) Payment to contractors in the building and construction industries	5	4%
(*i*) Payment for public entertainment	6	20%
(*j*) Payment for casual labour—		
(i) payment of up to K35,000		0%
(ii) payment in excess of K35,000		20%
(*k*) Payment for services		20%
(*l*) Interest	7	20%
(*m*) Fees	2	20%
(*n*) Winnings on betting and gambling including lotteries	8	5%

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.
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. The amount of tax so withheld shall be a final tax.
4. The tax withheld from income from sale of tobacco by tobacco clubs shall be a final tax.
5. Includes contractors and subcontractors of any category.
6. 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.
7. Excludes—

   (*a*) interest payable to a person exempt from income tax under the First Schedule;

   (*b*) interest payable to a person, not being a person resident in Malawi, whose income is liable to non-resident tax under section 76A of the Act; and

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

8.—(1)"Winnings" means any payment made to any person who wins a bet, a gamble or any gaming activity including lottery.

(2) The first K100,000 of winnings from betting and the first K500,000 of winnings from gambling including lotteries shall not be chargeable to tax.

(3) Withholding tax shall be charged on winnings—

(i) in excess of K100,000, where the winnings are from betting; and

(ii) in excess of K500,000, where the winnings are from gambling including lotteries.

(4) The tax withheld from winnings shall be a final tax.".

Replacement of the Fifteenth Schedule of the principal Act

8. The principal Act is amended, by revoking the Fifteenth Schedule and replacing therefor, the following new Fifteenth Schedule—

"FIFTEENTH SCHEDULE

List of transactions in respect of which a tax clearance certificate is required—

1. Transfer of land and building.
2. Application or renewal of Certificate of Fitness for commercial vehicles.
3. Renewal of Business Residence Permit.
4. Application or renewal of professional business licences and permits of medical practitioners or dentists, legal practitioners, engineers, architects and accountants who are engaged in private practice on his or her own behalf as a private practice or in partnership with another private practitioner.
5. Application or renewal of a customs agent licence.
6. Application or renewal of a certificate of registration under the National Construction Industry Act.
7. Transfer of a company as a going concern.
8. Externalization of funds to non-resident service providers whose source is deemed to be Malawi.
9. Renewal of Temporary Employment Permits.
10. Renewal of business licences by the Ministry responsible for industry and trade and Councils under local government areas.
11. Application and renewal of export and import licenses.
12. Renewal of tourism licences by the Ministry responsible for tourism.
13. Renewal, extension or transfer of mining licences, or transfer of mineral rights by the Ministry responsible for energy and natural resources.
14. Renewal of telecommunications licences by the Malawi Communications Regulatory Authority.
15. Renewal of energy licences by the Malawi Energy Regulatory Authority.
16. Application or renewal of a licence for gaming premises.
17. Application or use of a Customs Procedure Code by a privileged organisation.
18. Change of ownership of a company.
19. Renewal of registration of public transport conveyances by the Road Traffic Directorate.

20. Supply of goods or services to Malawi Government and its agencies.".

Passed in Parliament this twenty eighth day of March, two thousand and twenty two.

FIONA KALEMBA
Clerk of Parliament