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Act

No. 22 of 2022

I assent

DR. LAZARUS MCCARTHY CHAKWERA
PRESIDENT
12th May, 2022

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Replacement of Schedule A to Cap.42:01

An Act to amend the Customs and Excise Act

ENACTED by the Parliament of Malawi as follows—

Short title

1. This Act may be cited as the Customs and Excise (Amendment) Act, 2022.

Replacement of Schedule A to Cap.42:01

2. The Customs and Excise Act is amended, by repealing Schedule A and replacing therefor, the following new Schedule A—

"SCHEDULE A S. 111

VALUE OF IMPORTED GOODS

1. In this Schedule, unless the context otherwise requires, "customs value" means the transaction value or the price actually paid or payable for goods imported into this country, except in cases where provision is specifically made for another method of determining customs value.

2.—(1) The price actually paid or payable is the total payment made or to be made by—

(*a*) the buyer to the seller; or

(*b*) the buyer to a third party for the benefit of the seller for the imported goods,

and includes all payments made or to be made as a condition of sale of the imported goods.

(2) The customs value shall be adjusted to include the following—

(*a*) the cost of transport for importing the goods into the country;

(*b*) charges for loading, unloading and handling associated with the transport for importing the goods into the country; and

(*c*) the rate of insurance calculated as provided by the relevant enactment, where the importer fails to declare the insurance paid.

(3) In determining the customs value, any additions made to the price paid or payable shall, where they are incurred by the buyer but are not already included in the price actually paid or payable in respect of the goods, be added for the following—

(*a*) the cost of packing whether for labour or materials;

(*b*) commissions or brokerage, except the buying commission;

(*c*) the cost of containers which are treated as being one for customs purposes with the goods in question;

(*d*) the value apportioned as appropriate, of the following goods and services where they are supplied directly or indirectly by the buyer free of charge or at a reduced cost for use in connection with the production or sale, for export to this country, of the goods imported—

(i) materials, components and parts incorporated in the goods that are imported;

(ii) tools, dies and moulds;

(iii) materials consumed in the production of the goods that are imported; and

(iv) engineering, development, artwork, design work, and plans and sketches undertaken outside the country that are necessary for the production of the goods that are imported;

(*e*) royalties and licence fees that the buyer shall pay as a condition of sale of the goods; and

(*f*) proceeds of a subsequent resale, disposal, or use of the goods that are imported goods and accrue directly or indirectly to the seller.

(4) The following are excluded from the price, where the person shows that the goods are separate from the price paid or payable—

(*a*) charges for the transport of goods after the arrival of the goods in the country;

(*b*) charges for construction, erection, assembly, maintenance, or technical assistance, undertaken after the importation; and

(*c*) duty payable in the country in connection with the goods that are imported.

(5) The price shall be used as the transaction value only if there are no restrictions placed on the use of the goods other than the following—

(*a*) restrictions imposed or required by law or by the public authorities in the country;

(*b*) limitations in respect of the geographical area in which the goods may be resold; or

(*c*) restrictions that do not substantially affect the customs value of the goods.

(6) The price shall not be subject to conditions or considerations for which a value cannot be determined.

(7) Where there is a subsequent resale, disposal or use of goods part of the proceeds of the subsequent resale, disposal, or use of the goods shall not accrue directly or indirectly to the seller, unless an appropriate adjustment can be made.

(8) Where the buyer and seller are related, the importer shall prove that the relationship did not influence the price, or that the price closely approximates one of the following—

(*a*) the transaction values in sales between unrelated buyers and sellers of identical or similar goods for export from the country of origin; or

(*b*) the deductive or computed value of identical or similar goods, and the values used for comparison relate to goods imported into the country, at or about the same time as the goods being valued.

(9) In applying the comparison values to related party sales, the following shall be taken into consideration—

(*a*) whether the sale occurred at or about the same time; and

(*b*) differences between the cost incurred in sales in which the seller and the buyer are not related and sales in which the seller and the buyer are related.

(10) For the purposes of this Schedule, persons are deemed to be related only if—

(*a*) any person who participates directly or indirectly in the management, control or capital of the other; or

(*b*) a third person who participates directly or indirectly in the management, control or capital of both.

(11) For purposes of subparagraph (10), a person participates directly or indirectly in the management, control or capital of another person where the person—

(*a*) owns directly or indirectly, more than 50 per cent of the share capital of the other person; or

(*b*) has the practical ability to control the business of the other person.

(12) The rights or powers attributed to the person referred to in subparagraphs (10) and (11) include the rights or powers of any person associated to the person by marriage, consanguinity or affinity.

3.—(1) Where the customs value of imported goods cannot be determined on the basis of transaction value, the customs value shall be determined by proceeding sequentially through the following secondary methods of valuation—

(*a*) the transaction value of identical goods sold for export to Malawi and exported within three months of the date of export of the goods being valued;

(*b*) the transaction value of similar goods sold for export to Malawi and exported within three months of the date of export of the goods being valued;

(*c*) the deductive value which is the value based on the unit price at which the imported goods, or identical or similar imported goods are sold within Malawi in the greatest aggregate quantity to persons not related to the seller at or about the date of importation and reduced by the following deductions—

(i) commissions;

(ii) additions for profit and general expenses;

(iii) costs of international transportation and insurance;

(iv) costs of transportation and insurance from the port of arrival in Malawi to the place of delivery; and

(v) duties payable on importation;

(*d*) the computed value or the sum of—

(i) the cost or value of materials and manufacture or other processing employed in the production of the goods for import;

(ii) an amount for profit and general expenses equal to the amount that is usually reflected in sales of goods of the same class or kind made by a producer in the country of exportation for export to Malawi; and

(iii) assists and costs of packing; or

(*e*) by reversing the order of application of subparagraphs (*c*) and (*d*) on the request of the declarant.

(2) Where the customs value cannot be determined on the basis of transaction value or any of the secondary methods of valuation, the customs value shall be determined on the basis of a value derived from the transaction value or one of the secondary values specified in subparagraph (1) and, adjust the customs value using reasonable means consistent with the principles and general provisions of Article VII of the General Agreement on Tariffs and Trade.

(3) The customs value shall not be determined on the basis of any of the following—

(*a*) the selling price of goods produced in Malawi;

(*b*) a system that provides for the appraisement at the higher of two alternative values;

(*c*) the price of goods on the domestic market of the country of exportation;

(*d*) the cost of production, other than a computed value for identical or similar goods;

(*e*) the price for export to a country other than Malawi;

(*f*) minimum customs value; or

(*g*) arbitrary or fictitious values.".

Passed in Parliament this first day of April, two thousand and twenty-two.

FIONA KALEMBA
Clerk of Parliament