

Malawi

## Taxation Act

### Chapter 41:01

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Taxation Act  
 Contents

Part I – Preliminary ..... 2

    1. Short title ..... 2

    2. Interpretation of certain general terms ..... 2

    3. Commissioner of Taxes ..... 7

Part II – Administration ..... 7

    4. Delegation of functions by Commissioner ..... 7

    5. Report by Commissioner ..... 7

    6. Officers to observe secrecy ..... 7

    7. Forms ..... 8

    8. Service of documents ..... 9

    9. Service of oral notices ..... 9

    10. Validity of documents ..... 9

Part III – Income ..... 9

    Division 1–Determination of assessable income ..... 9

        11. Income and assessable income ..... 9

        12. Special circumstances in which income deemed to have accrued ..... 10

        13. Exemption ..... 10

        14. \*\*\* ..... 10

        15. Non-recognition of capital gain or capital loss in certain cases ..... 10

        15A. Involuntary conversion of assets ..... 10

        15B. Capital gains on disposal of business assets ..... 11

        16. Income– payments for services\* ..... 12

        17. Assessment to tax for single terminal ..... 12

        18. Sums payable by an employer for expenses of an employee ..... 12

        19. \*\*\* ..... 12

        20. \*\*\* ..... 12

        21. \*\*\* ..... 13

        22. Income– passages ..... 13

        23. Premiums ..... 13

        24. Timber sales ..... 13

        25. General ..... 13

        26. Foreign exchange gain and foreign exchange loss ..... 13

        27. Income deemed to have accrued in Malawi ..... 14

    Division 2–Deductions ..... 15

28. Allowable deductions in determining taxable income .....	15
29. *** .....	16
30. *** .....	16
31. *** .....	16
32. Allowable deductions – repairs .....	16
33. Allowable deductions – capital allowances .....	16
34. Allowable deductions – premiums paid .....	16
35. Allowable deductions – bad debts .....	17
36. Allowable deductions – doubtful debts .....	17
36A. Allowable deductions – export allowance .....	17
36B. Allowable deductions – payroll levy .....	17
37. Allowable deductions – pension funds and provident funds .....	18
38. Allowable deductions – sale of timber .....	18
39. Allowable deductions – research, etc. ....	18
39A. Allowable deductions – social contribution .....	19
40. Allowable deductions – annuity payment .....	19
41. Allowable deductions – new businesses initial expenditure .....	19
41A. *** .....	20
41B. Allowable deductions – transport allowance .....	20
42. Allowance of losses – general .....	20
43. Allowance of losses – change in shareholding in company .....	20
44. Allowance of losses – formation of new company .....	21
45. Deductions not to be made .....	21
46. Deductions not admissible as regards income derived from trade .....	22
Division 3 – Stock and work in progress .....	22
47. Trading stock and work in progress to be taken into account .....	22
48. Valuation of stock and work in progress at end of year .....	22
49. Valuation of stock and work in progress at beginning of year .....	22
50. Definition of cost and market selling value .....	22
51. Domestic consumption .....	23
52. Gifts and sales .....	23
53. Valuation of livestock .....	23
Division 4 – Determination of taxable income where adequate books and records are kept .....	23
54. Books of accounts .....	23
55. Period of accounts .....	23

Division 5 – Businesses carried on partly in and partly out of Malawi and businesses controlled abroad .....	24
56. Profits of non-resident persons from sale of exported produce .....	24
57. Persons carrying on business which extends beyond Malawi .....	25
Part IV – Special trades and cases .....	26
58. Taxation of income derived from farming .....	26
59. Co-operative agricultural societies .....	27
60. Consumers' co-operative societies .....	27
61. Clubs, etc., formed, etc., for pleasure or recreation .....	28
62. Building society interest .....	28
63. Insurance business .....	28
64. Hire purchase or other agreements providing for postponement of ownership of property .....	29
65. *** .....	29
Part V – Taxation of companies .....	30
Division 1–Income tax .....	30
66. Charge .....	30
67. Public officers of companies .....	30
68. Duty of companies to furnish returns .....	31
69. Notification of dividend declared .....	31
70. Dealings by a company in another company's shares .....	31
70A. Taxation of dividends .....	31
70B. Recognition of gain or loss on distribution of property with respect to shares .....	32
70C. Effect of a distribution of shares of a company to its shareholders .....	32
70D. Distribution in complete liquidation of a company .....	32
70E. No gain or loss on certain contributions to capital .....	32
70F. Basis of assets in a qualified reorganization of a company .....	33
Part VI – Individuals .....	33
71. Charge .....	33
72. Deemed taxable income .....	34
73. Income of married women and minor children .....	34
74. Partnership .....	35
Part VII – Trustees .....	35
75. Special provisions in connexion with income derived from assets in deceased and insolvent or bankrupt estates .....	35
76. Tax payable by trust .....	37
Part VIIA – Non-residents .....	37

76A. Liability for non-resident tax .....	37
Part VIII – Representative taxpayers .....	37
77. Representative taxpayers .....	37
78. Liability of representative taxpayer .....	38
78A. Protection for certain trustees .....	38
79. Right and personal liability of representative taxpayer .....	38
80. Company regarded as agent for absent shareholder .....	39
81. Power to appoint agent .....	39
82. Remedies of Commissioner against agent and trustee .....	39
83. Power to require information .....	39
Part IX – Returns, provisional tax and assessments .....	39
84. Return of income .....	39
84A. Payment of provisional tax .....	40
84B. Exemption from provisional tax .....	41
84C. Payment of balance of income tax .....	41
84D. Payment of tax .....	41
84E. Penalty for failure to pay taxes .....	42
85. Duty to furnish returns as to employees, their earnings and other matters .....	42
85A. Tax clearance certificate .....	42
86. Commissioner to have access to all public records .....	43
87. Duty of person submitting accounts in support of return or preparing account for other persons .....	43
88. Production of documents and evidence on oath .....	44
89. Estimated income .....	45
90. Assessment to tax .....	45
91. Additional assessment .....	45
91A. Turnover tax .....	46
92. Assessments and notices thereof .....	46
93. Register of assessments .....	46
94. Inspection of register .....	47
Part IXA – Taxation of fringe benefits .....	47
94A. Liability of employers to pay fringe benefits tax .....	47
94B. Section 94A not to apply in certain cases .....	47
94C. Employee defined .....	47
94D. Fringe benefits tax not to be imposed on employees .....	47
Part X – Appeals .....	47

95. Burden of proof .....	47
96. Procedure on appeals .....	48
97. Appeal to Commissioner .....	48
98. Appeal to Special Arbitrator .....	48
99. Publication of decisions of Special Arbitrator .....	49
100. Appeals from assessments, etc., by administrative officers .....	49
101. Appeal to High Court .....	49
Part XI – Collection and recovery of tax .....	50
Division 1–Withholding taxes .....	50
102. Deduction of tax from salaries and wages–Pay As You Earn .....	50
102A. Deduction of tax from certain payments .....	51
102B. Payment of withholding tax .....	51
103. Priority of tax deduction at source .....	52
104. Formal assessment to be unnecessary .....	52
104A. Credit for tax deducted at source .....	52
Division 2–Assessments raised by the Commissioner .....	52
105. Payment of tax on assessment .....	52
105A. Mutual assistance to recover outstanding tax .....	53
106. Persons by whom the tax is payable .....	54
107. Recovery of tax .....	54
107A. Creation of a lien .....	55
108. Form of proceedings .....	55
109. Production of register of assessments .....	55
110. Payment of tax by persons leaving Malawi .....	55
111. Security for payment of tax .....	56
Part XII – Penalties .....	56
112. Liability for penalties .....	56
113. Imposition of penalty .....	57
114. Accounts deemed to have been submitted by person .....	57
115. Assisting in making incorrect returns .....	58
116. Obstruction of officers .....	58
116A. Forceful rescue of seized property .....	58
116B. Physical assault of officers .....	58
117. Inciting a person to refuse to pay tax .....	58
118. Time limit for penalty proceedings .....	58

119. Liability of officers of company .....	59
120. Recovery of tax repaid in consequence of fraud or negligence .....	59
121. Saving for criminal proceedings, etc. ....	59
Part XIII – General .....	59
122. Relief from double taxation .....	59
123. Reduction of tax payable as a result of agreements entered into in terms of section 122 .....	59
124. Relief from double taxation in cases where no agreements have been made under section 122 .....	60
125. Error or mistake .....	60
126. Repayment of tax .....	61
127. Transfers to defraud, and artificial transactions .....	61
127A. Transfer pricing related to business transaction .....	62
128. Errors, etc., in assessment and notice may be rectified, and Commissioner may remit tax .....	62
Part XIV – Graduated tax .....	63
129. *** .....	63
130. *** .....	63
131. *** .....	63
132. *** .....	63
133. *** .....	63
134. *** .....	63
135. *** .....	63
136. *** .....	63
137. *** .....	63
138. *** .....	63
139. *** .....	63
140. *** .....	63
141. *** .....	63
142. *** .....	64
143. *** .....	64
144. *** .....	64
145. *** .....	64
Part XV – Regulations .....	64
146. Regulations by Minister .....	64
147. Saving .....	64
First Schedule (Sections 13 and 27 (3)) .....	64
Second Schedule (Sections 25, 33, 41 and 58 (4)(v)) .....	67

Third Schedule .....	73
Fourth Schedule .....	73
Fifth Schedule (Section 37) .....	74
Sixth Schedule (Section 59(1)) .....	75
Seventh Schedule (Section 63, 112(1) and 3rd Sch. para. 2(b)) .....	76
Eighth Schedule (Sections 96-101) .....	77
Ninth Schedule (Section 6 (6)) .....	80
Tenth Schedule .....	81
Eleventh Schedule (Sections 66, 71, 76 and 94 A ) .....	81
Twelfth Schedule (Section 27 (2)) .....	82
Thirteenth Schedule .....	83
Fourteenth Schedule (Section 102A) .....	84
Fifteenth Schedule .....	85



# Malawi

## Taxation Act

### Chapter 41:01

Commenced on 1 January 1964

*[This is the version of this document as it was at 31 December 2014.]*

*[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]*

#### **An Act to provide for the taxation of incomes and for purposes ancillary thereto**

*[46 of 1963; 12 of 1964 (N)\*; 19 of 1964; 37 of 1964 (N); 10 of 1964 (M); 5 of 1965; 33 of 1965; 11 of 1966; 7 of 1968†; 18 of 1968‡; 14 of 1969§; 16 of 1969; 19 of 1969; 27 of 1970; 14 of 1971; 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; 19 of 1995; 2 of 1996; 5 of 1997; 23 of 1997; 8 of 1998; 18 of 1998; 14 of 1999; 9 of 2000; 10 of 2001; 11 of 2002; 10 of 2003; 6 of 2005; 13 of 2006; 7 of 2007; 11 of 2008; 14 of 2009; 29 of 2010; 24 of 2011; 17 of 2012; 19 of 2013; 11 of 2014; G.N. 219/1964 (N); 137/1966; 194/1967]*

\*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 of 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 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 reenactment 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 amendments 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 of 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 amendments 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 provision 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.

The amendment to [section 105](#) (6) effected by this Act is deemed to have come into operation on the 1st of April, 1967. The amendment to [section 58](#) (3) by this Act is effective from 1st April, 1970, save any balance of

expenditure remaining in respect of water conservation works carried out in previous years is to be allowed in the assessment made for the year ending 31st March, 1971. The amendment to paragraph 1 (d) (ii) of the Twelfth Schedule effected by this Act is deemed to have applied for the year of assessment commencing on the 1st of April, 1970, and all subsequent years of assessment. The amendments effected by this Act to sections [40](#) and [56](#), the Second Schedule and the Eleventh Schedule Part 1 (Appendix) shall come, or be deemed to have come into operation for the year of assessment commencing on the 1st of April, 1971, and all subsequent years of assessment.

## Part I – Preliminary

### 1. Short title

This Act may be cited as the Taxation Act.

### 2. Interpretation of certain general terms

In this Act, unless inconsistent with the context—

“**adjusted basis**”, in relation to an asset, means the basis of the asset—

- (a) in 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 unincorporated, when acting as an agent;

“**amount realized**”—

- (a) in the case of disposal of an asset by sale for cash, means the case received or contracted to be received;
- (b) in the case of an exchange of the asset for other property, means that open market price of such other property received on the date of the exchange;
- (c) 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
- (d) 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)—

- (a) 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:

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—

- (i) 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
- (ii) 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 30th September, 1995, adjusted by the Consumer Price Index published by the National Statistical Office at the date of disposal of the asset;

*[10 of 1993; 6 of 2005; 13 of 2006; 7 of 2007]*

**“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;

**“business asset”** means an asset which is used or is held ready for use in a business, and includes any asset which is held for sale in a business, but does not include shares, treasury bills, bonds, debentures and any other investment assets;

*[17 of 2012]*

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

- (a) 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
- (b) 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 the Commissioner by this Act;

**“company”** includes any association wheresoever incorporated;

**“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 or bonus shares as described in [section 70C](#) 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;

*[10 of 1993]*

“**earnings**” means the total amount in cash paid at a rate which does not exceed K1,400 per annum received by or accrued to or in favour of an employee in respect of work done or services rendered in Malawi, and whether paid or payable daily, weekly, monthly or at other intervals, including any cash paid in lieu of notice to terminate employment, but excluding any amount received as a war disability pension or widow’s war pension, or as an old age pension paid out of public funds or as an award, benefit, or compensation paid under any written law in respect of injury, disease or disablement suffered in employment.

“**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;

[18 of 1998]

“**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—

- (a) is not paid to or applied to the benefit of—
  - (i) a beneficiary with a vested right; or
  - (ii) a person who would but for—
    - (A) the conferment on the trustee by the trust instrument of a discretion so to pay or apply the income; and
    - (B) 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
- (b) is not income deemed by virtue to [section 72](#) to have been received or have accrued to or in favour of the person by whom the trust instrument was made; or
- (c) is not accumulated in terms of the trust instrument for the future benefit of a beneficiary with a vested right;

“**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, seizure, requisition or condemnation;

[2 of 1994]

“**Malawi currency**” has the meaning assigned thereto in the Reserve Bank of Malawi Act;

[Cap. 44:02]

“**married woman**” means a woman married by a 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—

- (a) 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 at law or by custom to maintain a child;

“**pension fund**” means—

- (a) a superannuation, pension, widows’ or orphans’ fund established by any enactment whatsoever, whether in force in Malawi or elsewhere;
- (b) 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](#);

“**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;

[16 of 1954 (F)]

“**permanent establishment**” includes an office or other fixed place of business through which business activity is carried on;

[12 of 1987]

“**person**” includes an individual, a partnership, a company, a corporation, a trust, a club, a society, an organization, a public authority and an association;

[18 of 1998]

“**person resident in Malawi**” includes—

- (a) any individual present in Malawi for an aggregate of 183 days or more in any twelve months period commencing or ending in the year of assessment concerned;

*[29 of 2010]*

- (b) any trust, estate or partnership established or otherwise organized under any written law of Malawi; and

- (c) any company incorporated in Malawi;

*[12 of 1987]*

“**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) a husband who is separated from his wife under a judicial order or written agreement of separation; or
- (b) a husband who—
  - (i) is living apart from his wife; and
  - (ii) is not wholly maintaining his wife; or
- (c) a wife who is separated from her husband under a judicial order or written agreement of separation; or
- (d) a wife who—
  - (i) 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—

- (a) the administrator or executor of a deceased estate; and
- (b) 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
- (c) 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

- (d) 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](#);

[1 of 1985]

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

[12 of 1987; 1 of 1990; 1 of 1991; 7 of 1992; 10 of 1993; 2 of 1994; 18 of 1998; 6 of 2005; 13 of 2006; 7 of 2007; 29 of 2010; 17 of 2012]

### 3. Commissioner of Taxes

- (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.

[G.N. 194/1967]

## Part II – Administration

### 4. Delegation of functions by Commissioner

- (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.

[14 of 1969]

### 5. Report by Commissioner

- (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 his notice.

### 6. Officers to observe secrecy

- (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).

*[14 of 1969]*

- (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 his 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 or 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 of 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.

*[10 of 1993]*

- (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.

*[10 of 1993]*

## 7. Forms

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

*[14 of 1969]*



## 8. Service of documents

Any notice or document required or authorized under this Act to be served upon any person shall be sufficiently and effectively served—

- (a) if personally served upon him; or
- (b) 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
- (c) if sent by post addressed to such last known place of abode, whether 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;
- (d) 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.

## 9. Service of oral notices

- (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. Validity of documents

- (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.
- (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

### 11. Income and 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.

*[7 of 1992]*

## 12. Special circumstances in which income deemed to have accrued

- (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.
- (2) 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. Exemption

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

*[repealed by 17 of 2012]*

## 15. Non-recognition of capital gain or capital loss in certain cases

- (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; or
  - (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]*

*[7 of 1992; 10 of 1993; 5 of 1997; 13 of 2006]*

### 15A. Involuntary conversion of assets

- (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 recognized;

- (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 subsections (2) and (3).
- (2) 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 realized as a result of such conversion exceeds the cost of the qualifying replacement asset.
- (3) 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—
  - (a) briefly describes the type of involuntary conversion;
  - (b) identifies the asset so converted;
  - (c) indicates the adjusted basis of the asset; and
  - (d) states an intention to acquire a qualifying replacement asset.
- (4) 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 part of capital gain is realized;
  - (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 any 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.
- (5) 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.
- (6) This section shall not apply to motor vehicles not used in the business of transporting passengers or goods.

*[2 of 1994]*

### **15B. Capital gains on disposal of business assets**

- (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.
- (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.

*[13 of 2006; 7 of 2007]*

## 16. Income— payments for services\*

(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 including any contract gratuity.

(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.

*[18 of 1968]*

(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.

*[29 of 2010]*

\*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.

## 17. Assessment to tax for single terminal

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 cessation of employment and after he had been paid accordingly.

*[17 of 2012]*

## 18. Sums payable by an employer for expenses of an employee

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:

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.

*[1 of 1991]*

## 19. \*\*\*

*[repealed by 1 of 1991]*

## 20. \*\*\*

*[repealed by 1 of 1991]*

**21. \*\*\***

*[repealed by 1 of 1991]*

**22. Income— passages**

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](#).

**23. Premiums**

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.

**24. Timber sales**

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.

*[14 of 1971]*

**25. General**

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.

*[7 of 1992]*

**26. Foreign exchange gain and foreign exchange loss**

(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.

(2) The amount of foreign exchange gain or foreign exchange loss shall be determined in accordance with the following formula—

$a \times r1$  minus  $a \times r2$ .

where

“a” is the amount of foreign currency received, paid or otherwise computed with respect to a foreign currency asset or 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 on 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.

*[7 of 1968; 19 of 1969; 5 of 1977; 4 of 1982; 10 of 1983; 1 of 1991; 7 of 1992]*

## 27. Income deemed to have accrued in Malawi

- (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—
- (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;
  - (c) 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 service;
  - (d) from 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.
- [12 of 1987]*
- (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.

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

*[12 of 1987; 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]*

- (7) 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.

*[7 of 1992]*

## **Division 2—Deductions**

### ***Determination of taxable income***

#### **28. Allowable deductions in determining taxable income**

- (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.
- (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 headings 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—

- (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).

*[7 of 1992]*

- (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 unrealized foreign exchange gain which would otherwise be realized 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 realized, 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 (4) shall not apply in respect of the year of assessment in which the taxpayer dies or ceases to exist.

*[1 of 1991; 7 of 1992; 1 of 1995]*

**29. \*\*\***

*[repealed by 10 of 1983]*

**30. \*\*\***

*[repealed by 10 of 1983]*

**31. \*\*\***

*[repealed by 4 of 1988]*

**32. Allowable deductions — repairs**

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.

**33. Allowable deductions — capital allowances**

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.

*[1 of 1991]*

**34. Allowable deductions — premiums paid**

- (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 exceeds 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. Allowable deductions — bad debts**

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.

### **36. Allowable deductions — doubtful debts**

- (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 the 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.
- (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 previous law, his assessable income shall include that amount.

#### **36A. Allowable deductions — export allowance**

- (1) There shall be allowed as a deduction an amount (hereinafter referred to as an "export allowance") equivalent to twenty-five *per centum* of the taxable income as determined under section 14 of the Export Incentives Act in respect of exports of non-traditional goods made during the year of assessment.
- (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.

*[Cap. 39:04; 4 of 1988; 17 of 2012]*

#### **36B. Allowable deductions — payroll levy**

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.

*[9 of 2000; Cap. 55:06]*

### 37. Allowable deductions — pension funds and provident funds

There shall be allowed as a deduction—

- (a) an amount to be determined in accordance with the provisions of the Fifth Schedule in respect of ordinary contributions as defined in that Schedule which are made in the year of assessment to a pension fund;
- (b) 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 the 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;

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

*[14 of 1969]*

- (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.

*[4 of 1981; Cap. 2:06]*

*[14 of 1969]*

### 38. Allowable deductions — sale of timber

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 of 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;
  - (iii) 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. Allowable deductions — research, etc.

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 of 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 made 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

[19 of 1969; 7 of 1992]

- (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 the purposes of this paragraph.

[2 of 1996]

[1 of 1990; 7 of 1992; 2 of 1996]

### 39A. Allowable deductions – social contribution

There shall be allowed as a deduction of fifty *per centum* for any amount paid as a social contribution directly into the building of a public hospital or school, or the sponsoring of youth sporting development activities.

[17 of 2012]

### 40. Allowable deductions – annuity payment

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.

### 41. Allowable deductions – new businesses initial expenditure

- (1) In arriving at the taxable income of a taxpayer derived from a manufacturing business begun on or after the 1st day of April, 1963, there shall be allowed the amount of any expenditure which—
  - (a) is incurred by the taxpayer, not more than eighteen months before beginning the business, in the course of establishing the business; and
  - (b) 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.

**41A. \*\*\***

*[repealed by 24 of 2011]*

**41B. Allowable deductions — transport allowance**

There shall be allowed as a deduction an 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, made under the Export Incentives Act.

*[7 of 1992; 24 of 2011; 17 of 2012; G.N. 23/1990; Cap. 39:04]*

**42. Allowance of losses — general**

There shall be deducted, from any amount of assessable income, any assessed loss arising solely out of 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—

- (a) a deduction under this section shall, as far as possible, be made in the first year of assessment after the year in which the assessed loss was incurred and, in the next year of assessment up to a period of the six years;
- (b) no person who—
  - (i) has been adjudged or otherwise declared or has 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; and

- (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 operations.

*[6 of 2005; 19 of 2013]*

**43. Allowance of losses — change in shareholding in company**

- (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 effected 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.
- (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. Allowance of losses – formation of new company

If a company with an assessed loss (hereinafter referred to as the “old company”)—

- (a) was incorporated outside Malawi;
- (b) carried on its principal business within Malawi;
- (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.

#### 45. Deductions not to be made

No deduction shall in any case be made in respect of any of the following matters—

- (a) 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 expenses incurred in respect of any amounts received or accrued which are not included in the term “income” as defined in this Act;
- (g) 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;
- (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;

*[14 of 1969]*

- (i) any expense in respect of which a subsidy has been or will be received; and
- (j) fringe benefits tax and any penalty chargeable thereon.

*[1 of 1991]*

*[1 of 1991; 14 of 1969; 10 of 1983]*

#### 46. Deductions not admissible as regards income derived from trade

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

### Division 3 — Stock and work in progress

#### 47. Trading stock and work in progress to be taken into account

- (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.
- (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.
- (3) 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. Valuation of stock and work in progress at end of year

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:

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. Valuation of stock and work in progress at beginning of year

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.

#### 50. Definition of cost and market selling value

For the purpose of this Division—

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

“**market selling value**” means the expected realizable value of the relevant item of stock in the taxpayer’s normal selling market, the value of work in progress shall include overhead charges to the extent of the recognized accountancy practice for the type of business.

[14 of 1971]

### 51. Domestic consumption

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;
- (b) 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.

### 52. Gifts and sales

Where—

- (a) 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
- (b) 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
- (c) 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.

### 53. Valuation of livestock

Livestock shall be valued at cost or market selling value and [sections 47 to 52](#) inclusive shall apply.

*[14 of 1971]*

## Division 4 — Determination of taxable income where adequate books and records are kept

### 54. Books of accounts

- (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. Period of accounts

- (1) Where a taxpayer makes up his accounts for a period of 12 months ending on some day other than the 30th June, the Commissioner may in his discretion accept such accounts for assessment in

respect of the assessment year ending the 30th 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:

Provided that where the accounts of any taxpayer have been accepted for a year or period ending on some date other than the 30th June, 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) ceases 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.
- (4) 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 the taxable income of 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.

*[13 of 2006]*

## **Division 5 – Businesses carried on partly in and partly out of Malawi and businesses controlled abroad**

### **56. Profits of non-resident persons from sale of exported produce**

- (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 services, he shall be required to include the market value of such goods, property, or services in his assessable income.

[1 of 1995]

- (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.

[1 of 1995]

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

[1 of 1995]

[14 of 1971]

## 57. Persons carrying on business which extends beyond Malawi

- (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.
- (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. Taxation of income derived from farming

- (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 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—
  - (a) the stumping, levelling and clearing of lands;  
[27 of 1970]
  - (b) works for the prevention of soil erosion;
  - (c) boreholes;  
[27 of 1970]
  - (d) wells;
  - (e) aerial and geophysical surveys;
  - (f) any water control work in connexion with the cultivation and growing of rice, sugar or such other crop as the Minister may approve.  
[27 of 1970]

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.

- (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, weir, dam or embankment constructed for the impounding of water.
- (b) 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.  
[14 of 1971]
- (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. Co-operative agricultural societies

- (1) The assessable income of any producers' 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 any of the objects set out in the Sixth Schedule.
- (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 as 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.

#### 60. Consumers' co-operative societies

- (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.

[19 of 1969]

- (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.

[16 of 1969]

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

- (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—
- (a) for determining when such income tax shall be payable;
  - (b) 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.

[19 of 1969]

#### **62. Building society interest**

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

#### **63. Insurance business**

- (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:

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 the business of life assurance shall be liable to income tax.

*[1 of 1985; 13 of 2006]*

*[4 of 1982; 10 of 1983; 13 of 2006]*

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

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 movable property, the ownership shall pass or, in the case of immovable 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 on the date on which the agreement was entered into:

Provided that—

- (a) in the case of movable property—
- (i) the Commissioner, taking into consideration any allowance he has made under [section 35](#) or [section 36](#) may make 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;
- (b) in the case of immovable property—
- (i) 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. \*\*\***

*[repealed by 17 of 2012]\**

\*Any pension fund approved by the Commissioner under section 65 (now repealed) shall, immediately before the commencement of this Act, be deemed to have been registered under the Pension Act (Cap. 55:02).

## Part V – Taxation of companies

### Division 1—Income tax

#### 66. Charge

Subject to this Act income tax shall be charged, levied and paid for each year of assessment upon the 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.

*[1 of 1990]*

#### 67. Public officers of companies

- (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.
- (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 that 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 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 the 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 keep the office of the public officer constantly filled and shall at all times maintain a place for the service or delivery of notices in accordance with subsection (5) and every change of public officer or of the place for the service or delivery of notices shall be notified to the Commissioner within 30 days of such change taking effect.
- (8) Every notice, process or proceeding which under this Act may be given to, served upon, or taken against any company may be given to, served upon, 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 1st 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. Duty of companies to furnish returns**

- (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.
- (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.

#### **69. Notification of dividend declared**

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

*[7 of 1968]*

#### **70. Dealings by a company in another company's shares**

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. Taxation of dividends**

- (1) Every company incorporated in Malawi shall, uphold 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:

Provided that there 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 the 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.
- (3) Any company which fails to withhold tax at the time of distribution of any dividend as required by subsection (1) shall be liable to pay the tax due and an additional sum equal to 20 per cent of the tax due.

*[7 of 1992; 14 of 1999; 10 of 2001; 11 of 2002]*

#### **70B. Recognition of gain or loss on distribution of property with respect to shares**

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.

*[10 of 1993]*

#### **70C. Effect of a distribution of shares of a company to its shareholders**

Where 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—

- (a) 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;
- (b) the overall basis of the shares of the shareholders, following such bonus issue of shares, shall remain unchanged; and
- (c) the basis of the old shares shall be allocated between the old and the new shares in proportion to their respective values.

*[10 of 1993]*

#### **70D. Distribution in complete liquidation of a company**

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.

*[10 of 1993]*

#### **70E. No gain or loss on certain contributions to capital**

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 the adjusted basis in the hands of the person or persons immediately prior to the contribution.

*[10 of 1993]*



## 70F. Basis of assets in a qualified reorganization of a company

- (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.
- (2) Acquiring company assumes tax attributes of the acquired entity  
Except as otherwise provided in this Act, the acquiring company shall take into account the tax attributes of the acquired entity.
- (3) Distributions as part of a qualified reorganization  
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.
- (4) Non-qualified reorganization to be treated as a sale of the company  
Any reorganization which is not a qualified reorganization shall be treated as a sale of the company and of all of its assets.
- (5) A “qualified reorganization” to have a written plan and to be for valid business purposes and not for tax avoidance  
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.
- (6) Meaning of “reorganization”  
For the purposes of this Act, “reorganization” means—
  - (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.

*[10 of 1993]*

## Part VI – Individuals

### 71. Charge

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.

*[10 of 1983; 1 of 1995]*

## 72. Deemed taxable income

- (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 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.
- (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 or 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.

*[19 of 1969]*

- (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, 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 is 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. Income of married women and minor children

- (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.
- (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.

*[1 of 1995]*

- (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 sections 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  
*[1 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.  
*[1 of 1995]*
- [1 of 1995]*
- (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—
- (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  
*[1 of 1995]*
  - (b) any taxable income deemed to be his in terms of section 72.  
*[19 of 1969; 1 of 1995]*

#### **74. Partnership**

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**

#### **75. Special provisions in connexion with income derived from assets in deceased and insolvent or bankrupt estates**

- (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 of 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—
- (a) 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
- (b) 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
- (c) an amount received or forming part of the assets in a deceased estate—
- (i) which became due and payable before the death of the deceased person; and

- (ii) 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 been assessable income of the deceased person had it been received by him in his lifetime.

## 76. Tax payable by trust

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

## Part VIIA – Non-residents

### 76A. Liability for non-resident tax

- (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.
- (2) The tax payable under subsection (1) shall be deducted from the amount referred to therein upon—
- accrual of the amount to such person; or
  - payment of the amount to such person whether directly to him or to his account in or outside Malawi; or
  - remittance of the amount to such person; or
  - 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.
- [1 of 1990]*
- (3) The tax payable under subsection (1) is not payable in respect of—
- income and other amounts exempt from tax under the provisions of the First Schedule; and
  - any pension or annuity payment.

*[12 of 1987; 20 of 1987; 1 of 1990]*

## Part VIII – Representative taxpayers

### 77. Representative taxpayers

- (1) For the purpose of this Act—
- “representative taxpayer” in relation to the assessable or taxable income—
- of a company, means the public officer of the company; and
  - of a trust, means the trustee; and
  - controlled or managed by an agent, including an agent to whom the provisions of [section 81](#) relate, means the agent; and
  - 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—
    - (i) 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. Liability of representative taxpayer**

- (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 his 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.
- (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.
- (4) 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.

*[15 of 1973]*

### **78A. Protection for certain trustees**

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—

- (a) that person or agent actually received the profits under that authority; and
- (b) 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 of that person to income tax.

*[15 of 1973]*

### **79. Right and personal liability of representative taxpayer**

- (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—
- (a) he alienates, charges or disposes of taxable income in respect of which the tax is chargeable; or
  - (b) he disposes of, 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 fund or money the tax could lawfully have been paid.

#### **80. Company regarded as agent for absent shareholder**

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. Power to appoint agent**

- (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.
- (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. Remedies of Commissioner against agent and trustee**

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.

#### **83. Power to require information**

For the purposes of sections [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.

### **Part IX – Returns, provisional tax and assessments**

#### **84. Return of income**

- (1) Every person chargeable with income tax under this Act, shall within 90 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:

Provided further that this subsection shall not apply, except of his own volition, to an individual whose total income is only from employment or pension or from both employment and pension and does not exceed K30, 000, from which P. A. Y. E. has been deducted.

- (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:

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.

*[4 of 1988]*

- (5) 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.

*[14 of 2009]*

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

*[14 of 2009]*

- (7) 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.

*[1 of 1991; 2 of 1994; 14 of 2009]*

*[1 of 1985; 4 of 1988; 1 of 1991; 2 of 1994; 1 of 1995]*

#### **84A. Payment of provisional tax**

- (1) Subject to the other provisions of this Act, every person chargeable with income 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 installments within 25 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 or 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).

*[18 of 1998]*



- (3) The aggregate of the installments 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.

*[18 of 1998]*

- (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.

*[4 of 1988; 18 of 1998; 6 of 2005; 29 of 2010]*

#### **84B. Exemption from provisional tax**

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

- (a) not to exceed the amount specified in Part I paragraph A in the Appendix to the Eleventh Schedule as attracting the zero per cent rate of taxable income;
- (b) to exceed the amount specified in Part I paragraph A in the Appendix to the Eleventh Schedule as attracting the zero per cent rate of taxable income 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 the amount specified in Part I paragraph A in the Appendix to the Eleventh Schedule as attracting the zero per cent rate of taxable income and to include non-employment or non-pension income of not more than the amount specified in Part I paragraph A in the Appendix to the Eleventh Schedule as attracting the zero per cent rate of taxable income.

*[4 of 1988; 7 of 1992; 11 of 2002; 13 of 2006; 7 of 2007; 14 of 2009; 24 of 2011]*

#### **84C. Payment of balance of income tax**

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

*[4 of 1988]*

#### **84D. Payment of tax**

Every person not otherwise covered by section 84C, except the person whose taxable income substantially comprises 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.

*[4 of 1988]*

**84E. Penalty for failure to pay taxes**

- (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 per cent 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.

- (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.

*[4 of 1988; 7 of 1992; 18 of 1998]*

**85. Duty to furnish returns as to employees, their earnings and other matters**

- (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.

*[14 of 1969]*

**85A. Tax clearance certificate**

- (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—
  - (a) the applicant is a registered taxpayer, except where the applicant is not subject to, or is exempt from, income tax;
  - (b) the income tax returns of the applicant that are due have been submitted to the Commissioner;
  - (c) 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.

*[13 of 2006; 5 of 1997]*

## **86. Commissioner to have access to all public records**

- (1) Notwithstanding anything to the contrary contained in any law relating to banks or the Financial Intelligence Unit 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.
- (2) Every officer in the public service a bank, company or any other person 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 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.

*[14 of 2009]*

- (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 ten 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 banks, the Financial Intelligence Unit or organizations, 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.

*[14 of 2009]*

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

- (1) Every return required to be rendered by a taxpayer under this Act shall be accompanied by all such balance sheets, trading accounts, profits 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.

- (2) 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).

## 88. Production of documents and evidence on oath

- (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 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 or device in which he suspects any moneys, books, records, accounts or documents to be contained;  
*[14 of 2009]*
  - (c) seize any such books, records, accounts, device or documents as in his opinion may afford evidence which may be material in assessing the liability of any person for any tax;  
*[14 of 2009]*

- (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.

*[14 of 1969]*

- (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 or 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 K200, 000 and to imprisonment for one year.

*[14 of 2009; 14 of 1969]*

## **89. Estimated income**

- (1) In the following cases, namely where in respect of a year of assessment—
- (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 a 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 for any cause to furnish an accurate return of income, the Commissioner may accept the taxpayer's estimate of the amount of his taxable income.

*[14 of 1969]*

## **90. Assessment to tax**

- (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.

*[10 of 1983]*

## **91. Additional assessment**

- (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:

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.

*[14 of 1971; 14 of 1969]*

### 91A. Turnover tax

- (1) Notwithstanding any other provision of this Act, a tax to be known as turnover tax shall be payable by any person whose income from business is accrued in or derived from Malawi, and such income is above two million Kwacha (K2,000,000) but does not exceed six million Kwacha (K6,000,000) during any year of assessment:

Provided that a person who would otherwise be liable to pay tax under this section may, by notice in writing addressed to the Commissioner, elect not to be subject to turnover tax, in which case the other provisions of this Act shall apply to such person.

- (2) Turnover tax shall be payable for each year of assessment at the rate specified in the Eleventh Schedule.
- (3) Notwithstanding subsection (1), turnover tax shall not apply to—
  - (a) rental income and management or professional fees or training fees;
  - (b) the income of incorporated companies; and
  - (c) any income which is subject to a final withholding tax under this Act.
- (4) For the better carrying out of the provisions of this section, the Minister shall prescribe rules and regulations governing the administration of turnover tax.

*[14 of 2009]*

### 92. Assessments and notices thereof

- (1) All assessments required to be made under this Part shall, subject to [section 4](#), be made by the Commissioner or under his direction.
- (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. Register of assessments

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.

#### 94. Inspection of register

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.

### Part IXA – Taxation of fringe benefits

#### 94A. Liability of employers to pay fringe benefits tax

- (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.
- (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.

*[1 of 1991]*

#### 94B. Section 94A not to apply in certain cases

Section 94A shall not apply to fringe benefits provided to an employee whose annual taxable income does not exceed the amount specified in paragraph A of the Appendix to the Eleventh Schedule as attracting the zero per cent rate of taxable income.

*[2 of 1994; 6 of 2005; 14 of 2009]*

#### 94C. Employee defined

In this Part, “employee” includes a “director”.

#### 94D. Fringe benefits tax not to be imposed on employees

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

#### 95. Burden of proof

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.

*[14 of 1969]*

## 96. Procedure on appeals

- (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.

## 97. Appeal to Commissioner

- (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.

## 98. Appeal to Special Arbitrator

- (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 specially 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 to 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 judgment, 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 assessments shall be amended where necessary to give effect to the decision of a Special Arbitrator on an appeal.



## 99. Publication of decisions of Special Arbitrator

- (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.
- (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. Appeals from assessments, etc., by administrative officers

- (1) Notwithstanding the provisions of sections [97](#) and [98](#), an appeal by a taxpayer who is aggrieved by—
  - (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 lie 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 references to “Traditional Appeal Court”

## 101. Appeal to High Court

- (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 decisions;
  - (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. Deduction of tax from salaries and wages—Pay As You Earn

- (1) On the making of any payment of, or on account of, any emolument at a rate exceeding the amount specified in Part I paragraph A of the Appendix to the Eleventh Schedule as attracting the zero per cent rate of taxable income 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 to 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:

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, and the expression “bank interest” shall have the meaning assigned to it in the Fourteenth Schedule.

- (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—
- 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;
  - the production to an 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;
  - 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;
  - 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 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 is 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.

*[10 of 1993]*

- (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 30th June in each year.

*[6 of 1972; 1 of 1985; 1 of 1990; 2 of 1994; 10 of 2001; 13 of 2006; 14 of 2009; 24 of 2011]*

### 102A. Deduction of tax from certain payments

- (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 sub-contractors, payment for tobacco and other products and the expression "bank interest" shall have the meaning assigned to it in the Fourteenth Schedule.

- (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—
- (a) 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;
  - (b) 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
  - (c) 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.

*[1 of 1985; 4 of 1988; 1 of 1995; 5 of 1997; 23 of 1997; 18 of 1998; 10 of 2003; 29 of 2010; 24 of 2011]*

### 102B. Payment of withholding tax

- (1) Any person who imports goods shall be required to pay withholding tax at three *per centum* of the value of goods at the port of entry into Malawi.
- (2) Withholding tax shall be charged and payable on the importation of goods and for that purpose any written law applicable to collection of customs duties and other taxes on importation of goods shall apply with modifications as are necessary.
- (3) A person who imports goods under subsection (1) shall be exempted where—
- (a) the person has produced a withholding tax exemption certificate issued by the Commissioner General;
  - (b) the person is a Government Ministry;
  - (c) the person is a tax exempt under this Act; and
  - (d) the importation is done under section XXII of PART III of the Customs and Excise (Tariff) Order.

*[19 of 2013]*

### 103. Priority of tax deduction at source

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.

*[1 of 1983]*

### 104. Formal assessment to be unnecessary

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:

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

*[6 of 1972; 10 of 1983]*

### 104A. Credit for tax deducted at source

Where withholding tax has been deducted or paid under sections [102](#), [102A](#) and [102B](#), the tax so deducted or paid shall be allowed as a credit against tax charged on assessments issued under sections [90](#) and [91](#) of this Act.

*[1 of 1985; 19 of 2013]*

## Division 2—Assessments raised by the Commissioner

### 105. Payment of tax on assessment

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

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

*[14 of 1969; 10 of 1993; 19 of 2013]*

- (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.

*[10 of 1993]*

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

*[18 of 1998]*

*[1 of 1985; 10 of 1993; 18 of 1998; 19 of 2013]*

### **105A. Mutual assistance to recover outstanding tax**

- (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 for 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 affect his right to have his liability for any such amount determined in Malawi in accordance with the provisions of the relevant law.

*[18 of 1998]*

## 106. Persons by whom the tax is payable

Subject to this Act the tax shall be payable—

- (a) by a representative taxpayer in respect of any taxable income received or controlled by him in such representative capacity;
- (b) in respect of every other taxable income and in 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. Recovery of tax

- (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 used for and recovered by the Commissioner in any court of competent jurisdiction.
- (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, within 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.

*[10 of 1993]*

- (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 from 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.

*[10 of 1993]*

- (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. Creation of a lien**

- (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.
- (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 filed lien.

*[10 of 1993]*

### **108. Form of proceedings**

- (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.
- (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. Production of register of assessments**

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.

*[14 of 1969]*

### **110. Payment of tax by persons leaving Malawi**

- (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 K100.



- (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.

### 111. Security for payment of tax

- (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 be, 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.

*[14 of 1969]*

## Part XII – Penalties

### 112. Liability for penalties

- (1) Any person who—
  - (a) fails to comply with any notice served on him by the Commissioner under this Act or any rules made thereunder;
  - (b) gives any incorrect information or omits any relevant information from any statement required to be made to the Commissioner under [section 20](#);
  - (c) fails to keep records, books or accounts required to be kept under [section 54](#);
  - (d) 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](#);
  - (e) fails to furnish to the Commissioner returns or particulars relating to persons employed by him as required under [section 85](#); or
  - (f) fails to furnish any other person with a certificate as required under [section 87](#) (3);
  - (g) 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.

*[1 of 1990; 2 of 1994; 18 of 1998; 11 of 2002]*

- (2) Any company which—
  - (a) 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.

*[2 of 1994; 18 of 1998; 11 of 2002]*

- (3) Any taxpayer who—
- (a) fails to furnish or makes default in furnishing to the Commissioner a return of income in respect of any year of assessment; or
  - (b) omits from his return of income in respect of any year of assessment any amount which should have been included therein; or
  - (c) 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
  - (d) 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 K200,000 for companies, and K50, 000 for individuals 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.

*[2 of 1994; 18 of 1998; 11 of 2002; 14 of 2009]*

- (4) Any taxpayer who with intent to defraud—
- (a) commits any of the acts or omissions referred to in subsection (3); or
  - (b) makes any false statement or gives any false information when complying with any notice served on him under this Act; or
  - (c) 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 or accounts or other records; or
  - (d) makes any false claim for repayment of any tax for any year of assessment,

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.

*[1 of 1993; 18 of 1998; 11 of 2002]*

*[14 of 1969; 1 of 1990; 10 of 1993; 2 of 1994]*

### 113. Imposition of penalty

- (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 to 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.

### 114. Accounts deemed to have been submitted by person

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.

*[14 of 1969]*

### 115. Assisting in making incorrect returns

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

*[11 of 2002]*

### 116. Obstruction of officers

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.

*[11 of 2002]*

### 116A. Forceful rescue of seized property

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.

*[10 of 1993; 11 of 2002]*

### 116B. Physical assault of officers

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.

*[10 of 1993; 11 of 2002]*

### 117. Inciting a person to refuse to pay tax

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.

*[2 of 1999; 11 of 2002]*

### 118. Time limit for penalty proceedings

- (1) Proceedings for the recovery of any penalty incurred under this Act in connexion with or in relation to assessments 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:

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 willful 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.

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.

*[14 of 1969]*

- (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 willful default has been committed.

*[14 of 1969]*

### **119. Liability of officers of company**

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.

*[14 of 1969]*

### **120. Recovery of tax repaid in consequence of fraud or negligence**

Where in consequence of a person's fraud, willful 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.

### **121. Saving for criminal proceedings, etc.**

- (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.
- (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.

*[14 of 1969]*

## **Part XIII – General**

### **122. Relief from double taxation**

- (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.

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

- (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) 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

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

*[14 of 1969]*

C is the taxable income;

*[14 of 1969]*

- (b) 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 to 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. Relief from double taxation in cases where no agreements have been made under section 122**

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.

*[18 of 1968]*

#### **125. Error or mistake**

- (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.

- (2) On receiving any such application the Commissioner shall inquire 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.

## 126. Repayment of tax

- (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.

## 127. Transfers to defraud, and artificial transactions

- (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 proceedings:

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

- (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 1st April, 1968.

*[14 of 1969]*

- (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.

### **127A. Transfer pricing related to business transaction**

Where a person who is not a resident in Malawi engages in one or more commercial or financial transactions with a person resident in Malawi and the course of such transactions is so arranged that it produces to the person resident in Malawi either no profits or less than profits which might be expected from such transactions if there had been no such relationship, then the profits of that resident person from that business transactions shall be deemed to be the amount that might have been expected to accrue if the course of that business had been conducted by independent persons in accordance with the arm's length principle.

*[14 of 2009; 19 of 2013]*

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

- (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.
- (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—
  - (a) the name of a taxable person or of a person in whose name a taxable person is chargeable;
  - (b) the description of any income; or
  - (c) 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 the opinion cannot be recovered:

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

**Part XIV – Graduated tax**

**129. \*\*\***

*[repealed by 2 of 1994]*

**130. \*\*\***

*[repealed by 2 of 1994]*

**131. \*\*\***

*[repealed by 2 of 1994]*

**132. \*\*\***

*[repealed by 2 of 1994]*

**133. \*\*\***

*[repealed by 2 of 1994]*

**134. \*\*\***

*[repealed by 2 of 1994]*

**135. \*\*\***

*[repealed by 2 of 1994]*

**136. \*\*\***

*[repealed by 2 of 1994]*

**137. \*\*\***

*[repealed by 2 of 1994]*

**138. \*\*\***

*[repealed by 2 of 1994]*

**139. \*\*\***

*[repealed by 2 of 1994]*

**140. \*\*\***

*[repealed by 2 of 1994]*

**141. \*\*\***

*[repealed by 2 of 1994]*

142. \*\*\*

*[repealed by 2 of 1994]*

143. \*\*\*

*[repealed by 2 of 1994]*

144. \*\*\*

*[repealed by 2 of 1994]*

145. \*\*\*

*[repealed by 2 of 1994]*

## Part XV – Regulations

### 146. Regulations by Minister

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.

### 147. Saving

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.

## First Schedule (Sections 13 and 27 (3))

### General exemptions

There shall be exempt from income tax—

- (a) the revenues of local authorities;
- (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) any payments of pension or annuity, whether paid as a lump sum or periodically;  
*[6 of 2005; 7 of 2007; 29 of 2010; 17 of 2012]*
- (va) a payment on account of ill-health or disability;  
*[17 of 2012]*
- (vi) building societies and friendly societies;
- (vii) employees' savings 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 trusts 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 1977]*
- (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 of 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 per cent African Development Loan (Registered Bond) issued on the 1st day of July, 1960;
- (ha) interest up to K10,000 received by or accrued to or in favour of an individual—
  - (i) on any sums deposited with an institution registered under the Building Societies Act or the Banking Act;  
*[Cap. 32:01; Cap. 44:01]*
  - (ii) from stock, bonds or promissory notes raised by or on behalf of the Government;  
*[4 of 1988; 10 of 2001]*
- (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;

*[4 of 1988]*

- (hc) gains from sale of shares traded on the stock exchange if those shares are held by a tax payer for not less than twelve months;

*[7 of 1992; 10 of 1993; 1 of 1995; 19 of 1995; 5 of 1997; 24 of 2011; 17 of 2012]*

- (hd) housing allowance of up to K200 per month received by or accrued to or in favour of an employee from his employer;

*[1 of 1995; 19 of 1995]*

- (i) the gratuity, pension and other benefits granted by Government to a former President or a former Vice-President;

*[18 of 1968; 27 of 1970; 1 of 1995]*

- (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;

*[1 of 1995]*

- (k) any amount payable to any person or his dependents or heirs 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 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 of 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.

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;

*[25 of 1972]*

- (t) *[deleted by 10 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;
- (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 country which exempts from tax any amount payable to residents of Malawi for rendering similar service;  
*[12 of 1987]*
- (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]*
- (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.  
*[4 of 1981; Cap. 2:06]*

*[7 of 1968; 18 of 1968; 14 of 1969; 16 of 1969; 27 of 1970; 10 of 1983; 12 of 1987; 20 of 1987; 4 of 1988; 7 of 1992; 1 of 1995; 19 of 1995; 5 of 1997; 10 of 2001; 6 of 2005; 7 of 2007; 29 of 2010; 24 of 2011; 17 of 2012]*

## Second Schedule (Sections 25, 33, 41 and 58 (4)(v))

### Capital allowances

#### Part I – General

##### 1. Initial allowance

- (1) Subject to the 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, as the case may be and in respect of articles, implements, machinery, or utensils purchased and used by the taxpayer for the purposes of his trade or for farming purposes:

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.

*[4 of 1988; 18 of 1998]*

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 makes of a similar nature, excluding those used for hiring purposes.

- (2) The initial allowances shall be—
- (a) in respect of farm improvements, industrial buildings, railway lines a sum equal to ten per cent of the capital expenditure incurred by the taxpayer;
  - (b) in respect of articles, implements, machinery, and utensils a sum equal to twenty per cent of the cost thereof to the taxpayer; and
  - (c) in respect of farm fencing, a sum equal to thirty-three and one-third per cent 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.

*[19 of 1969; 14 of 1970; 18 of 1998]*

## 2. Annual allowances

- (1) Subject to this Schedule an allowance (hereinafter called an annual allowance) shall be made in respect of capital expenditure incurred in respect of—
- (a) farm improvements, farm fencing, industrial buildings, newly constructed buildings, railway lines; and  
*[14 of 1971; 6 of 2005]*
  - (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 allowances 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. Methods of computing annual allowances

- (1) The annual allowance in respect of an asset for any year of 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).
- (2) The said percentage is—
  - (a) in the case of farm improvements, railway lines and industrial building five per cent;
  - (b) in the case of farm fencing ten per cent;  
*[14 of 1971]*
  - (c) in the case of newly constructed commercial buildings whose cost is one hundred million Kwacha or above, two and half per cent;  
*[6 of 2005]*
  - (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.

### 4. Investment allowance

- (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 cent of the cost of new and unused industrial buildings, and plant or machinery, and equal to forty per cent 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.
- (2) A taxpayer who is eligible for the investment allowance under subparagraph (1) shall, in addition, be given an allowance equal to fifteen per cent for investment in an area designated for the purpose of such additional allowance by the Minister by order published in the *Gazette*.

*[7 of 1992]*

*[4 of 1988; 7 of 2007; 24 of 2011; 17 of 2012]*

5. \*\*\*

*[repealed by 7 of 1992]*

6. \*\*\*

*[repealed by 7 of 1992]*

**7. Sales of assets**

- (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 of 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 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.

**8. Meaning of industrial building**

- (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 of power; or
  - (e) a transport, dock, inland navigation, water refrigeration or electricity hydraulic power tunnel or bridge undertaking; or
  - (f) a 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 a 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.

*[15 of 1973; 4 of 1982]*

## 9. Interpretation

- (1) For the purposes of this Schedule—

“**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. Allowances for staff housing

- (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.

- (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—

- (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 cent 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.

*[14 of 1969]*

- (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.

*[1 of 1991]*

## Part II – Mining

### 11. Meaning of “mining expenditure”

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 in 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 value or no value to such person if the mine ceased to work;

*[13 of 2006]*

- (d) on the construction of any buildings or works which would have little or no value if the mine ceased to be worked; and
- (e) on development, general administration and management prior to the commencement of mining operations.

*[19 of 1969; 13 of 2006]*

### 12. Allowance in respect of mining expenditure

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.

*[13 of 2006]*

### 13. Allowance apportioned on transfer, etc.

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. Ineligibility for export allowance and transport allowance

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.

*[13 of 2006]*



**15. When expenditure incurred before mining operations, etc.**

- (1) Any mining expenditure incurred after the 1st 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.
- (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. Expenditure recovered deemed income in certain circumstances**

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:

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. Exceptions**

- (1) No allowance shall be made under this Part in respect of any expenditure on which an allowance is due under Part I:

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.

*[1 of 1991; 7 of 1992; 18 of 1996; 6 of 2005; 13 of 2006; 7 of 2007; 24 of 2011; 17 of 2012]*

**Third Schedule****Pension funds and provident funds**

*[repealed by 24 of 2011]*

**Fourth Schedule****Amounts received or accrued by way of a terminal benefit which shall not be included in assessable income**

*[repealed by 17 of 2012]*

## Fifth Schedule (Section 37)

### Deduction in respect of ordinary contributions to pension funds and under contributory pension provisions

#### 1. Interpretation

In this Schedule unless inconsistent with the context—

“**annual emoluments**” in relation to a member of a pension fund, other than a self-employed persons fund, or an officer, means—

- (a) 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
- (b) 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—

- (a) is not an arrear contribution;
- (b) is made by or in connexion with the member or the officer as the case may be;
- (c) 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 persons fund**” means a pension fund approved in terms of paragraph 2 of the Third Schedule.

*[14 of 1969; 6 of 2005]*

#### 2. Ordinary contributions by employer to pension funds

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—

- (a) the employer’s actual contributions; or
- (b) up to 15 per cent of the employee’s annual salary,

whichever is the lesser amount.

*[19 of 1969; 1 of 1990; 6 of 2005; 17 of 2012]*

#### 3. \*\*\*

*[deleted by 6 of 2005]*

#### 4. \*\*\*

*[deleted by 6 of 2005]*

## 5. \*\*\*

*[deleted by 6 of 2005]*

*[1 of 1990; 17 of 2012]*

**Sixth Schedule (Section 59(1))****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 to 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 cooperative 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 cooperative 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.
12. To acquire and distribute information on the markets of the world, and cooperation 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 cooperative agricultural company formed under the provisions of any law for the time being in Great Britain or in any other cooperative agricultural company with limited liability or cooperative society registered under any Malawi law relating to such type of company or society.

**Seventh Schedule (Section 63, 112(1) and 3rd Sch. para. 2(b))****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 assuming the obligations of an insurer under life policies but does not include funeral insurance;

“received in Malawi” means—

  - (a) received at an office of an insurer in Malawi without the intervention of an agent; or
  - (b) 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—
  - (a) the obligation of rendering returns of income which is not derived from insurance business; or
  - (b) 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—
  - (a) fire insurance business;
  - (b) accident insurance business, including employers’ liability insurance business;
  - (c) marine insurance business;
  - (d) funeral insurance business;
  - (e) fidelity or guarantee insurance business; and
  - (f) 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—
  - (a) 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—
  - (a) premiums paid on reinsurance; and
  - (b) actual losses in Malawi less losses recoverable on reinsurance; and
  - (c) expenses of management in Malawi other than those of a capital nature; and
  - (d) commission in Malawi, that is to say, net commission after deduction of commission received on reinsurance; and

- (e) expenditure, other than expenditure of a capital nature, expenses referred to in subparagraph (c) or commission referred to in subparagraph (d) which is incurred in Malawi in the production of income; and
  - (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
  - (g) 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 1st 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**

##### **1. Written statement required**

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 dispatched 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.

##### **2. Attendance of appellant**

On receipt of such written statement the Commissioner or administrative officer may require the personal attendance of the appellant.

##### **3. Failure to attend**

If an appellant who has been required to attend fails to do so the appeal may be dealt with in his absence.

##### **4. Further procedure**

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

### 5. Notice of appeal

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.

### 6. Grounds of appeal

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.

### 7. Reply

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.

### 8. Notice of hearing

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. Failure to attend

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.

### 10. Representation of parties

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.

### 11. Language

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.

## 12. Sequence to be followed

- (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 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.
- (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 him; 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. Costs

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.

## 14. Further procedure

Save as is provided in this Act the Special Arbitrator shall decide his own rules of procedure.

## 15. Appeals to Traditional Appeal Court

Where a taxpayer wishes to appeal from a decision of an administrative officer under [section 100](#) the provisions of this Part shall apply with necessary modification 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

## 16. Notice of appeal

- (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 dispatch 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.

## 17. Grounds of appeal

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.

## 18. Service of notice and grounds of appeal

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.

## 19. Reply

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.

## 20. Service of reply

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. Normal rules of procedure

Save as provided in this Part the normal rules of procedure relating to appeals to the High Court shall apply.

# Ninth Schedule (Section 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.

### ***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]*

*[1 of 1990; 1 of 1991; 7 of 1992; 2 of 1994; 1 of 1995]*

## **Eleventh Schedule (Sections 66, 71, 76 and 94 A )**

### **Rates of income tax**

Income tax shall be charged, subject to the minimum tax as specified in Part II of the Appendix to this Schedule, as follows—

- (a) in the case of an individual, at the rates laid down in paragraph A 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;

*[7 of 1992; 1 of 1995]*

- (c) in the case of all companies, other than companies engaged in mining operations under a licence issued under the Mines and Minerals Act, 30 per cent of taxable income except that—

(i) *[deleted by 24 of 2011]*

- (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 a 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;

*[5 of 1997; 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;

*[Cap. 61: 01]*

- (cb) *[deleted by 11 of 2014]*
- (d) in the case of life assurance business, at 21 per cent of the taxable income; and
- (e) in the case of fringe benefits, at 35 per cent of the taxable value of fringe benefits.
- (f) in the case of turnover tax, at the rate of 2% of the taxable turnover.
- (g) in the case of earnings on investment of pension funds, at 15 per cent.

*[29 of 2010]*

*[19 of 1995; 5 of 1997; 23 of 1997; 14 of 1999; 9 of 2000; 10 of 2001; 11 of 2002; 11 of 2002; 6 of 2005; 13 of 2006; 7 of 2007; 14 of 2009; 29 of 2010; 24 of 2011; 17 of 2012; 19 of 2013; 11 of 2014]*

## Appendix

### Table of rates of income tax on taxable income

Annual taxable income	Rate
First K240,000	0%
Next K60,000	15%
Excess of K300,000	30%

*[9 of 2000; 10 of 2001; 11 of 2002; 6 of 2005; 13 of 2006; 7 of 2007; 11 of 2008; 14 of 2009; 24 of 2011; 17 of 2012; 19 of 2013]*

## Twelfth Schedule (Section 27 (2))

### 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—
  - (a) 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;
  - (b) 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;
  - (c) 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 Republic Service; or
  - (d) the pensioner retires at some future date and he is then serving in the Public Service of Malawi.

- (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.

*[10 of 1983]*

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.

*[10 of 1983]*

### **Thirteenth Schedule**

#### **Table of rates of graduated tax**

*[deleted by 13 of 2006]*

**Fourteenth Schedule (Section 102A)****Withholding tax -rate of deduction**

<b>Nature of payment</b>	<b>Notes</b>	<b>Rates of Withholding Tax on gross payment</b>
(a) Royalties	—	20%
(b) Rents	1	15%
(c) Payment for any supplies to traders and institutions—		
(i) foodstuff	—	3%
(ii) other	—	3%
(d) Commission	2	20%
(e) Payment for carriage and haulage	—	10%
(f) Payment for tobacco and other farm products	—	3%
(g) Contractors in the building and construction industries	3	10%
(h) Payment for public entertainment	4	20%
(i) Payment of K15, 000 for casual labour	—	0%
(ia) payment in excess of K15, 000 for casual labour	—	20%
(ib) payment for services	—	20%
(j) Bank interest of over K10, 000	5	20%

(k) Fees	2	10%
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## Notes:

1. Includes rent for moveable and immovable 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 artists, 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](#).

*[1 of 1985; 4 of 1988; 1 of 1990; 7 of 1992; 2 of 1996; 5 of 1997; 10 of 2001; 10 of 2003; 6 of 2005; 7 of 2007; 29 of 2010; 24 of 2011; 17 of 2012]*

### 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.
4. Renewal of professional business licences and permits of medical practitioners or dentists, legal practitioners (lawyers), engineers and architects who are engaged in private practice on his or her own behalf as a private practice or in partnership with another private practitioner.
5. Renewal of a certificate of registration under the National Construction Industry Act.  
*[Cap. 53: 05]*
6. Transfer of a company as a going concern.
7. Externalization of funds to non-resident service providers whose source is deemed to be Malawi.
8. Renewal of Temporary Employment Permits.
9. Renewal of business licenses by the Ministry responsible for industry and trade.

10. Renewal of tourism licences by the Ministry responsible for tourism.
11. Renewal, extension or transfer of mining licences, or transfer of mineral rights by the Ministry responsible for energy and natural resources.
12. Renewal of telecommunications licences by the Malawi Communications Regulatory Authority.
13. Renewal of energy licences by the Malawi Energy Regulatory Authority.
14. Change of ownership of a company.
15. Renewal of registration of public transport conveyances by the Road Traffic Directorate.

*[5 of 1997; 18 of 1998; 14 of 2009; 24 of 2011]*