

Malawi

Accommodation and Refreshment Tax Act

Chapter 41:02

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Accommodation and Refreshment Tax Act Contents

1. Short title and application	1
2. Interpretation	1
3. Imposition and calculation of tax, payment, etc.	2
4. Responsibility of the manager	2
5. Collection of tax	2
6. Liability for payment of tax	3
7. Liability of company and body corporate	3
8. Powers of Commissioner	3
9. Regulations	4
Schedule (Section 3(1))	5

Malawi

Accommodation and Refreshment Tax Act

Chapter 41:02

Assented to on 8 May 1981

Commenced on 1 May 1982

[This is the version of this document 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 imposition, payment and collection of a tax on the cost of hiring accommodation and obtaining refreshment from certain premises, and for matters incidental to and connected with the foregoing

1. Short title and application

- (1) This Act may be cited as the Accommodation and Refreshment Tax Act.
- (2) The provisions of this Act apply with respect to the hiring of accommodation and the obtaining of refreshment after the date of commencement from any of the premises listed in the Schedule.
- (3) The Minister has power, by Order, to amend the Schedule.

2. Interpretation

In this Act—

“**accommodation**,” includes any bedroom, and any room, building or place used for the purpose of any business or social gathering, or for entertainment of any kind whatsoever, but does not include any room, building or place set aside and equipped, whether permanently or temporarily, and used solely for the purpose of any sporting or other similar recreational activity;

“**bill**” means any account, bill, cash sale slip, invoice, or other similar document requiring payment for the hiring of accommodation or obtaining of refreshment;

“**Commissioner**” means the Commissioner of Taxes and includes any officer authorized by him in writing to exercise his functions under this Act;

“**manager**” means any person who exercises overall control over the day-to-day operation of premises, whether or not he is the owner;

“**Minister**” means the Minister for the time being responsible for matters relating to finance;

“**owner**” includes any company or association or body of persons, whether corporate or unincorporate, and an individual;

“**premises**” means any of the premises listed in the Schedule;

“**refreshment**” means food or drink obtained from premises in exchange for money or other valuable consideration, whether consumed on the premises or not, but does not include food obtained in consideration of any sum lawfully deducted in pursuance of a Wages Order or Wages Regulation Order made under the Regulation of Minimum Wages and Conditions of Employment Act, nor to food obtained from premises for his own consumption on those premises by any person who is employed therein;

[Cap. 55: 01]

“**tax**” means accommodation and refreshment tax payable under this Act.

3. Imposition and calculation of tax, payment, etc.

- (1) Tax, to be known as accommodation and refreshment tax, is payable by or on behalf of every person by whom accommodation is hired or refreshment is obtained from any of the premises listed in the Schedule.
- (2) The amount of tax payable under subsection (1) is ten *per centum* of the total amount charged in respect of the hire of accommodation and the supply of refreshment to such person, calculated to the nearest tambala.
- (3) In calculating—
 - (a) the amount of tax payable, any sum included or to be included in the bill by way of service charge shall be disregarded;
 - (b) the amount of service charge, the amount of tax payable shall be disregarded.
- (4) The current amount of tax payable—
 - (a) shall be clearly shown as a separate item on the bill, and charged, at the time of presentment of the bill to the person by whom the bill is payable; and
 - (b) shall be paid by that person not later than the time of settlement of the bill.
- (5) Any person who—
 - (a) knowingly contravenes the provisions of subsection (3); or
 - (b) without lawful excuse fails so to show, charge or pay tax in accordance with the provisions of subsection (4),is guilty of an offence cognizable to the police and liable to a fine of K1,000 or to imprisonment for a term of three months.

4. Responsibility of the manager

Where tax is payable by virtue of [section 3\(1\)](#), it is the responsibility of the manager to take reasonably practicable steps to ensure—

- (a) that the amount of tax is correctly calculated in accordance with subsections (2) and (3) of [section 3](#);
- (b) that the amount of tax so calculated is shown in the manner, and at the time, provided in paragraph (a) of [section 3\(4\)](#);
- (c) that the amount of tax is charged.

5. Collection of tax

- (1) A sum in payment of tax, equal to the total amount of tax charged in each month, shall be sent by the manager by cheque to the Commissioner within 30 days after the last day of that month.
- (2) A manager who, without reasonable cause, fails to send a sum equal to the total amount of tax in accordance with the provisions of subsection (1) is guilty of an offence and liable to a fine of five thousand Kwacha or to imprisonment for a term of six months.
- (3) A manager who, whether knowingly or by neglect—
 - (a) causes or permits the commission by any person of an offence under [section 3\(5\)](#); or

- (b) fails to take such steps as are reasonably practicable to ensure compliance with the requirements of paragraph (a), (b) or (c) of [section 4](#),

is guilty of an offence and liable to a fine of two thousand Kwacha or to imprisonment for a term of three months.

6. Liability for payment of tax

- (1) Where the person by whom accommodation is hired or refreshment is obtained, and the person by whom the amount charged in respect thereof is payable, are not the same person, they shall each be liable to pay tax but the payment of tax by one operates so as to discharge the liability of the other.
- (2) For the purpose of [section 5](#), an owner of premises who employs any manager shall be answerable for the acts and omissions of such manager, and if such manager does any act or makes any omission which is an offence under that section, or if such owner does any act or makes any omission which is an offence under that section or which would be an offence if committed or made by such manager or which causes the commission of such an offence, such owner and such manager are, on conviction, jointly and severally guilty of the offence and liable to the penalties therein prescribed:

Provided that it shall be a defence for such owner to prove that he did not know and could not reasonably be expected to know that the act or omission was taking or was likely to take place and that he took all reasonable steps to ensure that the provisions of that section were being and would be complied with.

7. Liability of company and body corporate

Where the owner is a company or a body corporate and an offence under this Act is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, or other officer, of the company or body corporate, or any manager employed by it, the company or body corporate as well as such director or other officer or manager is guilty of that offence and liable to be proceeded against and punished accordingly.

8. Powers of Commissioner

- (1) The Commissioner may at all reasonable times—
 - (a) enter without warrant any room, building or place at any premises on which he has reasonable ground for believing that an offence under this Act or the regulations has been or is being committed, and shall have power—
 - (i) to examine and take copies of any register, book, account or document found on the premises relating to or appearing to relate to the business being carried on thereat;
 - (ii) to take possession of and detain any register, book, account or document found on the premises which he suspects on reasonable grounds to be, or to contain, evidence of an offence under this Act or the regulations;
 - (b) require any person who appears to be carrying on business at or to be employed in any premises to render such explanation and give such information relating to such business or employment as he may reasonably and lawfully require in order to ascertain whether the provisions of this Act and the regulations are being or have been complied with;
 - (c) require any person who appears to be carrying on business at any premises, by notice in writing given to that person, to produce to him, at a particular time and place, all or any of the registers, books, accounts and documents relating to or appearing to relate to that business for the purpose of ascertaining whether an offence under this Act or the regulations has been committed:

Provided that nothing in paragraph (a) of this subsection shall authorize entry into any lawfully hired bedroom without the permission of its current occupier if any.

- (2) Any person who—
 - (a) resists, hinders or obstructs any person acting in pursuance of subsection (1); or
 - (b) fails to the fullest extent of his knowledge and truthfully to comply with any requirement made of him under that subsection, is guilty of an offence and liable to imprisonment for a term of six months or to a fine of five thousand Kwacha.

9. Regulations

- (1) The Minister may make regulations generally for the better carrying out of the provisions and purposes of this Act.
- (2) Without prejudice to the generality of subsection (1), regulations under this section may—
 - (a) prescribe the procedure to be followed and the forms to be used in respect of things to be done under this Act or the regulations;
 - (b) make provision for the keeping of records and accounts of tax charged and received at premises;
 - (c) make provision for the audit of such records and accounts, in such manner and by such persons as may be prescribed;
 - (d) provide for and prescribe returns to be submitted to the Commissioner;
 - (e) make provision for the exemption, from all or any of the provisions of this Act or the regulations, of any specified transaction or class of transaction.

Schedule (Section 3(1))

Hotels	Restaurants
Bangwe Inn	Causerie
Capital	Chileka Airport Caterers
Chisakalime	China Bar and Restaurant
Club Makokola	Gazeebo
Grand Beach	Golden Dragon Chinese
Ku Chawe Inn	Golden Peacock
Kudya Motel	Golden Egg II
Lifupa Wildlife Lodge	Hong Kong
Lilongwe	Hot Gossip
Lingadzi Inn	Kudu
Mount Soche	Malawi Catering Services
Muona Inn	Maxim's
Mzuzu Hotel	
Nkopola Lodge	
Ryall's	
Shire Highlands	
Government Rest Houses	
Chitipa Inn	Mzuzu

Dedza	Ngabu
Karonga	Nkhata Bay
Kasungu Inn	Nkhotakota
Kasungu Rest House	Ntcheu
Likoma	Rumphi
Mzimba I	Zomba Government Hostel
Mzimba II	

[G.N. 116/1982]

[G.N. 24/1983]