

MALAWI GOVERNMENT

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Act

No. 14 of 2021

I assent

DR. LAZARUS MCCARTHY CHAKWERA

PRESIDENT

5th August, 2021

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An Act to provide for the establishment of the Revenue Appeals Tribunal to hear appeals under the Taxation Act (Cap.41:01), the Tax Administration Act (No. ...of 2021), the Customs and Excise Act (Cap.42:01), the Value Added Tax Act (Cap.42:02), and any other tax law as may be enacted; and to make provision for matters connected therewith and incidental thereto

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Revenue Appeals Tribunal Act, 2021, and shall come into operation on such date as the Minister may appoint, by notice published in the *Gazette*. Short title and commencement

2. In this Act, unless the context otherwise requires— Interpretation

“appeal” means an appeal to the Tribunal against an objection decision of the Commissioner General under any tax law;

“appellant” means a person who lodges an appeal before the Tribunal;

“Authority” means the Malawi Revenue Authority established by the Malawi Revenue Authority Act; Cap. 39:07

“Chairperson” means the person appointed as Chairperson of the Tribunal under section 3;

“close relative” means a spouse, child, sibling, grand child or parent and includes a dependent and child of a sibling;

“Commissioner General” means the Commissioner General of the Malawi Revenue Authority appointed under the Malawi Revenue Authority Act; Cap. 39:07

“currency point” has the meaning and value assigned thereto under the Tax Administration Act; No. 13 of 2021

“Deputy Chairperson” means a person appointed as Deputy Chairperson of the Tribunal under section 3;

“document” means an account, assessment, book, certificate, claim, declaration, invoice, note, notice, order, record, return, ruling or any other statement in writing, whether in electronic or other form;

“file” in relation to a document, includes lodging or furnishing the document with the Tribunal;

“High Court” means the Revenue Division of the High Court of Malawi;

“judicial officer” has the meaning ascribed to it under section 111(4) of the Constitution;

“member” means the person appointed as member of the Tribunal under section 3;

No. 13 of 2021

“objection decision” means an objection decision of the Commissioner General made pursuant to Part VII of the Tax Administration Act;

“officer” means employee of the Tribunal other than the Chairperson, Deputy Chairperson, member and Registrar;

“party” means an appellant or the Commissioner General;

“register” means the register kept by the Registrar of the Tribunal in which all particulars relating to applications or appeals are entered;

“Registrar” means the Registrar of the Tribunal appointed under section 5;

Cap. 39:07

“revenue” means taxes, duties, fees, levies, fines or other monies imposed by or collected under the laws set out in the Schedule to the Malawi Revenue Authority Act; and

“Tribunal” means the Revenue Appeals Tribunal.

PART II—THE REVENUE APPEALS TRIBUNAL

Establishment
and
composition
of the
Tribunal

3.—(1) There is hereby established a Tribunal to be known as the Revenue Appeals Tribunal whose functions shall be to hear and determine appeals against objection decisions of the Commissioner General.

(2) The Tribunal shall consist of—

(a) a Chairperson, who shall be a lawyer duly admitted to the Malawi bar with at least ten years practical experience in the legal profession and demonstrable experience in tax matters, appointed by the Minister in consultation with the Judicial Service Commission;

(b) a Deputy Chairperson, who shall be a lawyer duly admitted to the Malawi bar with at least ten years practical experience in the legal profession and demonstrable experience in tax matters, appointed by the Minister in consultation with the Judicial Service Commission; and

Cap. 30:12

(c) at least twelve members with a minimum of a bachelor’s degree from an institution recognized or accredited under the National Council for Higher Education Act and at least seven years practical experience in law, business, accounting, finance, public finance, economics or related discipline, appointed by the Minister in consultation with relevant professional bodies.

(3) A person shall not be appointed Chairperson, Deputy Chairperson or member of the Tribunal if that person—

(a) is a public officer or an employee of the Malawi Revenue Authority;

(b) has not met his tax obligations;

(c) has been liable for tax evasion or facilitation of tax evasion;

(d) has a criminal record;

(e) has been adjudged bankrupt by a court of competent jurisdiction; or

(f) is of unsound mind.

(4) The appointment of a Chairperson and a Deputy Chairperson shall be on full-time basis.

(5) The appointment of a member shall be on part-time basis.

4.—(1) The Chairperson, the Deputy Chairperson and a member of the Tribunal shall, subject to subsections (5) and (6), hold office for a term of four years and shall be eligible for re-appointment for one further term.

Tenure of
office and
termination of
appointment

(2) The Chairperson and the Deputy Chairperson of the Tribunal shall receive a salary and other benefits for their services.

(3) A member of the Tribunal shall receive allowances and other benefits, as may be determined by the Minister.

(4) The salary, any allowance and other benefit of the Chairperson, the Deputy Chairperson and a member of the Tribunal shall not, without his or her consent, be reduced during his or her term of office and shall be increased at intervals so as to retain their original value.

(5) The appointment of the Chairperson, Deputy Chairperson or member of the Tribunal shall immediately terminate upon the occurrence of any one of the following events—

(a) resignation upon giving three months' notice, in writing, to the Minister;

(b) expiration of the term of office;

(c) in relation to a member, absence without a reasonable cause from three consecutive sittings of the Tribunal of which the member had notice;

(d) death;

(e) being adjudged bankrupt;

(f) cessation to practice, on disciplinary grounds, a profession on the basis of which he was appointed;

(g) being convicted and sentenced for an offence against any written law to a term of imprisonment without the option of a fine;

(h) being found liable for tax evasion or facilitation of tax evasion;

(i) termination of the appointment pursuant to conditions of appointment other than circumstances in paragraphs (a) and (b); or

(j) occurrence of any condition that would have disqualified the person from appointment.

(6) The Minister may terminate the appointment of the Chairperson, Deputy Chairperson or member of the Tribunal on the grounds that the person—

(a) has ceased to be a fit and proper person to hold the office;

(b) has a mental or physical infirmity, as determined by a panel of three independent suitably qualified medical practitioners, such that he cannot properly carry out the duties of the office;

(c) has failed to comply with the Code of Conduct in a material particular; or

(d) is in breach of this Act.

(7) The Minister shall, where a vacancy occurs in accordance with subsection (5) or (6), appoint another person as Chairperson, Deputy Chairperson or member to fill the vacancy and such appointment shall be made in accordance with section 3.

Registrar of
the Tribunal

5.—(1) There shall be a Registrar of the Tribunal who shall be the chief executive officer of the Tribunal appointed by the Minister in consultation with the Judicial Service Commission .

(2) The Registrar shall be a lawyer duly admitted to the Malawi bar with at least ten years practical experience in the legal profession and demonstrable experience in tax matters.

(3) The Registrar shall be subject to such terms and conditions of service as may be determined by the Minister.

(4) The salary, any allowance and other benefit of the Registrar shall not, without his or her consent, be reduced during his or her term of office and shall be increased at intervals so as to retain their original value.

(5) The appointment of the Registrar shall terminate upon the occurrence of any one of the following events—

(a) resignation upon giving three months' notice, in writing, to the Minister;

(b) death;

(c) suffering from a mental or physical infirmity, as determined by three independent and suitably qualified medical practitioners, such that he cannot properly carry out the duties of the office;

(d) being adjudged bankrupt by a competent court of law;

(e) cessation to practice law on disciplinary grounds;

(f) being convicted and sentenced for an offence against any written law to a term of imprisonment without the option of a fine;

(g) being found liable for tax evasion or facilitation of tax evasion; or

(h) termination of employment pursuant to conditions of employment other than circumstances in paragraphs (a) and (b).

6.—(1) The Registrar shall, subject to this Act—

Functions and
powers of the
Registrar

(a) issue notices and summonses;

(b) keep a record of proceedings of the Tribunal;

(c) keep, or cause to be kept and maintained, a register of orders and decisions of the Tribunal;

(d) have the custody, and keep an account, of fees and other moneys payable or paid to the Tribunal, and keep proper accounts of all funds of the Tribunal;

(e) subject to any rules made under this Act, hear and determine interlocutory applications; and

(f) perform such other functions and exercise such other powers as may be conferred by this Act or rules and regulations made under this Act.

(2) A direction or order made on an interlocutory application under subsection (1)(e) shall not be so made as to prejudice the Tribunal from rendering a just decision on a matter.

(3) A person aggrieved by a decision of the Registrar may appeal to the Chairperson or the Deputy Chairperson.

7. Notwithstanding the provisions of sections 3(2) and 5(2), a suitably qualified Judicial Officer may be appointed as Chairperson, Deputy Chairperson or Registrar of the Tribunal on secondment terms.

Appointment
on
secondment

Oath of office

8. A person appointed as Chairperson, Deputy Chairperson, member, Registrar or Deputy Registrar shall, before exercising the duties of his office, take and subscribe to oaths of office and allegiance before the Chief Justice.

Disclosure of interest

9.—(1) The Chairperson, Deputy Chairperson or a member of the Tribunal shall not participate in the determination of any matter or attend a meeting convened to discuss anything in relation to a matter in which he or a close relative has a direct or indirectly interest.

(2) Where, before or during the hearing of any matter, it transpires that the Chairperson, Deputy Chairperson, member or a close relative of the Chairperson, Deputy Chairperson or member has a direct or indirect interest in the matter, he shall, before or during the hearing of the matter, as the case may be, disclose the interest and upon such disclosure, the Tribunal—

(a) shall adjourn the proceedings and replace such person on the panel; or

(b) may, with the consent of the parties to the appeal, allow the person to participate in the hearing of the appeal.

(3) A disclosure of interest and the decision of the Tribunal under subsection (2) shall be recorded as part of the proceedings in relation to the matter under determination.

(4) Where the Chairperson and Deputy Chairperson are conflicted, a member shall preside over the case with assistance of the Registrar.

(5) A person who contravenes the provisions of this section commits a disciplinary offence and shall be liable to such penalty as may be prescribed by the Code of Conduct.

Procedure for removal from office

10.—(1) Where the Minister believes that there are reasonable grounds, in accordance with this Act or Code of Conduct, that the Chairperson, Deputy Chairperson, member or Registrar should be removed from office, the Minister shall appoint a committee to inquire into the matter and furnish its findings to the Minister.

(2) The committee appointed under subsection (1) shall consist of—

(a) a judge of the High Court, who shall be the chairperson; and

(b) two other persons of good character, high integrity and with at least ten years' experience in the profession of the person under inquiry.

(3) The person under inquiry shall be suspended from office until a decision is made by the Minister.

(4) Where the committee, on the basis of its findings, recommends to the Minister that the person under inquiry should be removed from office, the Minister shall terminate the appointment.

(5) Where the person under inquiry was appointed on secondment terms, termination of the appointment shall not entail termination of his employment as a Judicial Officer.

(6) For purposes of this section, "High Court" means any division of the High Court as defined under the Courts Act.

Cap. 3:02

11.—(1) The Registrar shall, through a rigorous and transparent process, appoint officers and other staff of the Tribunal as he considers necessary for the proper carrying out of the powers and functions of the Tribunal.

Officers and staff of the Tribunal

(2) Officers and staff of the Tribunal shall be subject to such terms and conditions of service as may be determined by the Minister in consultation with the Registrar.

(3) An officer or member of staff shall, on first appointment, take an oath of secrecy in the form set out in the Schedule and the oath shall be administered by a commissioner for oaths.

12.—(1) There shall be established a Principal Registry of the Tribunal as the Minister shall designate by notice published in the *Gazette*.

Registries of the Tribunal

(2) The Registrar may, by notice published in the *Gazette*, establish District Registries of the Tribunal, at such places as are specified in the notice.

(3) The Registrar may, at any time by notice published in the *Gazette*, vary or revoke any notice issued in pursuance of subsection (2).

(4) The Registrar may, subject to section 11, appoint a Deputy Registrar of a District Registry.

(5) A Deputy Registrar shall exercise such functions and powers as may be assigned by the Registrar.

PART III—APPEALS

Jurisdiction of the Tribunal **13.—(1)** The Tribunal shall hear and determine appeals from objection decisions of the Commissioner General under any tax law.

No. 13 of 2021 (2) The Tribunal shall not allow to be lodged or, if lodged, to be heard any appeal unless the provisions of Part VII of the Tax Administration Act are complied with.

Right of appeal **14.—(1)** A person aggrieved by an objection decision of the Commissioner General may appeal to the Tribunal.

(2) A notice of appeal shall be—

(a) in writing;

(b) lodged with the Tribunal within thirty days upon receipt of the decision of the Commissioner General; and

(c) served on the Commissioner General within seven days of filing.

(3) The appellant shall, within fourteen days of the date of filing the notice of appeal, file with the Tribunal and serve on the Commissioner General—

(a) a statement of grounds of appeal containing assertions of fact and the arguments in law on which the appellant will rely at the hearing of the appeal;

(b) documentary evidence, including witness statements where necessary; and

(c) a copy of the objection decision under appeal.

(4) The grounds of appeal, arguments and witness statements filed under subsection (3) shall be—

(a) type written;

(b) set out in numbered paragraphs; and

(c) in sextuplicate or such number as may be advised by the Registrar.

No. 13 of 2021 (5) Where a person lodges an appeal with the Tribunal, any tax deposited pursuant to section 59(2) of the Tax Administration Act shall remain so deposited until the final determination of the appeal.

Extension of time **15.—(1)** The Registrar may, upon application in writing, extend time prescribed under section 14(2) or (3).

(2) The extension of time under subsection (1) shall not exceed thirty days from the expiry of the time prescribed under section 14(2) or (3).

(3) An extension of time under subsection (1) may be granted owing to absence from Malawi, ill-health or any other reasonable cause that may have prevented the appellant from complying with the provisions of section 14 (2) or (3).

16.—(1) The Commissioner General shall, within thirty days of being served with the appellant's grounds of appeal, file a reply with the Tribunal, which shall—

Reply by
Commissioner
General

(a) state which of the appellant's arguments in law or assertions of fact are admitted;

(b) state which of the appellant's arguments in law or assertions of fact are denied; and

(c) set out such other facts and arguments in law as the Commissioner General considers relevant and material to the determination of the appeal.

(2) The Commissioner General shall, within seven days of filing the reply under subsection (1), serve the reply on the appellant.

17. The Tribunal shall have power to—

Powers of the
Tribunal

(a) take evidence on oath;

(b) issue a warrant of arrest for failure to comply with summons;

(c) order payment of costs in relation to any matter filed with the Tribunal;

(d) dismiss any matter; and

(e) adjourn any proceedings.

18.—(1) For purposes of dealing with any matter before it, the Tribunal or any person authorized by the Tribunal, in writing, so to do may—

Power to
investigate

(a) examine or inspect any paper, document, record, goods or anything which is the subject matter of the objection decision appealed against or relevant for determination of the appeal;

(b) require any person to produce for examination any paper, document, record, or thing in that person's possession or under that person's control, and to allow a copy of or extract from any such paper, document or record to be made or taken; or

(c) require any person to furnish, in a form approved by or acceptable to the Tribunal, any information, copy of or extract from any paper, document or record that is in that person's custody or under that person's control.

(2) The Tribunal may require that any written information,

particular, copy or extract furnished under subsection (1)(c) be verified in such manner as the Tribunal may require.

(3) For purposes of dealing with any matter before it, the Tribunal may, on its own motion or on application—

(a) order that any information, particular or copy of the whole or any part of any paper, document or record, furnished or produced to it be served on any person appearing in the matter; and

(b) order or impose such terms and conditions as it deems fit in respect of such service or use of the information, particular or copy.

(4) A person who provides information, particular, paper, document or record or anything under this section, shall have the same privileges in relation to the giving of information, answering questions, or the production of the paper, document, record or anything to the Tribunal as any other witness before the Tribunal.

PART IV—PROCEEDINGS OF THE TRIBUNAL

Sittings of the
Tribunal

19.—(1) Proceedings of the Tribunal shall be of a judicial nature and shall be conducted at such times and at such places as the Chairperson may direct.

(2) The proceedings shall not be open to the public, and the Tribunal may, upon application, exclude or require to withdraw from such sitting any person whose attendance is not necessary for the hearing or determination of the appeal under consideration.

(3) The Chairperson or the Deputy Chairperson shall preside over a sitting of the Tribunal.

(4) The Tribunal shall, when hearing a matter, be duly constituted if it consists of the Chairperson or the Deputy Chairperson and two members.

(5) The Tribunal may sit as a circuit Tribunal.

Record of
proceedings

20. The Tribunal shall cause to be kept a record of its proceedings.

Representation
of parties

21. An appellant may appear in person at the hearing of an appeal or may be represented by any other person being a legal practitioner, a registered tax practitioner, an accountant or an auditor and the Commissioner General may be represented by any person duly authorized in that behalf.

22.—(1) The burden of proving that the objection decision in respect of which an appeal is filed is erroneous shall be on the appellant. Burden of proof

(2) Evidence before the Tribunal may be given orally or through sworn statements in such a manner as the Tribunal may direct.

23.—(1) The Registrar shall advise all parties to an appeal, in writing, of the time and place of the hearing, and shall give the parties not less than fourteen days' notice. Procedure on hearing of appeal

(2) Where a party to the proceedings or his representative fails to appear at the hearing, the Tribunal may, upon proof of service of the notice of hearing on that party or the representative—

(a) if the non-appearance is due to a reasonable cause, adjourn the hearing to another day; or

(b) if the non-appearance is without a reasonable excuse and the nature of the matter is such that failure to hear the absent party will—

(i) not prejudice his case, proceed to consider the appeal by hearing the party present and make a determination based on the evidence on record; or

(ii) prejudice his case, adjourn the hearing to another day.

(3) Where the appellant or his representative fails to appear at the hearing and the Tribunal thinks it appropriate so to do, the Tribunal may dismiss the appeal.

(4) Where the Tribunal dismisses an appeal under subsection (3), the appellant may, within fourteen days of receiving notice of dismissal of the appeal, apply to the Tribunal for reinstatement of the appeal, and the Tribunal may, if satisfied that the absence was due to reasonable cause, reinstate the appeal and give such directions as may be appropriate.

(5) On the hearing of the appeal, the parties shall, unless the Tribunal orders otherwise, be limited to the grounds of appeal, facts, evidence and legal arguments filed with the Tribunal.

24.—(1) Where an appeal is lodged against an objection decision of the Commissioner General which affects or is likely to affect the liability of a third party, the appellant shall serve documents filed under section 14(3) on the third party. Appeal affecting third parties

(2) Where the third party intends to appear at the hearing of the appeal, he shall file a notice of appearance with the Tribunal and shall hence forth be served with all documents in the matter.

(3) The third party served with documents under subsection (1) shall be entitled to appear on the hearing of the appeal as if he was a party thereto.

(4) Where the Tribunal considers it appropriate that any third party be joined as a party to any proceedings, it may order that copies of all documents in the matter be served on that third party who shall be entitled to appear on the hearing of the appeal.

Appeal
regarding
classification
of goods
Cap. 42:01

25.—(1) The Tribunal shall, in the case of an appeal solely on classification of goods for the purposes of the Customs and Excise Act, give at least thirty days' notice of the hearing which shall be published in the *Gazette* and two newspapers of wide circulation.

(2) A person with a legitimate trade interest in an appeal referred to in subsection (1) may, at least seven days before the date of the hearing, enter an appearance in the matter briefly explaining the basis of his interest.

Summoning
of witnesses

26.—(1) The Tribunal may summon any person to attend a hearing and give evidence as a witness, including the production of any document, book, record or item where the Tribunal believes such evidence will assist in the determination of the matter.

(2) A summon issued under subsection (1) shall be signed by the Registrar or Deputy Registrar and shall be served in the same manner as a subpoena for the attendance of a witness at a civil trial in the High Court.

(3) A witness or person summoned to produce any document, book, record or item shall be entitled to the same privileges and immunities as if the person was summoned to attend or give evidence in civil proceedings before the High Court.

G.N. 38/2017

(4) Evidence received under this section shall be taken in compliance with the provisions of the Courts (High Court) (Civil Procedure) Rules, relating to the taking of testimony on oath and admission of fresh evidence after commencement of proceedings.

(5) The person summoned under this section, other than a person with an interest in the proceedings may, on the order of the Tribunal, be paid from the funds of the Tribunal such allowances as may be prescribed.

(6) Where, without reasonable cause, a person summoned to give evidence does not comply with the summons, the Tribunal may, on proof that proper service of the summons was effected on the person, issue a warrant of arrest for the person to be brought before the Tribunal on a date, time and place specified in the warrant.

Discontinuation
of appeal

27. An appellant may, at any time before the final determination of an appeal, withdraw the appeal by notice in writing.

28.—(1) Parties to an appeal may, at any stage during proceedings, apply to the Tribunal to be allowed to settle the matter out of the Tribunal, and the Tribunal shall grant the request under such conditions as it may impose. Out of
Tribunal
settlement

(2) The parties shall file a copy of the out of Tribunal settlement agreement with the Tribunal and such agreement shall be enforceable as if it was a decision of the Tribunal.

(3) Where the parties fail to settle the matter out of the Tribunal within sixty days from the date of the order under subsection (1), the Tribunal shall proceed to hear and dispose of the matter.

29.—(1) The Tribunal shall render its decision on any appeal within sixty days of the conclusion of the hearing of the appeal. Decisions of
the Tribunal

(2) Where there are justifiable reasons, the tribunal may extend the period prescribed under subsection (1) by a period not exceeding thirty days.

(3) A decision of the Tribunal on any matter shall be according to the opinion of the majority of the members of the panel hearing the appeal.

(4) A decision of the Tribunal shall be in writing and shall—

(a) affirm the decision under review;

(b) vary the decision under review; or

(c) set aside the decision under review and either—

(i) make a decision in substitution for the decision so set aside; or

(ii) refer the matter to the Commissioner General for reconsideration in accordance with any directions or recommendations of the Tribunal.

(5) A decision of the Tribunal shall include an analysis of the relevant evidence and law, findings on material questions of fact and law and reasons for the decision.

(6) A decision of the Tribunal shall be dated, signed by members of the panel that determined the matter and be sealed.

(7) The Tribunal shall cause a copy of its decision to be served on each party to the proceeding within fourteen days of its delivery.

(8) A decision of the Tribunal shall come into operation on the date the decision is delivered or on such other date as may be specified by the Tribunal in the decision.

(9) A decision of the Tribunal shall have effect as and be enforceable as if it were a decision of a court.

(10) Decisions and records of proceedings of the Tribunal shall be public records open to inspection by the public:

Provided that appropriate measures shall be taken to prevent the disclosure of trade secrets or other confidential information.

(11) The Tribunal may publish its decisions in such form and manner as may be adapted for public information and use, and such publication shall be evidence of the decisions of the Tribunal in all courts without any further proof or authentication.

Costs

30.—(1) The Tribunal may award costs, as it considers appropriate, to a party to any proceedings to be paid by the other party within such period as the Tribunal may determine.

(2) The Registrar shall, assess a bill of costs issued in compliance with an order made under subsection (1).

(3) An appeal against the decision of the Registrar under subsection (2) shall be heard by the Chairperson or Deputy Chairperson.

Enforcement
of decisions
of the
Tribunal

31. A decision or order of the Tribunal, shall be enforceable and executed as if it were a decision or order of a court of law.

Appeal to the
High Court

32.—(1) A person aggrieved by a decision of the Tribunal may appeal to the High Court.

Cap. 3:02

(2) An appeal to the High Court shall lie on matters involving questions of law only and the provisions of the Courts Act and the Rules made thereunder shall apply *mutatis mutandis* to appeals from decisions of the Tribunal.

(3) An appeal from a decision of the Tribunal shall not operate as a bar to execution of any decision or order of the Tribunal.

(4) The Tribunal shall not have power to stay execution of its decision.

PART V.—IMMUNITY, OFFENCES AND PENALTIES

Indemnity
from personal
liability

33. The Chairperson, the Deputy Chairperson, a member, Registrar, Deputy Registrar or any other officer of the Tribunal empowered to exercise any power or perform any function under this Act, shall not be personally liable for any act done or omitted to be done, in the course of duty, if the act was done or omitted to be done in good faith in the exercise of purported power or function provided under this Act.

34. A person who—

Offences and
penalties

(a) being required to attend proceedings pursuant to this Act, fails without reasonable cause to attend or, being in attendance, refuses to take oath or make affirmation as required by the Tribunal;

(b) having been summoned to produce any document, book, paper, item or object which is in his possession or under his control, without reasonable cause, fails or refuses to produce it;

(c) makes any statement which he knows to be false or which he has no reason to believe to be true;

(d) omits or suppresses any information required by the Tribunal in the exercise of its jurisdiction or which is relevant to the exercise of such jurisdiction; or

(e) in any manner misleads, obstructs, insults or disturbs the Tribunal,

commits an offence and shall, upon conviction, be liable to a fine of not less than five hundred currency points and not more than nine hundred currency points or to imprisonment for six(6) months.

PART VI—FINANCIAL PROVISIONS

35.—(1) The funds of the Tribunal shall consist of—

Funds of the
Tribunal

(a) such sums of money as may be appropriated by the National Assembly;

(b) such grants or bequeaths as the Tribunal may receive from any person or organization;

(c) any other income which may be paid to the Tribunal in the course of discharging its functions; and

(d) a percentage of revenue collected by the Malawi Revenue Authority as the Minister may, whenever necessary, prescribe by notice published in the *Gazette*.

(2) The funds of the Tribunal shall be applied for the purposes for which the Tribunal is established.

36.—(1) The Registrar shall cause to be kept all proper books and records of accounts of the income, expenditure and assets of the Tribunal.

Accounts of
the Tribunal

(2) The financial records of the Tribunal shall be kept in accordance with provisions of the Public Finance Management Act.

Cap. 37:02

Cap. 37:01
Cap. 37:02
Cap. 37:03

(3) The Tribunal shall at all times comply with the provisions of the Public Audit Act, the Public Finance Management Act and the Public Procurement and Disposal of Public Assets Act.

(4) The financial year of the Tribunal shall be in accordance with the financial year of the Government as prescribed under the Public Finance Management Act:

Provided that the first financial year may be such shorter or longer period than twelve months as the Minister may determine, but being not less than six months nor more than eighteen months.

Annual audit

37.—(1) The financial records of the Tribunal shall be audited annually by independent auditors, approved by the Auditor General, in accordance with International Auditing Standards.

(2) The Auditor General shall examine the independent auditor's report before being presented to the Minister in accordance with subsection (3).

(3) The Tribunal shall, as soon as practicable, but not later than three months after the expiry of each financial year, submit to the Minister audited accounts for the year.

PART VII—MISCELLANEOUS PROVISIONS

Seal of the
Tribunal

38.—(1) The Tribunal shall have a seal which shall be kept under the custody of the Registrar.

(2) Subject to section 29(6), the affixing of the seal on any document shall be authenticated by the signature of the Chairperson, the Deputy Chairperson or the Registrar.

(3) A document purporting to be an instrument issued by the Tribunal and authenticated in the manner prescribed under subsection (2) shall, unless there is evidence to the contrary, be deemed to be a valid instrument and admissible in evidence.

(4) Each District Registry shall have a seal as may be prescribed by the Tribunal which shall be kept under the custody of the Deputy Registrar of the Registry.

Annual reports
of the Tribunal

39.—(1) The Tribunal shall prepare and submit to the Minister, within three months after the end of every financial year, a comprehensive annual report on the general conduct of the Tribunal and activities carried out during that financial year.

(2) The Minister shall lay before Parliament a copy of every annual report received under subsection (1).

40.—(1) There shall be a Code of Conduct, as the Minister shall prescribe, which shall apply to the Chairperson, Deputy Chairperson, Registrar, member and officers staff of the Tribunal. Code of
Conduct

(2) The Code of Conduct shall be consistent with this Act and other labour laws, and shall make provision for at least the following matters—

(a) conflict of interest;

(b) compliance with timeframes for discharging the functions of the Tribunal; and

(c) receiving, keeping, holding and reporting gifts.

(3) A person who contravenes a provision of the Code of Conduct commits a discipline offence and shall be sanctioned in accordance with the provisions of the Code of Conduct, terms and conditions of employment and any other relevant law.

41.—(1) The Chief Justice shall, in consultation with the Minister and by notice published in the *Gazette*, make rules to regulate procedure for the conduct of proceedings by the Tribunal. Rules

(2) Without prejudice to the generality of subsection (1), the rules may prescribe—

(a) powers and functions of the Registrar;

(b) forms to be used in connection with any matter before the Tribunal;

(c) procedure for summoning and compelling the appearance of witnesses and the production of documents or other evidence before the Tribunal;

(d) procedure for conducting proceedings;

(e) rules of evidence to be observed in proceedings before the Tribunal;

(f) powers of the Tribunal to award costs;

(g) procedure for review or taxation of costs;

(h) procedure relating to appeals from the Tribunal to the High Court; and

(i) any other matter that may be regulated or prescribed by rules under this Act.

(3) During any proceedings, the Tribunal shall not strictly adhere to rules of evidence, procedure or practice and may seek to be informed in relation to any matter in such manner as it thinks fit and as may result in the expeditious determination of the appeal.

Regulations

42. The Minister may, by notice published in the *Gazette*, make regulations for the better carrying out of the provisions of this Act.

SCHEDULE

(s.11(3))

OATH OF SECRECY

I,, having been employed in the service of the Revenue Appeals Tribunal, do hereby swear/affirm that I will truly, without fear or favour, affection or ill will, discharge my functions as an employee of the Tribunal, and that I will not, directly or indirectly, reveal any matter related to such functions to any unauthorized person or otherwise than in the course of duty.

SWORN at this ... day of, 20...

Signature:

Before:.....

Commissioner for Oaths

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

FIONA KALEMBA
Clerk of Parliament