

(Published 5th April, 2023)

**Act**

**No. 17 of 2023**

I assent

DR. LAZARUS MCCARTHY CHAKWERA  
PRESIDENT  
4th April, 2023

**ARRANGEMENT OF SECTIONS**

SECTION

- 1. Short title
- 2. Amendment of s. 2 to Cap 41:01
- 3. Amendment of s. 28 of the principal Act
- 4. Replacement of s.37 of the principal Act
- 5. Amendment of s. 76A (1) of the principal Act
- 6. Amendment of s. 88 (1) of the principal Act
- 7. Amendment of s. 102A of the principal Act
- 8. Amendment of s. 102B (1) of the principal Act
- 9. Insertion of s. 102C into the principal Act
- 10. Amendment of s.112 (2) of the principal Act
- 11. Amendment of the Eleventh Schedule of the principal Act
- 12. Amendment of the Fourteenth Schedule of the principal Act
- 13. Amendment of the Fifteenth Schedule of the principal Act

**An Act to amend the Taxation Act**

ENACTED by the Parliament of Malawi as follows—

**1.** This Act may be cited as the Taxation (Amendment) Act, 2023. Short title

**2.** The Taxation Act (hereinafter referred to as the “principal Act”) is amended, in section 2, by— Amendment of s.2 to Cap 41:01

(a) deleting the definition of the words “provident fund”;

(b) deleting the definition of the words “pension fund” and substituting therefor a new definition as follows—

““pension fund” means a superannuation, pension, widows’ or orphans’ fund established by any enactment whatsoever, whether in force in Malawi or elsewhere;”;  
and

(c) inserting, in the correct alphabetical order, the following new definitions—

““debt” means any loan, financial instrument, finance lease, financial derivative, or any arrangement that gives rise to interest, discounts, finance or other charges that are deductible in the computation of taxable income;

“deemed income” includes any income earned from a source in Malawi not restricted to physical presence;

“equity” includes—

(a) in case of a trust, the corpus of the trust; and

(b) in case of any other person, share capital, capital contributions, retained profits, interest-free loans or revaluation reserves; and

“place of effective management” means ordinarily the place where the most senior person or group of persons, such as a board of directors, make the key management and commercial decisions necessary for the conduct of the company’s business;”

Amendment  
of s.28 of the  
principal Act

**3.** The principal Act is amended, in section 28, by—

(a) deleting subsection (1) and substituting therefor a new subsection (1) as follows—

“(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.”;

(b) renumbering subsections (2), (3), (4), (5) and (6) as subsections (3), (4), (5), (6) and (7); and

(c) inserting a new subsection (2) as follows—

“(2) In determining the allowable deductions under this section—

(a) a taxpayer who makes both taxable and exempt income, shall only deduct the expenditure incurred in the production of the taxable income;

(b) expenditure related to income that is subject to a final tax shall not be deductible; and

(c) where a taxpayer has made both taxable and exempt income or income subject to a final tax, but cannot directly attribute the expenditure to the taxable and the exempt income or the income subject to a final tax under paragraphs (a) and (b), the person may deduct as expenditure an amount that bears the same ratio as the taxable income bear to the total income, applying the following apportionment formula:

$$\frac{A \times B}{C}$$

Where

A is the total amount of taxable income for the period;

B is the amount of expenditure related to both taxable and exempt income or income subject to a final tax; and

C is the total income for the period.

(d) Where the Commissioner General considers that the formula in paragraph (c) will result in an unreasonable calculation of the amount of allowable deduction, he may approve or direct alternative methods of apportioning the expenditure.”.

4. The principal Act is amended, by deleting section 37 and replacing therefor a new section as follows—

Replacement of s. 37 of the principal Act

“Allowable deductions-pension funds

37. 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 General 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 General may determine;

(c) 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.”.

Cap 2:06

Amendment of s. 76A (1) of the principal Act

**5.** The principal Act is amended, in section 76A (1), by inserting the words “and having a place of effective management”, immediately after the words “resident in Malawi”.

Amendment of s. 88 (1) of the principal Act

**6.** The principal Act is amended, in section 88(1), by inserting the words “or for the purpose of auditing the affairs of a taxpayer”, immediately after the words “of any person”.

Amendment of s.102A of the principal Act

**7.** The principal Act is amended, in section 102A, by deleting subsection (2) and substituting therefor a new subsection (2), as follows—

“(2) A withholding tax exemption certificate shall not be granted in respect of interest and rental payment for immovable property, royalties, fees other than fees that constitutes active business income, commissions other than on insurance, payment of casual labour, payment to contractors and subcontractors, and payment for farm produce to farmers’ clubs, and the expression “interest” shall have the meaning assigned to it in the *Fourteenth Schedule*.”.

Amendment of s. 102B (1) of the principal Act

**8.** The principal Act is amended, in section 102B—

(a) subsection (1), by deleting the words “three per centum” appearing immediately after the words “tax at” and substituting therefor the words “ten per centum”; and

(b) subsection (3), by deleting the words “or the importation of goods” immediately after the words “who imports goods”.

9. The principal Act is amended, by inserting, immediately after section 102B, a new section 102C, as follows—

Insertion of s. 102C into the principal Act

“Advance income tax on exports

**102C.**—(1) Any person who exports goods shall be required to pay, in advance, income tax at ten per centum of the customs value of the goods for duty purposes at the port of exit from Malawi.

(2) Advance income tax shall be charged and payable on the exportation of goods and for that purpose any written law applicable to collection of customs duties and other taxes on exportation of goods shall apply with modifications as are necessary.

(3) A person who exports goods shall be exempted where—

(a) the person exports goods intended for personal, family, home and other needs of a person not engaged in business activities, and exports shall be acknowledged by the customs authority as goods for personal use on the basis of—

(i) statement of a person about the exported goods in oral or written form using a passenger customs declaration;

(ii) nature and quantity of the goods; and

(iii) frequency of exportations by a person:

Provided that any exportation of goods whose value does not exceed five hundred United States dollars shall not be subjected to advance income tax on exports;

(b) the person has produced a valid Withholding Tax Exemption Certificate or a valid Tax Clearance Certificate issued by the Commissioner General;

(c) the exportation is made by a Government ministry, department or agency;

(d) the person is tax exempt under this Act;

(e) the person makes a temporary export;

(f) the person re-exports; or

(g) the export is made under the Simplified Trade Regime.”.

10. The principal Act is amended, in section 112(2), by inserting immediately after paragraph (e), a new paragraph (f), as follows—

Amendment of s.112 of the principal Act

“(f) fails to produce for examination, any deeds, plans, instruments, books, accounts, trade lists, stock lists, or documents as required under section 88 by the Commissioner General, for the purpose of obtaining full information in respect of any part of the income and the liability to mineral royalty of any person or for the purpose of auditing the affairs of a taxpayer.”.

Amendment of  
the Eleventh  
Schedule of the  
principal Act

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

(a) deleting paragraph (c) and substituting therefor a new paragraph (c) as follows—

“(c) in the case of all companies other than companies engaged in mining operations under a licence issued under the Mines and Mineral Act, thirty per cent of taxable income except that 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 zero per cent for such period, not exceeding ten years, as the Minister may grant in the order:

Provided that an additional tax of five per cent of taxable income shall be charged in respect of all companies not incorporated in Malawi:

Provided further that an additional tax of ten percent on any taxable income above ten billion Kwacha shall be charged in respect of a bank licensed under the Financial Services Act;”;

Cap. 44:05

(b) deleting Table B in the Appendix and substituting therefor a new Table B, as follows—

“B—TABLE OF RATES OF INCOME TAX ON EMPLOYMENT INCOME

<i>Annual Taxable Income</i>	<i>Rate</i>
First K1,200,000 . . . .	0%
Next K4,200,000 . . . .	25%
Next K24,600,000 . . . .	30%
Excess of K30,000,000 . . . .	35%”.

Amendment of  
the Fourteenth  
Schedule of the  
principal Act

**12.** The principal Act is amended, in the *Fourteenth Schedule* by—

(a) deleting paragraph (g) and substituting therefor a new paragraph (g) as follows—

“(g) Payment for farm produce—

(i) payment for farm produce  
to farmers’ clubs . . . .4 1%

(ii) payment for farm produce . . . .3%”;

(b) deleting paragraph (h) and substituting therefor a new paragraph as follows—

“(h) Payment to contractors in the building and  
construction industries . . . .10%”;

(c) inserting a new paragraph (o), immediately after paragraph (n), as follows—

“(o) Payment for quarry stones and quarry  
materials . . . . .10%”; and

(d) deleting note 4 and substituting therefor a new note 4, as follows—

“4. The tax withheld from income from sale of farm  
produce by farmers’ clubs shall be a final tax.”.

13. The principal Act is amended, in the *Fifteenth Schedule*, by inserting new paragraph 21 and 22, as follows—

Amendment  
of the  
Fifteenth  
Schedule of  
the principal  
Act

“21. Purchase of explosives from the Malawi  
Police Services.

22. Purchase of Ethanol.”.

Passed in Parliament this thirty-first day of March, two thousand and twenty three.

FIONA KALEMBA  
*Clerk of Parliament*