

VALUE ADDED TAX

CHAPTER 42:02

VALUE ADDED TAX ARRANGEMENT OF SECTIONS

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An Act to provide for the imposition and collection of Value Added Tax; and to provide for matters relating to or incidental to Value Added Tax
 [12th August, 2005]

7 of 2005
 11 of 2006
 6 of 2007
 10 of 2008
 15 of 2009
 30 of 2010
 23 of 2011
 7 of 2012
 18 of 2012
 20 of 2013
 12 of 2014
 10 of 2015
 24 of 2016
 25 of 2017
 27 of 2018
 32 of 2019
 15 of 2020
 G.N. 12/2006

PART I
Preliminary

Short title	1. This Act may be cited as the Value Added Tax Act.
Interpretation	2. In this Act, unless the context otherwise requires—
23 of 2011 18 of 2012 10 of 2015 27 of 2018 32 of 2019	“appropriation to own use”, in relation to goods, means applying the goods to personal use, including personal use by a relative or any other non-business use;
Cap. 39:07	“Authority” means the Malawi Revenue Authority established under section 3 of the Malawi Revenue Authority Act;
10 of 2015	“bank lending rate” means the rate of interest which the Reserve Bank of Malawi charges interest on its loans to commercial banks;
27 of 2018	“betting” means risking money or other property in forecasting the outcome of some event;
Cap. 39:07	“business” means the carrying on of any form of commercial activity, by a corporate body, individual, partnership or any organisation and includes the conduct of a mining project;
Cap. 39:07	“Commissioner General” means the Commissioner General of the Malawi Revenue Authority appointed under section 17 of the Malawi Revenue Authority Act;
10 of 2015	“consideration”, in relation to a supply of goods or services, means the total amount in money or kind paid or payable for the supply by any person, directly or indirectly, including any duties, levies, fees and charges paid or payable on, or by reason of, the supply, other than Value Added Tax, reduced by any discounts or rebates allowed and accounted for at the time of the supply;
10 of 2015	“customer” means a person that buys goods or services from a business;
	“exempt import” means goods to which section 22 applies;
	“exempt supply” means a supply of goods or services to which section 20 applies;
	“finance lease”, in relation to goods, includes the lease of goods where—
	(a) the lease term exceeds seventy-five per cent of the expected life of the goods;

(b) the lessee has an option to purchase the goods for a fixed or determinable price at the expiration of the lease;

(c) the estimated residual value of the goods to the lessor at the expiration of the lease term, including the period of any option to renew, is less than twenty per cent of its fair market value at the commencement of the lease;

“gaming” has the same meaning as ascribed to that term in the Gaming Act;

Cap. 47:03

“gaming machine” has the same meaning as ascribed to that term in the Gaming Act;

Cap. 47:03

“goods” includes all kinds of moveable and immoveable property, thermal and electrical energy, heating, gas, refrigeration, air conditioning and water, but does not include money;

“hire purchase agreement” means an agreement that is a hire purchase agreement within the meaning of the Hire Purchase Act;

Cap. 48:05

“importer”, in relation to import of goods, includes the person who owns the goods or any other person who is for the time being in possession of, or beneficially interested in, the goods;

“input tax” means tax payable by a taxable person in respect of taxable received goods and services or imports;

“lotteries” means a scheme whereby the right is purchased to take part in a draw by lot for a prize;

“mining project” means-

Cap. 61:01

(a) the holding of a mining permit;

(b) the conduct of activity under that permit including reconnaissance for, exploration for, and mining operations for minerals and including like operations for clay, sand, gravel, stone, or for any substance commonly won by quarrying;

27 of 2018

(c) the financing of any of the activities in (a) or (b) whether by debt or by equity; and

(d) the supply by sale or otherwise of anything resulting from those activities or of anything used, created or acquired in those activities;

“mining permit” means-

27 of 2018

(a) a mineral tenement or an artisanal mining permit as defined under the Mines and Minerals Act 2016, and

(b) where a mining permit covers an area taken from another mining permit while that permit was held by the taxpayer, the area of the other mining permit during the period before the later mining permit was taken from it;

“officer” means any member of the staff of the Authority performing duties under this Act and regulations made under this Act or delegated to him by the Commissioner General or any senior officer of the Authority or any other person appointed or authorized by an officer to perform any official duty connected with Value Added Tax; and includes an officer performing any duty under this Act on

	behalf of the Commissioner General;
	“relative”, in relation to an individual, includes an ancestor of the individual, a descendant of the individual’s grandparents, or the spouse of the individual;
	“rental agreement” means any agreement for the letting of goods other than a hire-purchase agreement or finance lease;
	“return” means a return of Value Added Tax due, or claim for Value Added Tax return;
10 of 2015	“tax invoice” means a fiscal receipt or invoice generated by electronic fiscal device upon supply of taxable goods or services in accordance with this Act and regulations made under this Act;
27 of 2018	“taxable person” means a person registered under section 11 and includes an individual, partnership, group of persons, company or corporation registered by the Commissioner General under that section and includes a person registered in relation to a mining project under that section, which shall be taken to be a separate taxable person from that person registered or on whose behalf another person is registered in any other respect;
	“tax period” means one calendar month;
	“taxable transaction” means a taxable supply or an import of goods or services that is subject to Value Added Tax under this Act;
10 of 2015	“user” means a person who is owner or employee who is required to use electronic fiscal device and includes the persons registered under this Act;
27 of 2018	“withholding agent” means any person and includes an individual, partnership, group of persons, company or corporation registered under section 14A.
Application of this Act to partnerships	<p>3.—(1) Where a firm consisting of two or more individuals in partnership is a registered supplier, the firm shall be taken for the purposes of this Act, to be the supplier of any goods and services supplied in the course of the business of the firm; but in default of such registration, each partner shall be deemed to be the supplier of any such goods and services.</p> <p>(2) Without prejudice to any other written law providing for the sufficiency of any means of giving notice to a partnership, any notice of assessment or other notice given under this Act to a partnership may be addressed to the partnership in the name under which it is registered under this Act.</p> <p>(3) Subject to this section, in determining for the purposes of this Act whether any goods or services are supplied to, or by, a partnership, no account shall be taken of any change in the partnership.</p> <p>(4) Without prejudice to any written law providing for the imposition of liability of members of a partnership, until the date on which a change in the partnership is notified to the Commissioner General, a person who has ceased to be a member of a partnership shall be regarded as continuing to be a partner for the purposes of this Act and, in</p>

particular, for the purpose of any liability for Value Added Tax or interest due from the partnership under this Act—

(a) arising within or in connexion with the tax period during which he or she so ceased to be a member of the partnership; or

(b) arising within or in connexion with any earlier tax period during which, or during any part of which, he or she was for the purposes of this Act a member of the partnership.

(5) Where a person ceases, for the purposes of this Act, to be a member of a partnership, any notice of assessment or other notice given to the partnership under this Act that relates to any matter—

(a) arising within or in connexion with the tax period during which he or she so ceased to be a member of the partnership; or

(b) arising within or in connexion with any earlier tax period during which, or during any part of which, he or she was for the purposes of this Act a member of the partnership,

shall be deemed to have been served on him or her.

4.—(1) Where a club, association or other unincorporated organization is a registered supplier, the organization shall be taken, for the purposes of this Act, to be the supplier of any goods and services supplied in the course of the business of the organization; but in default of such registration, the management of the organization shall be deemed to be the supplier of such goods and services.

Application of
this Act to
unincorporated
organizations

(2) The names and other particulars of the members of the management of an unincorporated organization that is a registered supplier shall be recorded in the register, and such members shall bear the liabilities of the organization under this Act.

(3) Until the date on which a change in the management of an unincorporated organization is notified to the Commissioner General, a person who has ceased to be a member of the management of an unincorporated organization that is a registered supplier shall be regarded as continuing to be such a member for the purposes of this Act and, in particular, for the purposes of any liability for Value Added Tax or interest due from the organization under this Act—

(a) arising within or in connexion with the tax period during which he or she so ceased to be a member of the management; or

(b) arising within or in connexion with any earlier tax period during which, or during any part of which, he or she was for the purposes of this Act a member of the management.

(4) Where a person ceases, for the purposes of this Act, to be a member of the management of an unincorporated organization that is a registered supplier, any notice of assessment or other notice given to the organization under this

Act that relates to any matter—

(a) arising within or in connexion with the tax period during which he or she so ceased to be a member of the management; or

(b) arising within or in connexion with any earlier tax period during which, or during any part of which, he or she was for the purposes of this Act a member of the management,

shall be deemed to have been served on him or her.

(5) Where a person is a member of the management of an unincorporated organization during part only of a tax period, his or her liability for Value Added Tax on the supply by the organization of goods or services during that period, and any liability for payment of any interest or additional Value Added Tax as a consequence, shall be limited to such proportion of the organization's liability as may be just in the circumstances.

Application of
this Act to
groups of
companies

5.—(1) For the purposes of this Act, two or more companies incorporated in Malawi are eligible to be treated as a recognized group if—

(a) one of them controls each of the others;

(b) one person, whether a company or an individual, controls them all; or

(c) two or more individuals carrying on a business in partnership control them all.

(2) On application made by a company naming itself and other companies in the application, or by the person or persons controlling the companies named in the application, the Commissioner General, if satisfied that the companies named in the application are eligible to be treated as a recognized group, may by notice in writing—

(a) declare that, as from a date specified in the notice, the companies shall form a recognized group for the purposes of this Act; and

(b) designate the representative member for the group.

(3) Where two or more companies form a recognized group, then, for the purposes of this Act, any business carried on by a member of the group shall be regarded as carried on by the representative member, and—

(a) any supply of goods or services by a member of the group to another member of the group shall be disregarded;

(b) any other supply of goods or services by or to a member of the group shall be regarded as a supply by or to the representative member; and

(c) any Value Added Tax paid or payable by a member of the group on the importation of any goods shall be regarded as paid or payable by the representative member, by whom the goods shall be deemed to have been imported.

(4) Notwithstanding subsection (3), all members of a recognized group shall be jointly and severally liable for any Value Added Tax due from the representative member.

(5) The Commissioner General may, on application made on behalf of a recognized group by notice declare that, as from a date specified in the notice—

(a) a further eligible company shall be included in the group;

(b) a specified member of the group shall be excluded from the group; or

(c) another member of the group shall be substituted as representative member; or

(d) the group shall no longer be a recognized group for the purposes of this Act.

(6) An application under this section shall not be refused unless the Commissioner General considers it necessary to refuse the application for the purposes of the protection of the revenue.

(7) The Commissioner General may, of his or her own motion, by notice exclude from membership of a recognized group any company which has ceased to be a member.

(8) For the purposes of this section—

(a) one company shall be taken to control another if it is empowered by any written law to control the other's activities or if it is the other's holding company within the meaning of the Companies Act; and

Cap. 46:03

(b) one or more individuals shall be taken to control a company if, apart from being an individual, he or she or they satisfy the criteria for being its holding company under the Companies Act.

Cap. 46:03

6.—(1) Except to the extent to which provision is otherwise made by or under this Act, this Act applies to a Government agency as though a supply of goods or services to it for the purposes of the performance of its official functions were a supply of goods or services for the purposes of a business carried on by it.

Application of this Act to Government agencies

(2) The Minister may by Order published in the *Gazette*, provide for the modification of any provision of this Act, or of any regulation or rule made under this Act, in its application to a Government agency.

PART II

Imposition of Value Added Tax

7.—(1) There is hereby imposed a tax to be known as value added tax (in this Act otherwise called "Value Added Tax") which shall in accordance with this Act be charged on—

Imposition of Value Added Tax

(a) every supply of goods and services made in Malawi;

(b) every importation of goods; and

(c) the supply of any imported service, other than exempt goods and services.

(2) Unless otherwise provided in this Act, Value Added Tax shall be charged on supply of goods and services where the supply is taxable supply and made by a taxable person in the course of his or her business.

(3) Value Added 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 such modifications as are necessary.

Persons liable
to pay Value
Added Tax

8. Except as otherwise provided in this Act, Value Added Tax shall be paid—

- (a) in the case of a taxable supply, by the taxable person making the supply;
- (b) in the case of imported goods, by the importer; and
- (c) in the case of imported services, by the receiver of the services.

Rate of Value
Added Tax
10 of 2008

9. Except as otherwise provided in this Act, the rate of Value Added Tax shall be 16.5 per cent, calculated on the value of the taxable supply of the goods, services or import.

PART III Taxable Person

Taxable
person

10.—(1) A taxable person is a person registered under section 11.

(2) The Commissioner General shall notify a taxable person when registered and shall issue a certificate of registration, in the prescribed form, which shall be exhibited at the principal place of business of the taxable person.

(3) The effective date of registration as a taxable person shall be such date as shall be specified in the certificate of registration issued by the Commissioner General.

Registration as
taxable person
15 of 2009
23 of 2011
20 of 2013
27 of 2018

11.—(1) A person is registrable as a taxable person-

- (a) if he or she is a person who makes taxable supply of goods or services or conducts a mining project and, whose business turnover is, or exceeds, K10,000,000 per annum; or
- (b) if he or she is a recipient of imported services whose value of imported services is, or exceed, K10,000,000 per annum.

(2) The Minister may, by order published in the *Gazette*, revise the threshold amount specified in subsection (1).

(3) For purposes of determining the threshold amount under subsection (1), separate businesses under the same ownership may be treated as owned by one person.

(4) Any person who qualifies as a taxable person, or has grounds to believe that he or she will qualify as a taxable person, shall apply on such form as shall be prescribed for registration by the Commissioner General.

(5) A person who is not registered, but who is liable to apply to be registered under this Act, is a taxable person from the beginning of the tax period immediately following the period in which the duty to apply for registration arose.

(6) An applicant shall make the application for registration under this Act within thirty days of becoming qualified and upon acquisition of an electronic fiscal device or having reason to believe that he or she will so qualify.

(7) The Commissioner General may by notice in writing notify any person that the person has within a tax period

23 of 2011
18 of 2012

specified in the notice made taxable supplies—

(a) in excess of the turnover figure; or

(b) below the turnover figure, specified in subsection (1), and is registrable as a taxable person or not registrable, and shall act accordingly by registering or cancelling the registration of a taxable person, as the case may be.

(8) Any national, regional, local or other authority or body which carries on any business activity which make it registrable as a taxable person shall apply for registration.

(9) A group of taxable persons may, with the approval of the Commissioner General be treated for the purposes of Value Added Tax as one designated taxable person:

Provided each member of the group undertakes to be jointly and severally liable for any contravention under this Act and regulations made under it.

(10) A taxable person whose business is structured into distinct divisions may apply to the Commissioner General for each division to be registered for Value Added Tax.

(11) Notwithstanding any provision of this section—

(a) any business with a turnover below the registrable threshold amount provided in subsection (1) may apply voluntarily to be registered by the Commissioner General; and

(b) the Commissioner General may by notice in writing notify the proprietor and register any class or category of businesses specified in the notice as registrable under this Act.

(12) The Commissioner General shall register a person who qualifies under subsection (11) as a taxable person unless the Commissioner General—

(a) is satisfied that the person has no fixed place of abode or business; or

(b) has reasonable ground to believe that the person—

(i) will not keep proper accounting records relating to any business activity carried on by that person; or

(ii) will not submit regular and reliable returns as required by or under this Act; or

(iii) is not a fit and proper person to be registered.

11A.—(1) Subject to such conditions as the Commissioner General may prescribe, Value Added Tax formalities or procedures may be carried out by use of information technology.

(2) For purposes of subsection (1), the Commissioner General may, by notice published in the *Gazette*, specify—

(a) the tax formalities or procedures; and

(b) the persons authorized to carry out such formalities or procedures.

11B.—(1) A person who wishes to be registered as a user of a Value Added Tax computerized system may apply, in writing, to the Commissioner General for computerized registration, and the Commissioner General may—

(a) grant the application, subject to such conditions as he

may deem necessary; or

(b) reject the application.

(2) A person shall not access, transmit or receive information from a Value Added Tax computerized system unless that person is a registered user of the system.

Cancellation of
registration
23 of 2011

11C. The Commissioner General may cancel the registration of a user of a Value Added Tax computerized system, or impose a penalty on the user, if the Commissioner General is satisfied that the user has—

(a) failed to comply with any condition of registration imposed by the Commissioner General under section 11B;

(b) failed to comply with, or has acted in contravention of, any condition under the Value Added Tax (Electronic Fiscal Devices) Regulations; or

(c) been convicted of an offence under this Act relating to improper access to, or interference with, a Value Added Tax computerized system.

Supply,
operation
and service of
electronic
fiscal devices
18 of 2012

11D.—(1) The Minister may, on the advice of the Authority, make regulations providing for the supply, operation and service of electronic fiscal devices.

(2) The Authority may, on application, issue a licence for the supply, operation and service of electronic fiscal devices.

(3) The Authority may issue any of the following types of electronic fiscal device licences—

(a) a Local Distributor's or Supplier's licence; or

(b) a Manufacturer's license.

(4) The Authority may only issue a single licence at a particular time.

(5) The Authority shall publish a list of approved electronic fiscal devices which may be supplied under any of the types of licences referred to in subsection (3).

Register and
particulars
of taxable
persons

12. The Commissioner General shall keep a register in the prescribed form in which shall be recorded the particulars of every taxable person.

Change in
business
11 of 2006

13.—(1) Every taxable person shall notify the Commissioner General in writing—

(a) if the business ceases to operate or is sold; or

(b) if there is a change in the location of the business; or

(c) if there is material change in the ownership of the business;

or

(d) of any change—

(i) in the name or address of that person; or

(ii) in circumstances which makes that person no longer qualified for registration as a taxable person; or

(iii) of a material nature in the business activities or in the nature of taxable supplies being made.

(2) Where a taxable person dies or becomes bankrupt or incapacitated, the Commissioner General may, from the date on which the taxable person died or became bankrupt or incapacitated treat as a taxable person any person carrying on

that business until some other person is registered in respect of the taxable supplies made or intended to be made by that taxable person in the course of his business, and the provisions of this Act shall apply to the person so treated as though he were a registered person; and any person carrying on such business shall inform the Commissioner General in writing of the fact and the date of the death or bankruptcy, or of the nature of the incapacity and the date on which it began, as the case may be.

(3) A notification under subsection (1) shall be made within thirty days of the cessation, sale, change of location, change in the business, or ownership or any other change, as the case may be.

14.—(1) The registration of a taxable person shall be cancelled by the Commissioner General where the Commissioner General is satisfied that the registered person no longer exists.

Cancellation of registration

(2) A taxable person shall, within thirty days of ceasing to carry on business in relation to which a registration is made, apply in writing for the cancellation of the registration.

(3) Any cancellation under this section shall take effect from the end of the tax period in which the registration is cancelled.

(4) A taxable person whose registration has been cancelled under this section shall be regarded as having made a taxable supply of all goods on hand (including capital goods) and the person shall be liable for output tax, at the time the registration is cancelled on all goods in respect of which he or she received input tax credit under section 30; the output tax payable being based on the open market value of the goods at the time his or her registration was cancelled.

(5) The obligations and liabilities of a person under this Act and regulations made under this Act, including the submission of returns required under section 34, in respect of anything done or omitted to be done by that person while a taxable person shall not be affected by cancellation of the registration of that person.

(6) The Commissioner General shall serve a notice in writing on a person of the decision to cancel or refuse to cancel any registration under this Part within thirty days of the making of the decision or of receipt of the application, as the case may be.

PART IIIA Withholding Agents

14A. - (1) The Commissioner General may, appoint a person, being-

Withholding Agent
27 of 2018

- (a) a purchaser of taxable goods or services; or
- (b) responsible for the payment for the taxable goods or services,

to be a withholding agent for Value Added Tax for the purposes of this section:

Provided that the Commissioner General may, at any time, revoke an appointment under this subsection if he deems it

appropriate to do so for the protection of revenue.

(2) The Commissioner General shall register the person appointed under subsection (1) as a withholding agent for Value Added Tax.

(3) A person appointed and registered under subsections (1) and (2), respectively, shall, on purchasing or making payment for taxable goods or services, withhold the Value Added Tax payable thereon and remit to the Commissioner General as specified under this Act.

(4) A person withholding Value Added Tax under subsection (3) shall issue a Withholding Value Added Tax Certificate, in a form as prescribed in the regulations, to the supplier at the time of making the payment for the supplies.

(5) For the avoidance of doubt, the withholding of Value Added Tax under subsection (3) shall not relieve the supplier of taxable goods or services of the obligation to account for Value Added Tax in accordance with this Act and the regulations.

(6) For purposes of this section, Section 11 of this Act shall not apply.

(7) The Minister may, on the advice of the Authority, make regulations providing for the appointment, registration and administration of withholding agents.

PART IV

Supply of Goods and Services

Supply of goods

15. Subject to this Act and regulations made under this Act, a supply of goods means any arrangement under which the owner of the goods parts with or will part with possession of the goods, including provision of goods by sale, barter, lease, transfer, exchange, gift or similar disposition, and appropriation to own use.

Supply of services

16. Subject to this Act and regulations made under this Act, supply of services means any supply which is not a supply of goods or money and includes—

(a) the performance of services for another person;

(b) the making available of any facility or advantage; or

(c) tolerating any situation or refraining from the doing of any activity.

(2) A supply of services made by an employee to his or her employer by reason of the employment is not a supply made by the employee.

Mixed supplies

17.—(1) A supply of services incidental to the supply of goods is part of the supply of goods.

(2) A supply of goods incidental to the supply of services is part of the supply of services.

(3) A supply of services incidental to the import of goods is part of the import of the goods.

18. A supply of goods or services made by a person as agent for another person who is the principal is a supply by the principal:

Supply by agent

Provided that where a supply of goods or services is made by an agent, on behalf of a principal who is resident outside Malawi, the supply of goods for services shall be deemed to be made by the agent.

PART V
Taxable Supplies

19.—(1) Except as otherwise provided in this Act or regulations made under this Act, a taxable supply is a supply of goods or services made by a taxable person for consideration in the course of, or as apart of his or her business activities and includes—

Taxable supply
10 of 2008

- (a) the processing of data or supply of information or similar service;
- (b) the supply of staff;
- (c) the making of gifts or loans of goods;
- (d) the leasing or letting of goods on hire;
- (e) the appropriation of goods for personal use or consumption by the taxable person or by any other person;
- (f) the sale, transfer, assignment, or licensing of patents, copyrights, trade marks, computer software, and other proprietary information; and
- (g) exports.

(2) A supply is made as part of the business activities of a person if the supply is made by him or her as part of or incidental to any economic activity he or she conducts.

(3) Where a person produces goods by processing or treating the goods of another person, the supply of the goods shall be regarded as supply of goods.

(4) The supply of any form of power, heat, refrigeration or ventilation shall be regarded as supply of goods.

(5) A supply is made for consideration, if the supplier, directly or indirectly, receives payment wholly or partly in money or in kind from the person supplied or any other person.

19A. A taxable person in relation to a mining project makes a taxable supply –

(a) when any goods or services are used for purposes other than the mining project or are supplied to any other person, and that taxable supply is taken to be for consideration equal to the value of the goods and services so used or supplied:

(b) of all the assets of the mining project when no mining permit continues to apply to the project, and the person remains a taxable person in relation to that mining project for the purposes of this Act even though the mining project may otherwise cease to exist and the taxable supply is taken to be, for consideration, equal to the value of all the assets of the mining project so disposed of; or

(c) if control or effective control of the conduct of the taxpayer's mining project, or of the taxpayer, or of the benefit of the conduct of the taxpayer's mining project changes, whether by a transaction to which the taxpayer is a party or by some other transaction and the taxable supply is taken to be of the results of reconnaissance and exploration in relation to the mining project and the consideration for that supply is taken to be the value of the results of reconnaissance and exploration in relation to the project.

Taxable person
in mining
project
27 of 2018

Exempt supply <i>First Schedule</i>	20. The supply of the goods and services specified in the First Schedule is exempt supply and not subject to Value Added Tax.
Zero-rated supply <i>Second Schedule</i>	21. Output tax shall be at zero on the supply of the goods and services specified in the Second Schedule.
Exempt import <i>First Schedule</i>	22. An import of goods is an exempt import if the goods are exempted under the First Schedule and classified in conformity with the Harmonized Commodity Description and Coding System also known as “the Harmonized System”.
Relief supply <i>Third Schedule</i>	23. There shall be relief from Value Added Tax on taxable supply to the individuals, organizations and businesses specified in the Third Schedule.

PART VI
Time and Place of Supply

Time of supply	<p>24.—(1) Except otherwise provided in this Act or regulations made under this Act, a supply of goods or services occurs—</p> <p>(a) where the goods or services are appropriated to own use, on the date on which the goods or services are first applied to own use;</p> <p>(b) where the goods or services are supplied by way of gift, on the date on which ownership in the goods passes or the performance of the services is completed, as the case may be;</p> <p>(c) in any other case, the earliest of the date on which—</p> <p style="padding-left: 20px;">(i) the goods are removed from the premises, or from other premises of the taxable person where the goods are under the control of the taxable person; or</p> <p style="padding-left: 20px;">(ii) the goods are made available to the person to whom they are supplied; or</p> <p style="padding-left: 20px;">(iii) the services are supplied or rendered; or</p> <p style="padding-left: 20px;">(iv) payment is received for all or part of the supply; or</p> <p style="padding-left: 20px;">(v) a tax invoice is issued.</p> <p>(2) Where supplies are made on a continuous basis or by metered supplies, the time of supply shall be the determination of the supply or the first meter reading following the introduction of Value Added Tax and subsequently at the time of each determination or meter reading.</p> <p>(3) The supply of goods under a hire purchase agreement or finance lease occurs on the date the goods are made available under the hire purchase agreement or lease finance, as the case may be.</p> <p>(4) Where—</p> <p style="padding-left: 20px;">(a) goods are supplied under a rental agreement; or</p> <p style="padding-left: 20px;">(b) goods or services are supplied under an agreement or written law which provides for periodic payment, the goods or services shall be treated as successively supplied for successive parts of the period of the agreement or as determined by that law, and each successive supply occurs on the earlier of the date on which payment is due or received.</p> <p>(5) For the purposes of this section, where two or more payments are made or are to be made for a supply of goods or services, other than a supply to which subsection (3) or (4) applies, each payment shall be regarded as made for a separate supply to the extent of the amount of the payment on the earlier of the date the payment is due or received.</p>
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(6) Where the supply of goods or services is ancillary to another supply, the time of supply of the ancillary supply shall be deemed to be the same as the time of supply for the main goods or services.

25.—(1) Subject to section 11A, every taxable person shall, on making taxable supply of goods or services, issue to the customer or the person supplied, an electronic fiscal device generated tax invoice or a tax invoice.

Issue of an
electronic
fiscal device
generated tax
invoice or a
tax invoice
23 of 2011
18 of 2012
10 of 2015

(2) Every taxable person shall, upon issuing of the electronic fiscal device generated tax invoice, retain a copy of the electronic fiscal device generated tax invoice in a serial number order.

(3) Notwithstanding the provisions of subsection (1), the Commissioner General may—

(a) on application by a registered person; and

(b) if he is satisfied that owing to the nature of a business, it is impracticable for the registered person to issue an electronic fiscal device generated tax invoice,

allow the registered person to account for Value Added Tax in such other manner as the Commissioner General may authorize.

(4) Notwithstanding subsection (1), the Commissioner General may, on application in writing by a taxable person, allow the person to issue an invoice other than a tax invoice where, owing to the nature of the business or malfunctioning of the electronic fiscal device as may be certified by the approved technician, or loss of the device, it is impracticable for the person to issue a tax invoice.

10 of 2015

26.—(1) The place of supply of goods shall be the place from which the goods are supplied.

Place of
supply

(2) Unless otherwise provided in regulations made under this Act, the place of supply of a service shall be the place of business of the supplier or the place from which the service is supplied or rendered.

PART VII

Taxable Value

27.—(1) The value of a taxable supply is—

Value of
taxable supply

(a) where the supply is for money consideration, the amount of the consideration with the addition of all duties and taxes but excluding Value Added Tax;

(b) where the supply is not for money consideration or is only partly for money consideration, the open market value of similar supply excluding Value Added Tax.

(2) For the purposes of subsection (1) “similar supply” in relation to a taxable supply, means a supply that is identical to or closely or substantially resembles the taxable supply, having regard to the characteristics, quality, quantity supplied, functional component, reputation of, and materials comprising the goods or services which are the subject of the taxable supply.

(3) For the purposes of this Act, the open market value of supply of goods or services is the value determined under subsection (1) (a), if the supplier, purchaser or any other person concerned in the transaction were completely independent of each other and did not in any way influence the transaction.

(4) Where the open market value of a taxable supply cannot be determined under subsection (3), the open market value of the supply shall be the amount that, having regard to all the circumstances of the supply, in the opinion of the Commissioner General, is the fair market value of the supply.

(5) The taxable value of—

(a) a taxable supply of goods under a hire purchase agreement or finance lease;

(b) a taxable supply of goods by way of an application to own use;

(c) a taxable supply for reduced consideration; or

(d) a taxable supply described in section 14 (4), is the open market value of the goods or services at the time the supply is made, excluding, in the case of a hire purchase agreement or finance lease, any interest or finance charges.

(6) Where a taxable supply is made without a separate amount of the consideration being identified as a payment of Value Added Tax, the taxable value of that supply shall be the amount of the consideration paid excluding Value Added Tax.

Taxable value
for determining
Value Added
Tax on
imported goods
Cap. 42:01

28. The value for determining the tax chargeable on taxable imports shall be the import value calculated in accordance with the Customs and Excise Act with the addition of all import duties and taxes, but excluding Value Added Tax.

Adjustments

29.—(1) This section shall apply where, in relation to a taxable supply by a taxable person—

(a) the supply is cancelled; or

(b) the nature of the supply has been fundamentally varied or altered; or

(c) the previously agreed consideration for the supply has been altered by agreement with the recipient of the supply, whether due to an offer of a discount or for any other reason; or

(d) the goods or services or part thereof have been returned to the supplier.

(2) Where the taxable person making the supply—

(a) in giving a tax invoice in relation to the supply, has shown an incorrect amount on the invoice as Value Added Tax charged on the supply because of the occurrence of any one or more of the events mentioned in subsection (1); or

(b) has filed a return for the period in which the supply occurred and has accounted for an incorrect amount of output tax on that supply because of the occurrence of any one or more of the events mentioned in subsection (1), the taxable person making the supply shall make an adjustment in accordance with subsections (3) and (4).

(3) Where the output tax properly chargeable in respect of the supply exceeds the output tax actually accounted for by the taxable person making the supply, the amount of the excess shall be regarded as Value Added Tax charged by the person in relation to a taxable supply made in the tax period in which the events referred to in subsections (1) and (2) occurred.

(4) Subject to subsection (6), where the output tax actually accounted for exceeds the output tax properly chargeable in relation to that supply, the taxable person making the supply shall be allowed a credit for the amount of the excess in the tax period in which the events referred to in subsections (1) and (2) occurred.

(5) The credit allowed under subsection (4) shall for the purpose of this Act be treated as a reduction of output tax.

(6) No credit shall be allowed under subsection (4) where the supply has been made to a person who is not a taxable person, unless the amount of the excess Value Added Tax has been repaid by the taxable person to the recipient, whether in cash or as a credit against any amount owed to the taxable person by the recipient.

PART VIII

Deduction of Input Tax and Refunds

30.—(1) At the end of the tax period, a taxable person may deduct from the output tax deductible due for the period, Value Added Tax on goods and services purchased in Malawi or goods and service imported by him or her used wholly, exclusively and necessarily in course of his or her business;

Credit for deductible input tax

Provided that –

27 of 2018

(a) the supply is a taxable supply;

(b) in respect of purchases made in Malawi, the taxable person is in possession of a tax invoice issued in accordance with section 25;

(c) in respect of importation or removal of goods from bonded warehouse, the taxable person is in possession of the relevant customs entries indicating that Value Added Tax was paid; and

(d) a taxable person is in possession of a withholding Value Added Tax Certificate issued under section 14A”

(2) Value Added Tax deducted from the output tax under subsection (1) shall be known as input tax.

(3) No input tax deduction shall be made on purchases or imports in respect of exempt supplies by the taxable person.

(4) No input tax deduction shall be taken more than once nor shall it be taken after the expiration of a period of twelve months from the date the deduction accrued.

(5) A taxable person does not qualify for input tax deduction in respect of taxable supply or import of motor vehicles or motor vehicle spare parts unless the taxable person is in the business of dealing in or hiring of motor vehicles or selling motor vehicle spare parts; but motor vehicles and motor vehicle spare parts used wholly, exclusively and necessarily for the business shall qualify for input tax deduction.

(6) A taxable person does not qualify for input tax deduction in respect of taxable supply in respect of entertainment, including restaurant, meals and hotel expenses, unless the taxable person is in the business of providing entertainment.

(7) Where a taxable supply to, or an import of goods by, a taxable person is partly for business use and partly for personal or other use, the amount of input tax allowed as a credit shall be restricted to that part of the supply that relates to the business use.

(8) If goods for which a credit has been allowed under this Act

cease to be applied to taxable transactions before the end of their life, the goods shall be treated as sold for the open market value at the time of the cessation.

(9) In the case of a taxable person who regularly resells used goods purchased from consumers, the Commissioner General may determine the procedures for allowing such person input tax credit.

(10) The Minister may, by Order published in the *Gazette*, prescribe other classes, types or description of goods and services on which input tax is non-deductible.

Refund or credit of
excess tax paid
11 of 2006

31.—(1) Where the amount of input tax which is deductible exceeds the amount of output tax due in respect of the accounting period, the excess amount shall be credited by the Commissioner General to the taxable person:

Provided that—

(a) in the case of exports, the Commissioner General may refund the excess credit to the taxable person where his or her exports exceed 70 per cent of the total supplies within the accounting period; and

(b) a refund shall be made by the Commissioner General to the taxable person where the excess credit remains outstanding for a continuous period of three months or more.

(2) A taxable person who is registered from a specified effective date and who has in stock on the effective date goods on which Value Added Tax has been paid may claim credit or refund of Value Added Tax in such form as shall be prescribed:

Provided that—

(a) the supply or import occurred not more than four months prior to the date of his or her registration; or

(b) in the case of capital goods, the goods have been held for a period not exceeding six months from the date of his or her registration.

(3) For the purpose of this section, a completed refund or credit claim form, in the prescribed form, together with the relevant tax invoices or, in the case of imported goods the relevant customs document for Value Added Tax paid, shall be submitted to the Commissioner General by the taxable person.

(4) Where the Commissioner General subsequently rejects the claim under subsection (2), any Value Added Tax previously treated as a credit or a refund shall be recovered by the Commissioner General in accordance with this Act.

(5) Where a taxable person has issued a tax invoice and has paid the appropriate tax for a supply, and—

(a) the purchaser becomes insolvent; or

(b) the purchaser fails to pay all or part of the taxable amount of the supply in addition to the tax imposed and the debt is a bad debt proved to be such to the satisfaction of the Commissioner General,

the taxable person shall be allowed to take as credit the portion of the tax paid or imposed on the supply which is attributable to the debt that becomes irrecoverable.

(6) Where a debt previously written off as a bad debt and for which credit has been given is later recovered, the tax due on

amount recovered shall be paid to the Commissioner General in the tax period in which the recovery has been made.

32.—(1) A taxable person who makes both taxable and exempt supplies may deduct the input tax on the taxable purchases and imports which are directly attributed only to the taxable supplies made.

(2) Where a taxable person has made both taxable and exempt supplies, but cannot directly attribute the input tax to the taxable and exempt supplies under subsection (1), he or she may deduct as input tax an amount that bears the same ratio as the taxable supplies bear to the total supplies, applying the apportionment formula specified in the Fourth Schedule.

*Fourth
Schedule*

(3) Where the fraction in subsections (1) and (2) is less than five per cent, the taxable person may not take credit for any input tax for the tax period.

(4) Where, in applying the formula referred to in subsection (2), the fraction under subsections (1) and (2) is less than five per cent, the taxable person may not take credit or any input tax for the tax period.

(5) Where in applying the formula under subsections (1) and (2) the fraction is more than 95 per cent, the taxable person may take credit for all input tax for the tax period.

(6) The Commissioner General may approve or direct alternative methods of apportioning input tax where he or she considers that the methods described in this section will result in an unreasonable calculation of the input tax which may be deducted.

(7) [*Deleted by 18 of 2012*].

33.—(1) Subject to subsection (2), where a taxable person is entitled to a refund of Value Added Tax under this Act, the refund shall be paid by the Commissioner General on an application by the taxable person within thirty days of receipt of the application.

*Time for
payment of
refund*

(2) No refund shall be made pursuant to subsection (1) to a taxable person unless—

(a) all previous returns by the taxable person have been submitted by the due dates and no Value Added Tax for any period is outstanding; and

(b) Value Added Tax, penalties and interest from the previous tax period have been paid by the taxable person by the due dates.

(3) Where the conditions specified in subsection (2) have not been fulfilled, the Commissioner General shall reject the claim for refund and shall inform the applicant accordingly in writing within thirty days of receipt of the application.

PART IX

Tax Returns, Records and Assessment

34.—(1) Unless otherwise directed in writing by the Commissioner General, a taxable person or withholding agent shall account for Value Added Tax each calendar month on a return.

(2) The return shall be in the prescribed form and shall state—

- (a) the amount of Value Added Tax payable for the tax period;
- (b) the amount of input tax credit or refund claimed; and
- (c) such other matters as may be prescribed.

(3) In addition to any return required under subsection (2), the Commissioner General may require any person, whether a taxable person or not, to submit, whether on that person's own behalf or as agent or trustee of another person, to the Commissioner General such further or other return in the prescribed form as and when required by the Commissioner General for the purposes of this Act.

(4) A return shall be submitted to the Commissioner General not later than the twenty-fifth day of the month immediately following the month to which the return relates.

(5) Upon application in writing by a taxable person, the Commissioner General may, where good cause is shown by the taxable person, extend the period in which a return is to be submitted.

(6) The payment of Value Added Tax due in the tax period shall be made to the Commissioner General not later than the twenty-fifth day of the month immediately following the tax period to which the return relates.

(7) A taxable person directed to make his or her return other than in accordance with subsection (4) shall be informed of the date by which the return and payment shall be made to the Commissioner General.

27 of 2018

(8) A taxable person or withholding agent who, without lawful excuse or justification, fails to submit to the Commissioner General his or her return on the due date shall be liable to a penalty of K300,000 for companies and K75,000 for individuals for the first month and a further penalty of K50,000 for companies and K20,000 for individuals for each month or part thereof during which the failure continues.

30 of 2010

(9) Any refer to drawer cheque for payment of Value Added Tax shall attract a penalty of thirty per cent of the value of the cheque, regardless of the reason for the bank dishonoring the cheque.

35.—(1) Every taxable person shall—

(a) keep such records and books of accounts as the Minister may prescribe or as the Commissioner General may direct; and

(b) produce such records and books of accounts at such place and time as the Commissioner General may by general notice publish in the *Gazette*, any newspaper in general circulation, or in writing to taxable person, require.

(2) In respect of the records to be kept under subsection (1), a taxable person shall not destroy any book, document, account or record which is less than six years old without the written permission of the Commissioner General.

(3) Any permission granted by the Commissioner General under subsection (2) shall specify the book, document, account or records to which the permission relates.

Records to be kept for purposes of Value Added Tax

36.—(1) Where a taxable person fails to submit a tax return by

Assessment of Value Added Tax and correction of return
6 of 2007

the date required under section 34 or the Commissioner General has grounds to believe that a return is incorrect or that any due Value Added Tax has not been paid, the Commissioner General—

(a) may based on any information available to him or her assess Value Added Tax due; and

(b) shall notify his or her assessment in writing to the taxable person stating that Value Added Tax shall be paid within twenty-one days of the date, of the notice:

Provided that the Commissioner General shall not raise an assessment after a period of six years after the Value Added Tax was due and payable unless fraud is a material element of the assessment.

(2) Where a taxable person notified of Value Added Tax assessment under subsection (1) provides information which the Commissioner General accepts as justifying the withdrawal or amendment of the assessment, the Commissioner General may withdraw or amend the assessment.

(3) Any Value Added Tax payable pursuant to an amended assessment under subsection (2) shall be paid within fourteen days of the date of the amendment.

(4) A taxable person who is not satisfied with the return submitted by him or her may apply in writing to the Commissioner General to make any addition or alteration to the return; and any such application shall—

(a) state in detail the grounds, supported by documentary evidence, upon which the application is made; and

(b) be submitted not more than three months after the submission of the original return.

PART X

Recovery of Due Value Added Tax, Interest and Other Liabilities

Recovery of
Value Added
Tax due

37.—(1) Any Value Added Tax due under this Act, and any penalty and interest which remains unpaid after the due date under this Act, or under any other written law in respect of Value Added Tax, may be recovered by the Commissioner General as a debt.

(2) Any amount shown on an invoice as Value Added Tax on a supply of goods or services shall be recoverable as Value Added Tax due from the person issuing the invoice, whether or not—

(a) the invoice is a tax invoice issued under this Act or in accordance with regulations made under this Act; or

(b) an amount of Value Added Tax is chargeable on the supply; or

(c) the person issuing the invoice is a taxable person.

(3) Where any body, corporate or unincorporated, liable for the payment of Value Added Tax, or of any penalties or interest

arising under this Act, defaults in payment, in whole or in part, after written demand, the directors, partners, and the person in control of the body, shall be jointly and severally liable to pay the sum due.

(4) Where a withholding agent under this Act fails to withhold Value Added Tax, he shall himself be personally liable to pay to the Commissioner General the amount of the Value Added Tax that ought to have been withheld.

Manner of
Paying Value
Added Tax
27 of 2018

37A.—(1) A taxable person or any other person shall pay any tax chargeable by the due date as provided in this Act-

(a) at any bank approved for this purpose by the Commissioner General;

(b) at any tax office, or

(c) in any other manner as the Commissioner General may prescribe.

(2) Where the person pays tax at a bank in accordance with subsection (1), the person shall notify the tax office where the person is registered as to the payment.

(3) The person shall pay tax in one of the following forms-

(a) if the payment is made at a tax office, in cash or bank certified cheque made payable to the Commissioner General; or

(b) if the payment is made through a bank, in cash, by bank certified cheque payable to the Commissioner General or by direct account transfer into an approved bank account for the Authority.

(4) Where the person purports to have made a payment towards a tax liability that is ineffective the Commissioner General may use all available powers to recover the tax.

Payment of
interest on
outstanding
Value Added
Tax
10 of 2008
10 of 2015
25 of 2017
27 of 2018

38.—(1) A taxable person or withholding agent who fails to pay any Value Added Tax payable by the due date shall be liable to pay to the Commissioner General—

(a) an additional sum of twenty *per centum* of the amount of tax which he has failed to pay in the first month or part thereof; and

(b) a further interest charged on the outstanding amount of tax at the prevailing bank lending rate plus five per cent per annum for each month or part thereof during which the tax remains unpaid,

and such additional sums together with the amount of the tax shall be summarily recovered by Commissioner General in his own name:

Provided that the Commissioner General may reduce or waive the amount of such additional sums if a satisfactory explanation for the delay is given.

(2) Any interest charged under this section and any penalty payable that remains unpaid shall be recoverable as a civil debt by the Commissioner General.

39. Where any Value Added Tax, penalty or interest is due and payable from a taxable person, the Commissioner General may order—

(a) any individual or business from whom any money is due

Garnishment
10 of 2008
23 of 2011

or is accruing or may become due to the taxable person; or

(b) any individual or business who holds or who may subsequently hold money for or on account of the taxable person, to pay the Commissioner General that money, or so much of it as is sufficient to discharge the Value Added Tax, interest or penalty due and payable;

(c) the Commissioner General shall, in respect of an individual or a business that fails to comply with paragraph (b), have the same remedies as he has against the property of any other person who is liable to pay Value Added Tax;

23 of 2011

(d) for purposes of paragraphs (b) and (c), the Commissioner General may require any person to give him information in respect of any money, funds, or other assets which may be held by that person for, or on account of, the taxable person.

23 of 2011

40.—(1) The Commissioner General may in writing authorize the levying of distress in accordance with this section.

Distraint for liability

(2) Where any Value Added Tax, penalty or interest due under this Act remains unpaid after the time by which this Act requires it to be paid, the Commissioner General may in writing and with notice to the taxable person authorize the levying of distress—

(a) upon the goods, chattels and effects of the taxable person; and

(b) upon—

(i) all assets, property, building, factory, machinery, plant, tools, means of transport and communication, accessories, animals, and all goods used in Malawi in the manufacture, production, sale or distribution of any taxable supplies;

(ii) any commodity or items found in any premises or any land owned by or in use or in possession of the taxable person or of any person on his or her behalf or in trust for him or her.

Fifth Schedule

(3) The written authority of the Commissioner General to distraint under this Act shall be a warrant as in Form A set out in the Fifth Schedule, and shall be the authority to levy by distress the amount of any Value Added Tax, penalty or interest due.

(4) The distress warrant so taken shall be executed on only the assets of the taxable person and the Authority shall take possession of the properties specified in subsection (2) exclusive of all liabilities.

(5) For the purpose of levying the distress, any person authorized in writing by the Commissioner General may execute the warrant of distress on the goods and assets of the taxable person specified under subsection (2) wherever the property may be and where necessary break open any building or place in the day-time for the purpose.

(6) Any authorized person who executes a warrant of distress under this section may call to his or her assistance any police officer, and it shall be the duty of the police officer when required to assist in the execution of the warrant of distress and in levying the distress to do so.

(7) The distress taken under this section may at the cost of the taxable person, be kept for fourteen days, and if the amount due

in respect of Value Added Tax, interest or penalty and the cost and charges of and incidental to the distress are not then paid, the property distrained may be sold.

(8) There shall be paid out of the proceeds of the sale, under subsection (7), first the costs or charges of the distress and incidental to the sale and keeping of the distress, next the amount due in respect of Value Added Tax, interest and penalty, and the residue, if any, shall be paid to the owner of the property; and any payment to the owner shall be made subject to the prior interest of the Authority which shall have precedence over all other interests.

(9) Where any property seized in the execution of the distress warrant under this section is under a mortgage, charged by way of security for any debt, or is in any way encumbered, the sale of the property shall be made subject to the prior interest of the Authority which shall have precedence over all other interests.

Recovery in respect of a person under liquidation

41.—(1) Where any tax, penalty or interest is due from a taxable or other person who is subject to liquidation or bankruptcy proceedings, the liquidator, receiver, or other person responsible for winding up the affairs of the debtor shall not distribute any assets until full payment has been made of Value Added Tax, penalty or interest due under this Act.

Cap. 46:03

(2) For the purpose of this section, the Commissioner General shall be deemed to be a creditor for purposes of the Companies Act.

Payment of Value Added Tax into Consolidated Fund

42.—(1) All Value Added Tax, interest and penalties collected under this Act shall be paid into the Consolidated Fund.

(2) Notwithstanding subsection (1), the Minister may set aside a percentage of Value Added Tax, interest and penalties collected under this Act in an account designated as "Value Added Tax Refund Account" out of which refunds due under this Act proven overpayment of Value Added Tax, payment made by non-taxable persons and payments made on non taxable supply may be refunded.

PART XI

Appeals

43.—(1) A person who is dissatisfied with any decision of an officer of the Authority other than the Commissioner General, may lodge an appeal with the Commissioner General within thirty days after notice of the decision has been served on him or her or upon his or her becoming aware of the decision.

(2) The Commissioner General may for good cause, accept an appeal lodged out of the time stipulated under subsection (1).

(3) Every appeal under subsection (1) shall be in writing, and shall specify in detail the grounds, supported by relevant documents, upon which it is made.

(4) The Commissioner General shall make a decision on an appeal within thirty days after receipt of the appeal and, where necessary, after interviewing the objector.

44.—(1) A person dissatisfied with the decision of the Commissioner General may lodge an appeal with any court of a

Appeal to decision of an officer other than the Commissioner General
10 of 2008

Appeal to court

Resident Magistrate.

(2) An appeal under this section shall be lodged by the aggrieved person within thirty days after being notified of the decision of the Commissioner General.

(3) No appeal lodged with the court shall be heard unless all returns due under this Act have been submitted to the Commissioner General and all Value Added Tax assessed or due has been paid:

Provided that the court may, for good cause, waive the requirement to pay all or part of the Value Added Tax due before hearing the appeal.

(4) Where, after hearing the appeal the appellant is found to be entitled to any refund of Value Added Tax, interest shall be paid on the refund at the prevailing bank rate from the date of the judgment.

PART XII

Offences and Penalties

45.—(1) A person who fails—

(a) to apply for registration as required under section 11; or

(b) to notify the Commissioner General of a change in his business as required under section 13; or

(c) to apply for cancellation of registration as required under section 14, commits an offence.

(2) Where the failure under subsection (1)—

(a) is deliberate or reckless, the person shall be liable to a penalty of K100,000; and

(b) for any other reason, the person shall be liable to a penalty of K20,000.

Failure to register
30 of 2010

30 of 2010

30 of 2010

Unlawful use of
Value Added Tax
computerized
system
23 of 2011

45A.—(1) A person who—

(a) knowingly or recklessly and without lawful authority, gains access to or attempts to gain access to any Value Added Tax computerized system; or

(b) having lawful access to any Value Added Tax computerized system, knowingly uses or discloses information obtained from such system for a purpose that is not authorized; or

(c) knowing that he is not authorized to do so, receives information obtained from any Value Added tax computerized system, and uses, discloses, publishes, or otherwise disseminates such information,

commits an offence and shall be liable on conviction to—

(i) in the case of a natural person, a fine of K500,000 and imprisonment for two years; and

(ii) in the case of a body corporate, a fine of K1,000,000 and imprisonment for two years on the part of directors of such a body corporate.

Falsification,
damage or
impairment
of record or
information
23 of 2011

45B. Any person who—

(a) falsifies any record or information stored in any Value Added Tax computerized system;

(b) damages or impairs any Value Added Tax computerized system; or

(c) damages or impairs any duplicate tape, disc or other

medium on which information obtained from a Value Added Tax computerized system is held or stored, otherwise than with the permission of the Commissioner General,

commits an offence and shall be liable on conviction to imprisonment for ten years.

Failure to issue a tax invoice or Withholding Value Added Tax Certificate
30 of 2010
23 of 2011
18 of 2012
10 of 2015
27 of 2018

46. A person who fails to issue a tax invoice as required under section 25 for goods supplied or services rendered commits an offence and shall be liable—

(a) to a penalty imposed by the Commissioner General of ten times the value of Value Added Tax invoiced in the transaction or K500,000, whichever is greater; or

(b) upon conviction, to a fine of twenty times the value of the Value Added Tax invoiced in the transaction or K1,000,000, whichever is the greater, and to imprisonment for two years.

(2) A withholding agent who fails to issue a Withholding Value Added Tax Certificate as required under section 14A(5) shall be liable to a penalty of K500,000.

Failure to use electronic fiscal device
10 of 2015

46A. A user of an electronic fiscal device or any person who is required to use an electronic fiscal device, who fails to do so without approval, commits an offence, and shall—

(a) be liable to a penalty imposed by the Commissioner General of K500,000; or

(b) upon conviction, be liable to a fine of K1,000,000 and to imprisonment for two years.

Fraudulent use of electronic fiscal device
10 of 2015

46B. A person who, with intent to defraud, takes steps to use electronic fiscal device in a manner that is aimed at misleading, deceiving, or manipulating information sent to a system or the Commissioner General, commits an offence and shall, in addition to payment of tax which is payable—

(a) be liable to a penalty imposed by the Commissioner General of twenty times the value of Value Added Tax or K5,000,000, whichever is greater; or

(b) upon conviction, be liable to a fine of K10,000,000 and to imprisonment for five years.

46C. A person who tampers with or causes electronic fiscal device to perform improperly, commits an offence and shall—

(a) be liable to a penalty imposed by the Commissioner General of twenty times the Value of Value Added Tax or K5,000,000 whichever is greater; or

(b) upon conviction, be liable to a fine of K10,000,000 and to imprisonment for five years.

Tampering with electronic fiscal device and software
10 of 2015

46D. A person who violates any obligation as a user or local supplier under this Act or the Value Added Tax (Electronic Fiscal Devices) Regulations, commits an offence and shall be liable to a penalty imposed by the Commissioner General of K500,000.

Failure to comply with any obligation as a user or supplier

46E.—(1) A person who, before or after purchasing goods or services, connives not to demand and retain a fiscal receipt or fails to report a refusal by a user to issue a fiscal receipt as required under this Act or the Value Added Tax (Electronic Fiscal Devices) Regulations, commits an offence and shall be liable to a penalty imposed by the Commissioner General, of three times the tax payable.

Failure to demand or keep a fiscal receipt
10 of 2015

(2) A person who, after selling goods or services, fails to issue

and retain a duplicate fiscal receipt or fiscal invoice or refuses to issue a fiscal receipt or invoice upon demand as required by this Act or the Value Added Tax (Electronic Fiscal Devices) Regulations, commits an offence and shall—

(a) be liable to a penalty imposed by the Commissioner General of K500,000; or

(b) upon conviction, be liable to a fine of K1,000,000 and to imprisonment for two years.

46F. A person who commits an offence under this Act or the Value Added Tax (Electronic Fiscal Devices) Regulations, for which no specific penalty is provided shall—

General
offence
10 of 2015

(a) be liable to a penalty imposed by the Commissioner General, of K500,000; or

(b) upon conviction, be liable to a fine of K1,000,000 and to imprisonment for three years.

47.—(1) A person who in any matter relating to Value Added Tax—

False or
misleading
statement

(a) makes a statement to an officer of the Authority which is false or misleading in any material particular; or

(b) omits from a statement made to the officer of the Authority any matter or thing without which the statement is misleading in any material particular, commits an offence.

(2) Where a statement or omission under subsection (1)—

(a) was made knowingly or recklessly, the person shall be liable on conviction to a fine of K100,000 and to imprisonment for five years; and

(b) in any other case, the person shall be liable on conviction to a fine of K20,000 and, to imprisonment for twelve months.

(3) For the purposes of this section a statement made to an officer of the Authority means a statement made in writing, orally or in any other form to the officer acting in the performance of his or her duties under this Act and regulations made thereunder and includes statements made—

(a) in an application, certificate, declaration, notification, return, objection or other document made, prepared, given, filed or furnished under this Act and regulations made thereunder; or

(b) in information required to be furnished under this Act and regulations made thereunder; or

(c) in answers to a question asked by an officer of the Authority.

Falsification
and alteration
of documents

48.—(1) Any person who—

(a) forges, falsifies or willfully uses a forged or falsified certificate or other document required by or under this Act, or by or under the directions of the Commissioner General or any instrument used in the transaction of any business or matter relating to Value Added Tax; or

(b) alters any document or instrument relating to Value Added Tax after it has been officially issued, or forges the seal, signature, initials or, other mark of or used by any officer for the verification of any document or instrument or for the security of the Value Added Tax relating to any other sum payable under this

Act; or

(c) on any document or instrument required for the purposes of this Act, forges or imitates the seal, signature, initials or other mark of or made use of by any other person whatsoever, whether with or without the consent of that person,

commits an offence and shall be liable on conviction to a fine of K200,000 and to imprisonment for ten years; and any goods involved in the commission of the offence shall be forfeited to the Government.

Evasion of Value
Added Tax
payment
10 of 2015

49.—(1) A person who is knowingly concerned in, or takes steps with a view to fraudulently evade Value Added Tax payable by him or her or any other person, commits an offence and shall, on conviction, be liable to a fine of not less than twenty times but not more than thirty times the amount of Value Added Tax evaded or MK5,000,000, whichever is the greatest and to imprisonment for five years.

10 of 2015

(2) A person who acquires possession of or deals with any goods, or accepts the supply of any goods or services having reason to believe that Value Added Tax on the supply of the goods or services has not been, or will not be paid or that Value Added Tax has been, or will be, falsely reclaimed, commits an offence and is liable on conviction to a fine of not less than twenty times but not exceeding thirty times, the amount of Value Added Tax involved or MK1,000,000, whichever is greater, and to imprisonment for two years.

Failure to
maintain
proper records
30 of 2010
23 of 2011

50.—(1) A person who fails to maintain proper records as required under this Act shall be liable—

(a) where the failure was deliberate or reckless, a penalty of K500,000; and

(b) in any other case, a penalty of K200,000.

51. A person who assaults, abuses, resists, obstructs, hinders or interferes with the Commissioner General or an officer authorized by the Commissioner General or any person aiding or assisting the Commissioner General, or any person authorized by the Commissioner General in the performance of his or her duties under this Act commits an offence and is liable on conviction to a fine of K500,000 and to imprisonment for twelve months.

Obstruction
etc., of officer
of the
Authority
10 of 2015

51A. A person who assaults, abuses, resists, obstructs, hinders or interferes with, a person who is buying taxable goods or services under this Act commits an offence and shall, on conviction, be liable to a fine of MK500,000, and to imprisonment for twelve months.

Obstruction
etc., of
customer
10 of 2015

52.—(1) An officer of the Authority who, in connexion with any of his or her duties, takes or seeks, directly or indirectly, any payment or other reward, pecuniary or otherwise, on account of anything relating to his or her office or employment, including the failure to carry out his or her proper duties, commits an offence and is liable on conviction to a fine not exceeding three times value of the Value Added Tax involved and to imprisonment for three years; and further shall be dismissed from the employment of the Authority.

Offences
relating to
officers

(2) A person who, directly or indirectly, offers to any officer

of the Authority any payment or other reward whatsoever, whether pecuniary or otherwise, in order to induce the officer not to perform his or her proper duties commits an offence and is liable on conviction to a fine not exceeding three times any Value Added Tax involved and to imprisonment for three years.

(3) Any person who for the purposes of this Act or regulations made under this Act, impersonates an officer of the Authority in any way commits an offence and is liable on conviction to a fine of K100,000 and to imprisonment for five years.

53. An officer of the Authority shall not be liable for any act or omission in respect of any matter or thing done by him or her in good faith in the performance of his or her duties under this Act and regulations made under this Act.

Protection of officers

54.—(1) The Commissioner General may authorize the provision of any information about the taxes and duties on request of the Commissioner of another Department or Division of the Authority when the information requested will assist the Commissioner seeking the information to fulfill his or her statutory responsibilities; and the information shall be provided without undue delay.

Relationship of the Authority and other public services

(2) The Commissioner General may require any officer in the public service or any local authority, other public body, or private institution to supply such particulars as may be required in respect of Value Added Tax and which may be in the possession of that officer or person.

(3) Every person who under this section is required by the Commissioner General to provide information shall, orally or in writing, as may be required, give all such information as may be required of him or her by the Commissioner General for the purpose of enabling the Commissioner General to make an assessment or to collect Value Added Tax.

Taking of samples

55.—(1) An officer of the Authority may take samples of goods from the possession of any person where he or she considers it necessary to protect revenue against mistake or fraud.

(2) The officer of the Authority who takes samples under subsection (1) shall provide a receipt for any samples taken, and the samples may, except where there is an offence, be returned to the owner or be disposed of by the Commissioner General with the consent of the owner.

Power of inspection and warrants

56.—(1) For the purpose of exercising any power given by or under this Act, an officer of the Authority may at any reasonable time enter premises used in any way for business purposes, including premises, where taxable goods are stored; and the officer may open any packaging and inspect and take stock of any goods and examine business records (including records stored in or on any computer system), accounts, and correspondence on the premises.

(2) Where the Commissioner General is satisfied that there are reasonable grounds to suspect that any premises contain taxable goods on which Value Added Tax has been evaded or fraudulently over-claimed, or documents or other evidence of failure to pay Value Added Tax legally due, he or she may

authorize an officer to seek a warrant to search the premises and things and persons therein.

(3) No search of any business premises, persons or things therein shall be made by any officer under this section, except under a warrant issued by a judge or magistrate.

(4) No person shall, pursuant to subsection (1), be searched by a person of the opposite sex.

(5) An authorized officer may for the purpose of entering the premises use such reasonable force as may be necessary.

(6) When exercising his or her powers under this section an authorized officer may remove any goods or documents or other evidence which he or she has reasonable grounds to believe will provide assistance in assessing Value Added Tax due, or have been, or will be, the subject of, or relevant to, the commission of an offence under this Act and regulations made under this Act.

(7) An officer who exercises powers under subsection (6) shall provide a receipt for anything removed.

Power to seal
of premises
10 of 2015

57.—(1) The Commissioner General or an officer authorized in writing by the Commissioner General, may seal off, lock up premises, or in any physical manner prevent any person from entering or gaining access to the premises of any person or taxable person who, there is a reasonable ground to believe—

(a) has failed to account for Value Added Tax;

(b) has not remitted Value Added Tax due;

(c) has made a false claim for refund of Value Added Tax;

(d) has failed to procure and use the electronic fiscal device;

(e) has failed, deliberately or not, to pay penalties for offences previously committed; or

(f) despite not being a convict for offences under this Act, there is proof that he has committed various offences related to the use of an electronic fiscal device.

(2) Where the Commissioner General or an officer authorized by the Commissioner General intends to lock the premises, the Commissioner General, or the officer authorized by him, may give seven days' notice to the concerned taxpayer before sealing off or locking up premises.

(3) The Commissioner General or an officer authorized by the Commissioner General in writing shall deliver to the taxpayer the sealed off or locked up premises, or allow access to the premises in subsection (1) upon the taxpayer—

(a) accounting for the Value Added Tax;

(b) remitting the Value Added Tax due;

(c) correcting the claim for refund;

(d) procuring for use the electronic fiscal device;

(e) paying all the outstanding penalties for the offences committed; or

(f) having committed various offences, complying with or fulfilling the conditions the Commissioner General may prescribe.

(4) In the performance of his duties under this section, the Commissioner General or an officer authorized by him may seek the assistance of the police.

58.—(1) Where an officer of the Authority has reasonable grounds to believe that an offence has been or will be committed in relation to any supply of goods or services under this Act, the officer may require—

Provision of information

(a) any person concerned in whatever capacity in the supply of the goods or services; or

(b) any person to whom the supply is made, to provide all records and documents relating to the supply of goods or services.

(2) Every person or taxable person shall, on request by an officer under subsection (1), provide the information and answer any question.

59. Any person, whether a taxable person or not, who unlawfully charges and collects Value Added Tax on supply of goods or services or withholds Value Added Tax on payment to a supplier of taxable goods or services commits an offence and is liable on conviction to a fine ten times the amount of the Value Added Tax involved in the commission of the offence and to imprisonment for five years.

Penalty for unauthorized collection or withholding of Value Added Tax
27 of 2018

60. Any person who does any act or makes an omission which constitutes a contravention of any provision of this Act for which no penalty is provided or is concerned in the doing or making of any such act or omission, or who does any such act or makes any such omission with intent to facilitate evasion of Value Added Tax by himself or herself or any person, commits an offence and is liable on conviction to a fine of five times the Value Added Tax or revenue involved in the commission of the offence and to imprisonment for two years.

General penalty

Compounding of offences
6 of 2007
23 of 2011

61.—(1) Where any person commits an offence under this Act which amounts to failure to pay Value Added Tax or which results in loss of revenue to the Government, the Commissioner General may at any time before proceedings are commenced in court, compound the offence and order the person to pay a sum of money not exceeding three times the amount of Value Added Tax or revenue involved in the commission of the offence or K100,000, whichever is the greater.

(2) The Commissioner General shall only compound an offence under this section if the person concerned admits in writing that the person has committed the offence.

(3) Where the Commissioner General compounds an offence under this section, the order referred to in subsection (1) shall be—

(a) in writing and specify the offence committed, the sum of money to be paid, and the due date for the payment; and shall have attached the written admission referred to in subsection (2);

(b) served on the person who committed the offence; and

(c) enforced in the same manner as an order of a court for the payment of the amount stated in the order.

(4) Where the Commissioner General compounds an offence under this section, the person shall not be liable for

prosecution in respect of the offence.

PART XIII

Miscellaneous Provisions

Evidence in proceedings

62.—(1) A certificate by the Commissioner General that—

(a) a person or taxable person was or was not registered on any date by or under this Act; or

(b) any return required by or under this Act has not been made or had not been made by any date; or

(c) Value Added Tax shown as due in any return or assessment made under this Act has not been paid, shall be sufficient evidence in civil or criminal proceedings of that fact unless the contrary is proved.

(2) A photocopy of document furnished to the Commissioner General or any other member of the Authority under the requirements of this Act and certified to that effect by the Commissioner General, shall be admissible as evidence in civil or criminal proceedings to the same extent as would the original document.

(3) A statement or other information contained in a document produced by a computer shall be admissible as evidence in civil or criminal proceedings provided it is certified as correct by the Commissioner General.

Regulations

63.—(1) The Minister may make regulations as he or she considers necessary for the carrying out of the purposes of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations—

(a) prescribing anything that is required to be prescribed under this Act;

(b) relating to time of supply for such goods and services as may be prescribed in the regulations;

(c) relating to the payment of Value Added Tax;

(d) in respect of time and method of claiming refund of tax;

(e) in respect of issue of tax invoice and the production to officers;

(f) in respect of records to be kept;

(g) for the apportionment of input tax between taxable and exempt supplies, where applicable;

(h) for the recovery, where applicable, of any tax paid on goods in stock at the start of business on the effective date of Value Added Tax; and

(i) for the application of special schemes for the collection of Value Added Tax in specified cases.

(3) Notwithstanding section 21 (e) of the General Interpretation Act, the regulations made under this Act may create offences in respect of any contravention to the regulations, and may for any such contravention impose a fine not exceeding the maximum fine imposable under the Act and to imprisonment for up to five years.

64.—(1) Subject to this Act, the Commissioner General may—

10 of 2015
Cap. 1:01

Directives and
other powers
of the
Commissioner
General
32 of 2019

(a) in writing, give such administrative directives as he or she considers necessary for the implementation of the provisions of this Act;

(b) in writing, where he or she considers it necessary for the protection of revenue, request a taxable person to provide such security as the Commissioner General considers adequate; and

(c) design, amend, approve and publish Value Added Tax forms as may, from time to time, be required for the administration of this Act.

65.—(1) On the date that Value Added Tax becomes chargeable under this Act, the Customs and Excise Act shall be deemed to be amended—

Consequential amendments and savings
Cap. 42:01

(a) in section 2, by deleting the definition of the terms “manufacture”, “registered person”, “supply”, “taxable goods”, “tax period” “taxable person”; “taxable services”, and “turnover”; and

(b) by repealing Part XIIIA.

(2) Notwithstanding the repeal of Part XIIIA of the Customs and Excise Act, repealed under subsection (1), any person liable to register for Value Added Tax under the Customs and Excise Act before the coming into force of this Act shall on the coming into force of this Act be deemed to be liable for registration under this Act.

Cap. 42:01

Cap. 42:01

(3) Notwithstanding subsection (1), Part XIIIA of the Customs and Excise Act, repealed under subsection (1), shall remain in force for the purpose of—

(a) verifying any return filed or required to be filed thereunder;

(b) the assessment and recovery of any Value Added Tax or penalty payable thereunder; and

(c) prosecuting any offence committed thereunder;

(d) processing claims for refunds thereunder.

Repeal and Savings
Cap. 42:01

66.—(1) Subject to subsection (2), the Surtax Act is hereby repealed.

(2) Anything done in accordance with the Surtax Act repealed by subsection (1), prior to the commencement of this Act and which may be done in accordance with the provisions of this Act, shall be deemed to have been done in accordance with this Act.

(3) Any subsidiary legislation made or deemed to have been made under the Surtax Act, repealed by subsection (1), in force immediately before the commencement of this Act—

(a) shall remain in force, unless in conflict with this Act, and shall be deemed to be subsidiary legislation made under this Act;

(b) may be replaced, amended or repealed by subsidiary legislation made under this Act.

11 of 2006
10 of 2008
15 of 2009
23 of 2011
7 of 2012
18 of 2012
20 of 2013
24 of 2016
25 of 2017
32 of 2019
15 of 2020

s. 20 FIRST SCHEDULE

Exempt Supplies

1. *Live Animals*

Exemption covers live animals under Customs Tariff Headings 0102.10.00 to 0106.00.00.

2. *Animal Products*

Exemption covers—

(a) meat and edible meat offals in raw form under Customs Tariff Headings 0201.10.00 to 0210.90.00;

(b) fish and crustaceans molluses and other aquatic invertebrates under Customs Tariff Headings 0301.91.00 to 0307.99.00; and

(c) dairy produce, birds' eggs, natural honey and infant milk under Customs Tariff Subheadings 0401.10.00, 0401.20.00, 0401.40.00, 0401.50.00, 0407.11.00 to 0407.90.00, 0409.00.00 and 1910.10.10.

3. *Vegetable Products in Raw State*

Exemption covers—

(a) live trees and other plants, bulbs, roots and the like under Customs Tariff Headings 0601.10.00 to 0602.40.00, but excluding cut flowers and ornamental foliage under Customs Tariff Headings 0603.10.00 to 0604.99.00;

(b) edible vegetables and certain roots and tubers under Customs Tariff Headings 0701.10.00 to 0714.90.00;

(c) edible fruit and nuts, peel of citrus fruits or melons under Customs Tariff Headings 0801.11.00 to 0805.90.00, 0807.11.00 to 0807.20.00, and 0809.10.00 to 0814.00.00;

(d) coffee and tea under Customs Tariff Headings 0901.11.00, 0901.12.00, 0902.10.00 and 0902.20.00;

(e) cereals under Customs Tariff Headings 1001.10.00 to 1008.90.00;

(f) products of the milling industry, malt starches, inulin and wheat gluten under Customs Tariff Headings 1102.10.00 to 1107.20.00; and

(g) oil seeds and oleaginous fruit, miscellaneous grains seeds and fruit, industrial or medicinal plants, straw and fodder under Customs Tariff Headings 1201.00.00 to 1214.90.00, but excluding products under Customs Tariff Headings 1208.10.00, 1208.90.00 and 1210.10.00 to 1210.20.00;

(ga) [*Deleted by 15 of 2020*] cooking oil under the Customs Tariff Subheadings ~~1507.10.00 to 1507.90.00, 1508.10.00 to 1508.90.90, 1511.10.10 to 1511.90.90 and 1512.11.00 to 1512.29.00;~~

(h) unmanufactured tobacco refuse of Customs Tariff Heading 24.01.

4. [*Deleted by 24 of 2016*].

5. *Printed Matter—Books*

Exemption covers printed books under Customs Tariff Headings 4901.10.00 to 4901.99.00, 4903.00.00, 4905.10.00 to 4905.99.00 and 4907.00.90.

6. *Petroleum Products*

Exemption covers petroleum oils under Customs Tariff

Headings 2710.00.11 to 2710.00.20 and 2710.00.41 to 2710.00.50.

7. *Vehicles other than railway and train way rolling-stock*

Exemption covers ambulances under Customs Tariff Heading—8703.90.10.

8. *Industrial Machinery and Construction Machinery Exemption covers—*

- (a) nuclear reactors; fuel elements (cartridges), non-irradiated, for nuclear reactors; machinery and apparatus for isotopic separation under Customs Tariff Subheadings 8401.10.00, 8401.20.00 and 8401.30.00;
- (b) steam or other vapour generating boilers (other than central heating hot water boilers capable also of producing low pressure steam); super-heated water boilers under Customs Tariff Subheadings 8402.11.00, 8402.12.00, 8402.19.00 and 8402.20.00;
- (c) central heating boilers under Customs Tariff Subheading 8403.10.10;
- (d) auxiliary plant for use with boilers of Heading 84.02 or 84.03 (for example, economizers, super-heaters, soot removers, gas recovers); condensers for steam or other vapour power units under Customs Tariff Subheadings 8404.10.10 and 8404.20.00;
- (e) producer gas or water gas generators, with or without their purifiers; acetylene gas generators and similar water process gas generators, with or without their purifiers under Customs Tariff Subheading 8405.10.10;
- (f) steam turbines and other vapour turbines under Customs Tariff Subheadings 8406.10.00, 8406.81.00 and 8406.82.00;
- (g) hydraulic turbines, water wheels, and regulators therefor under Customs Tariff Subheadings 8410.11.00, 8410.12.00 and 8410.13.00;
- (h) pumps for liquids, whether or not fitted with a measuring device liquid elevators under Customs Tariff Subheadings 8413.20.10, 8413.50.10, 8413.50.20, 8413.60.10, 8413.60.20, 8413.70.10, 8413.81.20 and 8413.82.20;
- (i) air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters under Customs Tariff Subheadings 8414.10.10, 8414.30.10 and 8414.40.00;
- (j) furnace burners for liquid fuel, for pulverised solid fuel or for gas; mechanical stokers, including their mechanical grates, mechanical ash dischargers and similar appliances under Customs Tariff Subheadings 8416.10.00, 8416.20.00 and 8416.30.00;
- (k) industrial or laboratory furnaces and ovens, including incinerators, non-electric under Customs Tariff Subheadings 8417.10.00, 8417.20.00 and 8417.80.00;
- (l) machinery, plant or laboratory equipment, whether or not electrically heated (excluding furnaces, ovens and other equipment of Heading 85.14), for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilising, pasteurising, steaming, drying, evaporating, vaporising, condensing or cooling, other than machinery

or plant of a kind used for domestic purposes, instantaneous or storage water heaters, non-electric under Customs Tariff Subheadings 8419.31.00, 8419.32.00, 8419.39.00, 8419.40.00, 8419.50.00, 8419.60.00, 8419.81.00, 8419.89.00 and 8420.10.00;

- (m) centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases under Customs Tariff Subheadings 8421.11.10, 8421.12.10, 8421.19.10, 8421.21.10 and 8421.22.10;
- (n) dish washing machines, machinery for cleaning or drying bottles or other containers; machinery for filling, closing, sealing or labelling bottles; cans, boxes, bags or other containers, machinery for capsuling bottles, jars, tubes and similar containers; other packing or wrapping machinery (including heat-shrink wrapping machinery); machinery for aerating beverages under Customs Tariff Subheadings 8422.20.90, 8422.30.00 and 8422.40.00;
- (o) ships' derricks; cranes, including cable cranes; mobile lifting frames, straddle carriers and works trucks fitted with a crane under Customs Tariff Subheadings 8426.11.00, 8426.12.00, 8426.19.00, 8426.20.00, 8426.30.00, 8426.49.00, 8426.91.00 and 8426.99.00;
- (p) fork-lift trucks; other works trucks fitted with lifting or handling equipment under Customs Tariff Subheadings 8427.10.00, 8427.20.00 and 8427.90.00;
- (pa) exemption covers other lifting, handling, loading, or unloading machinery (such as lifts, escalators, conveyors, teleferics) under Customs Tariff Headings 8428.10.00, 8428.20.00, 8428.31.00, 8428.32.00, 8428.33.00, 8428.39.00, 8428.40.00, 8428.60.00, 8428.90.00;
- (pb) exemption covers self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers under Customs Tariff Heading 8429.19.00;
- (q) self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers under Customs Tariff Subheadings 8429.11.00, 8429.20.00, 8429.30.00, 8429.40.00, 8429.51.00, 8429.52.00 and 8429.59.00;
- (r) other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snow-ploughs and snow-blowers under Customs Tariff Subheadings 8430.10.00, 8430.20.00, 8430.31.00, 8430.39.00, 8430.41.00, 8430.49.00, 8430.50.00, 8430.61.00 and 8430.69.00;
- (s) milking machines and dairy machinery under Customs Tariff Subheadings 8434.10.00 and 8434.20.00;
- (t) presses, crushers and similar machinery used in the manufacture of wine, cider, fruit juices or similar beverages under Customs Tariff Subheading 8435.10.00;
- (u) other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders under Customs Tariff Subheadings 8436.10.00, 8436.21.00 and 8436.29.00;
- (v) machines for cleaning, sorting or grading seed, grain or

dried leguminous vegetables; machinery used in the milling industry or for the working of cereals or dried leguminous vegetables, other than farm-type machinery under Customs Tariff Subheadings 8437.10.00 and 8437.80.00;

- (w) machinery, not specified or included elsewhere in the Chapter, for the industrial preparation or manufacture of food or drink, other than machinery for the extraction or preparation of animal or fixed vegetable fats or oils under Customs Tariff Subheadings 8438.10.00, 8438.20.00, 8438.30.00, 8438.40.00, 8438.50.00, 8438.60.00 and 8438.80.00;
- (x) machinery for making pulp of fibrous cellulosic material or for making or finishing paper or paperboard under Customs Tariff Subheadings 8439.10.00, 8439.20.00 and 8439.30.00;
- (y) book-binding machinery, including book-sewing machines under Customs Tariff Subheading 8440.10.00;
- (z) other machinery for making up paper pulp, paper or paperboard, including cutting machines of all kinds under Customs Tariff Subheadings 8441.10.00, 8441.20.00, 8441.30.00, 8441.40.00 and 8441.80.00;
- (aa) machinery, apparatus and equipment (other than the machine-tool of Headings 84.56 to 84.65), for preparing or making plates, cylinders and other printing components, plates, cylinders and other printing components, plates, cylinders and lithographic stones, prepared for printing purposes (for example, planed, grained or polished) under Customs Tariff Subheadings 8442.30.00 and 8442.50.00;
- (bb) printing machinery used for printing by means of plates cylinders and other printing components of Heading 84.42, other printers, copying machines and facsimile machines, whether or not combined, parts and accessories thereof under Customs Tariff Subheadings 8443.11.00, 8443.12.00, 8443.13.00, 8443.14.00, 8443.15.00, 8443.16.00, 8443.17.00 and 8443.19.00;
- (cc) machines for extruding, drawing, texturing or cutting man-made textile materials under Customs Tariff Subheading 8444.00.00;
- (dd) machines for preparing textile fibres; spinning, doubling or twisting machines and other machinery for producing textile yarns; textile reeling or winding (including weft-winding) machines and machines for preparing textile yarns for use on the machines of Heading 84.46 or 84.47 under Customs Tariff Subheadings 8445.11.00, 8445.12.00, 8445.13.00, 8445.19.00, 8445.20.00, 8445.30.00, 8445.40.00 and 8445.90.00;
- (ee) weaving machines (looms) under Customs Tariff Subheadings 8446.10.00, 8446.21.00, 8446.29.00 and 8446.30.00;
- (ff) knitting machines, stitch-bonding machines and machines for making gimped yarn, tulle, lace, embroidery, trimmings, braid or net and machines for tufting under Customs Tariff Subheadings 8447.11.00, 8447.12.00, 8447.20.00 and 8447.90.00;
- (gg) auxiliary machinery for use with machines of Heading 84.44, 84.45, 84.46 or 84.47 (for example, dobbies,

- Jacquards, automatic stop motions, shuttle changing mechanisms), parts and accessories suitable for use solely or principally with the machines of this Heading or of Headings 84.44, 84.45, 84.46 or 84.47 (for example, pindles and spindle flyers, card clothing, combs, extruding nipples, shuttles, healds and heald-frames, hosiery needles) under Customs Tariff Subheadings 8448.11.00 and 8448.19.00;
- (hh) machinery for the manufacture or finishing of felt or non-wovens in the piece or shapes, including machinery for making felt hats; blocks for making hats under Customs Tariff Subheading 8449.00.00;
- (ii) machinery for preparing, tanning or working hides, skins or leather or for making or repairing footwear or other articles of hides, skins or leather, other than sewing machines under Customs Tariff Subheadings 8453.10.00, 8453.20.00 and 8453.80.00;
- (jj) converters, ladles, ingot moulds and casting machines, of a kind used in metallurgy or in metal foundries under Customs Tariff Subheadings 8454.10.00, 8454.20.00 and 8454.30.00;
- (kk) metal-rolling mills and rolls therefor under Customs Tariff Subheadings 8455.10.00, 8455.21.00, 8455.22.00 and 8455.30.00;
- (ll) machine-tools for working any materials by removal of material, by laser or other light or photon beam, ultrasonic, electro-discharge, electrochemical, electron beam, ionic-beam or plasma processes under Customs Tariff Subheadings 8456.10.00, 8456.20.00, 8456.30.00 and 8456.90.00;
- (mm) machining centres, unit construction machines (single station) and multi-station transfer machines, for working metal under Customs Tariff Subheadings 8457.10.00, 8457.20.00 and 8457.30.00;
- (m) lathes (including turning centres) for removing metal under Customs Tariff Subheadings 8458.11.00, 8458.19.00, 8458.91.00 and 8458.99.00;
- (oo) machine-tools (including way-type unit head machines) for drilling, boring, milling, threading or tapping by removing metal, other than lathes (including turning centres) of Heading 84.58 under Customs Tariff Subheadings 8459.10.00, 8459.21.00, 8459.29.00, 8459.31.00, 8459.39.00, 8459.40.00, 8459.51.00, 8459.59.00, 8459.61.00, 8459.69.00 and 8459.70.00;
- (pp) machine-tools for deburring, sharpening, grinding, honing, lapping, polishing or otherwise finishing metal or cermets by means of grinding stones, abrasives or polishing products, other than gear cutting, gear grinding or gear finishing machines of Heading 84.61 under Customs Tariff Subheadings 8460.11.00, 8460.19.00, 8460.21.00, 8460.31.00, 8460.39.00, 8460.40.00 and 8460.90.00;
- (qq) machine-tools for planing, shaping, slotting, broaching, gear cutting, gear grinding or gear finishing, sawing, cutting-off and other machine tools working by removing metal or cermets, not elsewhere specified or included

under Customs Tariff Subheadings 8461.20.00, 8461.30.00, 8461.40.00, 8461.50.00 and 8461.90.00;

- (*rr*) machine-tools (including presses) for working metal by forging, hammering or die-stamping; machine-tools (including presses) for working metal by bending, folding, straightening, flattening, shearing, punching or notching; presses for working metal or metal carbides, not specified above under Customs Tariff Subheadings 8462.10.00, 8462.21.00, 8462.29.00, 8462.31.00, 8462.39.00, 8462.41.00, 8462.49.00, 8462.91.00 and 8462.99.00;
- (*ss*) other machine-tools for working metal or cermets, without removing material under Customs Tariff Subheadings 8463.10.00, 8463.20.00, 8463.30.00 and 8463.90.00;
- (*tt*) machine-tools for working stone, ceramics, concrete, asbestos-cement or like mineral materials or for cold working glass under Customs Tariff Subheadings 8464.10.00, 8464.20.00 and 8464.90.00;
- (*uu*) machine-tools (including machines for nailing, stapling, gluing or otherwise assembling) for working wood, cork, bone, hard rubber, hard plastics or similar hard materials under Customs Tariff Subheadings 8465.10.00, 8465.91.00, 8465.92.00, 8465.93.00, 8465.94.00, 8465.95.00, 8465.96.00 and 8465.99.00;
- (*vv*) machinery for sorting, screening, separating, washing, crushing, grinding, mixing or kneading earth, stone, ores or other mineral substances, in solid (including powder or paste) form; machinery for agglomerating, shaping or moulding solid mineral fuels, ceramic paste, unhardened cements, plastering materials or other mineral products in powder or paste form; machines for forming foundry moulds of sand under Customs Tariff Subheadings 8474.10.00, 8474.20.00, 8474.31.00, 8474.32.00, 8474.39.00 and 8474.80.00;
- (*ww*) machines for assembling electric or electronic lamps, tubes or valves or flashbulbs, in glass envelopes; machines for manufacturing or hot working glass or glassware under Customs Tariff Subheadings 8475.10.00, 8475.21.00 and 8475.29.00;
- (*xx*) machinery for working rubber or plastics or for the manufacture of products from these materials, not specified or included elsewhere in this Chapter under Customs Tariff Subheadings 8477.10.00, 8477.20.00, 8477.30.00, 8477.40.00, 8477.51.00, 8477.59.00 and 8477.80.00;
- (*yy*) machinery for preparing or making up tobacco, not specified or included elsewhere in this Chapter under Customs Tariff Subheading 8478.10.00;
- (*zz*) machines and mechanical appliances having individual functions, not specified or included elsewhere in this Chapter under Customs Tariff Subheadings 8479.10.00, 8479.20.00, 8479.30.00, 8479.40.00, 8479.50.00, 8479.60.00, 8479.81.00, 8479.82.00, 8479.89.10 and 8479.89.70;
- (*aaa*) moulding boxes for metal foundry; mould bases; moulding patterns; moulds for metal (other than ingot

moulds), metal carbides, glass, mineral materials, rubber or plastics under Customs Tariff Subheadings 8480.10.00, 8480.20.00, 8480.30.00, 8480.41.00, 8480.49.00, 8480.50.00, 8480.60.00, 8480.71.00 and 8480.79.00;

(*bbb*) machines and apparatus of a kind used solely or principally for the manufacture of semiconductor boules or wafers, semiconductor devices, electronic integrated circuits or flat panel display machines and apparatus and specified in NOTE 9 (C) to this Chapter, parts and accessories under Customs Tariff Subheadings 8486.10.00, 8486.20.00, 8486.30.00 and 8486.40.00;

(*ccc*) industrial or laboratory electric furnaces and ovens (including those functioning by induction or dielectric loss); other industrial or laboratory equipment for the heat treatment of materials by induction or dielectric loss under Customs Tariff Subheadings 8514.10.00, 8514.20.00, 8514.30.00 and, 8514.40.00.

9. [*Deleted by 24 of 2016*].

10. Coin

Exemption covers "Other coins" under Customs Tariff Heading 7118.90.00.

11. [*Deleted by 20 of 2013*].

12. Other coins

Exemption covers "Other coins" under Customs Tariff Subheading 7118.90.10 and 7118.90.90.

13. Medical Equipment

Exemption covers optical, photographic, cinematographic, measuring, checking instruments and apparatus under Customs Tariff Headings 9001.10.00 to 9001.40.90, 9001.50.10, 9001.90.10 to 9001.90.20, 9002.19.10, 9004.90.10 and 9018.11.00 to 9023.00.00.

14. Educational Services

15. Banking and Life Insurance Services

16. Postal Services

17. Funeral Services

Exemption includes provision of vehicles, coffins, wreaths and tombstones.

18. Medical Services

Syringes with or without needles under Customs Tariff Heading—9018.31.00.

19. Transport of Exports

20. Rentals and sale of properties used for residential purposes

21. [*Deleted by 23 of 2011*].

22. [*Deleted by 23 of 2011*].

23. Betting and gaming including lotteries

24. Rail locomotives and parts

Exemption covers rail locomotives and parts thereof under Chapter 86 of Customs and Excise (Tariffs) Order.

25. *Medical surgical or laboratory sterilizers*

Exemption covers medical, surgical or laboratory sterilizers
under Customs Tariff Heading 8419.20.00.

26. [*Deleted by 23 of 2011*].

11 of 2006
6 of 2007
10 of 2008
15 of 2009
23 of 2011
20 of 2013
24 of 2016
32 of 2019

SECOND SCHEDULE

s. 21

Zero-Rated Supplies

1. *Export of goods and services*
2. *Goods shipped as stores on aircraft and vessels leaving the territory of Malawi.*

3. *Fertilizers*

Zero rating covers fertilizers under Customs Tariff Headings 3101.00.00 to 3105.90.00.

4. *Sheath Contraceptives (Condoms)*

Zero rating covers condoms under Customs Tariff Heading 4014.10.00.

5. *Exercise Books*

Zero-rating covers exercise books under Customs Tariff Subheading 4820.20.00.

6. [*Deleted by 24 of 2016*].

7. *Salt*

Zero-rating covers salt under Customs Sub-heading 2501.00.00.

8. *Motor Vehicles for transport of goods*

(a) zero-rating covers motor vehicles under Customs Tariff Headings—

8704.22.90_GVW > 15 tonnes < 20 tonnes 8704.23.00_GVW > 20 tonnes 8704.32.30_GVW > 15 tonnes < 20 tonnes 8704.32.90_GVW > 20 tonnes

(b) zero-rating covers trailers, semi trailers under Customs Tariff Heading—

8716.31.30_GVW > 15 tonnes.

9. Zero-rating covers special purpose motor vehicles, other than those principally designed for the transport of persons or goods under Customs Tariff Headings 8705.10.00, 8705.20.00, and 8705.40.00.

10. *Pharmaceutical Products*

Zero-rating covers pharmaceutical products of Customs Tariff Subheadings 3001.10.00 to 3006.60.00.

11. *Buses*

Zero-rating covers buses with seating capacity of forty-five or more persons, including driver under Customs Tariff Subheadings 8702.10.30 and 8702.90.30.

12. *Military Equipment*

Zero-rating covers military equipment including vehicles, armoured vehicles, uniforms and appointments for air force, military or naval personnel for use of the Malawi Defence Force, Malawi Police Service, Prisons and Immigration as specified in Customs Procedure Codes 4000.421 and 4071.421.

13. *Building Materials for Factories and Warehouses*

Zero-rating covers building materials for construction of factories and adjoining warehouses as specified in Customs Procedure Codes 4000.425 and 4071.425.

14. *Goods for use in Tourism Industry*

Zero-rating covers goods for use in the tourism industry as specified in Customs Procedure Codes 4000.442 and 4071.442 including the following—

- (a) building materials, industrial catering equipment, motor boats, scuba diving, jet skis, kayaks, wind surfers, pedalos and marked linen: and
- (b) glass, china porcelain, earthenware and stone articles of tableware; enamelware and hollowware for table use, electro plated nickel-silver and plated ware, knives, forks, spoons and similar articles for cutlery.
- (c) hotels, inns and lodges gym equipment, massage equipment, sauna baths, industrial washing machines, generators, bar refrigerators and air conditioners.
- (d) furniture and furnishings, public address systems, video conferencing equipment; television screens, amplifiers, LCD equipment, for use in hotels with room capacity of not less than 50 under Customs Procedure Code 4000.442 or 4071.442.

15. Miscellaneous Chemical Products

Zero-rating covers insecticides, fungicides and herbicides under Customs Tariff Subheadings 3008.50.00, 3808.91.00, 3808.92.00 and 3808.93.00.

16. Cycle Ambulances

Zero-rating covers cycle ambulances under Customs Tariff Subheading 8712.00.11.

17. Motorcycle Ambulances

Zero-rating covers motorcycle ambulances under Customs Tariff Subheadings 8711.10.10, 8711.20.01, 8711.30.01, 8711.40.01 and 8711.50.01.

18. Syringes with or without needles under customs tariff headings

9018.31.00.

19.–24. [*Deleted by 23 of 2011*].

25. Mosquito and sandfly nets

Zero-rating covers mosquito and sandfly nets under Customs Tariff Headings 6304.91.10, 6304.92.10, 6304.93.10 and 6304.99.10.

26.–28. [*Deleted by 23 of 2011*].

29. Poultry or chicken feed

Zero-rating covers poultry feed under the Customs Tariff Subheading 2309.90.91.

30. Liquefied Petroleum Gas (LPG)

Zero-rating covers liquefied petroleum gas (LPG) under the Customs Tariff Subheading 2711.11.00 to 2711.19.00.

31. Laundry Soap

Zero-rating covers laundry soap under the Customs Tariff Subheading 3401.19.90.

32. Gas Cylinders

Zero-rating covers gas cylinders under the Customs Tariff

Subheading 7311.00.91.

33. *Wood Cook Stoves*

Zero-rating covers wood cook stoves under the Customs
Tariff Subheading 7321.19.10.

34. *Solar Products*

Zero-rating covers solar inverters, solar panels, solar battery
chargers, solar accumulators, solar regulators, solar
lamps, solar bulbs, solar batteries under the Customs Tariff
Subheadings 8504.40.30, 8504.40.91, 8506.80.10,
8507.20.10, 8507.30.10, 8507.40.10, 8507.50.10,
8507.60.10, 8507.80.10, 8539.49.11, 8539.50.00,
8541.40.10, 9032.89.91 and 9405.40.30.

35. *Energy Efficient Bulbs*

Zero-rating covers energy efficient bulbs under the Customs
Tariff Subheading 8539.49.12.

10 of 2008
15 of 2009
23 of 2011
12 of 2014

THIRD SCHEDULE s. 23

Relief Supplies

1. Goods and services for official use of—
 - (a) the President of the Republic of Malawi; and
 - (b) the Vice-President of the Republic of Malawi.
2. Goods and services supplied to the organizations other than the Government of Malawi, individual and businesses covered under section XXII of the Customs and Excise (Tariffs) Order.
3. Goods and services for use of diplomatic staff in terms of the Immunities and Privileges Act.
4. Goods for use of International Agencies or Technical Assistance Schemes where the terms of the Agreement made with the Malawi Government include exemption from taxes.
5. Goods specified under Customs Procedure Code C403 of the Customs and Excise (Tariffs) Order.
6. Raw materials, as approved under Customs Procedure Code (CPC) 401, for the manufacturing of fertilizer, medicaments and pharmaceuticals.

FOURTH SCHEDULE
Apportionment of Input Tax

s. 32 (2)

For the purpose of determining the deductible input tax under section 32 (2), the following formula shall apply—

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

Where

A is the total amount of input tax for the period; and

B is the total amount of taxable supplies made by the taxable person during the period; and

C is the total amount of all supplies made by the taxable person during the period.

FIFTH SCHEDULE
Warrant of Distress

Form A
s.40(3)

Value Added Tax Act

To

I, Commissioner General by
virtue of

the powers vested in me by section 40 (3) of the Value Added Tax
Act, 2005, do

hereby authorize you to collect and recover the sum of
Due for tax/penalty/interest from
Value Added Tax debtor of and for the recovery
of this sum I authorize you, with the aid if necessary of your assistants
to levy this sum forthwith by distress together with the costs and
charges of and incidental to the keeping of the distress on all
distrainable things specified under section 40 (2) of the Value Added
Tax Act, the property of and belonging to the said debtor wherever they
may be found and on all such distrainable things as specified under the
said section 40 (2) used in Malawi in the manufacture, production, sale
or distribution of any taxable supplies which you may find in any
premises or on any land owned by or in possession of the said debtor
on his behalf or in trust for him.

For the purpose of levying the distress you are hereby authorized
to call to your assistance any police officer to break open any
building or place in the daytime.

Given under my hand at this
day of 20.....

.....
Commissioner General

**The Malawi Gazette Supplement, dated 23rd June, 2006, containing Regulations,
Rules, etc. (No. 7A)**

GOVERNMENT NOTICE NO. 13

**VALUE ADDED TAX ACT, 2005
(No. 7 OF 2005)**

VALUE ADDED TAX REGULATIONS, 2006

REGULATION

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Schedule

IN EXERCISE of the powers conferred by 63 (1) of the Value Added Tax Act, 2005, I, GOODALL EDWARD GONDWE, Minister of Finance, make the following Regulations—

PART I—PRELIMINARY

- | | |
|----------------|---|
| Citation | 1. These Regulations may be cited as the Value Added Tax Regulations, 2006. |
| Interpretation | 2. In these Regulations unless the context otherwise requires—
“daily gross takings” include—
(a) all payments, including Value Added Tax received by, or on behalf of, a taxable person from cash customers for retail supplies made to such customers;
(b) the full value, including Value Added Tax, of all credit or other non-cash retail sales at the time the sale is made; and |

(c) any other adjustment made to the record of daily gross takings;

“effective date” means the date these Regulations enter into force;

“retailer” means any taxable person making supplies of taxable goods or services mainly or exclusively directly to private consumers;

“special retail scheme” means one of the methods of accounting for Value Added Tax set out in regulation 32;

“Value Added Tax office” means the local Value Added Tax office nearest to a taxable person’s principal place of business; and

“takings” means all forms of payment, including cash, cheques, bank drafts, credit cards and postal orders.

PART II—REGISTRATION OF TAXABLE PERSONS

3.—(1) A person who, on the effective date—

(a) qualifies as a taxable person; or

(b) has grounds to believe that he will qualify as a taxable person, shall, not less than thirty (30) days after the effective date, apply to the Commissioner-General for registration as a taxable person in the prescribed form contained in the Schedule hereto.

Application
for
registration

(2) A person who, after the effective date—

(a) qualifies as a taxable person; or

(b) has grounds to believe that he will qualify as a taxable person, shall, within thirty (30) days of qualifying or having grounds to believe he will qualify as a taxable person, apply to the Commissioner-General to be registered as a taxable person in the prescribed form contained in the Schedule hereto.

4. The name for registration as a taxable person shall—

(a) in the case of an individual, be the name of the individual;

(b) in the case of an individual who indicates a business registered name in the application, be both the individual and the business names;

(c) in the case of a partnership, be the name of the partnership; and

(d) in any other case, be the name submitted on the application form for registration.

Registration
name

5.— (1) Two or more corporate bodies may apply to be registered as members of a group if—

(a) each is a registered corporate body in Malawi and has an established place of business in Malawi; and

(b) one of them controls the other or others in the group or one corporate body controls all the members of the group.

Group
registration

(2) Subject to subregulations (3) and (4), where a group of corporate bodies apply under subregulation (1) to be treated for the purposes of payment

of the Value Added Tax as one designated taxable person, the Commissioner-General may, by written notice to the applicants—

- (a) approve that the corporate bodies form a registrable group;
- (b) nominate a representative member for the group; and
- (c) register the corporate bodies as a group.

(3) The Commissioner-General may before registering a number of corporate bodies as a group under subregulation (2), direct that a specified corporate body be included in the group or be excluded from the group.

(4) The Commissioner-General may after the registration of a group under this regulation, in writing to the group—

- (a) substitute another member of the group as the representative member of the group;
- (b) include a further body corporate in the group;
- (c) exclude a body corporate from the group; or
- (d) where he considers it necessary to do so for the effective collection of the Value Added Tax cancel the registration of the group.

Separate
registration
of business

6. A taxable person shall, in his application for separate registration of branches of his business, state the branches and divisions, including self-accounting branches, where there are more than two branches or divisions of his business.

Transfer of
a going
concern

7.—(1) Where a business carried on by a taxable person is transferred to another person as a going concern and the transferee is not a registered person at the time of transfer, the transferee shall upon the transfer—

- (a) become liable to be registered and apply for registration;
- (b) notify the Commissioner-General within thirty (30) days of the transfer.

(2) The transaction of transferring the going concern shall be a zero rated supply and no tax invoice issued.

Notification
of registration
and
non-
registration

8.—(1) The Commissioner-General shall upon registering a taxable person, notify the person that he has been registered for Value Added Tax and shall issue to the taxable person a certificate of registration in the prescribed form contained in the Schedule hereto.

(2) The Commissioner-General may refuse to register an applicant if he—

- (a) is satisfied that the applicant has no fixed place of business or abode;
- (b) has reasonable grounds to believe that, the applicant—
 - (i) will not keep proper accounting records relating to any business carried on by him;
 - (ii) will not submit regular, or reliable tax returns as required under the Act; or
 - (iii) is not a fit and proper person to be registered,
 and shall within thirty (30) days of receipt of the application notify the applicant of his decision in this regard.

9.—(1) The Commissioner-General may, at any time before registration of an applicant, request an applicant to provide such further information as the Commissioner-General may consider necessary for the purposes of processing the application for registration.

Request for further information

(2) Any person requested to provide further information under subregulation (1) shall do so within twenty-one (21) days from the date the request was made.

10.—(1) The Commissioner-General shall upon the registration of a taxable person or group of taxable persons issue him or them with a tax identification number which shall be indicated on the certificate of registration.

Tax payer identification number

(2) The tax registration number issued upon registration of a taxable person under these Regulations shall be the same identification number for any other tax purposes.

11. A taxable person shall keep exhibited, in a conspicuous position, at his principal place of business his certificate of registration as a taxable person.

Display of registration certificate

PART III—SUPPLY OF GOODS AND SERVICES

12. Where two or more persons in a partnership make a taxable supply, the partnership shall be the supplier of the goods or services and each partner shall also be deemed to be the supplier of the goods or services made by the partnership.

Supplies made by a partnership

13. Where two or more corporate bodies have been registered as members of a group under these Regulations—

Supplies made by members of a group

(a) any business carried on by a member of the group shall be treated as being carried on by the representative member;

(b) any supply of goods or services by a member of the group to another member of the group shall be disregarded for the purposes of the Value Added Tax;

(c) any supplies made by or to a member of the group shall be treated as supplies made by or to the representative member; and

(d) any Value Added Tax paid or payable by a member of the group on the importation of goods from a place outside Malawi shall be treated as paid or payable by the representative member and the goods shall be treated as imported by the representative member.

PART IV—TAXABLE SUPPLIES

14. A transaction involving either goods or services supplied in Malawi by a non-resident person shall be considered to be made in Malawi if—

Supplies made by non-resident persons

(a) the transaction is made in the course of a business carried on in Malawi; and

(b) at the time of the transaction, the person is a taxable person.

PART V—TIME AND PLACE OF SUPPLY

- Places of supply of service
15. The place of supply for any service shall—
- (a) in the case of services specified in section 19 (1) of the Act for a customer operating outside Malawi, be the place of business of the customer to which the services are supplied;
- (b) in the case of cultural, sporting, artistic, educational or similar activities, be the place where the services are physically carried out;
- (c) in the case of services connected with movable goods, be the place where the services are physically carried out;
- (d) in the case of services connected with immovable property, be the place where the property is situated; or
- (e) in the case of telecommunication services, be where the facility or instrument for the emission, transmission or reception of the services in respect of which the invoice for the supply is issued, or is to be issued, is ordinarily situated in Malawi.
- Deposits
16. Any deposit, whether refundable or not, given in respect of supply of goods or services, shall not be regarded as a payment for the supply of goods or services or a taxable transaction unless the supplier applies the deposit as payment or part-payment for the supply.
- Goods supplied on sale or return
17. Where goods are supplied on sale or return, the tax point shall be the earliest of—
- (a) the date when the purchaser chooses to keep the goods;
- (b) the issue of a tax invoice by the seller;
- (c) the receipt of payment by the seller;
- (d) the expiry of the period within which the customer may return the goods; or
- (e) twelve (12) months after the date of despatch of the goods by the seller.
- Imported goods
Cap. 42:01
18. The time of supply for imported goods shall be the time at which the import duties on the goods become due under the Customs and Excise Act.
- Tax invoices
19. (1) A taxable person shall on supply of taxable goods or services to a customer, issue to the customer a tax invoice prescribed by the Commissioner-General.
- (2) A prescribed tax invoice shall contain the following information—
- (a) the name of the registered person supplying the goods or services, his address and taxpayer identification number;
- (b) the date of supply;
- (c) the number of the invoice, taken from a consecutive series;
- (d) the name or business name of the customer and his address, and taxpayer identification number, if the customer is a taxable person;
- (e) a description, sufficient to identify the goods or services supplied including the quantity of the goods or the extent of the services supplied;

(f) the type of transaction by reference to the following categories—

(i) sale;

(ii) hire purchase, hire, lease or rental;

(iii) exchange; or

(iv) goods and services supplied from the customer's own supplies;

(g) the Value Added Tax exclusive charge for each description of goods or services supplied;

(h) the rate of Value Added Tax;

(i) the total charge on the invoice, exclusive of Value Added Tax;

(j) the rate of any discount;

(k) the total Value Added Tax charge; and

(l) the total charge inclusive of the Value Added Tax.

(3) A tax invoice shall not be provided in any circumstance other than that specified in subregulation (1).

(4) Where a taxable person loses a tax invoice, the supplier shall on request provide a duplicate copy clearly marked "copy" within thirty (30) days of the receipt of the request.

(5) Taxable person who does not receive a tax invoice, as required by subregulation (1) may request the taxable person who supplied the goods or services to him to provide a tax invoice in respect of the supply.

(6) A request for a tax invoice under subregulation (5) shall be made within thirty (30) days of the date of the supply.

(7) A taxable person who receives a request under subregulation (6) shall comply with the request within fourteen (14) days of receipt of the request.

(8) In the case of supplies made at the retail stage where most recipients are non-taxable persons, Value Added Tax may be charged in accordance with regulations 30 to 35.

(9) In the case of import of goods, the appropriate customs bills of entry certifying payment of the Value Added Tax shall be used as the control document for establishing eligible input tax credit.

20.—(1) All tax invoices received by a taxable person from his suppliers, customs entries, credit and debit notes and supporting evidence of purchase or importation under these Regulations shall, subject to section 35 of the Act, be retained for a period of not less than six (6) years from the date of receipt, in chronological or serial number order either by date or receipt or under supplier's name.

Retention of
tax invoices,
etc.

(2) All copies of tax invoices issued to customers, credit and debit notes shall, subject to section 35 of the Act, be retained by a taxable person for a period of not less than six (6) years from the date of receipt in chronological or serial number order either by date or receipt or under each supplier's name.

PART VI—TAXABLE VALUE

Adjustment
of value
debit and
credit notes

21.—(1) For the purposes of making any adjustments required under section 29 of the Act, where—

(a) a tax invoice has been issued and the amount shown as Value Added Tax charged in the tax invoice exceeds the Value Added Tax properly chargeable in respect of the supply, the taxable person making the supply shall issue to the recipient of the supply a credit note; and

(b) a tax invoice has been issued and the Value Added Tax properly chargeable in respect of the supply exceeds the amount shown as Value Added Tax charged in that tax invoice, the taxable person making the supply shall issue to the recipient of the supply a debit note.

(2) A credit note or debit note issued under subregulation (1) shall be clearly identified as such, and shall contain the following particulars—

(a) a sequential identifying number;

(b) the date of issue;

(c) the name, address and the taxpayer identification number of the supplier;

(d) the name and address of the recipient, and if the recipient is registered for Value Added Tax, his taxpayer identification number;

(e) the identifying number and date of issue of the tax invoice relating to the transaction;

(f) a description sufficient to identify the goods or services supplied and the reason for the credit or debit;

(g) the amount being credited or debited; and

(h) the amount of Value Added Tax being credited or debited.

(3) A taxable person shall maintain a record of all credit and debit notes issued during the month.

(4) A debit or credit note shall not be issued in any circumstances other than those specified in this Regulation.

(5) Where a taxable person loses the original debit or credit note, the person who issued the debit or credit note shall, on request, provide a duplicate copy clearly marked "copy".

PART VII—DEDUCTION OF INPUT TAX AND REFUNDS

Non-
deductible
input tax

22.—(1) The restriction of deduction of input tax on motor vehicles and vehicle spare parts, specified in section 30 (5) of the Act, shall not apply to—

(a) motor vehicles purchased or imported by a taxable person who is in the business of dealing in or hiring of motor vehicles for the purposes of his business; or

(b) motor vehicles, other than motor cars, purchased or imported by a taxable person wholly, exclusively and necessarily for use in his business.

(2) For the purposes of this regulation, "motor car" means any motor vehicle of a kind normally used on public roads which has three (3) or more wheels and is constructed or adapted solely or mainly for the carriage of passengers; or has, to the rear of the driver's seat, roofed accommodation which is fitted with side windows or which is constructed or adapted for the fitting of side windows, but does not include—

(a) a vehicle capable of accommodating only one person or suitable for carrying twelve or more persons;

(b) a vehicle of not less than three (3) tonnes unladen weight;

(c) an ambulance or prison van;

(d) a vehicle constructed for a special purpose other than the carriage of persons and has no other accommodation for carrying persons than such as is incidental to the purpose.

23.—(1) A taxable person may recover the Value Added Tax on stock and capital goods purchased prior to registration, if the goods are still in the ownership and possession of the taxable person at the time of registration and—

Purchase
prior to
registration

(a) in the case of stock, the purchase or importation occurred not more than four (4) months prior to the date of registration;

(b) in the case of capital goods, the purchase or importation occurred not more than six (6) months prior to the date of registration;

(c) the taxable person is in possession of a tax invoice or the relevant customs bill of entry; and

(d) the taxable person produces an inventory of all goods on hand on the effective date of registration.

(2) A claim for recovery of Value Added Tax under subregulation (1) shall be submitted to the Commissioner-General in the prescribed form contained in the Schedule hereto.

24. For the purposes of section 31 of the Act, where the amount of input tax deductible in an accounting period exceeds the output tax due, in addition to submitting the return for that accounting period, the taxable person shall—

Refunds

(a) submit a claim for refund to the Commissioner-General; and

(b) retain the tax invoices which relate to the accounting period for examination by the Commissioner-General.

25. For the purposes of determining the deductible input tax under section 32 (2) of the Act, the expression "C" in the formula for apportionment of input tax under the Fourth Schedule of the Act shall exclude exempt supplies under the First Schedule of the Act.

Deductible
tax for mixed
taxable and
exempt
supplies

PART VIII—VALUE ADDED TAX RETURNS, RECORDS AND ASSESSMENT

26. The tax return required to be filed under section 34 of the Act shall be submitted in the prescribed form contained in the Second Schedule hereto.

Tax reform
form

27.—(1) A taxable person who is a retailer of goods may apply to the Commissioner-General for approval to use a special retail scheme.

Special retail
scheme

(2) The Commissioner-General may, in any prescribed accounting period, permit the value of taxable supplies by a retailer to be determined by one of the methods described in subregulations (4) and (5).

(3) A special retail scheme shall require the taxable person to—

(a) record the value and brief details of each supply as it occurs and before the goods leave the business premises;

(b) keep copies of all purchase invoices issued by suppliers;

(c) keep a cash register, book or other suitable record at each point of sale in which shall be entered details of all daily gross takings received and cash payments made at the time that they are made and at the end of each day the record shall be totalled and a balance shall be struck; and

(d) record in the appropriate records at the end of each month the output tax chargeable on supplies made and deductible input tax shown on tax invoice in respect of supplies received.

(4) Where a retailer takes only taxable supplies at the standard rate, the output tax shall be calculated by applying the following method—

step 1. add up the total daily gross takings in the month; and

step 2. multiply the total under step 1 by the Value Added Tax fraction;

where the formula for the Value Added Tax fraction is—

$$\frac{\text{the rate of Value Added Tax}}{100 + \text{the rate of Value Added Tax}}$$

(5) Where taxable person to whom this regulation applies makes both taxable and exempt supplies, he shall first apportion his daily gross takings between taxable and exempt supplies, and for this purpose the taxable person shall—

(a) keep a separate record of exempt supplies and deduct the total of these from the daily gross takings in the month, the output tax shall be calculated by applying step 2 in under subregulation (4) to the balance; or

(b) calculate from his purchase records, the total value of all goods purchased for resale in the month and also the total value of taxable goods purchased in the month.

(6) For purposes of subregulation (5) (b) the output tax shall be calculated by applying the following method—

step 1. divide the total taxable purchases for resale in the month by the total purchases for resale in the month;

step 2. multiply the result of *step 1* by the total daily gross takings in the month;

step 3. apply the Value Added Tax fraction specified in subregulation (4) to the result of *step 2*.

28.—(1) A taxable person who calculates his output tax using the method specified in regulation 27 (5) (b) shall, on the anniversary of starting to use the method and on each subsequent anniversary, make an annual adjustment to his output tax for that year.

Annual
adjustments

(2) The adjustment shall be calculated by applying the same method but substituting purchases for resale in the year for purchases for resale in the month in *step 1* in regulation 27 (6) and substituting total daily gross takings in the year for the total daily gross takings in the month in *step 2* in regulation 27 (6); and the taxable person shall compare the result of this adjustment with the total output tax previously calculated for that year and adjust the difference on the return for the next accounting period.

(3) In the event of a change in the rate of Value Added Tax, a taxable person shall make an adjustment to his output tax to cover the period from the date of his last adjustment until the date of the change in the rate of Value Added Tax and on each anniversary of the change.

29. The Commissioner-General shall notify any person in writing the decision to approve or reject an application to operate a special retail scheme within thirty (30) days of receipt of the application.

Decision on
special retail
scheme

30.—(1) Where a taxable person is registered under a retail scheme, he shall issue to a purchaser a retail sales receipt printed in duplicate and containing the following minimum information, in place of a tax invoice—

Retail sales
receipt

- (a) the name and full address of the seller;
- (b) the description of the goods sold;
- (c) the taxpayer identification number of the seller;
- (d) the serial number of the receipt; and
- (e) the date of the transaction.

(2) A retail sales receipt issued under subregulation (1) shall also state either the gross amount of the transaction, including Value Added Tax or the amount of the transaction and Value Added Tax.

(3) Upon request by a purchaser who is registered for Value Added Tax, the taxable person shall issue a tax invoice showing the information required by or under section 25 of the Act.

(4) All copies of the retail receipts issued under this regulation shall be retained by the supplier in accordance with regulation 20.

31.—(1) A taxable person registered under a special retail scheme may install an electronic cash register to record all sales and tax liability in lieu of the issuance of retail sales receipts.

Use of
electronic
cash
registers

(2) An electronic cash register sales receipt shall contain the information specified in regulation 30 (1).

(3) Where an electronic cash register is used, it shall be programmed to retain information for purpose of verifying all transactions.

(4) Where requested by a purchaser who is a registered person, the taxable person shall issue a tax invoice showing the information specified in regulation 19 (2).

Authorization
of other
schemes by
Commissioner
General

32.—(1) The Commissioner-General may, in accordance with section 64 (1) of the Act authorize the use of appropriate schemes by registered retailers to ensure the proper accounting for the Value Added Tax.

(2) The Commissioner-General may issue directives authorizing other methods of taking account of the output tax chargeable and input tax deductible by other registered persons.

Withdrawal
of privilege

33. The Commissioner-General may withdraw the privilege to operate special retail scheme or other scheme from a registered person at any time where the registered person does not comply with the conditions specified under these Regulations or in any directives.

Value Added
Tax and other
records

34.—(1) Every registered person shall, for the purpose of accounting for Value Added Tax, keep the following records—

(a) a Value Added Tax account to show total output tax, total input tax and the amount of Value Added Tax due or refundable for each month;

(b) relevant business and accounting records, including sales and purchase journals, cash books, ledgers and other subsidiary books of accounts;

(c) copies of all tax invoices issued;

(d) all tax invoices received;

(e) documentation relating to the importation and exportation of goods and services;

(f) all debit and credit notes or other documents providing evidence of any increase or decrease in the value of goods and services purchased or sold by him; and

(g) such other records as the Commissioner-General may specify.

(2) On application by a registered person, the Commissioner-General may permit the records required to be kept under the Act or these Regulations to be maintained on computer, subject to the conditions that—

(a) the Commissioner-General shall have unrestricted access to the registered person's records during normal business hours;

(b) print-outs of any information required by Commissioner-General shall be provided at the registered person's expense;

(c) the registered person shall, at his expense, provide competent computer staff to assist the Commissioner-General in any verification or audit he may wish to conduct; and

(d) the accounting programme used by the registered person is one that is approved by the Commissioner-General.

(3) A taxable person shall on request make available his records for examination by the Commissioner-General during normal working hours.

Records to be
maintained by
independent
units

35. Where a taxable person opts to register each branch or division separately, the taxable person shall maintain separate accounting records for each branch or division for the purpose of Value Added Tax and shall file its returns accordingly.

36.—(1) Where a group of corporate bodies opt to be registered as a single unit under section 5 of the Act, all members of the group shall adopt the same accounting period and the same accounting basis for Value Added Tax. Records to be maintained by a registered group

(2) Notwithstanding that no output tax shall be paid in transactions involving members of the group, each member of the group shall maintain distinct records, including tax invoices, for all such transactions.

37. The amount of an assessment issued under section 36 of the Act shall include any interest payments and penalties incurred by the taxable person up to the date of issuance of the assessment. Assessment to include interest and penalties

PART IX—RECOVERY OF VALUE ADDED TAX DUE, INTEREST AND OTHER LIABILITIES

38. Any person who notifies the Commissioner-General of his intention to cease to be a partner in a business shall remain jointly and severally liable for the payment of any taxes due from the business in any accounting period up to the time he ceases to be a member of the partnership. Liability of persons ceasing to be partners

39. Where any number of corporate bodies have been registered as members of a group under these Regulations, each member of the group shall be held liable for any Value Added Tax due from the representative member. Liability of members of a registered group

PART X—MISCELLANEOUS PROVISIONS

40.—(1) The Commissioner-General may enter into an agreement with any bank under which the bank agrees to receive Value Added Tax returns and to make Value Added Tax payments on behalf of the Commissioner-General. Use of banks

(2) The use of a bank under an agreement under this regulation shall not relieve the Commissioner-General of his responsibility to collect and account for the Value Added Tax.

41.—(1) A taxable person may recover the Value Added Tax paid by him on goods, subject to output Value Added Tax, which are in stock at the start of business on the effective date, and subject to the following conditions that— Credit for Value Added Tax paid

(a) the taxable person making a claim for goods held for resale is registered by the effective-date;

(b) the goods on which the credit is claimed are in the possession of the taxable person at start of business on the effective date;

(c) the taxable person is in possession of a tax invoice or customs bill of entry showing the charge of Value Added Tax in respect of all goods for which he seeks to recover Value Added Tax and retain that evidence for inspection by the Commissioner-General for the period specified in section 35 of the Act;

(d) the taxable person shall have no reason for believing that the Value Added Tax has not been or will not be paid by his supplier; and

(e) the supply or importation must have occurred not more than six (6) months before the effective date.

(2) A taxable person shall submit a claim for recovery of the Value Added Tax under subregulation (1) in the prescribed form contained in the Schedule hereto, to the tax office not later than thirty (30) days from the effective date.

(3) A taxable person who claims input tax credit under this regulation shall produce an inventory of all goods on hand within thirty (30) days from the effective date, supported by an audit certificate issued by a qualified accountant or the managing director of the company.

(4) Any Value Added Tax certified by the Commissioner-General as deductible may be treated as an input tax deduction against future Value Added Tax liabilities:

Provided the deduction is made on the tax return form for any accounting period ending six (6) months after the effective date unless taxable person is instructed otherwise by the Commissioner-General in writing.

(5) Where, following an audit inspection, certification under subregulation (4) is revoked by the Commissioner-General, any Value Added Tax previously treated as credit may be recovered by the Commissioner-General in accordance with the provisions of the Act and these Regulations.

Contract entered into before and after the effective date

42.—(1) Where a contract was concluded between two or more parties before the effective date and no provision relating to the Value Added Tax was made in contract, the supplier shall recover the Value Added Tax due on any taxable supplies made under the contract after the effective date.

(2) Where a contract concluded after the effective date does not include a provision relating to Value Added Tax, the contract price shall be deemed to include the Value Added Tax and the supplier under the contract shall account for the Value Added Tax due.

Relief of Value Added Tax

43. Where a person, an organization or a business is eligible for relief of Value Added Tax under the Third Schedule of the Act, the person, organization or business may apply to the Commissioner-General for the relief of the Value Added Tax in the prescribed form contained in the Schedule hereto.

Manuals and circulars

44. The Commissioner-General may issue administrative accounting and operational manuals or circulars as he considers necessary for collecting and accounting for the Value Added Tax.

Revocation surtax Regulations, 2002 G.N. No. 25

45.—(1) The Surtax Regulations, 2002 are hereby revoked.

(2) Notwithstanding subregulation (1), the Surtax Regulations, 2002 revoked by subregulation (1) shall remain in force for the purposes of—

- (a) verifying any return filed or required to be filed thereunder;
- (b) the assessment and recovery of any surtax or penalty payable thereunder;
- (c) processing claims for refunds thereunder; and
- (d) prosecuting any offence committed thereunder.

SCHEDULE
 VALUE ADDED TAX ACT, 2005
 (No.7 OF 2005)
 MALAWI REVENUE AUTHORITY
 VALUE ADDED TAX DIVISION

FORM VAT 1

APPLICATION FOR REGISTRATION FOR VALUE ADDED TAX reg. 3 (1)

<p>The completed form should be sent to:</p> <p>The Commissioner-General Malawi Revenue Authority Chayamba Building Private Bag 247 Blantyre</p>	<p style="text-align: center;">FOR OFFICIAL USE ONLY</p> <p>Date of receipt</p> <p>Application checked by</p> <p>Registration recommended by</p> <p>Not recommended by</p> <p>Effective Date of Registration</p>
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1. Identification of person to be registered:

Taxpayer Identification Number (TPIN)

--	--	--	--	--	--	--	--	--	--

Name of person to be registered

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2. Status of person to be registered:

Limited Company/Sole Proprietor/Partnership/Other

If partners, provide name, address and signature of partners

Full name

Address

Signature Date

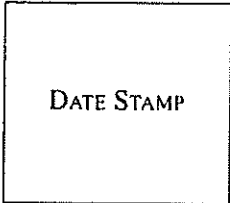
Full name

Address

Signature Date

FOR OFFICIAL USE ONLY

Officer/Accepting this Form:
 (Name in full)



Signature:

Bills of Entry and Purchase
 Invoices Verified and Compared
 With Stock on Hand By: (Name in full):

Signature:

Date:

FORM VAT 5

VALUE ADDED TAX ACT, 2005

(No. 7 OF 2005)

MALAWI REVENUE AUTHORITY

VALUE ADDED TAX DIVISION

APPLICATION TO PURCHASE GOODS FREE OF VALUE ADDED TAX reg. 43

(To be completed in triplicate by the purchaser/purchasing organization)

Purchaser's Name: Supplier's Name:

TPIN Address: TPIN Address:

Performa Invoice Number: Date:

Payment by: (a) Cheque (b) Cash (c) Other (state)

Full Name of Person submitting the Form:

Signature:

Mode of Identification: (ID, Passport, Driving Licence) No.:

Order/LPO No.	Date	Description of Goods	Unit Price	Quantity	Total Value (Kwacha)
TOTAL VALUE					

Total value (in words)

I declare the goods listed above eligible for entry under Customs Procedure Code No.

And are for exclusive use for/by:

Place of use:

Address:

The above information is, to my best knowledge, true and correct

Full Name in print:

Signature:

Office Title:

DATE STAMP

FOR OFFICIAL USE ONLY	FOR MANUFACTURE'S USE ONLY	FOR OFFICAL USE						
Approved <input type="checkbox"/> Not Approved <input type="checkbox"/>	Goods Supplied <input type="checkbox"/> Yes <input type="checkbox"/> No	Trading Records Verified and Certified Correct						
Full name: Signature:	Invoice No. and Date Delivery Note No. and Date	By: <i>Surtax Officer</i>						
Expiry Date: DATE STAMP	<table border="1" style="width: 100%;"> <tr> <th style="text-align: center;">Vehicle No.</th> <th style="text-align: center;">Quality</th> <th style="text-align: center;">Ref.</th> </tr> <tr> <td style="height: 20px;"> </td> <td> </td> <td> </td> </tr> </table> OFFICIAL DATE STAMP	Vehicle No.	Quality	Ref.				 DATE STAMP
Vehicle No.	Quality	Ref.						

Made this 19th day of June, 2006.

(FILE NO. C/DEA/3/3/6/10)

GOODALL E. GONDWE
Minister of Finance

