MALAWI GOVERNMENT

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I assent

Dr. Lazarus McCarthy Chakwera
President
5th August, 2021

ARRANGEMENT OF SECTIONS

SECTION

Part I—Preliminary

1. Short title and commencement
2. Interpretation

Part II—Relationship and Principles of Interpretation of Tax Laws

Division I: Relationship Among Tax Laws and International Agreements

3. Relationship among tax laws
4. Application of international tax agreements

Division II: Interpretation of Tax Laws

5. Interpretation of tax laws
6. Public ruling
7. Revocation of a public ruling
8. Private and class ruling
9. Basis and content of a private or class ruling
10. Rejection of application for a private or class ruling
11. Revocation of a private or class ruling
12. Fees for a private or class ruling

Part III—The Authority, Taxpayers and Tax Practitioners

Division I: Authority

13. Administration of tax laws
14. Powers and protection of a tax officer

SECTION

15. Delegation of powers and functions
16. Identification of tax officer
17. Assistance of an expert
18. Assistance by an officer from a public institution
19. Confidentiality and disclosure of information
20. Remuneration for complying with tax law

Division II: Taxpayers

21. Application for registration as taxpayer
22. Registration and issuance of TIN
23. Use of TIN
24. De-registration, cancellation, etc.
25. Tax clearance certificate
26. Right to information
27. Right to representation
28. Representative taxpayer
29. Obligations of a representative taxpayer
30. Liability of principal or master for acts of representative taxpayer

Division III: Tax Practitioners

31. Licensing of tax practitioners
32. Restrictions on representation and tax advice

PART IV—OFFICIAL COMMUNICATION AND DOCUMENTATION

33. Official language
34. Prescribed Forms
35. Authorized and defective documents
36. Declarations and filling of documents
37. Service of paper documents
38. Electronic document system

PART V—RETENTION AND PROVISION OF INFORMATION

Division I: Maintaining Documents

39. Maintaining documents

Division II: Provision of Information

40. Tax returns
41. Assistance in preparation of tax returns
42. Extension of time to file tax return

SECTION

43. Failure to file tax return on time
44. Correction of a tax return and other information

Division III: Access to Information

45. Access to premises and information
46. Access not to be limited by confidentiality
47. Rights and obligations of the possessor
48. Notice to obtain information
49. Audit

PART VI—PRIMARY TAX LIABILITY

50. Assessment of tax
51. Pre-emptive assessment and security
52. Adjusted assessment
53. Notice of assessment
54. Register of assessments

PART VII—DISPUTE RESOLUTION

Division I: Tax Decisions and Objections

55. Tax decision
56. Objection to a tax decision
57. Decision on an objection
58. Guidelines for objection process

Division II: Appeals

59. Appeal against objection decision

PART VIII—PAYMENT AND RECOVERY OF TAX

Division I: Payment of tax

60. Time for paying tax
61. Extension of time for paying tax
62. Manner of paying tax
63. Order of paying tax
64. Taxpayer accounts
65. Security

Division II: Recovery of Tax from Taxpayer

66. Tax is debt due to Government
67. Charge over asset
68. Taking possession of charged asset
69. Discharge of a charge

SECTION

70. Sale of charged asset
71. Restraint of person
72. Restraint of goods

Division III: Recovery from Third Parties

73. Manager of entity and other person
74. Receiver
75. Third party debtor and guarantor
76. Compliance with notice
77. Agent of non-resident tax payer

PART IX—REMISSION AND REFUND OF TAX

78. Limitation on tax reduction
79. Remission
80. Reporting on penalties and interest
81. Application for tax refund
82. Decision on application for tax refund
83. Payment of tax refund

PART X—INTEREST, PENALTIES AND OFFENCES

Division I: Interest and Penalties

84. Currency point system
85. Interest on payment of tax by instalments
86. Penalty and interest for under-estimating tax payable
87. Penalty and interest for failure to pay tax
88. Penalties relating to registration
89. Penalties relating to licensing
90. Penalty for failure to maintain proper documents
91. Penalty for failure to comply with a notice for transfer pricing information
92. Penalty for failure to file tax return or document
93. Penalty for making false or misleading statement
94. Penalty for tax avoidance
95. Penalty for failure to comply with electronic tax system
96. Penalty for aiding and abetting

Division II: Assessment of Interest and Penalties

97. Assessment of interest and penalties
98. Imposition of interest or penalty not bar to criminal prosecution

SECTION

Division III: Offences

99. Failure to comply with tax law
100. Offences relating to registration
101. Offences relating to licensing
102. Offences relating to TIN
103. Offences by tax practitioners
104. Failure to pay tax
105. Making false or misleading statement
106. Failure to maintain documents
107. Impeding tax administration
108. Offences in respect of goods
109. Offences by or in relation to authorized and unauthorized persons
110. Fraudulent claim of tax refund
111. Offences by entities
112. Aiding or abetting
113. Unlawful use of or interference with electronic tax system
114. Repeated offenders
115. Compounding offences

PART XI—PROCEEDINGS

116. Multiple proceedings
117. Power of search, seizure and arrest
118. Actions against the Authority
119. Jurisdiction and venue
120. Appearance of officers in court proceedings
121. Admissibility of documents
122. Burden of proof
123. Protection of witnesses
124. Tax decisions unaffected
125. Provision of security not a defence
126. Publication of list of offenders
127. Limitation of proceedings

PART XII—MISCELLANEOUS PROVISIONS

128. Regulations
129. Transition

SCHEDULE

Currency Point Value

An Act to provide for the administration and collection of taxes by the Malawi Revenue Authority and for purposes ancillary thereto; and to make provision for matters incidental thereto

ENACTED by the Parliament of Malawi as follows—

Part I—Preliminary

Short title and commencement

1. This Act may be cited as the Tax Administration Act, 2021, and shall come into operation on such date as the Minister shall appoint by notice published in the *Gazette*.

Interpretation

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

"aircraft" includes a balloon, kite, glider and every description of airship and flying machine and the equipment and furnishings thereof;

"adjusted assessment" means an assessment adjusted under section 52;

"assessment" means a determination of the amount of tax liability made under a tax law, whether by the Commissioner General or by way of self-assessment;

"arrangement" means the whole or part of an action, agreement, course of conduct, dealing, promise, transaction, understanding or undertaking, whether express or implied, whether or not enforceable by legal proceedings and whether unilateral or involving more than one person;

"Authority" means the Malawi Revenue Authority established under the Malawi Revenue Authority Act; Cap. 39:07

"bank lending rate" means the Reserve Bank of Malawi lending rate;

"class ruling" means written advice issued by the Commissioner General under section 8 that explains how a provision of a tax law is applied to a specific class of participants for a particular scheme;

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

"currency point" has the value assigned thereto in the Schedule hereto;

"document" includes an account, assessment, book, certificate, claim, declaration, deed, note, notice, invoice, order, plan, record,

return, ruling, or any other statement in writing, whether in electronic or other form;

"entity" means a corporation, partnership, trust or government agency, to the extent recognized as a person or taxable person by a tax law, but excludes an individual;

"file", in relation to a document, includes lodging or furnishing the document including by electronic means;

"forging" means the making of a false document, knowing it to be false, with the intention that it shall, in any way, be used or acted upon as genuine whether within Malawi or not, and making a false document includes making any false material alternation in a genuine document whether by addition, insertion, obliteration, erasure, removal or otherwise;

"High Court", means the Revenue Division of the High Court of Malawi;

"international tax agreement" means a treaty or agreement between the Government of Malawi and a foreign government providing for—

(*a*) relief of international double taxation and the prevention of fiscal evasion;

(*b*) reciprocal assistance for the administration or enforcement of tax laws; or

(*c*) reciprocal concessions in respect of goods grown, produced or manufactured in or imported from a contracting state;

"manager" in relation to an entity, means a director, manager, member, officer or other person who participates or may participate, whether alone or jointly with other persons, in making senior management decisions on behalf of the entity and includes—

(*a*) a partner of a partnership and a trustee of a trust;

(*b*) a person treated as a manager of an entity by a tax law; and

(*c*) a person under whose directions or instructions the entity or a person described in paragraphs (*a*) or (*b*) is required or accustomed to act;

"membership interest in an entity" means a right, whether of a legal or equitable nature, including a contingent right to participate in any income or capital of the entity and includes the

interest of a partner in a partnership, the interest of a beneficiary in a trust or shares in a corporation;

"original assessment" means an assessment that is not adjusted;

"objection decision" means a decision made under section 56;

"other tax law" means a tax law other than this Act;

"person" means a person as defined under a tax law;

"possessor of an asset" includes—

(*a*) in relation to premises or a place, the owner, manager or any other person in charge of the premises or place; and

(*b*) in relation to any other asset, including a document, a person from whom the asset is seized or taken;

"private ruling" means written advice issued by the Commissioner General under section 8 to a single taxpayer on the interpretation or application of a particular provision of a tax law with respect to a single transaction or a series of transactions;

"public officer" means a representative taxpayer of a company appointed in accordance with this Act;

"public ruling" means written advice issued by the Commissioner General under section 6 for the purpose of providing guidance to the public and officers of the Authority on the interpretation and application of a provision of a tax law;

"publicly available", in relation to a document, ruling or other notice issued by the Commissioner General, means making the document, ruling or notice accessible to the public at offices of the Authority and at such other locations or by such other medium as the Commissioner General may determine;

"restrain" or "distrain" includes detaining, locking up, marking, sealing, seizing, stopping, taking away or otherwise securing;

"self-assessment" means an original assessment under a tax law that is occasioned by a person filing a tax return;

"supervision" includes being physically or remotely present;

"tax" means revenue as defined under the Malawi Revenue Authority Act and includes—

(*a*) the liability of a withholding agent to remit withholding tax or an amount that should have been collected or withheld as such;

(*b*) interest and penalties imposed by assessment under Part X of this Act;

(*c*) notwithstanding provisions of any other law, any fine that may be imposed by a court in criminal proceedings under this Act;

(*d*) an amount required to be paid to the Commissioner General by a tax debtor under section 4 (5) or a taxpayer under section 70(9); and

(*e*) an amount required to be paid to the Commissioner General in respect of a tax liability of a third party under section 73, 74, 75 or 77;

"tax affairs" in relation to a person, includes all manner in which any provision of a tax law may apply to the person or the person's activities, assets or personal circumstances;

"tax clearance certificate" means a certificate issued by the Commissioner General upon being satisfied that a person has complied with tax laws through filing of returns and payment of the tax due or upon the person entering into an arrangement with the Commissioner General to pay any tax due;

"tax decision" means a decision made by the Commissioner General under a tax law, including an assessment or omission but does not include—

(*a*) a public, class or private ruling;

(*b*) a decision or omission to issue, revoke or refuse to issue a public, class or private ruling;

(*c*) a decision or omission that affects a person only as a tax officer or employee or agent of the Authority;

(*d*) a decision of the Commissioner General on an objection; or

(*e*) the compounding of an offence under any tax law;

"tax law" means—

(*a*) a law listed in the Schedule to the Malawi Revenue Authority Act, and includes this Act;

(*b*) any other law providing for the collection or administration of tax in whole or in part by the Authority; and

(*c*) an international tax agreement;

"tax officer" means the Commissioner General and any officer appointed under the Malawi Revenue Authority Act; Cap. 39:07

"taxpayer" means a person liable for tax under a tax law whether or not he has accrued a tax liability in a tax period;

"tax return" has the meaning assigned thereto under section 40;

"TIN" means a Taxpayer Identification Number issued under section 22;

"TIN certificate" means a certificate issued under section 22;

"Tribunal" means the Revenue Appeals Tribunal established under the Revenue Appeals Tribunal Act;

Act No. 14 of 2021

"trust" includes a trust constituted by an individual, a court order or operation of law;

"trustee"—

(*a*) means an individual or body corporate holding assets in a fiduciary capacity for the benefit of identifiable persons or for some object permitted by law whether or not—

(i) the assets are held alone or jointly with other individuals or bodies corporate; or

(ii) the individual or body corporate is appointed or constituted trustee by personal acts, by order or declaration of a court or by operation of the law; and

(*b*) includes joint trustee and further includes—

(i) an executor, administrator, tutor or curator;

(ii) a liquidator, receiver, trustee in bankruptcy or judicial manager;

(iii) any person having the administration or control of assets subject to a usufruct, *fideicommissum* or other limited interest;

(iv) any person who manages the assets of an incapacitated individual; and

(v) any person who manages assets under a private foundation or other similar arrangement;

"vehicle" includes every description of conveyance for the transport of persons or goods on land;

"vessel" includes every description of conveyance for the transport of persons or goods on water;

"withholding agent" means a person obliged to withhold tax from a payment; and

"withholding tax" means amount of tax that a withholding agent is required to withhold from a payment under a tax law.

Part II—Application, Relationship and Interpretation of Tax Laws

Division I: Relationship among tax laws

Relationship among tax laws

3.—(1) This Act shall be read as one with each of the other tax laws.

(2) To the extent necessary to give effect to the purposes of this Act, any undefined term in this Act has a meaning consistent with that used in any other tax law.

(3) For the purposes of applying the provisions of multiple tax laws—

(*a*) section 97 applies where interest and penalties are payable under multiple provisions of tax laws; and

(*b*) section 116 applies where multiple provisions of tax laws apply with respect to proceedings for recovery of tax or with respect to offences under tax laws.

Application of international tax agreements

4.—(1) Provisions of international tax agreements to which Malawi is a party shall, to the extent that they are inconsistent with the provisions of any tax law, prevail over the provisions of the tax law.

(2) Subsection (1) shall apply only where the international tax agreement is brought into force by order of the Minister, published in the *Gazette*.

(3) Upon publication of the Order in accordance with subsection (2), the Minister shall lay a copy of the tax agreement before the National Assembly—

(*a*) in the case of an agreement brought into force when the National Assembly is sitting, within twenty-eight days of its coming into force or, if before the agreement is so laid the National Assembly is dissolved or is prorogued or adjourned, within seven days of the commencement of the next sitting; or

(*b*) in the case of an agreement brought into force when the National Assembly is not sitting, within twenty-eight days of the next sitting or, if before the agreement is so laid the National Assembly is dissolved, prorogued or adjourned, within seven days of the commencement of the next sitting.

(4) The National Assembly may, within seven days of the agreement being laid before it in accordance with subsection (3), by resolution, decline to approve the agreement and resolve that it ceases to be of force.

(5) Where the Commissioner General receives a request, pursuant to an international tax agreement, from a competent authority of another country for collection of a tax payable by a tax debtor in Malawi under the tax laws of that other country, the Commissioner General may collect such tax in accordance with the provisions of the tax laws and transmit the taxes to the requesting authority.

(6) Where an international tax agreement requires Malawi to exempt an amount from income tax or subject it to reduced income tax, the exemption or reduction shall not be available to any entity—

(*a*) which, for the purposes of the agreement, is not a resident of another contracting state; or

(*b*) fifty percent or more of whose underlying ownership is held by persons who, for the purposes of the agreement, are not residents of a contracting state.

(7) For the purposes of this section, "underlying ownership", in relation to an entity, means membership interests owned in the entity, directly or indirectly, through one or more interposed entities, by individuals or entities in which no person has a membership interest.

Division II: Interpretation of tax laws

Interpretation of tax laws

5.—(1) In interpreting or construing a tax law, regard shall be had to context and the wider purpose of the law.

(2) In resolving any ambiguity within a tax law, regard shall be had to any official extrinsic material pertaining to the preparation of the law.

Public ruling

6.—(1) To achieve consistency in the administration of tax laws and to provide guidance on implementation of tax laws, the Commissioner General may issue public rulings setting out the Commissioner General's interpretation of the laws.

(2) A public ruling shall be published in the *Gazette* and shall take effect from the date specified in the notice or, where no date is specified, from the date of publication and shall remain in force until revoked.

(3) A public ruling shall state that it is a public ruling and shall have a number and subject heading by which it shall be identified.

(4) A public ruling may pertain to a single or several tax laws and the Commissioner General may issue multiple public rulings with respect to the same tax law.

(5) A public ruling shall bind the Commissioner General.

Revocation of a public ruling

7.—(1) The Commissioner General may revoke a public ruling, in whole or in part, by publishing notice of the revocation in the *Gazette*.

(2) A public ruling may be revoked by an Act of Parliament or subsequent issuance of another public ruling that is inconsistent with it.

(3) The revocation of a public ruling, in whole or in part, shall—

(*a*) where subsection (1) applies, take effect from the date specified in the notice of revocation or, if no date is specified, from the date the notice of the revocation is published in the *Gazette*; or

(*b*) where subsection (2) applies, take effect from the date the Act of Parliament comes into force or, in the case of an inconsistent public ruling, from the date the inconsistent public ruling comes into force.

(4) A revoked public ruling or the revoked part thereof shall continue to apply to arrangements or transactions commenced before the revocation.

Private and class ruling

8.—(1) The Commissioner General may, on application in writing by a person or a class of persons, issue a private ruling or a class ruling setting out the Commissioner General's position regarding the application of a tax law with respect to an arrangement or a transaction proposed or entered into—

(*a*) in the case of a private ruling, by the person; or

(*b*) in the case of a class ruling, by persons in the specified class.

(2) The Commissioner General shall issue a—

(*a*) private ruling by serving a written notice of the ruling on the applicant; and

(*b*) class ruling by serving a written notice of the ruling on the applicants and making the ruling publicly available.

(3) A private or class ruling shall be headed "private ruling" or "class ruling", as the case may be, and shall have a number and subject heading by which it shall be identified.

(4) A private or class ruling may pertain to a single or several tax laws and may apply to a single or multiple arrangements.

(5) A private or class ruling shall be valid for the period specified in the ruling or from the date of issuance until revoked.

(6) Subject to subsection (7), a private or class ruling shall bind the Commissioner General.

(7) A private or class ruling shall be binding only if—

(*a*) prior to its issuance, the applicant makes full and true disclosure to the Commissioner General of all aspects of the arrangement to which the ruling applies; and

(*b*) the arrangement proceeds in all material respects as described in the application for the ruling.

(8) Without derogating from the generality of subsection (6), a private or class ruling shall not bind—

(*a*) the applicant or any other person; or

(*b*) the Commissioner General, with respect to any person other than, in the case of a private ruling, the person who applied for the ruling or, in the case of a class ruling, persons in the specified class.

(9) A person shall not challenge a private or class ruling, unless the challenge is in respect of a tax decision made with respect to an arrangement which is the subject of the ruling.

(10) For the purposes of this section a class of persons includes—

(*a*) persons holding a particular class of membership interest in an entity; and

(*b*) such persons who, in the opinion of the Commissioner General, may be identified as belonging to a class of persons with respect to the application of a particular provision of a tax law.

Basis and content of a private or class ruling

9.—(1) The Commissioner General may base a private or class ruling on assumptions about a future event or any other matter considered appropriate.

(2) A private or class ruling shall—

(*a*) set out the matter ruled on;

(*b*) identify the tax law, period and arrangement to which the ruling relates as well as any assumption on which the ruling is based;

(*c*) in the case of a private ruling, identify the applicant and his TIN; and

(*d*) in the case of a class ruling, except as otherwise instructed by an applicant in writing, refrain from revealing the TIN of any person or the identity of the class members or any other person referred to in the ruling.

Rejection of an application for a private or class ruling

10.—(1) The Commissioner General may reject an application for a private or class ruling where—

(*a*) in the case of a private ruling—

(i) the arrangement, which is the subject of the application, has already been the subject of a tax decision; or

(ii) the Commissioner General has commenced an investigation of the applicant's tax affairs that cover the arrangement or, before the application, has notified the applicant, in writing, of an intention to do so;

(*b*) the Commissioner General is of the opinion that an existing public ruling adequately covers the arrangement;

(*c*) the application is frivolous or vexatious;

(*d*) the arrangement has not been carried out and there are reasonable grounds to believe that it will not be carried out;

(*e*) the applicant has not provided the Commissioner General with sufficient information to make a ruling; or

(*f*) in the opinion of the Commissioner General, it would be unreasonable to comply with the application having regard to the resources needed to comply or any other matter the Commissioner General considers relevant.

(2) The Commissioner General shall, where he rejects an application for a private or class ruling, serve the applicant with a written response stating the reasons for the rejection.

Revocation of a private or class ruling

11.—(1) The Commissioner General may, with reasonable cause, revoke a private or class ruling, in whole or in part, by written notice—

(*a*) in the case of a private ruling, served on the applicant; and

(*b*) in the case of a class ruling, served on the applicant and made publicly available.

(2) Where a written law that is inconsistent with a private or class ruling is enacted or promulgated, the private or class ruling shall be revoked to the extent of the inconsistency.

(3) The revocation of a private or class ruling, in whole or in part, shall—

(*a*) where subsection (1) applies, take effect from the date specified in the notice of revocation; or

(*b*) where subsection (2) applies, take effect from the date the inconsistent legislation comes into force.

(4) The revoked part of a private or class ruling shall continue to apply to arrangements commenced before the revocation.

Fees for a private or class ruling

12.—(1) The Commissioner General may charge a fee for issuance of a private or class ruling.

(2) The Minister may, by regulations published in the *Gazette*, prescribe fees payable under subsection (1) which shall be based on cost recovery.

(3) The Commissioner General shall, on receipt of each application, provide the applicant with the estimate of the anticipated fee and shall promptly notify the applicant if it subsequently appears that the estimate may be exceeded.

(4) The fees imposed under this section shall constitute funds of the Authority.

Part III—The Authority, Taxpayers and Tax Practitioners

Division I: The Authority

Administration of tax laws

Cap. 39:07

13. The Authority shall be responsible for administering and giving effect to tax laws in accordance with the provisions of the Malawi Revenue Authority Act.

Powers and protection of a tax officer

14.—(1) Subject to express limitations in this Act, the powers of a tax officer specified in this Act may be exercised with respect to any tax law and are in addition to specific powers granted under other tax laws.

(2) Unless otherwise expressly provided in a tax law, a tax officer may, in performing functions under this Act—

(*a*) act under a more specific provision of a tax law; or

(*b*) act for the purposes of more than one tax law at the same time.

(3) The Commissioner General may use, for the purposes of any tax law, information gathered by a tax officer in the proper execution of duties under a particular tax law.

(4) The Commissioner General may give, in writing, such administrative directive as he considers necessary for the implementation of the provisions of this Act or any other tax law.

(5) A tax officer shall not be liable for any act or omission in respect of any action done or omitted to be done, in good faith, in the performance of duties under this Act or any other tax law.

Delegation of powers and functions Cap.39:07

15.—(1) The Commissioner General may delegate powers and functions conferred on him by a tax law to a tax officer appointed under the Malawi Revenue Authority Act.

(2) The Commissioner General shall not delegate powers or functions in relation to a tax law to any person, other than a tax officer.

(3) The Commissioner General shall not delegate the power to—

(*a*) grant an extension of time for holding a document or seized asset;

(*b*) remit a penalty or interest;

(*c*) refund tax;

(*d*) issue a ruling under this Act or any other tax law; or

(*e*) compound an offence.

Identification of a tax officer

16.—(1) The Authority shall issue an identity card to every tax officer.

(2) The identity card shall incorporate the Authority's logo and have a picture of the tax officer.

(3) A person dealing with a tax officer may require the tax officer to identify himself and his position and, if dealing with the tax officer in person, demand to be shown the tax officer's identity card.

Assistance of an expert

17.—(1) The Commissioner General may engage experts, on such terms and conditions as the Commissioner General thinks fit, to assist the Authority in the proper performance of its functions under this Act or any other tax law.

(2) An expert engaged under subsection (1) shall work under the supervision of a designated tax officer.

(3) A person shall not obstruct an expert engaged under subsection (1) from performing the functions assigned to the expert.

(4) A person may lodge a complaint with the Commissioner General where that person is of the opinion that the engagement or involvement of a particular expert in the execution of a particular task involves a conflict of interest.

(5) The Commissioner General shall determine a complaint lodged under subsection (4) and shall give reasons for his decision.

Assistance by an officer from a public institution

18.—(1) The Commissioner General may engage an officer from a public institution, including the police, to assist or protect the Authority and its tax officers in the performance of their functions under any tax law.

(2) A public institution requested to provide assistance under subsection (1) shall provide the requested assistance within the limits of its authority and resources.

(3) An officer engaged under subsection (1) shall work under the supervision of a designated tax officer.

Confidentiality and disclosure of information

19.—(1) This section applies to a person who—

(*a*) in whatever capacity, is employed or engaged by the Authority or, at the request of the Authority, provides assistance to the Authority; or

(*b*) prior to the commencement of this Act, fell within paragraph (a).

(2) A person falling within subsection (1) (*a*) shall take an oath of secrecy in a manner and format as may be prescribed by Regulations made under this Act.

(3) A person to whom this section applies shall treat as secret and confidential any information, communication or document that come to that person's possession or knowledge in the course of performing duties assigned to him.

(4) A person may disclose information or document referred to in subsection (3) to another person where —

(*a*) the other person is employed or engaged by or assisting the Authority as referred to in subsection (1)(*a*);

(*b*) the disclosure is for the purposes of a tax law or any other law; or

(*c*) the Commissioner General has specifically or generally authorized the disclosure.

(5) The Commissioner General may disclose information or a document referred to in subsection (3) to a court or the Tribunal only as is necessary for the purposes of a tax law or any other law that expressly requires the Commissioner General to disclose the information or document.

(6) The Commissioner General may disclose information or document referred to in subsection (3) to—

(*a*) the Minister or any person authorized by the Minister where such disclosure is necessary for the performance of official duties;

(*b*) the Commissioner of National Statistics or any person authorized by the Commissioner where such disclosure is necessary for the performance of official duties;

(*c*) the Auditor General or any person authorized by the Auditor General where such disclosure is necessary for the performance of official duties; or

(*d*) a competent authority of the government of another country with which Malawi has entered into an international tax agreement, to the extent permitted under that agreement.

(7) The person, court, Tribunal or authority receiving information or a document under subsection (3), (4) or (5) shall keep the information or document secret, under the provisions of this section, except to the minimum extent necessary to achieve the purpose for which the information or document was obtained.

(8) This section does not apply to information that may be published under section 126.

(9) This section does not prevent disclosure of a taxpayer's information to that taxpayer or, with the taxpayer's consent, to another person.

(10) This section does not prevent disclosure of information not relating to a specific taxpayer, if the Commissioner General has specifically or generally authorized the disclosure.

(11) A person who contravenes the provisions of this section commits an offence and shall, upon conviction, be liable to a fine of not less than one thousand currency points and not more than ten thousand currency points and to imprisonment for six months.

Remuneration for complying with tax law

20.—(1) A person shall not, unless expressly provided for in a tax law, be entitled to any remuneration or reimbursement of expenses for complying with the provisions of a tax law.

(2) Subsection (1) shall not apply to—

(*a*) a tax officer; or

(*b*) an expert or an officer of a public institution assisting the Authority in the performance of its functions.

(3) The remuneration of persons referred to in subsection (2) shall be determined in accordance with the Malawi Revenue Authority Act. Cap. 39:07

(4) Notwithstanding the provisions of subsection (1), the Commissioner General may offer or order payment of a reward, as he may think fit, to any person for information or service rendered in the detection of an offence under a tax law.

(5) The Commissioner General may, in consultation with the Minister, prescribe guidelines for purposes of implementing the provisions of subsection (4).

Division II: Taxpayer

Application for registration as taxpayer

21.—(1) A person who by reason of carrying on a business becomes potentially liable to tax under a tax law, shall apply for registration as a taxpayer.

(2) A person who does not fall within subsection (1) but earns income or engages in an activity with the potential of earning income, shall apply for registration as a taxpayer within fifteen days of earning the income or commencement of the activity or such period as the Commissioner General may determine.

(3) A person who, at the commencement of this Act, is a registered tax payer with a TIN shall not apply for registration.

(4) An application for registration shall be—

(*a*) in the prescribed Form; and

(*b*) accompanied by the prescribed documentary evidence.

(5) Where a person has applied for registration and details provided under subsection (4) change before the person is issued a TIN, the person shall immediately notify the Commissioner General, in writing, of the change and provide the appropriate documentary evidence.

(6) Where the Commissioner General rejects an application for registration, he shall, within fourteen days of receiving the application, serve the applicant with a written notice of the rejection and reasons for the rejection.

Registration and issuance of TIN

22.—(1) The Commissioner General shall, in the case of a successful application, issue the applicant, within fourteen days of receipt of the application, with a number to be known as a TIN for the purposes of registration and identification.

(2) The TIN is issued when the Commissioner General serves the applicant with a TIN certificate.

(3 The TIN is personal to the person to whom it is issued and shall not be transferred or used by any other person.

(4) A person shall have one TIN at a time and it shall be used for purposes of all tax laws.

(5) The Commissioner General shall not issue a TIN to a person unless the Commissioner General is satisfied—

(*a*) as to the person's true identity; and

(*b*) that the person does not have an existing TIN.

(6) Where a taxpayer who is obliged to register with the Commissioner General under a tax law fails to do so, the Commissioner General may register the taxpayer for one or more tax types as is appropriate under the circumstances and shall issue the taxpayer with a TIN.

(7) The holder of a TIN shall notify the Commissioner General, in writing, within twenty-one days of any change in the details contained in the TIN certificate.

Use of TIN

23.—(1) A person who has been issued with a TIN shall include the TIN in any claim, notice, return, statement or other document submitted to the Authority or used for purposes of any tax law.

(2) A person shall not represent to any other person, including a tax officer, that the person is a holder of or has been issued with a particular TIN when that is not the case.

(3) A person who contravenes subsection (2) commits an offence.

De-registration, cancellation, etc

24.—(1) The Commissioner General may, where he thinks it appropriate, by notice in writing, deregister a taxpayer, cancel, amend or replace a TIN issued to a person.

(2) The Commissioner General shall cancel a TIN where—

(*a*) a person has applied for deregistration and the Commissioner General is satisfied that the person is no longer required to be registered;

(*b*) a person has not applied for deregistration but the Commissioner General is satisfied that the person is eligible for deregistration;

(*c*) a person described in the TIN certificate is fictitious;

(*d*) a person described in the TIN certificate does not accurately reflect the true identity of the person to whom the certificate was issued;

(*e*) a person to whom the TIN certificate was issued has another valid TIN;

(*f*) a bearer of the TIN is dead; or

(*g*) in the case of a body corporate, the body is wound up.

(3) The Commissioner General may replace the TIN that has been cancelled by issuing a new TIN in accordance with section 22.

(4) The Commissioner General may, where he thinks it appropriate and without cancelling a TIN, issue a person with an adjusted TIN certificate.

Tax clearance certificate

25.—(1) A person shall not carry out a prescribed arrangement without a tax clearance certificate.

(2) The Minister may, by regulations published in the *Gazette*, prescribe arrangements that would require a tax clearance certificate.

(3) A person may apply, in writing, to the Commissioner General for a tax clearance certificate stating the purpose for which the certificate is required.

(4) The Commissioner General may issue a tax clearance certificate where the Commissioner General is satisfied that—

(*a*) the applicant has a TIN, which is specified in the application;

(*b*) the applicant has no outstanding tax liability, return or other obligation under any tax law; and

(*c*) the applicant has satisfied any other condition prescribed by the Commissioner General.

(5) The tax clearance certificate shall indicate—

(*a*) the name of the taxpayer;

(*b*) the TIN of the taxpayer;

(*c*) the period to which the tax clearance certificate relates, and, with respect to that period, whether—

(i) the person has any outstanding tax obligation;

(ii) arrangements, that are satisfactory to the Commissioner General, have been made by the taxpayer for the payment of the outstanding tax; or

(iii) the Commissioner General is satisfied that the taxpayer is in good standing; and

(*d*) any limit on the purpose for which the tax clearance certificate has been issued.

(6) The tax clearance certificate shall be valid only for the period and purpose specified in the certificate.

Right to information

26. A taxpayer is entitled, upon request, to receive information from the Authority regarding the taxpayer's tax affairs.

Right to representation

27.—(1) A taxpayer has the right to be represented in his dealings with the Authority, either by—

(*a*) a representative taxpayer as prescribed under section 28; or

(*b*) a tax practitioner as prescribed under section 31.

(2) The Commissioner General may prescribe a form to be used by a taxpayer when appointing a representative.

(3) The Commissioner General may, upon receipt of a completed Form under subsection (2), approve the appointment of the representative.

(4) Where the Commissioner General is not satisfied with the appointment, the Commissioner General shall, within fourteen days of receiving the application, serve the applicant with a written notice of the refusal and reasons for the rejection.

(5) The Authority shall not be obliged to communicate with a taxpayer through the taxpayer's representative unless the Authority has approved the appointment of the representative.

Representative taxpayer

28.—(1) A person may be appointed a representative taxpayer of another person for the purposes of this Act or any other tax law, in the case of—

(*a*) an individual under a legal disability, where the person so appointed is the guardian or other legal representative who receives or is entitled to receive income on behalf of, or for the benefit of the individual under a disability;

(*b*) a company, in the absence of the appointed public officer, where the person so appointed is the chief executive officer, managing director, company secretary, treasurer, trustee or a resident director or similar officer of the company acting or purporting to act in such a position as public officer;

(*c*) an association of persons, where the person so appointed is responsible for accounting for the receipt or payment of moneys or funds on behalf of the association;

(*d*) a partnership, where the person so appointed is a partner in the partnership or a manager of the partnership responsible for accounting for the receipt or payment of moneys or funds on behalf of the partnership;

(*e*) a trust, if the person so appointed is a trustee of the trust;

(*f*) a non-resident person, where the person so appointed is controlling the non-resident person's affairs in Malawi, including managing a business of that non-resident person;

(*g*) any person, including a person referred to in paragraphs (*a*), (*b*), (*c*), (*d*), (*e*), and (*f*), where the person so appointed is an appointed agent of a principal or is a representative of a person as provided for under a tax law or specified by the Commissioner General, by notice in writing, to the agent or representative; or

(*h*) an aircraft or vessel, the person is appointed as an agent by a principal or master of the aircraft or vessel.

(2) Where a non-resident person with no fixed place of business in Malawi is required to register under a tax law, the person shall appoint a representative taxpayer in Malawi.

(3) Where a person required to appoint a representative taxpayer fails to do so, the Commissioner General may appoint a representative taxpayer for that person.

Obligations of a representative taxpayer

29.—(1) A representative taxpayer shall be responsible for performing any duty or obligation imposed by a tax law on a taxpayer, including the submission of returns and the payment of tax.

(2) Where a tax law requires a representative taxpayer to perform a duty or an obligation in respect of the taxpayer, that representative taxpayer shall comply with the requirements of the tax law.

(3) Where a taxpayer has more than one representative taxpayer, each representative taxpayer shall be responsible for all obligations of the taxpayer as prescribed under the tax law.

(4) Where the representative taxpayer pays a tax on behalf of a taxpayer, the representative taxpayer shall be indemnified by the taxpayer in respect of that payment.

(5) Except as provided otherwise under a tax law and subject to subsection (6), any tax that is payable by a representative taxpayer under this section shall be recoverable from the taxpayer only to the extent of the income or assets of the taxpayer that are in the possession of or under the control of that representative taxpayer.

(6) Subject to subsection (7), a representative taxpayer shall be personally liable for the payment of any tax due by the representative taxpayer in that capacity where, during the period when the tax remains unpaid, the representative taxpayer—

(*a*) alienates, charges or disposes of any monies received or accrued in respect of which the tax is payable; or

(*b*) disposes of or parts with any funds belonging to the taxpayer that are in the possession of the representative taxpayer or which come to the representative taxpayer after the tax is payable and could legally be paid from or out of such funds.

(7) A representative taxpayer shall not be personally liable for a tax under subsection (6) where—

(*a*) the funds were paid out by the representative taxpayer on behalf of a taxpayer and the amount paid has priority, in law or

equity, over the tax payable by the taxpayer; or

(*b*) at the time the funds were paid out, the representative taxpayer did not know and could not reasonably be expected to know of the taxpayer's tax liability.

(8) Notwithstanding subsections (6) and (7), for the purposes of the Customs and Excise Act, a representative taxpayer shall be personally liable for the performance of all related acts and obligations of the taxpayer including the payment of duty and answering of questions which may be required of the taxpayer, and may be prosecuted for any offence committed by the taxpayer as if he himself had committed the offence. Cap. 42:01

(9) This section does not relieve a taxpayer from performing any obligation imposed on the taxpayer under a tax law that the representative taxpayer has failed to perform.

(10) A tax liability of a taxpayer includes any interest payable in respect of the liability.

Liability of principal or master for acts of a representative

30. A principal or master of an aircraft or vessel who appoints a representative taxpayer shall be liable for the acts and statements of the representative taxpayer in respect of that appointment and may accordingly be prosecuted for any offence committed by the representative taxpayer as if the principal or master had himself committed the offence.

Division III: Tax Practitioners

Licensing of tax practitioners

31.—(1) A person shall not practice as a tax practitioner unless he is licensed under this section.

(2) A person who intends to practise as a tax practitioner shall apply in the prescribed manner to the Commissioner General for registration.

(3) The Commissioner General shall, upon being satisfied with the application under subsection (2), grant a licence to the applicant in a prescribed form.

(4) Where the Commissioner General is not satisfied with the application, he shall, with written reasons, reject the application.

(5) The Minister may, by notice published in the *Gazette*, make regulations to provide for licensing, registration and de-registration of tax practitioners and the conduct of activities of tax practitioners.

Restrictions on representation and tax advice

32.—(1) A person, other than a tax practitioner licensed under section 31, shall not—

(*a*) represent a taxpayer in the taxpayer's tax affairs;

(*b*) provide advice regarding the interpretation or effect of a tax law; or

(*c*) prepare a tax return, appeal or any other document under a tax law on behalf of a taxpayer.

(2) A person, not being a tax practitioner, shall not represent to any person, including a tax officer, that the person is a tax practitioner or offer services of a tax practitioner to a taxpayer.

(3) A person who contravenes subsection (2) commits an offence.

(4) Subsection (1) shall not apply to a legal practitioner performing legal work on behalf of a taxpayer in relation to a tax dispute.

Part IV—Official Communication and Documentation

Official language

33.—(1) English shall be the official language for purposes of tax laws and the Authority may refuse to recognize any communication or document that is not in the official language.

(2) Where any communication or document that is not in the official language is relevant in applying a tax law to a taxpayer, the Commissioner General may require the taxpayer to provide a translation of the communication or document into the official language.

(3) The requirement in subsection (2) shall be in writing and served on the taxpayer.

(4) The taxpayer shall use a translator approved by the Commissioner General and shall bear the cost of the translation.

(5) Where a taxpayer fails to comply with the requirement under subsection (2), the Commissioner General may have the communication or document translated at the cost of the taxpayer.

(6) The translation of any communication or document under this Act shall be subject to the Authentication of Documents Act.

Cap. 4:06

Prescribed Forms

34.—(1) The Commissioner General may, for the efficient administration of tax laws, from time to time, prescribe forms of documents required under a tax law.

(2) A person shall use a prescribed form when filing documents with the Commissioner General or when the form is otherwise required for the purposes of a tax law.

(3) The Commissioner General shall make prescribed forms available to the public at offices of the Authority and at such other locations or by such other medium as the Commissioner General may determine.

Authorized and defective documents

35.—(1) A document issued by the Commissioner General under a tax law shall be sufficiently authenticated if the name or title of the Commissioner General or authorized officer of the Authority, is—

(*a*) in the case of a paper document, signed, printed, stamped or written on the document; or

(*b*) in the case of an electronic document, imbedded in the document by way of electronic signature.

(2) A document issued under a tax law is not invalid or defective if—

(*a*) it is, in substance and effect, in conformity with the tax law; and

(*b*) the person to whom the document is addressed or to whom it applies is designated in the document according to common practice.

(3) Subject to subsection (4), the Commissioner General may amend a document issued under a tax law for the purposes of rectifying a defect in the document.

(4) Where a document issued by the Commissioner General under a tax law contains a defect that is subject to a dispute as to the interpretation of the tax law or facts involving a particular person, the Commissioner General may not amend, with respect to that particular person, that part of the document that contains the defect.

Declarations and filling of documents

36.—(1) Where a declaration authorized or required by a tax law may be made orally, the declaration may be so made before a tax officer authorized for that purpose.

(2) A declaration required of a person under a tax law shall be sufficiently authenticated if it is signed by the person making the declaration.

(3) A paper document shall be filed with the Commissioner General under a tax law by—

(*a*) personally delivering the document to an office of the Authority; or

(*b*) sending it by post to an office of the Authority.

(4) A document referred to in subsection (3) shall be treated as received by the Commissioner General when the Authority acknowledges receipt by stamping it.

Service of paper documents

37.—(1) The Commissioner General or a tax officer sufficiently serves a paper document on a person under a tax law where the document is—

(*a*) handed to the person or, in the case of an entity, a manager of the entity; or

(*b*) left at or sent by post to the usual or last known place of abode, business, office, post office box or other address of the person including the address contained in the person's TIN certificate or value added tax registration certificate.

(2) A document shall be deemed to have been served at the following times—

(*a*) in the case of hand delivery to a person or leaving it at a place, at the time of handing over or leaving it;

(*b*) in the case of service by registered post, at the time the document is delivered or the person is informed that the document awaits collection;

(*c*) in the case of service by ordinary post to an address within Malawi, ten days after posting; and

(*d*) in the case of service by post to an address outside Malawi, the time at which the document would normally be delivered in the ordinary course of post.

Electronic document system

38.—(1) The Commissioner General may establish and operate a system for—

(*a*) electronic filing of documents with the Commissioner General;

(*b*) electronic service of documents by the Commissioner General;

(*c*) electronic payments to the Commissioner General; and

(*d*) carrying out formalities or procedures by use of information technology.

(2) The Commissioner General may, for purposes of establishing and operating the system under subsection (1), by notice published in the *Gazette*, prescribe rules, concerning—

(*a*) registration of persons to participate in the system, including issuance and cancellation of authentication codes;

(*b*) types of documents that may be transmitted through the system, including format and manner of transmission and the issuance and cancellation of document registration numbers;

(*c*) resolution of difficulties, including correction of errors, amendment of documents and procedure on breakdown or interruption of the system;

(*d*) confidentiality to be maintained, whether by a person using the system on his own behalf or on behalf of another person; and

(*e*) any other matter for the better administration of the system.

(3) An electronic document shall be deemed to have been filed by a person and received by the Commissioner General under a tax law when a document registration number is created using the person's authentication code.

(4) Subsection (3) shall not apply where a person proves to the satisfaction of the Commissioner General that the person did not send or authorize the filing of the document.

(5) An electronic document shall be deemed to have been served on a person by the Commissioner General under a tax law when a document registration number is created and the document can be accessed using the person's authentication code.

(6) The Commissioner General may authenticate a printed document as a copy of an electronic document filed under subsection (3) or served under subsection (5).

(7) In a proceeding before a court or the Tribunal, a copy of an electronic document authenticated under subsection (6) shall be conclusive evidence of the nature and content of an electronic document, unless the contrary is proved.

Part V—Retention and Provision of Information

Division I: Maintaining Documents

Maintaining documents

39.—(1) A person shall maintain, within the country, proper records—

(*a*) to provide information required to be filed with the Commissioner General under any tax law;

(*b*) to enable an accurate determination of tax payable under a tax law; and

(*c*) as may be prescribed by the Commissioner General or by Regulations.

(2) For the purpose of subsection (1), necessary records include underlying documents, however described, in the nature of receipts, invoices, vouchers, contracts or, in the case of electronic records, any medium by which the information can be extracted.

(3) The records referred to in subsection (1) shall be retained for a period of at least six years from the relevant date or for a period as follows, whichever is longer—

(*a*) where a person objects to a tax decision or appeals against a tax decision, all documents relevant to the matter in dispute shall be retained until the matter is finally decided and the decision is executed;

(*b*) where a person makes an application to the Commissioner General, all documents relevant to the application shall be retained until the application is finally determined;

(*c*) where a person seeks a refund of tax, all documents relevant to calculation of the refund shall be retained until the refund is made; and

(*d*) where a person has received notice of an investigation by the Commissioner General, all documents relevant to the investigation shall be retained until the Commissioner General notifies the person in writing that the investigation has been completed.

(4) Notwithstanding the provisions of subsections (1), (2) and (3), the Commissioner General may, by service of a notice in writing—

(*a*) to the extent specified in the notice, relieve a person of the obligation to maintain records or the time for which they are to be retained; and

(*b*) require a person to retain records, described with reasonable certainty in the notice, for such period as specified in the notice.

(5) Subsection (4)(*b*) shall apply whether or not the records pertain to the person's own tax affairs.

(6) Notwithstanding the other provisions of this section, the Minister may, by Regulations, prescribe the nature and manner of preparing and maintaining records that may be required under a tax law.

(7) In this section, "relevant date" means—

(*a*) in the case of income tax, the end of the year of income or years of income for which the records are relevant;

(*b*) in the case of value added tax, the end of the tax period or periods for which the records are relevant; and

(*c*) in the case of other taxes, the last date on which the taxpayer is obliged to file a tax return or any other record with the Commissioner General.

Division II: Provision of information

40.—(1) A person required to furnish a tax return under a tax law shall submit the return in the prescribed form and in the manner determined by the Commissioner General. Tax return

(2) A tax return filed by an individual shall be signed by the individual and contain a declaration that the return is complete and accurate.

(3) A tax return filed by an entity shall be signed by a duly authorized manager of the entity and contain a declaration that the return is complete and accurate.

(4) The Commissioner General may, by notice in writing, require a person to file a tax return if, before the date for filing the return—

(*a*) the person becomes bankrupt, is wound-up or goes into liquidation;

(*b*) the Commissioner General believes, on reasonable grounds, that the person—

(i) is about to leave the country indefinitely;

(ii) is otherwise about to cease its operations in the country; or

(iii) has committed an offence under a tax law; or

(*c*) the Commissioner General otherwise considers it appropriate, including but not limited to where the person fails to maintain adequate records as required under section 39.

(5) The notice under subsection (4) shall specify the period, part of a period or event to be covered by the tax return and the date by which the return is required to be filed.

(6) The following are tax returns for the purposes of this Act—

(*a*) a return of income;

(*b*) a provisional return for provisional tax estimate;

(*c*) a return of dividend;

(*d*) a business information return;

(*e*) a return required to be furnished under the Valued Added Tax Act; Cap. 42:02

(*f*) in relation to taxes on imports, a declaration of value filed under the Customs and Excise Act; Cap. 42:01

(*g*) an excise duty return filed under the Customs and Excise Act; Cap. 42:01

(*h*) any other return required to be furnished under a tax law; and

(*i*) any form required to be furnished under a tax law containing information relating to assessment of tax.

Assistance in preparation of tax returns

41.—(1) A person who prepares or assists in the preparation of a tax return or an attachment to a tax return of another person, shall certify the return or the attachment—

(*a*) specifying the extent to which he has examined the relevant documents of the other person maintained under section 39 and the nature of the documents examined; and

(*b*) stating that to the best of his knowledge, the return or attachment presents a true and fair view of the circumstances to which it relates.

(2) Where a person objects to certifying a tax return or an attachment as required under subsection (1), the person shall furnish the other person with a statement in writing of the reasons for such objection and shall sign the statement.

Extension of time to file tax return

42.—(1) A person who is required to file a tax return under a tax law may apply to the Commissioner General for an extension of time within which to file the return.

(2) An application under subsection (1) shall—

(*a*) be in writing;

(*b*) state the reasons for the request for extension; and

(*c*) be made before the due date for filing the return.

(3) Where a person makes an application under subsection (1) and the Commissioner General is of the opinion that good cause is shown, the Commissioner General may extend the date by which the return is to be filed.

(4) An extension of time granted under subsection (3) may be subject to such terms and conditions as the Commissioner General considers appropriate, including the payment of security.

(5) A decision of the Commissioner General with respect to an application filed under subsection (1) shall be in writing and shall be served on the applicant.

(6) The Commissioner General may grant multiple extensions but the extensions shall not in total exceed sixty days from the date the return was originally required to be filed.

(7) The grant of an extension of time under this section shall not alter the date for payment of tax as specified in the tax law under which the return is to be filed.

Failure to file tax return on time

43.—(1) Where a person fails to file a tax return by the due date prescribed under a tax law, the Commissioner General may, subject to section 42, appoint another person to prepare and file any information that the Commissioner General may require, including information required by the return.

(2) The Commissioner General shall make an assessment of the tax liability of the person as required by the tax law, including by way of adjusted assessment, and for this purpose may use any information in the possession of the Commissioner General including information obtained under subsection (1).

(3) A tax return filed after the due date or in a manner other than that specified in the relevant tax law has no effect on a tax decision of the Commissioner General, including an assessment made under subsection (2).

(4) Despite the provisions of subsection (3) the Commissioner General shall take a tax return filed after the due date into account in deciding whether or not to issue an adjusted assessment.

Correction of a tax return and other information

44.—(1) Where the Commissioner General is not satisfied with a tax return filed under a tax law, the Commissioner General shall use appropriate powers, including those in Division III, to gather such further information as is necessary to make an assessment.

(2) In addition to any return required under section 40, the Commissioner General may, by notice in writing, require a person to submit such further or other return in the prescribed form as and when required for the purposes of this Act or any other tax law.

(3) With the exception of a provisional tax return which may be amended at the end of the second quarter, a person shall not amend or correct a tax return without the permission of the Commissioner General after filing the return.

(4) Where a person discovers that any information filed with the Commissioner General in a tax return or otherwise is incorrect or misleading in any material particular, the person shall submit further information to the Commissioner General in respect of the matter.

(5) The Commissioner General may take into account any information received under subsection (4) in making an assessment or adjusted assessment.

Division III: Access to Information

Access to premises and information

45.—(1) A tax officer may, while acting in the course of duty for the purposes of a tax law, enter and be given full and free access to—

(*a*) any business or public premises, customs area or other place used for reception or storage of goods in use for or intended for trade or any document, electronic record or data relating to such business; and

(*b*) any place in respect of which a search warrant has been issued by a court of law.

(2) A tax officer exercising power under subsection (1) shall specifically be authorized in writing for the purpose by the Commissioner General.

(3) A tax officer may, upon gaining entry into premises in accordance with subsection (1)—

(*a*) examine and make extracts from and copies of any book, document, computer record, electronic data or anything which is required under a tax law to be kept or exhibited in such area or place or which in his opinion may afford evidence of an offence under a tax law;

(*b*) seize a book, document, computer record, electronic data or anything which, in his opinion, may afford evidence of an offence under a tax law; and

(*c*) seize any document that, in his opinion, affords evidence that may be material in determining the tax liability of any person under a tax law.

(4) The tax officer may enter into premises pursuant to the powers under this section—

(*a*) in the case of entry in terms of subsection (1) (*a*), between 7.30am and 5:00pm; and

(*b*) in the case of entry in terms of subsection (1) (*b*), at any time as permitted by the search warrant.

(5) Subject to subsection (1), the tax officer may—

(*a*) where a document is not available or a copy is not provided by a person having custody of the document on request, seize any asset that the tax officer reasonably suspects contains or stores the document in any form;

(*b*) in the case of premises used for business purposes, inspect stock, including by way of opening packaging and taking of samples; and

(*c*) park, moor or store at any premises or place a vehicle or other equipment in use by the tax officer.

(6) A document, asset or sample seized by the tax officer shall be signed for by the tax officer and may—

(*a*) in the case of a document, be retained for 6 months;

(*b*) in the case of an asset seized under subsection (5)(*a*), be retained until the record, document or information therein is extracted or thirty days, whichever period is greater and the extracted document shall be retained in accordance with paragraph (a); and

(*c*) in the case of a sample, be retained and disposed of in the manner directed by the Commissioner General.

(7) The Commissioner General may, for good reason, extend the periods prescribed under paragraphs (*a*) and (*b*) of subsection (6) but the extension shall not exceed twelve months from the date the document or asset is seized.

(8) The Commissioner General shall, upon expiry of the periods prescribed under subsections (6) and (7), return the seized items.

(9) Where the seized document or asset forms part of the evidence in an ongoing investigation, tax decision objection or appeal, the document or asset shall be retained until the investigation is concluded or the matter is finally determined.

(10) A tax officer exercising power under this section may be assisted by an employee of the Authority, an expert appointed under section 17 or an officer from a public institution engaged under section 18.

(11) The person assisting the tax officer shall be authorised for the purpose and be supervised by the tax officer.

Access not to be limited by confidentiality

46. The provisions of this Act or any other tax law regarding access to information shall have effect notwithstanding the provisions of any other law relating to confidentiality, privilege or public interest with respect to the production of or access to a document.

Rights and obligations of the possessor

47.—(1) A possessor of any premises, place, document or asset to which a tax officer seeks or has obtained access under section 45 may require the officer to produce the authorization referred to in that section.

(2) Where the tax officer fails to comply with a request under subsection (1), the possessor may refuse the officer access to the premises or document and may require the officer to leave the premises or place or return the document or asset to which the tax officer has obtained access.

(3) A possessor of premises, place, document or asset to which an exercise of power under section 45 relates shall provide all

reasonable facilities and assistance for the effective exercise of the power.

(4) The failure of the possessor to comply with subsection (3) shall be evidence of risk to the collection of tax for purposes of an application under section 117(2).

(5) The possessor of a document or asset seized under section 45 may examine the document or asset and make copies or take extracts of the document, at his own expense, during regular office hours and under such supervision as the Commissioner General may determine.

(6) Where the exercise of power under a tax law reveals no breach of the law, any physical damage caused by a tax officer or any person assisting the tax officer, in respect of a person, goods or premises, resulting from the exercise of such power shall be made good at the expense of the Authority, unless such damage was caused by or is attributed to the obstruction of, or the failure on the part of the person concerned to comply with the directions given by the tax officer.

Notice to obtain information

48.—(1) The Commissioner General may, by notice in writing, require a person, including a public officer, whether or not the person is liable for tax to—

(*a*) produce, including by way of creation of a document, within the time specified in the notice, any information that is described with reasonable certainty in the notice;

(*b*) attend at the time and place designated in the notice for the purposes of being examined on oath by the Commissioner General or an officer authorised in writing by the Commissioner General concerning the tax affairs of the person or any other person; or

(*c*) produce, at the examination of the person under paragraph (*b*) and for the purposes of that examination, any document in the control of that person that is described with reasonable certainty in the notice.

(2) A person to be examined on oath under subsection (1) (*b*) shall be entitled to legal or other representation.

(3) A notice under subsection (1) shall be served by delivery of the notice by hand to the person to whom it is directed or leaving the notice at the person's last known or usual place of business or abode.

(4) The power in subsection (1) may be exercised in conjunction with the power in section 45.

(5) This section has effect notwithstanding any law relating to confidentiality, privilege or public interest with respect to the production of or access to a document.

Audit

49.—(1) The Commissioner General may use powers under this Act, including those in sections 45 and 48, for the purposes of auditing the tax affairs of a person.

(2) The Commissioner General may select a person for audit having regard to—

(*a*) the person's history of compliance or non-compliance with any tax law;

(*b*) the amount of tax payable by the person;

(*c*) the class of business or other activity conducted by the person;

(*d*) criteria developed under a compliance management plan, which may include random selection of returns for audit; or

(*e*) any other matter that the Commissioner General considers relevant for ensuring the collection of tax due.

(3) The Commissioner General shall give advance written notice of at least twenty-one days to the person to be audited under this section.

(4) An audit may be conducted for the purposes of more than one tax law.

(5) A person who has been audited for any particular period may be audited again for the same period or in the next and following period if there are reasonable grounds, particularly having regard to the matters referred to in subsection (2).

Part VI—Primary Tax Liability

Assessment of tax

50.—(1) Assessment of tax shall be made by way of—

(*a*) self-assessment, where a person is obliged to file a tax return; and

(*b*) the Commissioner General making an assessment in any other case, including where a self-assessment is adjusted.

(2) Where a person fails to file a tax return on time, the Commissioner General may make a tax assessment of the person, using best judgement and information reasonably available.

(3) The Commissioner General or an authorized tax officer may adjust an assessment.

(4) The Commissioner General may make an assessment at any time, including an adjusted assessment, where he discovers a case of fraud, wilful default or serious omission by or on behalf of a taxpayer.

(5) Subject to subsection (4), the power of the Commissioner General to make—

(*a*) an original assessment expires six years from the date on which the Commissioner General was first entitled to make the assessment;

(*b*) an adjusted assessment expires six years from—

(i) the due date for filing a tax return that gives rise to the assessment or, if later, the date the tax return is filed where a self-assessment is adjusted;

(ii) the date on which the Commissioner General serves the notice of assessment on a taxpayer where any other original assessment is adjusted; or

(iii) the date referred to in sub-paragraph (i) or (ii) in respect of the original assessment that is adjusted where an adjusted assessment is adjusted; and

(*c*) an assessment made under this section is treated as an assessment that is made under a tax law that charges the person or subject matter assessed.

Pre-emptive assessment and security

51.—(1) The Commissioner General may, in the circumstances specified in section 50(4), make pre-emptive assessment of tax payable or to become payable by a person under a tax law, whether or not the person is required to file a tax return.

(2) The Commissioner General may, instead of making a pre-emptive assessment, accept from the person such security for outstanding and future tax liabilities as the Commissioner General considers appropriate.

(3) The Commissioner General shall use best judgement and information reasonably available in making a pre-emptive assessment or determining the amount of security.

(4) A pre-emptive assessment may be for such period or with respect to such event or subject matter as the Commissioner General may specify in the notice of assessment.

(5) Unless the Commissioner General specifies otherwise in the notice of assessment, a pre-emptive assessment shall not relieve a person from the obligation to file a tax return or otherwise report a taxable event as required by a tax law.

(6) The filing of a tax return, including where it results in a self-assessment, shall not affect a pre-emptive assessment.

(7) A tax paid with respect to the pre-emptive assessment shall be credited against tax payable with respect to a self-assessment that covers the same period, event or tax.

Adjusted assessment

52.—(1) The Commissioner General may adjust an assessment in such manner as ensures the taxpayer is liable for the correct amount of tax in the circumstances to which the assessment relates.

(2) The Commissioner General shall use best judgement and information reasonably available in making an adjusted assessment.

(3) The Commissioner General shall not adjust an assessment that has been adjusted pursuant to a decision of the Tribunal or an order of a court of competent jurisdiction, unless the decision or order is vacated.

(4) An assessment shall cease to have effect to the extent to which it is adjusted.

(5) An adjusted assessment shall be treated as made under the tax law which charges the person or subject matter assessed.

Notice of assessment

53.—(1) Where the Commissioner General makes an assessment under a tax law, he shall serve a written notice of the assessment on the taxpayer.

(2) The notice shall, in addition to the requirements prescribed by the tax law in question, state—

(*a*) the name of the taxpayer and the taxpayer's TIN;

(*b*) the Commissioner General's assessment of the tax payable by the taxpayer for the period, event or matter to which the assessment relates;

(*c*) the amount of tax remaining to be paid, after any relevant credits, reductions or pre-payments;

(*d*) the manner in which the assessment is calculated;

(e) the reason why the Commissioner General has made the assessment;

(*f*) the date by which the tax must be paid; and

(*g*) the time, place and manner of objecting against the assessment.

Register of assessments

54.—(1) The Commissioner General shall file complete copies of notices of assessment made under this Part which shall constitute the register of assessments for purposes of this Act and any other tax law.

(2) The register of assessments shall not be open to public inspection, but a taxpayer shall be entitled to a copy of his own notice of assessment certified by or on behalf of the Commissioner General.

Part VII—Dispute Resolution

Division I: Tax Decision and Objection

Tax decision

55.—(1) A tax decision is made—

(*a*) in the case of an assessment, when the notice of assessment is served on the taxpayer; and

(*b*) in the case of any other tax decision, when the Commissioner General serves the affected person with written notice of the decision.

(2) Where the Commissioner General fails to serve the notice under subsection (1)(*b*), the person may, by notice in writing to the Commissioner General, elect to treat the Commissioner General as having made a tax decision in that person's favour—

(*a*) where the tax law specifies a time by which the Commissioner General is to make the decision, when that time expires; or

(*b*) where the tax law does not specify a timeframe within which the decision should be made, sixty days after the affected person files a request for the Commissioner General to make the decision.

(3) Where the Commissioner General does not respond to the election of the person under subsection (2) within thirty days of the election, the election shall be treated as final and conclusive.

(4) The following shall be conclusive evidence that a tax decision has been made and is correct—

(*a*) in the case of a self-assessment, the tax return that causes the assessment or a document under the hand of the Commissioner General purporting to be a copy of the tax return;

(*b*) in the case of other assessments, the notice of assessment or a document under the hand of the Commissioner General purporting to be a copy of the notice; and

(*c*) in the case of any other tax decision, written notice of the decision under the hand of the Commissioner General or a document under the hand of the Commissioner General purporting to be a copy of the decision.

Objection to a tax decision

56.—(1) Subject to a tax law to the contrary, a person who is dissatisfied with a tax decision that affects that person may lodge an objection to the decision with the Commissioner General within thirty days of being notified of the decision.

(2) An objection to a tax decision shall be in a form as may be prescribed by the Commissioner General and shall state precisely the grounds upon which the objection is made.

(3) A person may, before the expiration of the period specified in subsection (1), apply in writing to the Commissioner General for an extension of time to file an objection.

(4) Where the Commissioner General is satisfied that there are reasonable grounds for the extension, the Commissioner General may grant the application for extension of time and shall serve notice of the decision on the applicant.

(5) A tax decision shall, to the extent of the objection, be suspended from the time the person files the objection until the time the person is served with a notice of the decision in relation to the objection.

(6) A tax decision to which an objection is not made within thirty days shall be final.

Decision on an objection

57.—(1) The Commissioner General may, after considering an objection, vary the tax decision in whole or in part or disallow the objection.

(2) The Commissioner General shall make a decision under subsection (1) within sixty days of receipt of the objection and serve the objector with a notice of the decision including the reasons for the decision.

(3) Where the Commissioner General does not serve the objector with a notice of the decision within sixty days, the objector may, by notice in writing to the Commissioner General, elect to treat the Commissioner General as having made a decision to allow the objection.

(4) Where the Commissioner General does not respond to an election of the objector within thirty days of the election, the election shall be treated as final and conclusive.

(5) A decision is made in respect of an objection—

(*a*) on the date the person is served with a notice of the decision; or

(*b*) where a person makes an election under subsection (3),

thirty days from the date the person files the election with the Commissioner General.

(6) A notice served on a person in respect of an objection is conclusive evidence that a decision has been made and is correct.

Guidelines for objection process

58. The Commissioner General may prescribe guidelines for purposes of this Division.

Division II: Appeals

Appeal against objection decision

No. ... of 2021

59.—(1) A person who is dissatisfied with an objection decision of the Commissioner General may appeal against the decision to the Tribunal within thirty days of the decision in accordance with the provisions of the Revenue Appeals Tribunal Act.

(2) Where an objection decision raises a tax liability, an appeal against the decision shall not be entertained by the Tribunal unless the person has paid—

(*a*) the undisputed assessed amount; and

(*b*) a fifty percent deposit of the assessed amount in dispute; or

(*c*) in the case of an import tax, the whole of the tax amount assessed on the imported goods.

(3) Notwithstanding any law to the contrary, where a person files an application in the High Court challenging a tax decision of the Commissioner General which raises a tax liability, the requirements of subsection (2) shall apply.

(4) For purposes of this section, the undisputed tax means the amount which will be charged if the assessment is amended in accordance with the notice of objection.

Part VIII—Payment and Recovery of Tax

Division I: Regular payment of tax

Time for paying tax

60.—(1) Subject to subsection (2), tax shall be payable at the time specified in the tax law under which the tax is charged.

(2) Tax shall be payable—

(*a*) in the case of tax payable on an assessment under section 50 or 51, on the date specified in the notice of assessment served under section 53;

(*b*) in the case of tax payable on an adjusted assessment under section 52, within twenty-one days from the date on which the person assessed is served with a notice of the adjusted assessment under section 53;

(*c*) in the case of interest and a penalty under Part X, on the date specified in the notice of assessment served under section 53;

(*d*) with respect to an amount required to be paid to the Commissioner General under section 67(8) or 75(3), on the date set out in the relevant notice;

(*e*) with respect to a liability under section 73, at the same time as the tax is payable by the entity;

(*f*) with respect to an amount required to be paid to the Commissioner General under section 74(4) or (5), seven days after the sale from which the amount is set aside or the failure to set aside, respectively; or

(*g*) with respect to an amount required to be paid to the Commissioner General under a security, on the date provided for in a notice under section 65(8).

(3) Subject to section 52(4) and 56(5), tax shall remain payable despite any dispute or review proceedings, irrespective of whether the proceedings are administrative, judicial, quasi-judicial or appellate in nature.

Extension of time for paying tax

61.—(1) A taxpayer may apply, in writing, to the Commissioner General for an extension of time to pay tax under a tax law.

(2) On receipt of an application under subsection (1), the Commissioner General may—

(*a*) where no justifiable cause is shown, reject the application; or

(*b*) where good cause is shown, extend the date on which the tax or part of the tax is payable on the terms and conditions that the Commissioner General considers appropriate, including the deposit of security.

(3) Where the application is approved, the Commissioner General may order that the tax be paid by instalments within a prescribed period.

(4) An extension of time to pay tax shall not exceed 6 months, but a taxpayer may re-apply to the Commissioner General before the expiry of the extension period for a further extension.

(5) Where an extension of time to pay tax is granted, interest shall be charged on the outstanding amount at the rate prescribed under this Act.

(6) Where an extension is granted and the taxpayer is permitted to pay tax by instalments and the taxpayer defaults in paying any of

the instalments, the whole balance of the tax outstanding becomes payable immediately.

(7) A decision of the commissioner General under this section shall be in writing and served on the applicant.

Manner of paying tax

62.—(1) A taxpayer shall pay tax—

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

(*b*) at any tax office; or

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

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

(3) A taxpayer shall pay tax in one of the following forms—

(*a*) where the payment is made at a tax office, cash or bank certified cheque made payable to the Malawi Revenue Authority; or

(*b*) where the payment is made through a bank, cash or bank certified cheque payable to the Malawi Revenue Authority or direct account transfer into an approved bank account for the Authority.

(4) Where a taxpayer purports to have made a payment towards a tax liability that is ineffective, the Commissioner General may use his powers under this Act or any other tax law to recover the tax.

Order of paying tax

63.—(1) This section shall apply where a taxpayer is liable to pay—

(*a*) more than one tax type under a tax law; or

(*b*) more than one tax type under several tax laws.

(2) Where a taxpayer makes a payment which is insufficient to discharge all the tax due, the Commissioner General shall allocate the payment between the different tax obligations of the taxpayer according to the following order—

(*a*) the payment shall be allocated first to tax due, if any, for which other taxpayers are credited and where the payment is insufficient to discharge all such tax due, the Commissioner General shall allocate the payment between tax liabilities of this kind as the Commissioner General sees fit;

(*b*) the balance of the payment after clearing obligations under paragraph (*a*) shall be allocated next to tax due, if any, which is a

final withholding tax in relation to other taxpayers and where the balance is insufficient to discharge all such tax due, the Commissioner General shall allocate the balance between tax liabilities of this kind as the Commissioner General sees fit;

(*c*) the balance of the payment after clearing obligations under paragraph (*b*) shall be allocated next to tax due, if any, which is imposed on the taxpayer as a representative taxpayer and where the balance is insufficient to discharge all such tax due, the Commissioner General shall allocate the balance between tax liabilities of this kind as the Commissioner General sees fit;

(*d*) the balance of the payment after clearing obligations under paragraph (*c*) shall be allocated next to tax due, if any, by way of royalty by a mining project or for mining products and where the balance is insufficient to discharge all such tax due, the Commissioner General shall allocate the balance between tax liabilities of this kind as the Commissioner General sees fit; and

(*e*) the balance of the payment after clearing obligations under paragraph (d) shall be allocated next to all other tax liabilities of the taxpayer and the Commissioner General shall allocate the payment between tax liabilities of this kind as the Commissioner General sees fit.

(3) For purposes of this Act, the taxpayer shall be taken to have made payment of a particular tax due in accordance with the allocation made by the Commissioner General and not in accordance with any allocation directed or nominated by the taxpayer.

(4) Where tax is due and the Commissioner General is otherwise required to make a payment to the taxpayer, the Commissioner General may elect to offset the payment in part or in full against the tax due, and the offset amount shall be taken to be a payment by the taxpayer for the purposes of a tax law.

(5) Notwithstanding subsection (2), (3) and (4), where a taxpayer has more than one tax liability at the time a payment is made, and the taxpayer makes payment which is insufficient, the Commissioner General may apply the payment against the tax liabilities in the order in which the tax liabilities arose.

Taxpayer tax accounts

64.—(1) The Commissioner General shall establish and operate an electronic system of taxpayer tax accounts.

(2) The system shall be established and operated separately or as part of the electronic document system established under section 38.

(3) For purpose of establishing and operating the electronic system of taxpayer tax accounts, the Commissioner General shall, by notice published in the *Gazette*, prescribe rules concerning—

(*a*) the debiting of tax when it becomes payable;

(*b*) the crediting of tax paid;

(*c*) the allocation of tax paid against tax payable; and

(*d*) other matters of the type described in section 38(2).

Security

65.—(1) A taxpayer may, for the purpose of securing the payment of tax, by notice in writing to the Commissioner General, request that his interest in an asset be used as security for payment of an amount of tax specified in the notice.

(2) The Commissioner General may accept security for an obligation under a tax law on such terms and conditions as the Commissioner General may specify.

(3) The security under subsection (1) may take the following forms—

(*a*) cash deposit;

(*b*) bond or guarantee;

(*c*) charge, lien, mortgage or other fixed interest over property; or

(*d*) a mixture of the forms of security listed in paragraphs (*a*), (*b*) and (*c*).

(4) Security may be accepted for a specific obligation under a tax law or for multiple or continuing obligations.

(5) Nothing in this section shall require the Commissioner General to accept any particular security for any obligation under a tax law or prevent the Commissioner General from seeking or requiring additional security.

(6) A security shall remain enforceable according to its terms against any property despite any delay, extension, inactivity or other temporary failure on the part of the Commissioner General to enforce the obligation that is secured.

(7) The security accepted under this section shall be discharged upon application by the taxpayer proving to the satisfaction of the Commissioner General that he has complied with the conditions which were imposed in respect of the security.

(8) Where any condition in respect of a security has not been complied with, the Commissioner General shall give notice to the taxpayer for the enforcement of the security within a period specified in the notice.

(9) Where the notice period in subsection (8) lapses, the Commissioner General may enforce the security in such manner as he deems fit.

Division II: Recovery of Tax from Taxpayer

Tax is debt due to Government

66.—(1) Tax shall be a debt due to the Government on the date it becomes payable.

(2) The Commissioner General may commence legal proceedings for the recovery of unpaid tax in any court of competent jurisdiction.

Charge over asset

67.—(1) Where a taxpayer fails to pay tax on time, the Commissioner General may create a charge in favour of the Government over an asset owned by the taxpayer, irrespective of who possesses the asset.

(2) The Commissioner General shall create the charge by serving the taxpayer with a notice in writing specifying the taxpayer's name and TIN, the asset charged, the extent of the charge, the tax to which the charge relates and details regarding the Commissioner General's power of sale under section 70.

(3) The asset of the taxpayer shall be charged to the extent of the unpaid tax, interest accruing with respect to that tax under section 97 and any cost of the charge and sale of the asset.

(4) A charge shall not have effect until—

(*a*) where an interest in land or a building is charged, the Commissioner General files an application to register the charge under subsection (6); or

(*b*) in any other case, the notice creating the charge is served on the taxpayer.

(5) A taxpayer shall not dispose of or purport to dispose of a charged asset once the Commissioner General takes possession of the asset.

(6) Where the Commissioner General creates a charge over an interest in land or a building, the Registrar of Lands shall, without a fee, register the charge on the title of the interest in the land or building.

(7) A charge created by the Commissioner General under this section shall take priority over any other subsequent charge or interest.

(8) The Commissioner General may, at any time, serve on a taxpayer a notice in writing—

(*a*) specifying the cost of charge and sale with respect to the charged asset incurred by the Commissioner General prior to the date of service; and

(*b*) requiring the taxpayer to pay the cost to the Commissioner General by the date specified in the notice.

(9) In this section, "cost of charge and sale", with respect to an asset, means any expenditure incurred or to be incurred by the Commissioner General or an authorized agent in—

(*a*) creating and releasing a charge over the asset; or

(*b*) taking possession of, holding and selling the charged asset.

Taking possession of charged asset

68.—(1) Where the Commissioner General decides to take possession of an asset charged under section 67, the Commissioner General shall serve the taxpayer with a written notice of the Commissioner General's intention to take possession of the charged asset.

(2) The notice under subsection (1) may be incorporated in or accompany a notice referred to in section 67(2) and shall specify—

(*a*) the taxpayer's name and TIN;

(*b*) the charged asset, the Commissioner General's intention to sell the asset and the proposed method and timing of the sale; and

(*c*) in the case of a tangible asset, the Commissioner General's intention to take possession of the asset, the manner in which the Commissioner General will take physical possession of the asset and the place at which the asset will be possessed.

(3) Where the Commissioner General decides to take possession of a charged tangible asset, the following rules shall apply—

(*a*) the Commissioner General may exercise the power at any time after the notice is served either directly or indirectly through an authorized agent;

(*b*) where the asset is in the possession of a person other than the taxpayer, the Commissioner General shall serve that person with a copy of the notice prior to taking possession;

(*c*) the Commissioner General may use reasonable force to enter, at any time, any premises or place described in the notice and he may do so with the assistance of the police;

(*d*) the Commissioner General shall, at the time of taking possession, provide the taxpayer with an inventory of assets seized; and

(*e*) in the case of a movable asset, the Commissioner General may store the asset, at the cost of the taxpayer, at any place that the Commissioner General considers appropriate.

(4) A taxpayer shall not deal or purport to deal with a charged asset from the moment the Commissioner General takes possession of the asset.

Discharge of a charge

69.—(1) A charge created under section 67 is discharged when—

(*a*) the taxpayer pays to the Commissioner General the full amount referred to in section 67(3): or

(*a*) the Commissioner General sells the asset in accordance with section 70.

(2) Where a charge over an interest in land or a building is released—

(*a*) the Commissioner General shall, within seven days of the release, lodge the release with the Registrar of Lands; and

(*b*) the Registrar of Lands shall remove the entry of the charge from the title of the interest in the land or the building within seven days from the date the Commissioner General lodges the release.

Sale of charged asset

70.—(1) Where the Commissioner General takes possession of a charged asset under section 68 and decides to sell the asset, the following rules shall apply—

(*a*) the Commissioner General shall issue a public notice of the intended sale; and

(*b*) the sale shall be carried out—

(i) in the case of an interest in land or a building, after the expiry of thirty days from the date of the notice;

(ii) in the case of a perishable movable asset, twenty-four hours after taking possession; and

(iii) in the case of any other asset, fourteen days after taking possession.

(2) The sale of a charged asset under this section shall be by public auction.

(3) The Commissioner General may exercise the power of sale either directly or indirectly through an authorized agent.

(4) Subsection (1) shall not apply where the Commissioner General sells a charged asset with the consent of the taxpayer.

(5) Where the Commissioner General sells a charged asset, the proceeds of the sale shall be utilized in the following order—

(*a*) first, recovery of the cost of charge and sale of the asset;

(*b*) second, recovery of the outstanding tax and interest accrued with respect to that tax under section 87;

(*c*) third, recovery of any other unpaid tax; and

(*d*) the remainder, to be paid to the taxpayer.

(6) Where the property sold under this section was, at the time the Commissioner General created the charge, under a mortgage, charged by way of security for any debt, or in any way encumbered, the sale of the property shall be subjected to any such prior mortgage, charge or encumbrance.

(7) The Commissioner General shall, within thirty days of completing distribution of the sale proceeds in accordance with subsection (5), serve the taxpayer with a written notice detailing the amount realized from the sale and the manner in which the sale proceeds were applied.

(8) Where the sale proceeds are insufficient to pay in full the cost of the charge and sale, the tax due and interest accrued with respect to the tax, the Commissioner General may proceed to collect the outstanding amount in accordance with the procedure for recovery of tax from a taxpayer under this Division or Division III.

(9) This section shall not restrict the exercise of any right of the Commissioner General under a security, including one created under section 65.

(10) The activities of the Commissioner General under this section, irrespective of whether they result in the transfer of title to an asset, shall be exempt from stamp duty and any other transaction tax.

(11) For purpose of this section—

(*a*) "charged asset" means asset charged under section 67; and

(*b*) "cost of charge and sale" has the meaning given in section 67.

Restraint of person

71.—(1) Where a person fails to pay tax on time and the Commissioner General has reasonable cause to believe that the person may leave Malawi, the Commissioner General may, by notice in writing to the Director General of Immigration and Citizenship Services, order the Director General to prevent the person from leaving the country.

(2) The Director General shall, on receipt of a notice under subsection (1), prevent the person from leaving the country.

(3) A notice issued under subsection (1) shall be valid for seven days.

(4) The Commissioner General shall withdraw the notice where the person pays the tax or arranges for payment of the tax in a manner satisfactory to the Commissioner General or upon material change of circumstance.

(5) The High Court may, on application by the Commissioner General, extend the period in subsection (3).

Restraint of goods

72.—(1) This section shall apply where the Commissioner General believes, on reasonable grounds, that tax has not been paid or will not be paid in respect of the supply or import of goods.

(2) The Commissioner General may, in the circumstances specified in subsection (1)—

(*a*) distrain the goods; or

(*b*) upon obtaining a search warrant from a court of law, search any premises, place, vehicle, vessel or other asset on or in which the Commissioner General believes, on reasonable grounds, the goods are located.

(3) The Commissioner General may use reasonable force for the purposes of paragraphs (*a*) and (*b*) of subsection (2).

(4) The Commissioner General may exercise the powers referred to in subsection (2) in conjunction with any other powers of the Commissioner General under this Act.

(5) The Commissioner General shall, upon distraining the goods under subsection (2)—

(*a*) serve a written notice on the possessor of the goods and, where there is more than one possessor, service on a single possessor shall be sufficient; or

(*b*) where no possessor is available, leave the notice at the premises or place where the distrain takes place.

(6) The notice issued under subsection (5) shall—

(*a*) identify and list the goods distrained;

(*b*) state the reason for the distrain; and

(*c*) set out the terms for release, including any security required, and terms for disposal of any goods seized.

(7) The Commissioner General may distrain goods for such period as is necessary to raise a pre-emptive or adjusted assessment and exercise the powers in sections 67 and 70 or ten days, whichever is less.

(8) Where within the period referred to in subsection (7), no person proves to the satisfaction of the Commissioner General that the person is the owner of the distrained goods, the Commissioner General may treat the goods as charged assets and sell them in accordance with section 70.

(9) Where goods distrained under this section are charged by way of security for any debt, or are in any way encumbered, the sale of the goods and distribution of the proceeds thereof shall be made subject to satisfying the interest of the Authority where such interest existed prior to any other interest.

Division III: Recovery from third parties

Manager of entity and other person

73.—(1) Where an entity fails to pay tax on time, every person who is or has been a manager of the entity during the relevant period shall be jointly and severally liable with the entity for the payment of the tax.

(2) Subsection (1) shall apply irrespective of whether the entity ceases to exist.

(3) Subsection (1) shall not apply in respect of a manager who has exercised the degree of care, diligence and skill that a reasonably prudent person in the position of the manager would have exercised in preventing the initial and continuing failure to pay the tax.

(4) The defence in subsection (3) shall not be available to a manager who is a current partner of a partnership.

(5) Where a person required to withhold or deduct tax under a tax law fails to do so, he shall be personally liable to pay the amount of the tax he failed to withhold or deduct.

(6) In this section—

(*a*) "manager" of an entity includes a person purporting to act as a manager of the entity; and

(*b*) "relevant period" means the period beginning six months before the event that give rise to the entity's tax liability.

Receiver

74.—(1) A person appointed as a receiver of an asset situated in Malawi shall notify the Commissioner General, in writing, of the appointment within fourteen days of the appointment or on the date the receiver takes possession of the asset, whichever occurs first.

(2) The receiver shall not dispose of the asset until he has accounted for the asset to the Commissioner General.

(3) The Commissioner General shall, within fourteen days of receiving the notice under subsection (1), serve the receiver with a

notice, in writing, specifying an amount that appears to the Commissioner General to be sufficient to provide for any tax due or that will become due by the taxpayer.

(4) The receiver shall, after receiving the notice under subsection (3)—

(*a*) sell such part of the asset as shall raise sufficient funds to cover the payment of any debt having priority over the tax referred to in the notice and the amount notified by the Commissioner General under that subsection; and

(*b*) pay to the Commissioner General, on account of the taxpayer's tax liability, the amount notified under that subsection.

(5) To the extent that a receiver fails to comply with subsection (4), the receiver shall be personally liable to pay to the Commissioner General, on account of the taxpayer's tax liability, the amount that should have been paid in accordance with that provision.

(6) For purposes of this section—

"receiver" means any person who, with respect to an asset situated in Malawi, is—

(*a*) a liquidator of an entity;

(*b*) a receiver appointed out of court or by a court in respect of an asset or entity;

(*c*) a trustee for a bankrupt person;

(*d*) a mortgagee in possession;

(*e*) an executor, administrator or heir of a deceased individual's estate; or

(*f*) conducting the affairs of an incapacitated individual.

Third party debtor and guarantor

75.—(1) Where a taxpayer fails to pay tax on time, the Commissioner General may serve a notice, in writing, on a third party debtor or guarantor under security requiring the debtor or guarantor to pay to the Commissioner General the amount specified in the notice.

(2) The Commissioner General shall serve the taxpayer with a copy of the notice after serving the third party debtor or guarantor.

(3) On receiving the notice under subsection (1), the third party debtor or guarantor shall pay, on account of and to the extent of the tax due by the taxpayer, the money to the Commissioner General by the date specified in the notice.

(4) The date specified in the notice shall not be before the date—

(*a*) the money owed by the third party debtor becomes payable to the taxpayer or is held on behalf of the taxpayer; or

(*b*) the third party debtor is served with the notice.

(5) The following shall be treated as money owed to a taxpayer—

(*a*) money owing or that may subsequently become owing to the taxpayer;

(*b*) money held or that may subsequently be held for or on account of the taxpayer;

(*c*) money held or that may subsequently be held on account of a third person for payment to the taxpayer; and

(*d*) money held by a person who has authority from a third person to pay the money to the taxpayer.

(6) Where a third party debtor or guarantor under security neglects, refuses or fails to pay the amount payable to the Commissioner General, such amount shall be a personal tax liability of the third party debtor or guarantor under security and shall be recovered from the third party debtor or guarantor under security in accordance with the provisions of this Act or any other tax law.

(7) In this section—

"guarantor under security" means a person who grants the Commissioner General security for tax payable or to become payable by another person;

"money" includes a debt obligation denominated or payable in money; and

''third party debtor'' means a person who owes money to a tax payer.

Compliance with notice

76.—(1) A third party who pays to the Commissioner General pursuant to section 73, section 74, section 75 or pursuant to a security, shall be—

(*a*) treated as having acted with the authority of the taxpayer and all other persons concerned; and

(*b*) indemnified in respect of the payment against all proceedings, civil or criminal, and all processes, judicial or extra judicial.

(2) Subsection (1) shall apply irrespective of any provision to the contrary in any written law or contract.

(3) A notice under section 74 or 75 or a security granted by a guarantor shall cease to have effect once the tax or obligation referred to in the provision or security is paid or otherwise satisfied.

(4) Where a third party served with a notice under section 74 or 75 is unable to comply with the notice by reason of lack of money owing to or held for the taxpayer, the third party shall notify the Commissioner General of that fact through a third party notice.

(5) A third party notice shall—

(*a*) be in writing;

(*b*) set out the reasons for the inability to comply; and

(*c*) be filed with the Commissioner General as soon as practicable after the third party becomes aware of the inability and, in any event, before the payment date specified in the notice served pursuant to section 74 or 75.

(6) On receipt of a third party notice, the Commissioner General may, by notice in writing served on the third party, accept the third-party notice and cancel or amend the notice served under section 74 or 75 or reject the third party notice.

(7) The filing of a third party notice shall have no effect on section 74(4) or (5) or section 75(6) and the enforcement of payment under the notice served under section 74 or 75 unless and until the Commissioner General cancels or amends the notice.

(8) In this section, "third party" means a receiver served with a notice under section 74, a third party debtor served with a notice under section 75 and a guarantor under security.

Agent of non- resident taxpayer

77.—(1) Notwithstanding the provisions of the Taxation Act, where a non-resident taxpayer fails to pay tax on the due date or the Commissioner General believes, on reasonable grounds, that the non-resident taxpayer will not pay tax on the due date, the Commissioner General may, by service of a notice in writing, require a person (the "agent") who is in possession of an asset owned by the taxpayer to pay the tax on behalf of the taxpayer.

(2) The agent shall pay the tax up to the market value of the asset but not exceeding the amount of the taxpayer's unpaid tax.

(3) For the purposes of this section—

(*a*) a taxpayer who charters an aircraft or ship under a charter exceeding three years shall be treated as owning the aircraft or ship during that period; and

(*b*) the captain of any aircraft or ship shall be treated as being in possession of the aircraft or ship.

(4) The Commissioner General may, by service of a notice, in writing, require a resident partnership or a resident partner to pay tax due or that may become due by a non-resident partner.

(5) The resident partnership and any resident partner shall be jointly and severally liable to pay the tax up to the amount of the non-resident partner's share in the net assets of the partnership.

(6) Where a person, including a resident partnership or partner, makes a payment to the Commissioner General pursuant to a notice under subsection (1) or (4) —

(*a*) the person may recover the payment from the non-resident taxpayer or partner;

(*b*) for the purposes of paragraph (*a*), the person may retain, out of any asset including money of the non-resident taxpayer or partner in or coming into the possession of that person an amount not exceeding the payment; and

(*c*) the taxpayer, non-resident partner or any other person may not make a claim against the person with respect to the retention.

Part IX—Remission and Refund of Tax

Limitation on tax reduction

78.—(1) The Commissioner General shall, in assessing, collecting and recovering tax, ignore a tax reduction except where the tax reduction is sanctioned by law.

Cap. 37:02
Cap. 39:07

(2) Subject to section 38 of the Public Finance Management Act and section 16 of the Malawi Revenue Authority Act, a Ministry, Department or Agency of the Malawi Government shall not negotiate or enter into an agreement for the waiver or variation of tax except with the written approval of the Minister.

Remission

79.—(1) Where the Commissioner General is of the opinion that the whole or any part of a tax payable under a tax law by a taxpayer cannot be effectively recovered by reason of hardship, impossibility, undue difficulty or the excessive cost of recovery, the Commissioner General may refer the taxpayer's case to the Minister.

(2) Where a taxpayer's case is referred to the Minister under subsection (1), the Minister shall consider remission, in part or in whole, of the tax payable by the taxpayer in accordance with the Public Finance Management Act.

Cap. 37:02

(3) Where a person who is liable to pay a penalty or interest shows good cause in writing to the Commissioner General, the Commissioner General may remit or waive in whole or in part the assessed penalty or interest.

(4) The power in subsection (3) may be exercised whether or not the penalty or interest has been paid or whether or not proceedings for an offence have been commenced or concluded.

(5) In this section, a "penalty" includes an asset liable to forfeiture or which has been seized by the Commissioner General on grounds that the asset is liable to forfeiture.

Reporting on penalties and interest

80.—(1) The Commissioner General shall submit to the Minister quarterly reports on the total amount of penalties and interest remitted, waived or claimed by taxpayers.

(2) Each report shall categorise remissions of penalties and interest by reference to—

(*a*) remissions granted that comply with section 79, sub-categorized by reference to—

(i) the statutory provision under which the remission is granted; and

(ii) any criteria or factors set out in regulations;

(*b*) remissions granted that do not comply with section 79, including reasons why the remissions were granted; and

(*c*) remissions claimed but not granted, including reasons why the claims were not granted.

(3) The Minister shall report to the National Assembly Tax, penalty and interest permissions granted in each fiscal year.

Application for tax refund

81.—(1) A person may, within three years of the relevant date, apply to the Commissioner General for a refund of tax paid in excess of the person's tax liability:

Provided that for Value Added Tax, the period within which excess input tax may be claimed shall be twelve months from the relevant period of assessment as defined under the Value Added Tax Act.

Cap. 42:02

(2) An application under subsection (1) shall be made in writing and shall explain how the excess has been calculated and include evidence relevant to the calculation.

(3) A person shall be limited to making applications for tax refund with the following frequency—

(*a*) in case of Value Added Tax, monthly; and

(*b*) in any other case, every three months.

(4) In this section, "relevant date" means the later of—

(*a*) the event that gave rise to payment of the excess tax;

(*b*) the date on which the tax return with respect to the payment is filed by the person; or

(*c*) the date of payment.

Decision on application for tax refund

82.—(1) The Commissioner General shall make a decision on an application for a tax refund under section 81 within sixty days of receipt of the application.

(2) The Commissioner General may—

(*a*) where he is of the opinion that the applicant has not paid excess tax, reject the application; or

(*b*) where he is satisfied that the applicant has paid excess tax, make a refund to the applicant.

(3) Where the Commissioner General is of the opinion that the information provided by the applicant is not sufficient for decision making, the Commissioner General may request the applicant to provide further information as may be necessary to make a decision on the application.

(4) Where the Commissioner General requests for further information under subsection (3) and the applicant fails or refuses to provide the requested information, the Commissioner General shall proceed to make a decision based on the available information.

(5) Where further information requested under subsection (3) is submitted by the applicant, the Commissioner General shall make a decision within thirty days of receiving the information.

(6) Decisions of the Commissioner General under this section shall be in writing and shall be served on the applicant.

Payment of tax refund

83.—(1) Where the Commissioner General is satisfied that a person has paid excess tax, whether on application for a refund or by reason of an award of the Tribunal or a court order or otherwise, the Commissioner General shall—

(*a*) apply the excess in reduction of any outstanding tax liability of the person; and

(*b*) refund the remainder to the person within ninety days of making the decision.

(2) Where the Commissioner General accepts a person's refund application in part, the Commissioner General shall refund the amount accepted, irrespective of whether the person files an objection against the Commissioner General's decision.

(3) Where the Commissioner General fails to refund the excess tax to the person within ninety days as specified in subsection (1)(b), the Commissioner General shall be liable to pay interest on the excess tax.

(4) Where the tax refund is premised on a court order which also requires the Commissioner General to pay interest on the excess tax, the Commissioner General shall not pay the interest prescribed under subsection (3).

(5) The interest payable under subsection (3) shall be calculated at the prevailing bank lending rate plus five percent per annum for each month or part thereof during which the excess tax remains unpaid.

(6) The Commissioner General shall refund interest paid by a taxpayer under a tax law with respect to tax not paid on time, to the extent that the tax is found not to have been payable, and the Commissioner General shall be liable to pay interest on the refund as provided under subsection (3).

(7) The Commissioner General shall, for purposes of this section, maintain a separate bank account and ensure that there are sufficient funds at all times to enable him fulfil his obligations.

Part X—Interest, Penalties and Offences

Division I: Interest and penalties

Currency point system

84.—(1) For purposes of promoting fairness of the tax system and protecting against the effects of inflation, amounts referred to in a tax law may be expressed in terms of currency points.

(2) The currency point system shall apply in respect of penalties and fines prescribed under this Act and any other tax law.

(3) The value of a currency point is set out in the Schedule.

(4) The Minister may, by Order published in the *Gazette*, adjust the value of the currency point to reflect changes in the index of consumer prices.

Interest on payment of tax by instalments

85. Where there is an extension of time to pay tax or an arrangement has been made to pay tax by instalments, interest shall be payable on the outstanding amount at the prevailing bank lending rate plus five per centum per annum for each month or part thereof during which the tax remains unpaid.

Penalty and interest for under-estimating tax payable

86.—(1) This section applies where a taxpayer's estimate of income tax payable for a year of income under section 84A of the Taxation Act is less than ninety percent of the actual income tax payable by the taxpayer for the year of assessment.

(2) Where this section applies, the taxpayer shall be liable to a penalty and interest from the date on which the taxpayer is served with a notice of assessment.

(3) The amount of penalty and interest that the taxpayer shall pay under subsection (2) shall be calculated as follows—

(*a*) in the case of a penalty, twenty per centum of the unpaid amount of tax which was due to be paid; and

(*b*) in case of interest, the prevailing bank lending rate plus five per centum per annum charged on the outstanding amount of the principal sum of the unpaid tax for each month or part thereof during which the tax remains unpaid.

(4) For the purposes of calculating interest payable under subsection (3), any extension granted under section 42 or suspension under section 56(5) shall be ignored.

Penalty and interest for failure to pay tax

87.—(1) A person who fails to pay tax on the date on which the tax is payable shall be liable to a penalty and interest for the period the tax is outstanding.

(2) The penalty and interest payable under subsection (1) shall be calculated as follows—

(*a*) in the case of the penalty, twenty per centum of the unpaid amount of tax which was due to be paid; and

(*b*) in the case of the interest, the prevailing bank lending rate plus five per cent per annum charged on the outstanding amount of the principal sum of the unpaid tax for each month or part thereof during which the tax remains unpaid.

(3) For the purposes of calculating interest payable under subsection (1)—

(*a*) tax is outstanding—

(i) in the case of an adjusted assessment, from the time tax is payable under the original assessment; or

(ii) in any other case, from the date the tax is payable; and

(*b*) any extension granted under section 42 or suspension under section 56(5) shall be ignored.

(4) Where a withholding agent is liable for interest for failing to pay withholding tax in respect of a payment made by the agent, the agent shall not recover the interest from the person subject to the withholding.

Penalties relating to registration

88.—(1) A person who fails to register for tax as required under a tax law shall be liable to—

(*a*) a penalty of five hundred currency points for an entity and one hundred currency points for an individual for the first month; and

(*b*) a further penalty of fifty currency points for an entity and ten currency points for an individual for each month or part thereof during which the failure continues.

(2) A person who fails to deregister or cancel registration or notify the Commissioner General of a change in his business as required under a tax law shall be liable to—

(*a*) a penalty of one hundred currency points for an entity and thirty currency points for an individual for the first month; and

(*b*) a further penalty of twenty currency points for an entity and ten currency points for an individual for each month or part thereof during which the failure continues.

Penalties relating to licensing

89. A person who fails to get licensed as required under a tax law shall be liable to—

(*a*) a penalty of five hundred currency points for an entity and one hundred currency points for an individual for the first month; and

(*b*) a further penalty of fifty currency points for an entity and ten currency points for an individual for each month or part thereof during which the failure continues.

Penalty for failure to maintain proper documents

90. A person who fails to maintain proper documents as required by a tax law shall be liable to—

(*a*) a penalty of five hundred currency points for an entity and one hundred currency points for an individual for the first month; and

(*b*) a further penalty of fifty currency points for an entity and ten currency points for an individual for each month or part thereof during which the failure continues.

Penalty for failure to comply with a notice for transfer pricing information

91. A person who fails to comply with a notice for information by the Commissioner General under the Taxation (Transfer Pricing) Regulations shall be liable to—

(*a*) a penalty of one thousand currency points for the first month; and

(*b*) a further penalty of one thousand five hundred currency points for each month or part thereof during which the failure continues.

Penalty for failure to file a tax return or document

92.—(1) A person who fails to file a tax return as required by a tax law shall be liable to—

(*a*) a penalty of five hundred currency points for an entity and one hundred currency points for an individual for the first month; and

(*b*) a further penalty of fifty currency points for an entity and ten currency points for an individual for each month or part thereof during which the failure continues.

(2) A person who fails to submit a document, other than a tax return, as required under a tax law shall be liable to—

(*a*) a penalty of five hundred currency points for an entity and one hundred currency points for an individual for the first month; and

(*b*) a further penalty of fifty currency points for an entity and ten currency points for an individual for each month or part thereof during which the failure continues.

(3) The penalty for failure to file a provisional tax return shall be payable at the end of the financial year in which the failure occurred.

Penalty for making a false or misleading statement

93.—(1) A person shall be liable to a penalty if the person—

(*a*) makes a statement that is false or misleading in a material particular to a tax officer in the course of duty; or

(*b*) omits from a statement made to a tax officer any matter or thing without which the statement is misleading in a material particular.

(2) The penalty under subsection (1) shall be—

(*a*) where the statement or omission is made knowingly or recklessly and without reasonable excuse, one hundred percent of the tax shortfall; or

(*b*) in any other case, thirty per cent of the tax shortfall.

(3) The penalty under subsection (2) shall be—

(*a*) increased by twenty percent for the second or subsequent application of this section to the person within the last five years; or

(*b*) reduced by twenty percent if the person voluntarily discloses the error or omission prior to its discovery by a tax officer or before the next tax audit of the person, whichever is earlier.

(4) A statement shall be considered to have been made to a tax officer in the course of performing his duties under a tax law when it is made orally, in writing or in any other form and it includes a statement made—

(*a*) in any document or information required to be filed under a tax law;

(*b*) in a document furnished to a tax officer otherwise than under a tax law;

(*c*) in response to a question asked of a person by a tax officer; or

(*d*) to another person with the knowledge or reasonable expectation that the statement will be passed on to a tax officer.

Penalty for tax avoidance

94. Where the Commissioner General has applied a tax avoidance provision in assessing a taxpayer, the taxpayer is liable for a tax avoidance penalty equal to double the amount of the tax that would have been avoided but for the application of the tax avoidance provision.

Penalty for failure to comply with electronic tax system

95. A person who fails to comply with the requirements of an electronic tax system as required under a tax law shall be liable to—

(*a*) a penalty of five hundred currency points for an entity and one hundred currency points for an individual for the first month; and

(*b*) a further penalty of fifty currency points for an entity and ten currency points for an individual for each month or part thereof during which the failure continues.

Penalty for aiding and abetting

96.—(1) A person who knowingly or recklessly aids, abets, counsels or induces another person to commit an offence under this Division shall be liable to a penalty of one hundred percent of the tax shortfall.

(2) For purposes of this section, "tax shortfall" means the underpayment of tax that, in the Commissioner General's view, may have resulted if the offence had been committed and had gone undetected.

Division II: Assessment of Interest and Penalties

Assessment of interest and penalties

97.—(1) The Commissioner General shall assess the interest or penalties for which a person is liable under this Part.

(2) Liability for interest or a penalty under this Part, with respect to a particular failure or statement, shall be calculated separately for each section.

(3) Notwithstanding subsection (2), where a particular failure or statement incurs interest or a penalty under this Act and another tax law, the Commissioner General shall assess the interest or penalty under one tax law of the Commissioner General's choice.

(4) Where an assessment is made under this section, the Commissioner General shall serve a written notice of the assessment on the person stating—

(*a*) the name of the person and the person's TIN, if any;

(*b*) the Commissioner General's assessment of the interest or penalty;

(*c*) the manner in which the assessed interest or penalty is calculated;

(*d*) the reason why the Commissioner General has made the assessment;

(*e*) the date by which the interest or penalty is required to be paid; and

(*f*) the time, place and manner of objecting the assessment.

(5) An assessment made under this section is an original assessment.

(6) A notice of assessment under subsection (4) may be incorporated with another notice of assessment under a tax law.

Imposition of interest or penalty not bar to criminal prosecution

98. The imposition of interest or a penalty under this Part is in addition to any tax imposed by a tax law and does not relieve the offender from liability to criminal proceedings.

Division III: Offences and penalties

Failure to comply with tax law

99. Except as otherwise provided in this Act, a person who fails to comply with a provision of a tax law commits an offence and shall, upon conviction, where a specific penalty is not provided, be liable to—

(*a*) where the failure results in or, if undetected, may have resulted in an underpayment, to a fine of not less than one thousand currency points and not more than ten thousand currency points or ten times the amount of tax which would have been prejudiced, whichever is the greater, or to imprisonment for one year; or

(*b*) in any other case, to a fine of not less than fifty currency points and not more than one hundred currency points.

Offences relating to registration

100. A person who, without reasonable excuse, does not apply for registration, deregistration or cancellation of registration as required under a tax law, commits an offence and shall, upon conviction, be liable to—

(*a*) in the case of failure to apply for registration, a fine of not less than five hundred currency points and not more than five thousand currency points or ten times the amount of tax which would have been prejudiced, whichever is the greater, or imprisonment for six months; or

(*b*) in any other case, to a fine of not less than three hundred currency points and not more than nine hundred currency points or to imprisonment for three months.

Offences relating to licensing

101. A person or taxpayer who—

(*a*) without reasonable excuse, does not apply to be licensed as required under a tax law; or

(*b*) upon expiry of a licence, continues to operate without a license,

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

Offences relating to TIN

102. A person who—

(*a*) uses a false TIN on a tax return or other document used for the purposes of a tax law;

(*b*) uses a TIN of another person; or

(*c*) obtains a TIN through fraud, misrepresentation or deceit,

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

Offences by tax practitioners

103.—(1) A tax practitioner who assists a taxpayer to create a tax avoidance scheme, or abets or aides a taxpayer to evade tax shall, upon conviction, be liable to a fine equal to double the tax evaded or five thousand currency points, whichever is greater, or to imprisonment for one year .

(2) A person who contravenes section 31 or 32 commits an offence and shall, upon conviction, be liable to a fine of not less than one thousand currency points and not more than three thousand currency points or to imprisonment for one year.

Failure to pay tax

104. A person who fails to pay a tax on or before the date on which the tax is payable commits an offence and shall, upon conviction, be liable—

(*a*) to a fine of not less than one thousand currency points and not more than ten thousand currency points or ten times the amount of the unpaid tax, whichever is the greater, or to imprisonment for six months; or

(*b*) in the case of non-payment of tax as a result of issuance of a cheque that is subsequently dishonoured by a bank, to an additional fine of thirty per cent of the amount of the cheque.

Making false or misleading statement

105.—(1) A person commits an offence where the person—

(*a*) makes a statement that is false or misleading in a material particular to a tax officer in the course of duty; or

(*b*) omits from a statement made to a tax officer any matter or thing without which the statement is misleading in a material particular.

(2) A person who commits an offence under subsection (1) shall, upon conviction, be liable to—

(*a*) where the statement results in or, if undetected, may have resulted in an underpayment of tax, a fine of not less than one thousand currency points and not more than ten thousand currency points or ten times the amount of tax which would have been prejudiced, whichever is the greater, or to imprisonment for one year; or

(*b*) in any other case, a fine of not less than fifty currency points and not more than one hundred currency points.

(3) Section 93(4) shall apply for the purposes of determining whether a statement is made to a tax officer in the course of duty.

Failure to maintain proper documents

106.—(1) A person who fails to maintain proper documents as required by a tax law commits an offence and shall, upon conviction, be liable—

(*a*) in the case of a natural person, to a fine of not less than three hundred currency points and not more than nine hundred currency points or to imprisonment for six months; or

(*b*) in the case of a body corporate, to a fine of not less than one thousand currency points and not more than ten thousand currency points.

(2) Where an offence under subsection (1) is committed by a body corporate, each director of the body corporate at the time the offence is committed shall be liable to the same fine as the body cooperate or to imprisonment for one year.

Impeding tax administration

107.—(1) A person who impedes or attempts to impede the administration of a tax law commits an offence and shall, upon conviction, be liable to—

(*a*) where the offence involves fraud or undue force—

(i) in the case of a natural person, a fine of not less than one thousand currency points and not more than ten thousand currency points or ten times the amount of tax sought to be evaded whichever is greater, or to imprisonment for four years; or

(ii) in the case of a body corporate, a fine of not less than two thousand currency points and not more than twenty thousand currency points or twenty times the amount of tax sought to be evaded, whichever is greater; or

(*b*) in any other case, a fine of not less than one hundred currency points and not more than one thousand currency points or to imprisonment for one year.

(2) Where an offence under subsection (1) is committed by a body corporate, each director of the body corporate at the time the offence is committed shall be liable to the same fine as the body corperate or to imprisonment for two years.

(3) In this section, "impeding administration of a tax law" includes, but is not limited to—

(*a*) assaulting, abusing, obstructing or attempting to assault, abuse or obstruct, or in any other way interfering with a tax officer or an asset used by a tax officer in the course of duty;

(*b*) assaulting, abusing, obstructing or attempting to assault, abuse or obstruct, or in any other way interfering with a person assisting a tax officer or an asset used by the person assisting a tax officer in the course of duty;

(*c*) assaulting, abusing, obstructing, hindering or interfering with a person who intends to buy or is buying taxable goods or services under a tax law;

(*d*) failure to comply with a notice under section 48 or answer truthfully when being interrogated under the Customs and Excise Act; Cap. 42:01

(*e*) forging or falsely making or altering a document or mark on a document purportedly required by or issued under a tax law, with the intention that a person will wrongly believe or act on the basis that the document is correctly required by or issued under a tax law;

(*f*) falsely altering any asset or any mark on an asset with the intention of evading an obligation under a tax law;

(*g*) knowingly dealing with a document or asset that contains or produces information including by way of measurement in any way so that the document or asset contains or produces information that is false or misleading in a material particular;

(*h*) contravening section 32;

(*i*) evading tax, including dealing with an asset charged under section 67 so as to prevent seizure;

(*j*) obstructing recovery of tax, including recovering or rescuing an asset seized under section 45, section 68, section 72 or section 117;

(*k*) interfering with any lock, seal, mark, fastening or other security used to restrain an asset under section 72 or section 117;

(*l*) disguising, warning, hiding or rescuing a person with the intention that a liability, obligation or arrest of the person under a tax law is evaded;

(*m*) failure to stop at a barrier or checkpoint set up by the Authority;

(*n*) failure to produce any document as required under a tax law;

(*o*) being in possession of a blank or incomplete invoice, bill head or other similar document capable of being filled out and used as an invoice for imported goods, with intent to deceive;

(*p*) with regard to a master or a person in charge of a conveyance—

(i) failure to ensure that a lock, mark or seal placed on any part of the conveyance by a tax officer is not opened, altered or broken except with the authority of a tax officer;

(ii) failure to take reasonable precaution to prevent the conveyance from being used in smuggling or in the transportation of smuggled goods;

(iii) failure to take reasonable precaution to prevent the conveyance from stopping for boarding in compliance with a lawful order issued by a tax officer;

(iv) failure to cause the conveyance to depart from Malawi after being required to do so by a tax officer; or

(v) failure to take reasonable precaution to prevent goods from being brought aboard a conveyance, thrown overboard, staved or destroyed to prevent seizure;

(*q*) committing an offence under a tax law where the person has already been convicted of a similar offence under that tax law or had that offence compounded under section 115;

(*r*) failure to issue a tax invoice under a tax law for goods supplied or services rendered;

(*s*) failure to issue or retain a duplicate fiscal receipt or fiscal invoice;

(*t*) failure to use an electronic fiscal device without approval;

(*u*) using an electronic fiscal device in a manner that is aimed at misleading, deceiving or manipulating information sent to a

system or the Commissioner General;

(*v*) tampering with or causing an electronic fiscal device to perform improperly;

(*w*) violating any obligation as a user or local supplier of an electronic fiscal device under a tax law;

(*x*) failure to demand and retain a fiscal receipt after purchasing goods or services as required under a tax law;

(*y*) failure to report a refusal by a user to issue a fiscal receipt after purchasing goods or services as required under a tax law;

(*z*) refusing to issue a fiscal receipt or invoice upon demand after selling goods or services as required by a tax law;

(*aa*) using a licence, permit, certificate or other document issued under a tax law in a manner contrary to the provisions or conditions of the tax law or of such licence, permit, certificate or other document;

(*bb*) using a conveyance having a false respect of bulkhead, false bow or stern, double side or bottom, or any conveyance's secret or disguised place, adapted for the purpose of smuggling goods, unless the person proves that he was unaware of the condition of the conveyance; or

(*cc*) where, on inspection of a conveyance by a tax officer, goods subject to customs control are found thereon that are not found wholly or partly thereon during a subsequent inspection or additional goods subject to customs control are found thereon and the person in charge of the conveyance fails to account for the goods to the satisfaction of the tax officer, unless the person in charge of the conveyance proves that he took all reasonable precaution to prevent the removal or addition of such goods.

Offences in respect of goods

108. A person who—

(*a*) imports, exports, carries coastwise or in transit, loads, unloads, removes, possesses or conveys goods contrary to the provisions of the Customs and Excise Act; Cap. 42:01

(*b*) imports or exports any goods in pursuance of any document in which a false declaration is made;

(*c*) except in accordance with the Customs and Excise Act— Cap. 42:01

(i) buys, receives, harbours, offers for sale or deals in, or has in his possession any goods subject to customs control; or

(ii) conceals, moves, alters, damages, destroys, removes, disposes of or in any way interferes or tampers with goods subject to customs control;

(*d*) offers for sale or deals in or possesses any goods under the pretence that they are smuggled goods whether or not they are in fact smuggled goods; or

(*e*) without lawful authority or payment of any duty which may be due, imports any excisable goods after they have been exported,

commits an offence and shall, upon conviction, be liable to a fine of not less than one thousand currency points and not more than ten thousand currency points or ten times the amount of tax evaded, whichever is the greater, or to imprisonment for two years.

Offences by or in relation to authorized and unauthorized persons

109.—(1) A person authorized by the Authority and acting in the performance of duties under a tax law commits an offence if the person—

(*a*) directly or indirectly asks for or takes in connection with the person's duties, any payment or reward whatsoever, whether pecuniary or otherwise, or promise or security for any such payment or reward, not being a payment or reward that the person is lawfully entitled to receive;

(*b*) agrees to, permits, conceals, connives at or acquiesces in, any act or a thing whereby the Government is or may be defrauded with respect to any matter under a tax law, including the payment of tax; or

(*c*) unlawfully charges and collects or attempts to collect an amount that the person describes as tax on a supply of goods or services.

(2) A person who without lawful authority—

(*a*) directly or indirectly offers or gives to a tax officer any payment or reward whatsoever, whether pecuniary or otherwise, or promise or security for any such payment or reward, not being a payment or reward that the tax officer is lawfully entitled to receive from that person; or

(*b*) proposes or enters into an agreement or conspires with a tax officer, in order to induce the tax officer to do, abstain from doing, permit, conceal or connive at, any act or thing whereby revenue is or may be defrauded, or which is contrary to the provisions of any tax law or the proper execution of the duties of the tax officer,

commits an offence.

(3) A person who is not authorized by the Authority commits an offence if the person—

(*a*) collects or attempts to collect an amount of tax payable under a tax law or an amount that the person describes as a tax;

(*b*) otherwise makes representations with the intent that another person should believe that the person is a tax officer;

(*c*) opens or enters any part of a customs area without lawful excuse or without the permission of an authorised tax officer, or refuses to leave any part of a customs area when lawfully directed to do so by a tax officer;

(*d*) removes any goods from a customs area without the permission of an authorised tax officer;

(*e*) uses, or permits to be used, any customs area in contravention of any of the terms of the licence or approval for such customs area; or

(*f*) not being an officer in the course of his duty, or the licensee or owner of a customs area, or the authorized employee of such licensee or owner, opens or enters any part of that customs area without lawful excuse or without the permission of the authorized officer.

(4) A person who commits an offence under subsection (1), (2) or (3) shall, upon conviction, be liable to a fine of not less than one thousand currency points and not more than ten thousand currency points or to imprisonment for one year.

Fraudulent claim of a tax refund

110. A person who, in relation to a tax period, fraudulently claims any tax relief or refund commits an offence and shall, upon conviction, be liable to a fine of twice the amount fraudulently claimed or to imprisonment for four years.

Offences by entities

111.—(1) Where an entity commits an offence under a tax law, every person who is a manager of the entity at the time the offence is committed shall be treated as also having committed the same offence.

(2) Subsection (1) shall not apply where the manager has exercised the degree of care, diligence and skill that a reasonably prudent person in the position of the manager would have exercised in preventing the commission of the offence.

(3) Where a manager of an entity commits an offence under a tax law while acting in his capacity as manager, the entity shall be treated as having committed the same offence.

Aiding or abetting

112.—(1) A person who aids, abets, counsels or induces, another person to commit an offence under a tax law (the "original offence") commits an offence.

(2) A person who commits an offence under subsection (1) shall, upon conviction, be liable—

(*a*) where the original offence involves a statement mentioned under section 93(1) and if the inaccuracy of the statement were undetected would have resulted in an underpayment of tax, a fine of not less than one thousand currency points and not more than ten thousand currency points or ten times the amount of tax which would have been prejudiced, whichever is the greater, or imprisonment for two years;

(*b*) where the original offence is of a kind mentioned in section 94, a fine of not less than one thousand currency points and not more than ten thousand currency points or ten times the amount of tax sought to be evaded, whichever is the greater, or imprisonment for two years;

(*c*) where the original offence involves inducing an authorised person to commit an offence under section 109, imprisonment for four years; or

(*d*) in any other case, a fine of not less than one hundred currency points and not more than five thousand currency points or to imprisonment for one year.

Unlawful use of or interference with electronic tax system

113.—(1) A person who—

(*a*) knowingly or recklessly and without lawful authority, gains access to or attempts to gain access to any electronic tax system;

(*b*) having lawful access to an electronic tax system, knowingly uses or discloses information obtained from such system for a purpose that is not authorized;

(*c*) knowing that he is not authorized to do so, receives information obtained from an electronic tax system, and uses, discloses, publishes, or otherwise disseminates such information;

(*d*) falsifies any record or information stored in any electronic tax system;

(*e*) damages or impairs an electronic tax system; or

(*f*) damages or impairs a duplicate tape, disc or other medium on which information obtained from an electronic tax system is held or stored, otherwise than with the permission of the Commissioner General,

commits an offence and shall, upon conviction, be liable to—

(*i*) in the case of a natural person, a fine of not less than one thousand currency points and not more than ten thousand currency points or imprisonment for two years; or

(*ii*) in the case of a body corporate, to a fine of not less than two thousand currency points and not more than twenty thousand currency points.

(2) Where an offence under subsection (1) is committed by a body corporate, each director of the body corporate at the time the offence is committed shall be liable to the same fine as the body cooperate or to imprisonment for two years.

Repeated offender

114. A person who has previously been convicted of an offence under a tax law shall be liable to double the fine or term of imprisonment prescribed under the tax law.

Compounding offences

115.—(1) Where a person commits an offence under a tax law and admits in writing to have committed the offence and agrees to pay any taxes payable and any other sum of money, not exceeding the amount of the fine to which he would have been liable if he had been prosecuted and convicted of the offence, the Commissioner General may settle the case on such terms as he thinks fit, or may order any goods liable to forfeiture in connection therewith to be forfeited.

(2) The Commissioner General shall not delegate powers under subsection (1).

(3) The Commissioner General may not compound an offence under section 109.

(4) Where criminal proceedings have been instituted against a person for an offence under a tax law, the power to compound the offence under subsection (1) shall not be exercised without the consent of the Director of Public Prosecutions.

(5) For the purposes of subsection (1), the Commissioner General shall constitute a committee of not less than three officers to consider and make recommendations on applications for the compounding of offences.

(6) An order by the Commissioner General under subsection (1) shall—

(*a*) be in writing under the hand of the Commissioner General and the offender, and witnessed by a tax officer;

(*b*) specify the name of the offender, the offence committed, the sum of money ordered by the Commissioner General to be paid, and the date or dates on which payment is to be made;

(*c*) have a copy of the written admission referred to under subsection (1) attached;

(*d*) be served on the offender;

(*e*) be final and not be subject to appeal; and

(*f*) on production in any court, be treated as proof of the conviction of the offender for the offence specified, and may be enforced in the same manner as a decree of a court for the payment of the amount stated therein.

(7) Where the Commissioner General compounds an offence under this section, the person concerned shall not be liable for any other penalty or prosecution with respect to that offence.

(8) Section 116 shall apply for the purposes of this section.

Part XI—Proceedings

Multiple proceedings

116.—(1) Proceedings in a court for the recovery of tax shall be deemed to be proceedings for the recovery of a debt validly acknowledged in writing by the debtor.

(2) In any action or proceeding for the recovery of tax it shall not be competent for the respondent to question the correctness of any assessment, notwithstanding that an appeal may have been lodged thereto.

(3) A proceeding to recover tax under one provision of a tax law shall not restrict simultaneous or separate proceedings to recover the same tax under a different provision of that law or a provision of a different tax law.

(4) Prosecution of a person for an offence under one provision of a tax law shall not restrict the simultaneous or separate prosecution of the person for another offence under a different provision of that tax law or a provision of a different tax law.

(5) Subject to any provision in a tax law to the contrary, a person may be convicted and sentenced under more than one offence provision with respect to the same course of conduct or omission.

(6) Where two or more offence provisions apply to the same part of a course of conduct or omission of a person, the adjudicator may choose one provision under which to convict and sentence the person.

Power of search, seizure and arrest

117.—(1) Where a tax officer specifically authorised for the purpose has reasonable grounds to believe that a person—

(*a*) has committed an offence under a tax law;

(*b*) will abscond before being charged or standing trial for an offence under a tax law; or

(*c*) will destroy, tamper or otherwise dispose of evidence of an offence under a tax law,

the tax officer may apply to a magistrate, by way of a sworn statement, for an order authorising that tax officer to take any of the actions set out in subsection (2).

(2) Where the magistrate is satisfied that there is a risk to the collection of tax or the administration of justice, the magistrate may make an order authorising the tax officer, with the assistance of the police, to—

(*a*) enter any premises or place and distrain assets that may reasonably provide evidence that an offence has been committed under a tax law;

(*b*) distrain and search any premises, place, vehicle or other asset on or in which the tax officer believes, on reasonable grounds, there is such evidence;

(*c*) interrogate and search or cause to be interrogated and searched a person who the tax officer believes, on reasonable grounds, has committed an offence under a tax law or to be in possession of assets that may reasonably provide evidence that an offence has been committed under a tax law;

(*d*) arrest a person who the tax officer believes, on reasonable grounds, has committed an offence under a tax law; or

(*e*) use reasonable force for the purposes of the preceding paragraphs including by way of breaking into any premises, place or asset that may contain evidence referred to in paragraph (a).

(3) Upon distraining an asset under subsection (2), the tax officer shall—

(*a*) serve a written notice on the possessor of the asset and, where there is more than one possessor, service on a single possessor is sufficient; or

(*b*) if the possessor of the asset is not available, leave the notice at the premises or place where the distraining takes place.

(4) The notice under subsection (3) shall—

(*a*) identify and list the assets distrained;

(*b*) state the reason for the distraint; and

(*c*) set out the terms for release, including any as to security required, and terms for disposal of the seized assets.

(5) A tax officer that arrests a person under subsection (2) shall, as soon as practicable, surrender the person to the police.

(6) A person shall be searched under paragraph (2) (*c*) by a person of the same sex.

(7) A tax officer may exercise any powers granted by a magistrate under this section in conjunction with any other powers of the tax officer, including those granted under sections 45 and 48.

Actions against the Authority

118. Except as provided under a tax law, where any proceedings are brought against the Authority under a tax law and judgement is given against the Authority the claimant shall be entitled to recover anything seized by the Authority, or the value thereof, but shall not otherwise be entitled to any damages.

Jurisdiction and venue

119.—(1) Proceedings for recovery of tax or with respect to an offence under a tax law, shall be commenced and heard at and disposed of by a court of competent jurisdiction nearest to—

(*a*) the usual place of abode of the person from whom recovery is sought or who is charged with the offence, as the case requires;

(*b*) the office of the Commissioner General having primary responsibility for the person's tax affairs;

(*c*) if the person is held in custody pending prosecution for an offence, where the person is held; or

(*d*) in the case of an offence, where the offence was committed.

(2) The Commissioner General may choose between possible venues.

Appearance of officers in court proceedings

120. Notwithstanding any law to the contrary, an officer duly authorized in writing by the Commissioner General may appear on behalf of the Commissioner General in any court proceedings to which the Commissioner General is a party.

Admissibility of documents

121.—(1) The following documents are admissible in proceedings on appeal under Part VII or in recovery of tax or criminal proceedings under a tax law without calling the person who prepared or signed the document—

(*a*) a document relating to the tax affairs of a person seized or obtained by a tax officer acting in the course of duty under a tax law;

(*b*) a statement relating to the tax affairs of a person that is made by the person to a tax officer acting in the course of duty under a tax law; and

(*c*) a copy of, translation of or extract from a document or statement referred to in paragraph (a) or (b).

(2) Admissibility of a document under subsection (1) shall not be affected by the fact that the person was induced to provide the document, copy or extract or made the statement by reason that the person was led to believe that—

(*a*) the Commissioner General may settle the matter on any terms; or

(*b*) the decision of the Commissioner General as to whether to settle the matter would be influenced by the fact that the person confessed to have committed an offence and provided full facilities for investigation.

(3) The production of a register of assessments or of any document under the hand of the Commissioner General or a tax officer duly authorized purporting to be a copy of, or extract from any such register of assessments shall be conclusive evidence of the making of any assessment referred to therein and, except in the case of proceedings on appeal against an assessment, shall be conclusive evidence that the amount and all the particulars of such assessment appearing in such register or document are correct.

(4) This section shall apply notwithstanding any law to the contrary but it shall not limit the admissibility of any document, copy, extract or statement under any other law.

Burden of proof

122.—(1) In an objection or proceedings on appeal under Part VII or for the recovery of tax or with respect to an offence under a tax law, the burden of proof shall be on the taxpayer to show compliance with the provisions of the tax law.

(2) The following are *prima facie* evidence in proceedings on appeal under Part VII or for the recovery of tax or with respect to an offence under a tax law—

(*a*) as to the matters certified therein—

(i) a certificate of the Commissioner General stating the name and address of a person and the amount and type of tax payable by the person;

(ii) a certificate of the Commissioner General stating that a person or a taxpayer was or was not registered under a tax law on any date;

(iii) a certificate of the Commissioner General that tax shown as due in any return or assessment made under a tax law has not been paid;

(iv) a certificate of the Commissioner General stating that an officer is authorised for the performance of specified activities under a tax law and that specified activities of the officer were performed in the pursuit of that authority;

(v) a certificate signed by an officer of a public institution acting in an official capacity; and

(vi) a certificate signed by an officer of a foreign government acting in an official capacity; and

(*b*) where goods are seized and some of them have been disposed of or damaged, the production of ten percent of the seized goods will suffice.

(3) This section shall apply to proceedings to enforce an obligation with respect to a security in favour of the Commissioner General.

Protection of witnesses

123.—(1) A witness on behalf of the Authority or the Government in proceedings on appeal under Part VII or in recovery of tax or with respect to an offence under a tax law shall not be required to disclose the following—

(*a*) the fact that the person received any information relating to a tax matter;

(*b*) the nature of the information received; or

(*c*) the name of the person who gave that information.

(2) A tax officer or police officer appearing as a witness in any proceedings referred to in subsection (1) shall not be required to produce any confidential reports made or received in the officer's official capacity or any confidential information received by the officer in that capacity.

Tax decisions unaffected

124. Subject to section 56(5), a tax decision shall not be stayed or otherwise affected by—

(*a*) the institution of proceedings—

(i) for the recovery of tax; or

(ii) with respect to an offence under a tax law; or

(*b*) the reason that the Commissioner General compounds an offence.

Provision of security not a defence

125. Provision of security for compliance with any provision of a tax law shall not be a defence in proceedings for recovery of tax or with respect to an offence under that tax law or any other tax law.

Publication of list of offenders

126.—(1) The Commissioner General may publish in the *Gazette* or any other newspaper of wide circulation a list of persons who—

(*c*) have been convicted of an offence under a tax law, but only if the time for appeal has expired; or

(*d*) are repeated offenders of tax law.

(2) A list published under subsection (1) may specify the following details—

(*a*) name and address of a person;

(*b*) offending conduct;

(*c*) period during which the conduct occurred;

(*d*) amount of tax involved; and

(*e*) particulars of any fine or sentence imposed.

Limitation of proceedings

127.—(1) A proceeding for the recovery of tax shall be commenced within six years from the date the tax is payable.

(2) Prosecution for an offence under a tax law shall be commenced within six years from the date the offence is committed.

(3) Where fraud is a material element of the offence, the time prescribed under subsection (2) shall start to run from the date the fraud is discovered.

(4) A tax officer may seize prohibited goods at any time.

Part XII—Miscellaneous Provisions

Regulations

128.—(1) The Minister may, by notice published in the *Gazette*, make regulations for carrying out the purpose and provisions of this Act into effect and prescribing all matters which are necessary or convenient to be prescribed for the better carrying out of the provisions of this Act.

(2) Without limiting the generality in subsection (1), such regulations may provide for—

(*a*) requiring persons or a class of persons to provide information as may be prescribed, whether on an isolated or periodic basis; and

(*b*) special schemes for payment and recovery of tax from particular persons or class of persons.

(3) Regulations made under subsection (1) may pertain to a single tax law or multiple tax laws.

(4) Where a law is only partly administered by the Authority the regulations shall be made by the Minister in consultation with the relevant ministry.

Cap. 1:01

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

Transition

129.—(1) Any international agreement entered into by the Government of Malawi prior to the commencement of this Act, continues to have effect under this Act.

(2) Forms and other documents used in relation to the prior tax law may continue to be used under this Act and all references in those forms and documents to provisions of and expressions appropriate to the prior law are taken to refer to the corresponding provisions and expressions of this Act.

(3) Any tax liability that arose before the commencement of this Act may be recovered by fresh proceedings under this Act, but without prejudice to any action already taken for the recovery of the tax.

SCHEDULE s. 84

CURRENCY POINT VALUE

Value of a currency point	K1,000.00

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

FIONA KALEMBA
Clerk of Parliament