

TAXATION (AMENDMENT) BILL, 2019

MEMORANDUM

This Bill seeks to amend the Taxation Act (Cap. 41:01) in order to—

(a) improve the administration of the Export Allowance incentive available to exporters of non-traditional products in order to promote in-country value addition of exported non-traditional products;

(b) introduce an incentive to encourage increased recruitment of people with disabilities in the labour market;

(c) improve the administration of the presumptive tax regime applicable to commercial passenger carrying motor vehicles;

(d) allow companies in the insurance sector to qualify for application for Withholding Tax Exemption Certificate subject to compliance with tax laws;

(e) provide for penalty pertaining to any undeclared income for loss making persons;

(f) increase the zero threshold for Pay-As-You-Earn (PAYE) from MK35,000 to MK45,000;

(g) improve fairness in the administration of the Pay-As-You-Earn (PAYE) scheme for salaried employees and individual businesses;

(h) provide for the exemption of the first ten bales of tobacco or 1,200 kilograms from Withholding Tax; and

(i) increase the Withholding Tax rates for fees and rents to twenty per cent.

TAXATION (AMENDMENT) BILL, 2019

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of s.36A of Cap. 41:01
3. Insertion of new s.36C into the principal Act
4. Insertion of new s.91B into the principal Act
5. Amendment of s.102A of the principal Act
6. Amendment of s.112 of the principal Act
7. Replacement of the Eleventh Schedule of the principal Act
8. Replacement of the Fourteenth Schedule of the principal Act

A BILL

entitled

An Act to amend the Taxation Act.

ENACTED by the Parliament of Malawi as follows—

1. This Act may be cited as the Taxation (Amendment) Act, 2019. Short title

2. The Taxation Act (hereinafter, referred to as “the principal Act”) is amended by deleting section 36A and substituting therefor a new section 36A, as follows— Replacement of s. 36A of Cap. 41:01

“Allowable
deductions—
export
allowance

36A.—(1) There shall be allowed, as a deduction, during the year of assessment, an amount (hereinafter, referred to as an “export allowance”) equivalent to—

B. No. 22

(a) thirty *per centum* of taxable income in respect of exports of processed non-traditional goods; or

(b) ten *per centum* of taxable income in respect of exports of unprocessed non-traditional goods.

(2) For the purpose of this section, "non-traditional goods" include all goods, except those excluded by the Export Incentives (Exclusion Order) under section 30 of the Export Incentives Act."

Cap. 39:04

Insertion of new s.36C into the principal Act

3. The principal Act is amended by inserting, immediately after section 36B, a new section 36C, as follows—

"Allowable deductions – allowance for employing person with disability
Cap. 33:06

36C. There shall be allowed, as a deduction, against the assessable income of a taxpayer, an additional fifty *per centum* of an amount paid as basic salary by the taxpayer to an employee with disability as defined by the Disability Act."

Insertion of new s.91B into the principal Act

4. The principal Act is amended by inserting, immediately after section 91A, a new section 91B, as follows—

"Presumptive tax for commercial passenger carrying vehicles

91B.—(1) Any person operating a commercial passenger motor vehicle shall be liable to pay a tax known as a presumptive tax, which shall be payable quarterly in equal instalments, as follows—

(a) for motor vehicles of up to sixteen seats, including a driver, K15,000 *per annum*; and

(b) for motor vehicles of above sixteen seats and less than thirty-three seats, including the driver, K20,000 *per annum*:

Provided that the Commissioner General shall have powers to graduate a taxpayer into the income tax regime applicable to income for individual businesses or corporations, as the case may be, if he believes that there are reasonable grounds to warrant the decision.

(2) The tax prescribed under subsection (1) shall be payable by the 14th day of the next month following the quarter.

(3) Any person who fails to pay tax as specified under this section shall be liable to pay the tax which he was supposed to pay and a further penalty of twenty *per*

centum of the amount of tax which he has failed to pay and a further interest charged on the amount of tax at the prevailing bank lending rate plus five *per centum per annum* for each quarter or part thereof during which the tax remains unpaid.”

5. The principal Act is amended by deleting section 102A and replacing therefor a new section 102A as follows—

Replacement
of s. 102A of
Cap. 41.01

“Deduction of
tax from
certain
payments

102A.—(1) Every person who makes any payment specified in the Fourteenth Schedule to any other person shall, before making the payment, withhold tax in accordance with the rates specified in that Schedule, subject to and in accordance with any regulations made by the Minister under section 146, notwithstanding that the recipient has not been assessed in respect of the amount in question:

Provided that where the recipient produces a valid withholding tax exemption certificate issued by the Commissioner General, withholding tax shall not be deducted.

(2) A withholding tax exemption certificate shall not be granted in respect of interest and rent, royalties, fees other than fees that constitutes active business income, commissions other than on insurance, payment of casual labour, payment to contractors and sub-contractors, and payment for tobacco and other products, and the expression “interest” shall have the meaning assigned to it in the Fourteenth Schedule.

(3) For the purposes of this section, active business income means income earned by or accrued to or accrued in favour of a taxpayer in the ordinary course of carrying on his trade.

(4) Regulations made with respect to deduction of tax (otherwise referred to as withholding tax) from certain payments in accordance with this section may include provision for—

(a) requiring any person making any payment to which this section applies to deduct tax in the manner provided and for rendering persons required to withhold tax accountable to the Commissioner;

(b) the production to and inspection by persons authorized by the Commissioner, of records and other documents for the purpose of satisfying

themselves that tax is being withheld and accounted for in accordance with the regulations; and

(c) the personal liability of any person required to withhold tax to pay to the Commissioner the amount of any tax which that person may fail to withhold contrary to this section or any regulation in respect thereof.”

Amendment
of s. 112 of
the principal
Act

6. The principal Act is amended in section 112 by deleting subsection (3) and replacing therefor a new subsection (3), as follows—

“(3) Any person who, in respect of any year of assessment,—

(a) omits from his return of income, any amount which should have been included therein;

(b) in his return of income, deducts or sets off any amount the deduction or setting off of which is not allowed under the Act; or

(c) claims any allowance which he is not entitled to claim under this Act; or

(d) fails to deduct the tax due, or to remit tax deducted, under section 76A,

shall be liable to pay to the Commissioner General—

(i) where a person is in a taxable loss position and the Commissioner General makes an adjustment to his return, a penalty of six *per centum* of the adjusted amount; or

(ii) where a person is in a taxable position and the Commissioner General makes an adjustment to his return, a penalty of twenty *per centum* of the amount of tax which he has failed to pay in the first month or part thereof; and

(iii) a further interest charged on the penalty in subparagraph (i) or on the outstanding amount of tax in subparagraph (ii) at the prevailing bank lending rate plus five *per centum* per annum for each month or part thereof during which the tax remains unpaid,

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

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

7. The Eleventh Schedule to the principal Act is amended by deleting the Schedule and replacing therefor, a new Eleventh Schedule, as follows—

Replacement
of the
Eleventh
Schedule to
the principal
Act

“ELEVENTH SCHEDULE
RATES OF INCOME TAX

Income tax shall be charged as follows—

(a) in the case of an individual, at the rates laid down in the Appendix to this Schedule;

(b) in the case of ecclesiastical, charitable or educational institutions of a public character or of trusts, at thirty per cent of the taxable income;

(c) in the case of all companies other than companies engaged in mining operations under a licence issued under the Mines and Mineral Act, thirty per cent of taxable income except that in the case of companies operating in priority industries, so designated by the Minister for this purpose, by order published in the *Gazette*, the applicable rate shall be either—

(i) zero per cent for such period, not exceeding ten years, as the Minister may grant in the order; or

(ii) fifteen per cent:

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

(d) in the case of a taxpayer in respect of their mining project—

(i) thirty per cent of taxable income:

Provided that an additional tax of five per cent of taxable income shall be charged in respect of all such taxpayers who, if a company, are not incorporated in Malaŵi, and who, if other than a company, are not resident in Malaŵi;

(ii) an additional resource rent tax at a minimum rate of fifteen per cent on after tax project resource rent in respect of their mining project determined by using the formula—

$$r = \frac{40.5 - t}{100 - t} \times 100$$

where;

“r” is the rate of RRT, expressed as a percentage; and

“t” is the rate applicable for income tax on companies;

(e) in the case of life assurance business, at thirty per cent of the taxable income;

(f) in the case of fringe benefits, at thirty per cent of the taxable value of fringe benefits;

(g) in case of Turnover Tax, at the rate of two per cent of the taxable turnover;

(h) in the case of earnings on investment of pension funds, at fifteen per cent.

APPENDIX

TABLE OF RATES OF INCOME TAX ON TAXABLE INCOME

<i>Annual Taxable Income</i>	<i>Rate</i>
First K540,000	0%
Next K60,000	15%
Next K 35,400,000	30%
Excess of K36,000,000	35%”

Amendment
of the
Fourteenth
Schedule to
the principal
Act

8. The Fourteenth Schedule to the principal Act is amended by deleting the Schedule and replacing therefor with the new Schedule as follows—

“FOURTEENTH SCHEDULE

WITHHOLDING TAX — RATE OF DEDUCTION

<i>Nature of payment</i>	<i>Notes</i>	<i>Rate of Withholding Tax on gross payment</i>
(a) Royalties		20%
(b) Rents	1	20%
(c) Payment for any supplies to traders and institutions		
(i) Foodstuff		3%
(ii) Other		3%
(d) Commissions	2	20%
(e) Payment for carriage and haulage		10%

(f)	Payment of tobacco and other farms products		
	(i) Sale for the first 1,200 kilograms or ten bales of tobacco sold through auction floors		0%
	(ii) Sale of tobacco in excess of 1,200 kilograms or ten bales sold through auction floors		3%
	(iii) Sale of tobacco through farmer clubs at auction floors		0%
	(iv) Payment for other farm produce		3%
(g)	Payment to contractors in the building and construction industries	3	4%
(h)	Payment for public entertainment	4	20%
(i)	Payment for casual labour		
	(i) Payment of up to K15,000		0%
	(ii) Payment in excess of K15,000		20%
(j)	Payment for services		20%
(k)	Interest	5	20%
(l)	Fees	2	20%

Notes:

1. Includes rent for moveable and immoveable property, whether paid under a lease or otherwise, but excludes rent payable by an individual whose source of income is only from employment and the rent is payable in respect of property used as a dwelling house.
2. Excludes fees and commissions on which P.A.Y.E. is being operated, but includes technical fees and management fees to the extent they do not relate to reimbursement of expenses.
3. Includes contractors and subcontractors of any category.
4. Includes payment to musicians, radio and television artist, athletes and theatres, but excludes payments to radio and television artists which are subject to P.A.Y.E.
5. Excludes—
 - (a) interest payable to a person exempt from income tax under the First Schedule;
 - (b) interest payable to a person, not being a person resident in Malawi, whose income is liable to non-resident tax under section 76A of the Act; and

- (c) interest, however arising, payable by any person to an institution registered under the Banking Act.”

OBJECTS AND REASONS

The principal objective of this Bill is to amend the Taxation Act in order to—

(a) improve the administration of the Export Allowance incentive available to exporters of non-traditional products in order to promote in-country value addition of exported non-traditional products;

(b) introduce an incentive to encourage increased recruitment of people with disabilities in the labour market;

(c) improve the administration of the presumptive tax regime applicable to commercial passenger carrying motor vehicles;

(d) allow companies in the insurance sector to qualify for application for Withholding Tax Exemption Certificate subject to compliance with tax laws;

(e) provide for penalty pertaining to any undeclared income for loss making persons;

(f) increase the zero threshold for Pay-As-You-Earn (PAYE) from K35,000 to K45,000;

(g) provide for the exemption of the first ten bales of tobacco or 1,200 kilogrammes from Withholding Tax; and

(h) increase the Withholding Tax rates for fees and rents to twenty per cent.

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