

**MALAWI GOVERNMENT**

(Published 24th August, 2018)

Act

No. 27 of 2018

I assent

PROF. ARTHUR PETER MUTHARIKA

PRESIDENT

20th August, 2018

## ARRANGEMENT OF SECTIONS

## SECTION

1. Short title and commencement
2. Amendment of s. 2 of Cap. 42:02
3. Amendment of s. 11 of the principal Act
4. Insertion of Part IIIA into the principal Act
5. Insertion of s. 19A into the principal Act
6. Amendment of s. 30 of the principal Act
7. Amendment of s. 34 of the principal Act
8. Amendment of s. 37 of the principal Act
9. Insertion of s. 37A into the principal Act
10. Amendment of s. 38 of the principal Act
11. Amendment of s. 46 of the principal Act
12. Amendment of s. 59 of the principal Act

**An Act to amend the Value Added Tax Act**

ENACTED by the Parliament of Malawi as follows—

1. This Act may be cited as the Value Added Tax (Amendment) Act, 2018, and shall come into operation on 1st July, 2018. Short title  
and  
commencement
2. The Value Added Tax Act (hereinafter referred to as the “principal Act”) is amended, in section 2, by— Amendment  
of s. 2 of  
Cap. 42:02
  - (a) deleting the definition of the word “business” and substituting therefor a new definition of “business” as follows—

“business” means the carrying on of any form of commercial activity, by a corporate body, individual, partnership or any organization and includes the conduct of a mining project;”;

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

“taxable person” means a person registered under section 11 and includes an individual, partnership, group of persons, company or corporation registered by the Commissioner General under that section and includes a person registered in relation to a mining project under that section, which shall be taken to be a separate taxable person from that person registered or on whose behalf another person is registered in any other respect;”;

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

“mining project” means—

(a) the holding of a mining permit;

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

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

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

“mining permit” means—

Cap. 61:01 (a) a mineral tenement or an artisanal mining permit as defined under the Mines and Minerals Act; and

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

“withholding agent” means any person, including an individual, partnership, group of persons, company or corporation, registered under section 14A.”.

3. Section 11 of the principal Act is amended, by deleting subsection (1) and replacing it with a new subsection (1) as follows—

Amendment  
of s.11 of the  
principal Act

“(1) A person is registrable as a taxable person—

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

(b) if he or she is a recipient of imported services whose value of imported services is, or exceed, K10,000,000 per annum.”.

4. The principal Act is amended, by inserting, immediately after Part III, the following new “PART IIIA” as follows—

Insertion of  
Part IIIA into  
the principal  
Act

“PART IIIA—WITHHOLDING AGENTS

Withholding  
Agent

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

(a) a purchaser of taxable goods or services; or

(b) responsible for the payment for the taxable goods or services,

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

Provided that the Commissioner General may, at any time, revoke an appointment under this subsection if he deems it appropriate to do so for the protection of revenue.

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

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

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

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

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

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

Insertion of  
s.19A into the  
principal Act

5. The principal Act is amended, by inserting, immediately after section 19, a new section 19A as follows—

Taxable  
person in  
mining project

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

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

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

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

Amendment of  
s.30 of the  
principal Act

6. The principal Act is amended, in section 30, by repealing subsection (1) and replacing therefor a new subsection (1) as follows—

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

Provided that—

(a) the supply is a taxable;

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

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

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

7. Section 34 of the principal Act is amended—

Amendment  
of s. 34 of the  
principal Act

(a) in subsection (1), by inserting, immediately after the words “taxable person”, the words “or withholding agent”; and

(b) by repealing subsection (8) and replacing therefor a new subsection (8) as follows—

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

8. The principal Act is amended, in section 37, by inserting, immediately after subsection (3), a new subsection (4) as follows—

Amendment  
of s. 37 of the  
principal Act

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

9. The principal Act is amended, by inserting, immediately after section 37, a new section 37A, as follows—

Insertion of  
s. 37A into  
the principal  
Act

“Manner of  
paying Value  
Added Tax

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

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

(b) at any tax office; or

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

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

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

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

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

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

Amendment  
of s. 38  
of the  
principal Act

10. The principal Act is amended, in section 38(1), by inserting, immediately after the words “A taxable person”, the words “or withholding agent”.

Amendment  
of s. 46  
of the  
principal Act

11. The principal Act is amended, by repealing section 46 and replacing therefor a new section 46 as follows—

“Failure to  
issue a tax  
invoice or  
Withholding  
Value Added  
Tax Certificate

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

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

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

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

12. The principal Act is amended, by repealing section 59(1) and replacing therefor a new section 59, as follows—

Amendment  
of s. 59  
of the  
principal Act

“Penalty for  
unauthorized  
collection or  
withholding of  
Value Added  
Tax

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

Passed in Parliament this twenty-ninth day of June, two thousand and eighteen.

FIONA KALEMBA  
*Clerk of Parliament*