



2023/24 Supplementary Tax Update  
Income Tax, VAT and Customs & Excise Amendments



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## Introduction

The Minister of Finance, Honourable Sosten Alfred Gwengwe, delivered his 2023/2024 Budget Statement to Parliament on 2nd of March 2023, introducing new measures impacting the Taxation Act, Value Added Tax Act and Customs and Excise Act. The Finance Minister indicated in his speech that the effective date of the Income Tax and VAT measures shall be the 1st of April 2023, with the Customs and Excise tax measures effective from midnight on 2nd March 2023.

Deloitte issued an initial 2023/24 Tax Update addressing the key measures announced in the Budget Statement, as well as highlighting other important legislative updates. The final legislative tax amendments were pending at the time of Deloitte's initial 2023/24 Tax Update.

The proposed tax measures were subsequently published in Bills No. 4 to 6 of 2023, which were assented to by His Excellency Dr Lazarus McCarthy Chakwera, President of the Republic of Malawi, on 5th April 2023. The Gazettes in relation to these amendments have now been published.

This Supplementary Tax Update serves to provide more detail in relation to the measures outlined in the Minister's speech with reference to the recently published Taxation (Amendment) Act, 2023, VAT (Amendment) Act, 2023, and Customs and Excise (Amendment) Act, 2023. We also provide, in certain cases, our commentary based on our reading of the amendments.

## Taxation (Amendment) Act, 2023

### Changes in Definitions

The following new definitions have been included in the Taxation (Amendment) Act, 2023, as stated below:

**Debt** - any loan, financial instrument, finance lease, financial derivative, or any arrangement that gives rise to interest, discounts, finance or other charges that are deductible in the computation of taxable income.

**Deemed income** - includes any income earned from a source in Malawi not restricted to physical presence.

**Pension fund** - a superannuation, pension, widows', or orphans' fund established by any enactment whatsoever, whether in force in Malawi or elsewhere

### Commentary

*We note that while the definition of "deemed income" was not contained in the earlier Taxation (Amendment) Act, 2022, the definitions of "debt" and "pension fund" as stated in the new Taxation (Amendment) Act, 2023 do not appear to alter the existing definitions already contained in the 2022 Act. However, "pension fund" has now replaced "provident fund" in section 37 of the Taxation (Amendment) Act, 2023, as further explored below.*

**Equity** includes -

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

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

### Commentary

*The inclusion of interest-free loans as a definition of equity brings about uncertainty around the treatment of interest-free loans. This definition indicates that's interest free loans may be recharacterized for tax purposes as equity contributions. This brings into question the interaction between this definition and section 27(8) of the Taxation Act, which forms the basis for deeming interest on interest free loans. It is unclear whether in the case of interest free loans, the MRA would still deem interest when the Taxation Act now defines such loans as equity for tax purposes. From a transfer pricing perspective, interest free loan transaction may be recharacterized as capital contributions.*

**Place of effective management** - ordinarily the place where the most senior person or group of persons, such as a board of directors, make the key management and commercial decisions necessary for the conduct of the company's business.

### Commentary

*The place of effective management was previously undefined in the Taxation Act and its inclusion provides clarity for the changes in the non-resident tax provisions.*



## Section 28

A new subsection 28(1) has been included in the Taxation (Amendment) Act, 2023, as well as including a new subsection (2) which states that for taxpayers making both taxable and exempt income, only the expenditure incurred in producing taxable income is deductible for tax purposes. It further highlights that any expenses related to income subject to a final tax are not deductible for tax purposes.

In line with the new provisions, where the taxpayer cannot segregate the expenditures that relate to taxable and exempt income generation, the taxpayer may allocate the expenditures according to the ratio of taxable to exempt income to determine the amount of expenses that are deductible. However, the expenditure calculated in this way is subject to approval of the Commissioner General (“CG”) who may direct an alternative method at his discretion.

The formula for allowable expenditure deduction is as below:

$$\frac{\text{Taxable Income}}{\text{Total Income for Period}} \times \text{Total Expenditure}$$

### Commentary

*We note that the new section 28 (1) referenced above does not introduce any changes to the definition already contained in the 2022 Taxation Act. As for the subsequent definitions, this*

*clarification provides clear direction to taxpayers on deductibility of business expenses where taxpayers generate both taxable and exempt income. The apportionment method provided in the new provisions offers administrative ease to taxpayers who would otherwise be unable to appropriately quantify these expenses. It may be advantageous to agree the apportionment methods in advance.*

## Section 37

The section has been amended to reflect the changes in the definitions section by replacing the use of *provident fund* with *pension fund* and expanding the scope of criteria in the provision.

## Section 76A (1)

The section of non-resident tax has been amended to include persons having a “place of effective management” outside Malawi. The definition of place of effective management has also been introduced in the Taxation (Amendment) Act, 2023, as defined above.

## Section 88 (1)

This section, which covers the provision of documents after a written request from the CG for any documents deemed necessary for examination by the CG, has been amended to indicate that such requests may also be made for the purpose of auditing the affairs of a taxpayer.

### Commentary

*The amendment provides a clear basis for the CG to request information deemed appropriate for the purpose of auditing a taxpayer.*

## Section 102A

The provision on the limitation of what payments may be granted a withholding tax exemption certificate (WHTEC) have been updated to include rent payments for immovable property and all farm produce to farmer’s clubs.

### Commentary

*The amendment narrows the provision to exclude all rent payments for immovable property. Previously, payments for tobacco alone were not permitted a WHTEC, but the amendment has further widened this exclusion to all payments for farm produce made specifically to farmer’s clubs. This, however, indicates that individual farming enterprises are still eligible for a WHTEC.*

## Section 102(B)

The advanced import tax has been confirmed to be 10%, an increase from the previous 3%.

## Section 102(C)

This is a new section that specifically provides guidance on the payment of advanced income tax of 10% of the customs value of goods for exports. The new section further highlights the exemption criteria which includes those exporting for personal, family, home and other needs, those holding a



WHTEC, exports by the Government of Malawi, re-exportation, exports by an exempt person, temporary exports and exports made under the Simplified Trade Regime.

### Commentary

*The Simplified Trade Regime (STR), although not explicitly defined in the Taxation Act, is an arrangement implemented by Member States of COMESA to formalise and improve the performance of the small-scale cross border traders and enable them to benefit from the regional preferential treatment when importing or exporting goods within the region.*

### Section 112(2)

The section on penalties has been amended to include a new paragraph that includes penalties for those who fail to produce documents as required by the CG under the amended section 88.

### Eleventh Schedule

#### Corporate Income Tax

The rates of income tax have been amended to include the payment of an additional 10% of corporate income tax for banks licenced under the Financial Services Act with taxable income in excess of MWK 10 billion. Any bank with taxable income above the threshold will be subject to a corporate income tax of 40%. This additional tax is only applicable to the amounts exceeding the MWK 10 billion threshold.

### Commentary

*The amendment uses taxable income as a basis for the threshold, not profit before tax or turnover. Taxable income is the income used for tax purposes after appropriate deductions and disallowances have been made.*

*The Finance Minister stressed that the 40% levy is temporary, to raise resources to fund various initiatives in the aftermath of the infrastructural damage caused in Malawi by Tropical Cyclone Freddy.*

#### Pay As You Earn Rates

The new PAYE rates are as summarised in the tables below:

Monthly Income	Rate
First MK100,000	0%
Next MK 350,000	25%
Next MK2,050,000	30%
Excess of MK2,500,000	35%

Annual Income	Rate
First MK1,200,000	0%
Next MK 4,200,000	25%
Next MK24,600,000	30%
Excess of MK30,000,000	35%

### Commentary

*The 25% bracket has been increased to cover amounts in excess of MK100,000 up to MK350,000. The 30% bracket has been narrowed from a ceiling of MK3,000,000 to MK2,500,000.*

*The proposed changes have been passed with no corresponding changes to the income tax rates of the self-employed, which continue to have a marginal rate of 30%.*

### Fourteenth Schedule

All proposed changes to withholding tax (WHT) have been effected. The WHT rate table has been amended to harmonise the WHT rate on tobacco with the rate on all other farm produce at 3% and subsequent changes have been made in the note that provides clarity for this section.

The increase of WHT rate for payments to contractors in the building industry has been maintained at the previously proposed 10%.

Withholding Tax - Rate of Deductions	
Nature of Payment	Rates
(a) Royalties	20%
(b) Rent	20%
(c) Supplies	
(a) Food	3%
(b) Other	3%
(d) Commissions	20%
(e) Commissions for individual insurance agents	1%
(f) Payment for carriage and haulage	10%
(g) Payment for farm produce	
(i) Farm produce to farmers clubs;	1%



(ii)	Payment for farm produce	3%
(h)	Payments to contractors in the building and construction industry	10%
(i)	Payment for public entertainment	20%
(j)	Payment for casual labour	
	(i) Up to K35,000	0%
	(ii) Over K35,000	20%
(k)	Payment for services	20%
(l)	Interest	20%
(m)	Fees	20%
(n)	Winnings on betting and gambling	5%
(o)	Payment for quarry stones and quarry materials	10%

Note that the tax withheld from the sale of farm produce by farmers clubs shall be a final tax.

### Fifteenth Schedule

The schedule has been amended to include the need of a tax clearance certificate for the purchase of explosives from the Malawi Police Services and the purchase of ethanol.

## VAT (Amendment) Act, 2023

### Section 30(1)

As proposed, this section has been updated so that the MRA may request proof of receipt of export proceeds from the banks before processing Value Added Tax refunds for exports.

### First Schedule

Electric motor vehicles have been included in the exemption schedule as proposed and the customs tariffs subject to the change have been provided in paragraph 9 of the First Schedule.

Paragraph 11 has been amended to include gas stoves and the relevant customs tariff headings.

Paragraph 21 has been amended to include wheat under customs tariff subheading 1101.00.10.

A new paragraph 26 has been added to include urinary drainage bags in the exemptions category.

### Second Schedule

The zero-rated supplies schedule has been amended as below:

New paragraph 1 to cover goods under customs control for export purposes or goods which are taken out from any part of the customs area and brought into an export processing zone.

Amending the types of exercise books that are zero rated by excluding those with hard covers.

A new paragraph 6 to include under the zero rating the supply of a business as a going concern. For the purpose of this paragraph, the “supply of a business as a going concern” means the disposal of any part of a business which is capable of separate operation and the buyer must carry on the same kind of business as that carried on by the seller.

## Customs & Excise (Amendment) Act, 2023

### Definitions

**Duty** - The Amendment Act states that the definition of the word “duty” has been amended by deleting the word “withholding” and substituting it with “advance income”.

**Export warehouse** – This has been defined as a customs-controlled place licensed by the Commissioner General for the deposit of goods prior to their exportation and from which export customs clearance formalities may be carried out.

### Part VIIIA- Export Warehouses

This is a new section that provides detailed guidance on the newly established export warehouses. This is made up of new sections 57A-F which set out the following:

#### *Licensing of export warehouses*

Warehouses may be licensed as a general export warehouse or private export warehouse (for holding goods which are property of the licence



holder only) by submitting an application form to the CG. The licences will expire on the 31<sup>st</sup> of December of the second year following the date of issue.

#### ***The transfer of licence***

For the transfer of a licence, the holder may upon approval of the CG transfer the licence to apply to a different physical location belonging to the licence holder. It is not transferable from one person to another.

#### ***The revocation or non-renewal of licence***

The CG will send notification of revocation or non-renewal of the licence to the licence holder.

Where the licence holder chooses to not renew the licence, this intention must be expressed to the CG and all owners of the goods being warehoused shall give 30-day notice.

#### ***Records to be kept by licence holders***

The license holder must keep records of all goods warehoused and provide all necessary labour and materials for the storing, examining, weighing and taking stock of the goods warehoused therein whenever the proper officer so requires. The licence holder is further accountable for all goods deposited in the export warehouse in accordance with the customs laws and any other laws regarding export of goods.

#### ***Goods for warehousing***

The CG may prescribe a schedule of goods to be deposited into an export warehouse.

Entry of warehoused goods for exportation

#### **Section 77C**

This section has been amended to remove the mention of Schedule C which has been repealed and includes a new subsection 2 which specifies that the Minister may specify by way of the Gazette the excisable goods to which excise tax stamps will be affixed and all matters to do with the systems of management as well as the manner and place of affixing the stamps.

Schedule C which is a list of excisable goods requiring excise tax stamps has been repealed.

### **Estate and Stamp Duty Amendments**

#### **Proposed Amendments**

The government had announced that the Stamp Duties Act and Estate Duties Act are archaic and will be amended and aligned with modern legislation. The Bills pertaining to these measures are currently still pending, and we shall issue a subsequent update once the new measures are published.





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