

(Published 2nd September, 2016)

ACT

No. 25 of 2016

I assent

PRO. ARTHUR PETER MUTHARIKA

PRESIDENT

1st September, 2016

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An Act to amend the Taxation Act

ENACTED by the Parliament of Malawi as follows—

Short title and commencement

1. This Act may be cited as the Taxation (Amendment) Act, 2016, and shall come into operation on 1st July, 2016.

Amendment of section 2 of Cap. 41:01

2. The Taxation Act (hereinafter referred to as the “principal Act”) is amended, in section 2 by—

(a) inserting, immediately after the definition of “company”, the following new definition—

““derivative transaction” means a financial instrument or other contract within the scope of Accounting Standard IAS 9 and with all three of the following characteristics—

(a) its value changes in response to the change in an underlying measure (the underlying) which may be a specified interest rate, a financial instrument price, a commodity price, a foreign exchange rate, an index of prices or rates, a credit rating or credit index, or another variable, provided that if it is a nonfinancial variable then the variable is not specific to a party to the contract;

(b) it requires no initial net investment or an initial net investment that is smaller than the potential response of its value to changes in market factors; and

(c) it is settled at a future date”;

(b) inserting, immediately after the definition of “mineral”, the following new definition—

““mineral royalty” means the payment for the right to extract minerals from the ground”;

(c) inserting, immediately after the definition of “mining operations”, the following new definition—

““mining project” means—

(a) the holding of a mining permit; and

(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; and

(c) the financing of any of 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”;

(e) inserting, immediately after the definition of “income tax”, the following new definition—

““independent personal services” include professional services and other services of an independent character excluding management fees”;

(f) deleting the definition of “person” and substituting therefor the following new definition—

““person” includes an individual, a partnership, a company, a corporation, a trust, a club, a society, an organization, a public authority, an association and an unincorporated joint venture of persons who are not partners so far as they together have a mining project and, in respect of each mining project that they have, a person is a separate taxpayer from being a taxpayer in any other respect”;

(g) inserting, immediately after the definition of “previous law”, the following new definition—

““professional services” include independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants”;

(h) inserting, immediately after the definition of “Malawi currency”, the following new definition—

““management fees” means payments to a person for any services of an administrative, technical or managerial nature, if such services make available administrative, technical or managerial knowledge, experience, skills or know-how, and that are not payments to the person as an employee.”

(i) inserting, immediately after the definition of “mining operations”, the following new definition—

““mining permit” means—

(i) a mineral tenement or an artisanal mining permit as defined under the Mines and Minerals Act, 2016 and includes such a right as may be renewed or varied from time to time; and

(ii) 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”; and

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2016

(j) by inserting, immediately after the definition of “provident fund”, the following new definition—

““royalty” means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience”.

Insertion of
new section
34A into the
principal Act

3. The principal Act is amended by inserting, immediately after section 34, the following new section as section 34A—

Mineral
royalty
allowable
deduction

“34A—Sums actually expended by the taxpayer during the year of assessment by way of payment of mineral royalty under section 64A shall be an allowable deduction.”.

Insertion of
new section
64A into the
principal Act

4. The principal Act is amended by inserting, immediately after section 64, the following new section as section 64A—

Taxation of
Mining
project

“64A—A person shall be taxed in respect of each mining project they have in accordance with the Sixteenth Schedule.”.

Insertion of
new PART IVA
into the
principal Act

5. The principal Act is amended by inserting, immediately after PART IV, the following new Part as “PART IVA”—

“PART IVA

MINERAL ROYALTY

Mineral
Royalty

64B—(1) Royalty is payable as a tax in respect of the products of mining in accordance with the Seventeenth Schedule.

(2) A taxpayer in respect of a mining project shall pay royalty to the Commissioner General for all minerals taken from the earth as part of their mining project during each royalty period.

(3) A taxpayer in respect of a mining project for which the only mining permit is a non-exclusive prospecting licence or a small-scale mining licence need not pay royalty for reserved minerals taken from the earth as part of that mining project, if the minerals are disposed of to the holder of a reserved minerals licence.

(4) The holder of a reserved minerals licence shall pay mineral royalty to the Commissioner General for all minerals held under the licence at the end of each royalty period and all minerals held under the licence but disposed of during the royalty period.

(5) Subject to the provisions of this Act, every person chargeable with mineral royalty under this Act shall pay such royalty on quarterly basis within twenty days after the end of each quarter of that year of assessment.”.

6. Section 76A of the principal Act is amended by deleting subsection (1) and substituting therefor the following new subsection—

Amendment
of section 76A
of the
principal Act

“(1) Subject to subsection (3), any income payable to a person, not being a person resident in Malawi, arising from a source within Malawi and not attributable to a permanent establishment of that person in Malawi shall be liable to a final tax at the rate of—

(a) 15 per cent of the gross amount of such income;

(b) 15 per cent in relation to management fees; and

(c) 10 per cent in relation to income derived from a mining project by way of interest, royalty, payment for independent personal services, or dividend.”.

7. The principal Act is amended, in section 84, by inserting, immediately after subsection (7), the following new subsection as subsection (8)—

Amendment
of section 84
of the
principal Act

“(8) The Commissioner General may specify that returns of a particular kind, or by a particular taxpayer or class of taxpayer (whether identified by size or otherwise), or relating to liabilities of a particular size, must be made in a particular manner (which manner may include delivery in a particular electronic form or to a particular electronic address or otherwise).”.

8. The principal Act is amended, in section 85A, by deleting subsection (4), and substituting therefor the following new subsection as subsection (4)—

Amendment
of section 85A
of the
principal Act

“(4) Any person who concludes or causes the conclusion of a transaction referred to in subsection (1) without a tax clearance certificate shall—

(a) be liable to a penalty imposed by the Commissioner General of five times the amount of tax prejudiced or K2,000,000, whichever is greater; or

(b) upon conviction, be liable to a fine of not less than ten times but not exceeding twenty times the amount of tax prejudiced or K10,000,000, whichever is greater, and to imprisonment for two years.”.

Amendment of
section 88 of
the principal
Act

9. The principal Act is amended in section 88 by—

(a) deleting subsection (1) and substituting therefor the following new subsection—

“(1) For the purpose of obtaining full information in respect of any part of the income and the liability to mineral royalty of any person, the Commissioner General may by notice in writing require any person to produce for examination by the Commissioner General, or by any person appointed by him for that purpose, at such time and place as may be appointed by the Commissioner General for that purpose any deeds, plans, instruments, books, accounts, trade lists, stock lists, or documents which the Commissioner General may deem necessary for the purposes of this Act. Any person so producing any deed, plan, instrument, book, account, trade list, stock list or document which is not a ledger, cash book, journal, paid cheque, bank statement, deposit slip, stock sheet, invoice or other book of account required by this Act to be kept and retained by a person whose assessable income does not consist of salary, wages or similar compensation for personal services, may be allowed by the Commissioner General any reasonable expenses necessarily incurred in producing it or obtaining and producing a copy of it.”; and

(b) deleting paragraph (a) of subsection (2), and substituting therefor the following paragraph—

“(a) The Commissioner General may, by reasonable notice in writing, require any person entitled to or in receipt of any income or of any mineral or of any product of mining operations, whether on his own behalf or as the representative of any person, or any person whom the Commissioner General may deem able to furnish information, to attend at a time and place to be named by the Commissioner General for the purpose of being examined on oath respecting the income of any such person, or any transactions or matters affecting the same, or any of them, or any part thereof.”.

Amendment of
PART XI of the
principal Act

10. The principal Act is amended in PART XI by—

(a) inserting, immediately after section 104A, the following new Division as ‘Division 1A’—

“Division 1A—Mineral Royalty

104B—Where a mining project or a holder of a reserved minerals licence is liable to pay royalty on products of mining, the mineral royalty shall constitute a tax chargeable under this Act and shall be paid to the Commissioner General.” and

(b) deleting the words "*Division 2—Assessments Raised by the Commissioner*", immediately before section 105, and substituting therefor the following words—

"Division 2—General".

11. The principal Act is amended by inserting, immediately after Section 106, the following new section as Section 106A—

Insertion of
new section
106A into the
principal Act

"106A.—(1) Where tax is due in accordance with more than one of sections 102 (1), 102A (1), 102B (1), 104B, 70A, 78, 65, 66, 71, 76, 76A, 84A, 91A, and 94A, and the taxpayer makes payment which is insufficient to discharge all the tax then due, the Commissioner General shall allocate the payment between the different tax obligations of the taxpayer according to the following order—

(a) partial payment shall be allocated first to tax due (if any) for which other taxpayers are credited. Where the partial 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 partial payment shall be allocated next to tax due (if any) which is a final withholding tax in relation to other taxpayers. Where the partial 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;

(c) the balance of the partial payment shall be allocated next to tax due (if any) which is imposed on the taxpayer as a representative taxpayer. Where the partial 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;

(d) the balance of the partial payment shall be allocated next to tax due (if any) by way of royalty by a mining project or for products of mining. Where the partial 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; and

(e) the balance of the partial payment shall be allocated next to all other tax liabilities of the taxpayer. The Commissioner General shall allocate the payment between tax liabilities of this kind as the Commissioner General sees fit.

(2) For all purposes of this Act, the taxpayer shall be taken to have made payments of particular tax due in accordance with the allocation so made, and not in accordance with any different allocation directed or nominated by the taxpayer.

(3) Where tax is due and the Commissioner General would otherwise make a payment to the taxpayer, the Commissioner General may elect to make the payment by offset of the payment amount (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 this Act.”.

Amendment of section 107 of the principal Act

12. The principal Act is amended, in section 107, by deleting subsection (1) and substituting therefor the following new subsection—

“(1) (a)—Any tax or liability shall when it becomes due or is payable, be deemed to be a debt due to the Malawi Government and shall be payable to the Commissioner General in the manner and at a place prescribed, and may be sued for and covered by the Commissioner General in any court of competent jurisdiction.

(b) The Commissioner General may specify that payment of a particular kind of tax or any liability, or by a particular taxpayer or class of taxpayer (whether identified by size or otherwise), or a payment of a particular size, shall be made in a particular manner (which manner may include payment by electronic transfer of a particular kind).”.

Amendment of the First Schedule into the principal Act

13. The principal Act is amended in the First Schedule by deleting paragraph “(ha)” and renumbering paragraphs (hb), (hc) and (hd) as (ha), (hb) and (hc).

Amendment of the Second Schedule into the principal Act

14. The principal Act is amended, in the Second Schedule, by deleting—

(a) the words “PART” I below the words “CAPITAL ALLOWANCES”; and,

(b) the words “PART II”.

Amendment of the Eleventh Schedule into the principal Act

15. The principal Act is amended, in the Eleventh Schedule by—

(a) deleting paragraph (ca) and substituting therefor the following paragraph—

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

(i) 30 per cent of taxable income:

Provided that an additional tax of 5 per cent of taxable income shall be charged in respect of all such taxpayers who, if a company, are not incorporated in Malawi, and who, if other than a company, are not resident in Malawi;

(ii) an additional resource rent tax at a minimum rate of 15 per cent on after tax project resource rent in respect of their mining project determined by using the following 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.”

(b) deleting paragraph (d) and substituting therefor the following paragraph—

“(d) in the case of life assurance business, at thirty per cent of the taxable income”.

16. The principal Act is amended, in the Fourteenth Schedule, by deleting paragraph (j) and substituting therefor the following paragraph—

Amendment of the Fifteenth Schedule to the principal Act

“(j) bank interest5 20%”.

17. The principal Act is amended, in the Fifteenth Schedule, by inserting, immediately after paragraph 15, the following new paragraph as paragraph 16—

Amendment of the Fourteenth Schedule to the principal Act

“16. Supply of goods or services to Malawi Government and its agencies.”.

18. The principal Act is amended by inserting, immediately after the Fifteenth Schedule, the following new Schedule as the “Sixteenth Schedule”—

Insertion of new Sixteenth Schedule to the principal Act

"SIXTEENTH SCHEDULE

Taxation of Mining Projects

Determining taxable income

1. The taxable income or assessed loss of a taxpayer for their mining project shall be determined by allowing deductions according to this Act for expenditure of the taxpayer directly in carrying on or providing the activities of the project and by including in taxable income their receipts in relation to the activities of the project, the produce and assets of the project, and the expenditure of the project. Mining royalty paid by a taxpayer is deductible in determining taxable income or assessed loss.
2. The taxable income or assessed loss of a taxpayer for their mining project shall include deductions according to the lower of cost or market value of any assets, goods or services provided by them to or for the mining project as any other taxpayer and shall include taxable income according to the market value of any assets, goods or services provided to them in their capacity other than as the mining project whether provided by or for the mining project.
3. Where the income or deductions of a person in relation to their mining project include gains or losses from derivative transactions, the amount of any loss from derivative transactions shall be allowed as a deduction only to the extent of the lesser of either;
 - (a) the loss realized from derivative transactions; or
 - (b) the gain realized from derivative transactions in that year of assessment.
4. Where the whole or a part of a loss from derivative transactions of the mining project has not been deducted by reason of the limitation imposed under clause 3, the undeducted amount of the loss shall be carried forward to the following year and included in the loss from derivative transactions of the mining project in that year, and so on until fully deducted against the gains of the mining project from derivative transactions.

Meaning of Mining Capital Expenditure

5. For the purposes of this Schedule, "mining capital expenditure" is capital expenditure of a mining project incurred directly in carrying on or providing the activities of the project.

6. For the purposes of this Schedule, "mine specific expenditure" is mining capital expenditure of a mining project on capital assets of the mining project which assets would have little or no value if the activities of the mining project ceased.
7. For the purposes of this Schedule, "mine start-up expenditure" is mining capital expenditure of a mining project which is incurred before a small-scale mining licence, a medium-scale mining licence, a large-scale mining licence, or an artisanal mining permit first applies to the mining project, or within four years after such a licence or permit first applies to the mining project.
8. Mine specific expenditure is the subject of an annual allowance according to expected life of the mining project, with the allowance being the percentage of so much of the expenditure as has not yet been allowed as is the percentage of the year of tax as a share of the expected life of the mining project including that year and worked out at the end of the year in which the mine specific expenditure was incurred.

Provided that it shall not be necessary for the Commissioner General to re-determine the expected life of the mining project yearly and any determination of the period at the end of which the expected life of the mining project will end may be relied on until a year in which the expected life is re-determined.
9. So far as losses are attributable to mine start-up expenditure, or to deductible expenditure incurred before a small-scale mining licence, a medium-scale mining licence, a large-scale mining licence, or an artisanal mining permit first applies to the mining project, the losses shall be deducted in the year that the losses arise and in the next year up to a period of ten years after the losses arise, or in the next year up to a period of ten years after a mining permit applies to the mining project, whichever is the later. The taxpayer may choose which losses to deduct so as to gain most deductions for these and other losses.
10. Expenditure on mining information, rights or licenses acquired before a small-scale mining licence, a medium-scale mining licence, a largescale mining licence, or an artisanal mining permit first applies to the mining project shall be included in mine specific expenditure.
11. When a mining project ceases to be subject to any mining permit, all assets are taken to be disposed of by the taxpayer in relation to their project at their market value, all liabilities are taken to be discharged by the person in relation to their project at their then value, and for the purposes of this Act the mining

project is taken to continue for all purposes connected with the person's obligations as a taxpayer in relation to its tax affairs.

Mine Closure Funds

12. Where a person pays a contribution to a qualifying mine closure fund in respect of their mining project, the contribution shall be deducted as expenditure directly in carrying on or providing the activities of the project.
13. Where a qualifying mine closure fund pays a person in respect of their mining project, including where a mine closure fund discharges liabilities in relation to which the person is entitled to a deduction in respect of their mining project or where a mine closure fund reimburses the person for expenditure the person has incurred or paid or where the mine closure fund pays the person to enable them to make expenditure, the payment is a receipt in relation to the activities of the project and the expenditure of the project.

Qualifying Mine Closure Fund

14. (a) A qualifying mine closure fund is a fund which is not controlled by the person and which cannot become controlled by the person, which is able to pay to a contributor only in relation to closing down expenditure for the contributor's mining project and for no other purpose, and which is otherwise able to pay only for closing down expenditure of mining projects and for environmental rehabilitation and environmental management, and which cannot be enabled to make any other payments to or for the benefit of the contributor.

(b) A qualifying mine closure fund is able to pay only to reimburse closing down expenditure of mining projects which has already been paid, or to pay directly closing down expenditure of mining projects, or to pay for environmental rehabilitation and environmental management which is part of the conduct of a mining project.
15. A contribution is paid to a qualifying mine closure fund only if it is received by the fund and cannot be returned by the fund or recovered by or on behalf of the payer of the contribution.
16. Any deduction for a contribution is limited to the current total contributions endorsed by the Minister responsible for the Environment as reasonable in relation to the mining project, reduced by any contributions already made to the qualifying mine closure fund.

Additional Income on Change of Control

17. 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, the taxpayer shall include in their income in relation to their project the excess of the value of the assets of the project over the value of the liabilities of the project.

Debt Deduction Limit

18. In working out deductions for a taxpayer's mining project, deductions for expenditure in relation to debt in directly carrying on or providing the activities of the project shall be limited in proportion as the debt, at any time during the year, exceeds the debt to equity ratio for the year.
19. The debt to equity ratio for a taxpayer's mining project is 3 to 1 (3:1) for the first five years in which a small-scale mining licence, a medium-scale mining licence, a large-scale mining licence, or an artisanal mining permit applies to the project and 1.5 to 1 (1.5:1) thereafter.
20. For the purposes of the debt to equity ratio, the taxpayer's debt in relation to their mining project includes all debt so far as its proceeds are employed in carrying on or providing the activities of the project.
21. For the purposes of the debt to equity ratio, the taxpayer's equity in relation to their mining project includes for:
- (a) a trustee, the corpus of the trust;
 - (b) any other taxpayer, the total paid up capital including reserves and retained earnings or profits;

Provided that in each case only so far as this is available to meet liabilities of their mining project and where this is available to meet other liabilities only the proportion of the equity that the lowest liabilities in relation to the mining project bear to the highest liabilities not in relation to the mining project during the year.

Advance Pricing Agreements

22. (1) The Commissioner General may agree to substitute an agreed amount which may be fixed or may vary on an agreed basis for actual expenditure and for actual receipt, accrual or value in working out a taxpayer's income and deductions in relation to their mining project.

(2) An agreement shall apply only to the stated taxpayer and to a period stated by the Commissioner General which shall not be longer than five successive years of tax including the year in which the Commissioner General states the agreement.

(3) An agreement may be stated to apply on the basis that particular conditions, including conditions of fact, are satisfied.

(4) An agreement shall bind the Commissioner General and the taxpayer in working out the stated taxpayer's income and deductions in relation to the taxpayer's mining project for the stated period, unless—;

(a) conditions on which the agreement applies are no longer met, in which case the agreement shall bind up to the point at which the conditions are not met;

(b) material information has been withheld from the Commissioner General in the making of the agreement;

(c) the agreement was procured by fraud, bribery or deception;

(d) the Commissioner General and the taxpayer agree that it is fair in the interests of both parties to waive the agreement, in which case it shall not bind either of them from the time they agree it should not bind.

Determination of After Tax Project Resource Rent

23. The after tax project resource rent in respect of a mining project shall be worked out from the assessable income and deductions under this Schedule with the following adjustments:

(1) For each year, the assessable income in respect of the mining project shall be decreased by omitting any income in relation to financing arrangements and shall be increased by adding any net input tax credits received for VAT and any refunds of income tax in respect of the mining project. The resulting income shall be the adjusted assessable income.

(2) For each year, the deductions under this Schedule shall be decreased by omitting any deductions in relation to financing arrangements and shall be increased by adding any payments of income tax in respect of the mining project (but not any payments of after tax project resource rent tax, which shall be excluded). The resulting deductions shall be the adjusted deductions arising in the year.

- (3) In each year, any excess of adjusted deductions over adjusted assessable income shall be carried forward to the following year, uplifted by 20 per cent and added to the adjusted deductions arising in the following year to form the adjusted deductions of the following year.
- (4) In each year, any excess of adjusted assessable income over the adjusted deductions of the year (including excess deductions uplifted and carried forward) shall be the after tax project resource rent of the year.

Mining Project Tax Reporting

24. (1) The Commissioner General shall publish annually the amount of taxable income during the year from each mining project and from each holder of a reserved minerals licence and the amount collected during the year from each mining project and from each holder of a reserved minerals licence .
- (2) Each holder of a mining permit and each holder of a reserved minerals licence shall report annually to the Commissioner for Mines and Minerals the amount of taxable income during the year derived by them in respect of each mining project and the amount paid by them during the year in respect of each mining project.

Investment, Export, and Transport allowances

25. Investment, Export and Transport allowances are not applicable to any mining project.

Stabilisation Term

26. The provisions of the First Schedule to the principal Act, paragraph "s" are not applicable to any mining project.
27. (1) The rates of fiscal imposts applicable to mining projects shall be stabilised and so fixed at the rates applicable to mining projects under this Act for a period of ten years.
- (2) The rates so fixed shall apply to each mining project so far as it applies to that project, during the ten year period, to the exclusion of any variations to any of those rates whether by way of increase or exemption.
- (3) For purposes of this Act, the stabilised and so fixed rates shall become applicable from the time the mine is commissioned."

Insertion of
new
Seventeenth
Schedule to
the principal
Act

19. The principal Act is amended by inserting, immediately after the Sixteenth Schedule, the following new Schedule as the "Seventeenth Schedule—

"SEVENTEENTH SCHEDULE

Mineral Royalty

Timing for Payment

1. In this Schedule—

"acquired" means acquisition by sale, barter, import, holding on deposit as a pledge or security, receipt as a gift, or receipt under any other supply or disposition, whether for consideration or otherwise;

"disposal" means sale, barter, export, deposit as a pledge or security, donation as a gift, or other supply or disposition, whether with or without consideration and includes loss by theft or misappropriation and "disposed of" has the corresponding meaning;

"mine gate" is the point at which a mineral is disposed of from a mining project, or the point at which a mineral last leaves a site of the mining project, whichever is the later;

"reference price" is the price of a mineral, or of a product derived from that mineral, that obtains in a market with a significant number of sellers, a significant number of buyers, and an open price according to objective criteria and arrived at on arm's length terms;

"semi-precious stones" include all stones which are not reserved minerals but which are valued according to their potential to be polished or to be cut and polished and to be used in jewellery or in decorative craftsmanship;

2. (1) Mineral royalty is payable as prescribed in section 64B (5). Where an additional liability to royalty is assessed by the Commissioner General, that additional royalty is payable within 20 days after the assessment.

(2) If any minerals subject to royalty are disposed of for export before royalty has been paid for them, the amount of the royalty shall be paid or security for payment to the satisfaction of the Commissioner General shall be given before the minerals are disposed of.

(3) Where the taxpayer has overpaid, credit for such payment shall be given in working out the liability to royalty.

Filing of Returns

3. (1) A taxpayer in respect of a mining project and each holder of a reserved minerals licence shall furnish the Commissioner General a return within twenty days after the end of the royalty period to which the return relates, stating the type and volume of minerals subject to royalty for that return period, the royalty due, and such other information as the Commissioner General may approve, specify, or require.
- (2) A taxpayer in respect of a mining project and the holder of a reserved minerals licence shall furnish the Commissioner General a return required by the Commissioner General for such period as the Commissioner General may require, stating the type and volume of minerals subject to royalty for that period, the royalty due, and such other information as the Commissioner General may approve, specify or require, within twenty days after the Commissioner General notifies the taxpayer of the requirement to furnish that return.

Mineral Royalty Calculation

4. The mineral royalty due shall be worked out at the rate, and according to the method, specified under Paragraphs 5, 6, 7, 8 and 9.

Commercial Value

5. (1) All minerals shall be valued according to their full commercial value at the mine gate or, for reserved minerals, their full commercial value at the time they are acquired by the holder of a reserved minerals licence.
- (2) If minerals are disposed of at the mine gate or are acquired by the holder of a reserved minerals licence for a reference price, their commercial value shall be that reference price. If reserved minerals are so acquired by the holder of a reserved minerals licence their commercial value shall be the reference price at which similar minerals are sold at the end of the royalty period at the end of which the reserved minerals are held.
- (3) If minerals are disposed of or are acquired by the holder of a reserved minerals licence but not at a reference price, their commercial value when they are disposed of is the reference price that would have applied at that time. If reserved minerals

are so acquired by the holder of a reserved minerals licence their commercial value shall be the reference price that would have applied at the end of the royalty period at the end of which the reserved minerals are held.

- (4) If there is no reference price applicable to minerals in the state and at the time they are disposed of or at the end of the royalty period in which they are acquired by the holder of a reserved minerals licence, their commercial value is worked out by deducting from the reference price of the minerals or of other mineral products commercially capable of being produced from the minerals the cost of bringing the minerals from the state at which they are disposed of into the state to which a reference price applies ('netback value') and by adding to the value of the minerals all the costs of bringing them to the state at which they are disposed of ('cost plus value') and averaging the netback value and the cost plus value if they differ.
- (5) If the netback value or the cost plus value cannot be ascertained, the Commissioner General may determine the commercial value of the minerals.

Royalty Base

6. (1) The royalty base is the commercial value of all minerals taken from the earth by a taxpayer as part of their mining project during a royalty period and, for the holder of a reserved minerals licence, is the commercial value of all reserved minerals acquired by the holder during a royalty period. All reserved minerals held by the holder of a reserved minerals licence at the end of a royalty period or disposed of by the holder during that royalty period shall be subject to royalty as having been acquired during that period except so far as the holder establishes affirmatively that the reserved minerals were acquired in an earlier royalty period, and from whom and on what terms the minerals were acquired.
 - (2) Where royalty has already been paid for minerals in respect of an earlier royalty period, the royalty paid for those minerals shall be credited against the liability for royalty in the current royalty period.
 - (3) Royalty credited as paid for minerals in an earlier royalty period is limited to so much royalty as is established to the satisfaction of the Commissioner General to have been paid for those minerals, whether by the taxpayer or by another taxpayer.
 - (4) Where royalty is due for minerals for a royalty period both from a taxpayer and from any other taxpayer, and one or

another taxpayer pays any part of the royalty, credit shall be given for that payment in working out the royalty due for the minerals from any other taxpayer for that period; and this shall be without prejudice to any right of contribution any of these taxpayers may have against another.

Standard Royalty Rates

7. The royalty rate for all minerals other than precious stones and semiprecious stones, and commercial minerals exported in an unmanufactured state, shall be 5% (five-percent) of their royalty base.
8. The royalty rate for precious stones and semi-precious stones shall be 10% (ten-percent) of their royalty base with their commercial value worked out as rough stones, that is, immediately before they are polished (if they are not to be cut) or immediately before they are first polished or cut (if they are to be cut, before or after polishing).
9. The royalty rate for commercial minerals exported in an unmanufactured state shall be 7.5% (seven point five percent) of their royalty base.

Samples

10. Where minerals are held or are disposed of solely as samples of minerals, for the purposes of assay, analysis or other examination, and not for any commercial production of minerals or of final mineral products or other products from the minerals, the taxpayer shall be credited for the purposes of working out royalty for the royalty period in which royalty is due for those minerals with the royalty due in relation to those minerals.
11. The taxpayer must report the results of the assays, analysis or other examination of the minerals to the Commissioner General immediately the results are obtained and must report on the final destruction or disposition of the minerals.
12. If the Commissioner General is not satisfied that a part of those minerals was held or disposed of solely for the purposes of assay, analysis or other examination, then the royalty credit given for that part of those minerals shall be added to the royalty due for the royalty period in which the Commissioner General forms the view that one cannot be satisfied in respect of that part of those minerals.

13. Failure to provide the results of assay, analysis or other examination within a reasonable time may provide sufficient reason not to be satisfied that the part of the minerals for which results have not been provided was held or disposed of solely for the purposes of assay, analysis or other examination.

Calculation Records

14. (1) For the purpose of determining the gross value payable in respect of any sale of mineral product, the mining project shall take reasonable steps, either by the certificate of a competent independent party acceptable to the Commissioner General or otherwise to satisfy the Commissioner General as to the correctness of all relevant weights, assays and analyses for the purposes of the mineral royalty calculation and shall give due regard to any objection or representation made by the Commissioner General as to any weight, assay or analysis affecting the mineral royalty calculation.
- (2) The gross sum calculation of the gross value shall be supported by such information as the Commissioner General may reasonably require, including information and documentation about the gross sum realised and about any claimed deduction from the gross sum realised in calculation of the gross value, and where calculation is not supported by all the information the Commissioner General reasonably requires the Commissioner General may set the gross value as the Commissioner General chooses. Any information supporting calculation of the gross value may be subject to audit by the Commissioner General and if the information is not established on audit the Commissioner General may adjust the gross value as the Commissioner General chooses.
- (3) Any information obtained by the Commissioner General under this clause shall not be disclosed to any other taxpayer for any purpose other than so far as is required for the correct application of the taxation law in relation to that taxpayer in relation to the actual transactions to which the information relates.

Royalty Reporting

- Act No.....of 2016 15. (1) The Commissioner General shall publish annually the amount of royalty due during the year from each mining project and from each holder of a reserved minerals licence and the amount collected during the year from each mining project and from each holder of a reserved minerals licence. The

Commissioner General shall report at least annually to the Commissioner of Mines and Minerals Act, 2016 the identity of each mineral tenement holder required during the year to pay any royalty, and any payment of royalty made during the year on account of any mineral tenement, and when the payment was made.

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2016

(2) Each holder of a mining permit and each holder of a reserve minerals licence shall report annually to the Commissioner for Mines and Minerals the amount of royalty due during the year from them in respect of each permit and the amount paid by them during the year in respect of each permit.

Amended Liability to Royalty and Assessment

16. (1) If the Commissioner General discovers or is of the opinion at any time that any taxpayer has not correctly returned their liability for royalty he may, within the year the royalty was due or within six years after the expiration thereof and as often as may be necessary, assess such person to royalty at such amount or additional amount as according to the best of his judgment was due, and the provisions of this Act as to notice of assessment, appeal and other proceedings under this Act shall apply to such assessment and to the tax charged thereunder.

(2) Where any fraud or wilful default has been committed by or on behalf of any person in connection with or in relation to royalty for any year of assessment the Commissioner General may, for the purpose of making good to the revenue of Malawi any loss of royalty attributable to the fraud or wilful default, exercise the powers conferred by this section at any time, whether before or after the expiration of the period specified in this section:

Provided that where the person by or on whose behalf the fraud or wilful default was committed has died an assessment on his personal representatives to royalty for any year of assessment ending not less than six years before the person's death shall not be made.

17. (1) All assessments of royalty required to be made shall, subject to section 4 of this Act, be made by the Commissioner General or under his direction.

(2) Notice of assessment and of the amount of royalty payable, where royalty is payable, shall be given to the taxpayer assessed.

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- (3) The Commissioner General shall, in the notice of assessment, give notice to the taxpayer that any appeal against the assessment must be sent to him within 30 days after the date of such notice.
18. Complete copies of all notices of assessment to royalty shall be filed in the office of the Commissioner General and shall be included in the register of assessments for the purposes of this Act.
- 19 The register of assessments shall not be open to public inspection, but every taxpayer shall be entitled to copies certified by or on behalf of the Commissioner General of his own notice of assessment.

Passed in Parliament this first day of July, two thousand and sixteen.

FIONA KALEMBA
Clerk of Parliament