

Malawi

Estate Duty Act

Chapter 43:02

Legislation as at 31 December 2014

FRBR URI: /akn/mw/act/1946/6/eng@2014-12-31

There may have been updates since this file was created.

PDF created on 17 March 2023 at 08:28.

Collection last checked for updates: 31 December 2014.

[Check for updates](#)



About this collection

The legislation in this collection has been reproduced as it was originally printed in the Government Gazette, with improved formatting and with minor typographical errors corrected. All amendments have been applied directly to the text and annotated. A scan of the original gazette of each piece of legislation (including amendments) is available for reference.

This is a free download from the Laws.Africa Legislation Commons, a collection of African legislation that is digitised by Laws.Africa and made available for free.

www.laws.africa

info@laws.africa

There is no copyright on the legislative content of this document.

This PDF copy is licensed under a Creative Commons Attribution 4.0 License (CC BY 4.0). Share widely and freely.

Estate Duty Act
Contents

1. Short title 1

2. Interpretation 1

Commissioners 1

 3. Constitution of Board of Commissioners 1

Charge of estate duty 2

 4. Charge of estate duty 2

 5. What property is included in an estate 2

 6. Interest on estate duty 3

Exemptions from estate duty 3

 7. Power to remit estate duty where death is caused by operations of war 3

 8. Remission of estate duty in case of property passing more than once owing to deaths caused by operations of war 4

 9. Reduction of rate for quick successions 4

Aggregation of estate 4

 10. Aggregation of deceased's property to determine rate of duty 4

Principles for determining value of estate 5

 11. Principles for determining value of estate 5

 12. Allowance for debts 5

Liabilities of executors or beneficiaries 5

 13. Executor to ascertain value of estate, and to make affidavit 5

 14. Duty to be paid on delivery of estate duty affidavit 6

 15. Liability of executor for duty 6

 16. Liability of beneficiaries and trustees 6

 17. Estate duty when deemed to be in arrear 6

 18. Power to permit postponement of payment 6

 19. Power for person liable to raise duty by sale or mortgage 6

 20. Estate duty to be borne by beneficiaries rateably 7

 21. Executors and persons having possession of estate to produce documents and attend for examination if required 7

Valuation and assessment by Commissioners 7

 22. Valuation by Commissioners 7

 23. Assessment by Commissioners 8

 24. Refund of overpaid duty 8

Appeals against assessments, etc., of Commissioners 8

25. Appeals against assessments, etc.	8
Recovery of estate duty	9
26. Recovery of estate duty by civil suit	9
27. Summary recovery of estate duty	9
28. Stay of execution pending appeal	9
29. Estate duty a charge on deceased's estate	9
Certificates of discharge and compositions	10
30. Certificate of discharge from estate duty	10
31. Power to accept composition for estate duty	10
Fixed duty on small estates	10
32. Option to pay fixed duties on estates not exceeding £500	10
Miscellaneous provisions	11
33. No grant of representation to be made without certificate of Commissioners	11
34. Duty of court administering estate to direct payment of duty	11
35. Service of notices	11
36. Proof of Commissioners' acts	11
37. Affidavit to be free of stamp duty	12
38. Exception as to property in the United Kingdom and Commonwealth countries	12
39. Arrangements for relief from double estate duty	12
40. Power to make Regulations	12
41. General penalty	13
Schedule (Section 4)	13

Malawi

Estate Duty Act Chapter 43:02

Commenced on 19 February 1946

[This is the version of this document at 31 December 2014.]

[Note: This version of the Act was revised and consolidated in the Forth Revised Edition of the Laws of Malawi (L.R.O. 1/2015), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]

An Act to provide for duties on estates of deceased persons

1. Short title

This Act may be cited as the Estate Duty Act.

2. Interpretation

In this Act, unless the context otherwise requires—

“**Commissioners**” means the Estate Duty Commissioners;

“**deceased person**” and “the deceased” means a person dying after the commencement of this Act;

“**estate duty**” means estate duty under this Act;

“**estate duty affidavit**” means an affidavit made or required under this Act and shall include any inventory or account of property with or without a valuation thereof with reference to which such an affidavit is made or required;

“**executor**” means the executor or administrator of a deceased person and includes, as regards any obligations under this Act, any person who takes possession of or intermeddles with the property of a deceased person;

“**incumbrances**” includes mortgages and terminable charges;

“**property**” includes immovable and real property and movable and personal property and the proceeds of sale thereof respectively and any money or investment for the time being representing the proceeds of sale, and an undivided share in any property held jointly or in common with any other person;

“**representation**” means probate, letters of administration, confirmation, or other instrument appointing a person the executor, administrator, or other representative of the deceased or to administer any of his assets.

Commissioners

3. Constitution of Board of Commissioners

- (1) There is hereby established a Board of Commissioners who shall administer this Act and collect estate duty.
- (2) The Board shall consist of the following members—
 - (a) the Attorney General who shall be Chairman of the Board;
 - (b) the Secretary to the Treasury;

- (c) the Registrar General who shall be Secretary and executive officer of the Board;
 - (d) such other members as the Minister may, by notice published in the *Gazette*, appoint.
- (3) Two members of the Board shall constitute a quorum.
- (4) The Commissioners may sue and be sued by the name of “The Estate Duty Commissioners”.
- (5) The Secretary shall, subject to the directions of the Commissioners assess the estate duty and be responsible for the collection of the duty on behalf of the Estate Duty Commissioners.
- (6) Any act, matter or thing done by the Secretary shall be deemed to be within the scope of his authority unless the contrary is proved.

Charge of estate duty

4. Charge of estate duty

In the case of every person dying after the commencement of this Act, there shall, save as hereinafter mentioned, be levied and paid to the Government upon the principal value of all property belonging to the deceased at his death (in this Act referred to as the “estate of the deceased”) a duty, called “estate duty”, at the graduated rates set forth in the Schedule.

5. What property is included in an estate

- (1) The estate of the deceased shall include—
- (a) property which vests in the executor of the deceased;
 - (b) property of which the deceased was at his death competent to dispose;
 - (c) property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest; but exclusive of property the interest in which of the deceased or other person was only an interest as holder of an office, or recipient of the benefits of a charity, or as a corporation sole;
 - (d) money payable to the deceased’s estate under any policy of insurance;
 - (e) property taken as a *donatio mortis causa* made by the deceased;
 - (f) property which belonged to the deceased or of which the deceased was competent to dispose at any time within three years before his death, and of which the deceased had disposed in any manner other than for full consideration in money or money’s worth:

Provided that this provision shall not apply to gifts which are made in consideration of marriage, or which are proved to the satisfaction of the Commissioners to have been part of the normal expenditure of the deceased, and to have been reasonable, having regard to the amount of his income or to the circumstances, or which, in the case of any donee, do not exceed in the aggregate £100 in value or amount;
 - (g) personal property not within the limits of Malawi but only in cases where the deceased was domiciled in Malawi at the date of his death; and
 - (h) any annuity or other interest purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased.
- (2) The estate of the deceased shall not be deemed to include—

- (a) property held by the deceased as trustee for another person under a disposition not made by the deceased or under a disposition made by the deceased more than three years before his death;
- (b) any gratuity paid by the Government to the personal representatives, heirs or dependants of a deceased public officer after his death under—
 - (i) section 16 of the European Officers' Pensions Ordinance; or
[Cap. 59]
 - (ii) the Malawi Public Service Regulations.
[1 of 1969]
- (3) For the purposes of this Act a person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power, whether exercisable by instrument *inter vivos* or by will, or both, as would, if he were *sui juris* enable him to dispose of the property for his own benefit.

6. Interest on estate duty

- (1) Simple interest at the rate of three pounds ten shillings *per centum* per annum or such other rate as the Minister may, from time to time, by notice published in the *Gazette*, prescribe shall be payable upon all estate duty from the date of the death of the deceased, and shall be payable and recoverable in the same manner as if it formed part of the estate duty.
- (2) The Commissioners may, if they think fit, remit the interest on any estate duty where the amount appears to them to be so small as not to repay the expense and trouble of calculation and collection.

Exemptions from estate duty

7. Power to remit estate duty where death is caused by operations of war

Where—

- (a) any person has, on or after the 3rd September, 1939, died from wounds inflicted, accident occurring, or disease contracted, within three years before death, while on active service against an enemy, whether on sea, land or in the air, or on service which, in the opinion of the Commissioners, is of a warlike nature or involves the same risks as active service, and was, when the wounds were inflicted, the accident occurred or the disease was contracted, subject to any naval, military or air force law; or
- (b) any person, other than a person referred to in paragraph (a) of this section, has, on or after the 3rd September, 1939, died from injuries received within three years of his death and which were, in the opinion of the Commissioners, caused by the operation of war,
the Commissioners may, if they think fit, remit, or, in the case of estate duty already paid, repay, in any one case, an amount not exceeding one half of the estate duty leviable under this Act in respect of the estate of the deceased to the widow or widower of the deceased, as the case may be, or to the lineal descendants or lineal ancestors, or to the brothers or sisters of the deceased or the lineal descendants of such brothers or sisters.

[23 of 1969]

8. Remission of estate duty in case of property passing more than once owing to deaths caused by operations of war

- (1) Where the Commissioners are satisfied that estate duty leviable under this Act has become payable on the estate of any deceased person to which [section 7](#) applies and that subsequently such estate duty has again become payable on the same property or any part thereof forming part of the estate of some other deceased person to which [section 7](#) applies, the whole of such estate duty payable on such subsequent death in respect of such property shall be remitted, or, in case such estate duty has been paid, repaid, and the property shall not be aggregated with any other property forming part of the estate of the deceased on such subsequent death for the purpose of determining the rate of such estate duty.
- (2) This section shall apply whether or not on any such death any property passes to the widow or widower, lineal descendants, lineal ancestors, brothers or sisters, or the lineal descendants of such brothers or sisters, of the deceased.

9. Reduction of rate for quick successions

Where the Commissioners are satisfied that estate duty has become payable on any property consisting of land or a business (not being a business carried on by a company) or any interest in land or such a business, and that subsequently estate duty has again become payable on the same property or any part thereof by reason of the death of the person to whom the property passed on the first death, the amount of estate duty payable on that property by reason of the second death shall be reduced as follows—

where the second death occurs within one year of the first death, by *fifty per centum*;

where the second death occurs within two years of the first death, by *forty per centum*;

where the second death occurs within three years of the first death, by *thirty per centum*;

where the second death occurs within four years of the first death, by *twenty per centum*;

Where the second death occurs within five years of the first death, by *ten per centum*:

Provided that where the value, on which the duty is payable, of the property on the second death exceeds the value, on which the duty was payable, of the property on the first death, the latter value shall be substituted for the former for the purpose of calculating the amount of duty on which the reduction under this section is to be calculated.

Aggregation of estate

10. Aggregation of deceased's property to determine rate of duty

- (1) For determining the rate of estate duty to be paid on the estate of the deceased, all property forming the estate shall be aggregated so as to form one estate, and the duty shall be levied at the proper graduated rate on the principal value thereof.

- (2) Marginal relief

But the amount of estate duty payable on an estate at the rate applicable thereto under the scale of rates of duty shall, where necessary, be reduced so as not to exceed the highest amount of estate duty which would be payable at the next lower rate, with the addition of the amount by which the value of the estate exceeds the value on which the highest amount of duty would be so payable at the lower rate.

Principles for determining value of estate

11. Principles for determining value of estate

- (1) The principal value of any property for the purposes of estate duty shall be the price estimated by the Commissioners to be the price which it would fetch if sold in the open market at the time of the death of the deceased, and no reduction shall be made in the estimate on account of the assumption that the whole property would be placed on the market at one and the same time.
- (2) But when it is proved to the Commissioners that the value of the property has been depreciated by reason of the death of the deceased, the Commissioners in fixing the price shall take such depreciation into account.

12. Allowance for debts

- (1) In determining the principal value of an estate for the purpose of estate duty, allowance shall be made for reasonable funeral expenses and for debts and incumbrances; but an allowance shall not be made—
 - (a) for debts incurred by the deceased unless such debts were incurred *bona fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit; or
 - (b) for any debt in respect whereof there is a right to reimbursement from any other estate or person, unless such reimbursement cannot be obtained; or
 - (c) more than once for the same debt or incumbrance charged upon different portions of the estate;and any debt or incumbrance for which an allowance is made shall be deducted from the value of the land or other subjects of property liable thereto:

Provided that an allowance shall not be made for incumbrances created by a disposition made by the deceased within three years before his death unless such incumbrances were created *bona fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit or in consideration of his marriage and take effect out of his interest.

- (2) An allowance shall not be made for debts due from the deceased to persons resident outside Malawi unless contracted to be paid in Malawi or charged on property situated within Malawi, or unless and to the extent to which it is shown to the satisfaction of the Commissioners that the personal property of the deceased situated in the country in which the person to whom such debts are due resides is insufficient for their payment.

Liabilities of executors or beneficiaries

13. Executor to ascertain value of estate, and to make affidavit

- (1) It shall be the duty of the executor of the deceased as soon as possible after the death to ascertain the particulars and principal value of the estate of the deceased, and to make and deliver to the Commissioners an estate duty affidavit giving such particulars and value so far as known to him, and from time to time to make and deliver to the Commissioners any further estate duty affidavit which may be necessary to supplement any omission from or mistake in any previous estate duty affidavit:

Provided that the Commissioners may, if they think fit, accept a statement as a correction of an estate duty affidavit, without requiring that statement to be verified on oath.

- (2) Any executor who wilfully fails to perform any duty imposed on him by this section or who fails to make and deliver an estate duty affidavit within fourteen days after service of a notice from the Commissioners requiring him so to do shall be guilty of an offence against this Act.

14. Duty to be paid on delivery of estate duty affidavit

- (1) Estate duty shall in the first instance be calculated at the appropriate rate according to the value of the estate of the deceased as set forth in the original estate duty affidavit and shall be payable by the executor on delivery of that affidavit.
- (2) On the delivery of every subsequent estate duty affidavit the executor shall pay any estate duty payable on any property disclosed by that affidavit, and also any additional estate duty payable on any property disclosed by any previous affidavit.

15. Liability of executor for duty

The executor of the deceased shall be liable for all estate duty payable in respect of the estate of the deceased but his liability shall not exceed the assets which he has received as executor or might but for his own neglect or default have received.

16. Liability of beneficiaries and trustees

Every beneficiary of the estate of the deceased up to the amount of his interest in the estate, and also to the extent of the property actually received or disposed of by him, every trustee, guardian, committee, or other person in whom any interest in the estate of the deceased or the management thereof is at any time vested, and every person who takes possession of or administers any part of the estate of the deceased, and every person in whom the same is vested by alienation or other derivative title shall each be liable for all the estate duty payable on the estate of the deceased:

Provided that nothing in this section shall render a person accountable for duty who acts merely as agent or bailiff for another person in the management of property.

17. Estate duty when deemed to be in arrear

Except as hereinafter mentioned, the whole estate duty payable on the estate of the deceased shall be due and payable at the end of six months from the death of the deceased or on the delivery of the original estate duty affidavit, whichever first occurs, and any estate duty which is not so paid shall be deemed to be duty in arrear and recoverable accordingly.

18. Power to permit postponement of payment

Where the Commissioners are satisfied that any estate duty cannot without excessive sacrifice be raised at once, they may allow payment to be postponed for such period, to such extent, and on payment of such interest, and on such terms as the Commissioners think fit.

19. Power for person liable to raise duty by sale or mortgage

Any person liable for and required to pay estate duty on any part of the estate of the deceased shall have power, whether the estate is or is not vested in him, to raise the amount of such duty and expenses incurred by him in connexion therewith by sale or mortgage of that part of the estate of the deceased.

20. Estate duty to be borne by beneficiaries rateably

- (1) Subject to this Act and any will of the deceased, estate duty shall be borne by the beneficiaries of the estate in proportion to the value of their respective interests, and the executor in distributing the estate of the deceased shall make such payments, deductions, and adjustments as may be necessary for that purpose.
- (2) In the case of property which does not pass to the executor as such, an amount equal to the proper rateable part of the estate duty may be recovered by the person, who, being authorized or required to pay the estate duty in respect of any property, has paid such duty, from the person, up to the amount of his interest therein, entitled to any such property or to any interest therein, or who takes possession or administers such property, or in whom such property is vested by alienation or other derivative title, other than a purchaser for valuable consideration without notice.
- (3) Any dispute as to the proportion of the estate duty to be borne by any property or person may be determined upon application to the High Court in manner directed by Rules of Court made under this Act.
- (4) Any person from whom a rateable part of the estate duty can be recovered under this section shall be bound by the accounts and valuations as settled between the person entitled to recover the same and the Commissioners.

21. Executors and persons having possession of estate to produce documents and attend for examination if required

- (1) Every executor or other person who is liable for payment of any estate duty or has any part of the estate of the deceased or any documents relating thereto in his possession, power, or control shall, whenever required by the Commissioners—
 - (a) make and deliver to the Commissioners an affidavit giving, to the best of his knowledge and belief, answers to any questions as to the estate of the deceased which may be put to him by the Commissioners;
 - (b) disclose by such an affidavit and produce to and allow the Commissioners to inspect and take copies of any such documents as aforesaid; and
 - (c) attend before the Commissioners and be examined by them on oath (which any Commissioner is hereby authorized to administer) as to any matter in connexion with the estate of the deceased.
- (2) Any executor or other person who fails to comply with the requirements of the Commissioners under this section within fourteen days after service of a notice from the Commissioners of their requirements shall be guilty of an offence against this Act.

Valuation and assessment by Commissioners

22. Valuation by Commissioners

- (1) Subject to this Act, the Commissioners shall ascertain the principal value of the estate of the deceased in such manner and by such means as they think fit, and may, if they think fit, as respects any property, accept the value estimated by the executor or the valuation of any person approved by the Commissioners as a valuer for the purposes of this Act, or so approved for the purpose of making that valuation.
- (2) Where the Commissioners require a valuation to be made by a person named by them, the reasonable cost of such valuation shall be defrayed by the Commissioners.

- (3) Any person authorized by the Commissioners to value any property for the purpose of this Act shall at all reasonable times have power to enter and inspect the property.

23. Assessment by Commissioners

- (1) Subject to the right of appeal conferred by this Act, the assessment by the Commissioners that any estate duty is payable in respect of any property shall be conclusive evidence that that duty is payable in respect of that property.
- (2) But the Commissioners may at any time revoke or reduce an assessment where it is shown to their satisfaction to be erroneous or excessive, and may make a further assessment in respect of the same property where, by reason of the value of other property of the deceased not being accurately known, the duty has not been assessed at the proper rate, or where a further assessment is justified by facts not known to the Commissioners at the date of the original assessment.

24. Refund of overpaid duty

Where it is shown to the satisfaction of the Commissioners that too much estate duty has been paid, the excess shall be repaid by them.

Appeals against assessments, etc., of Commissioners

25. Appeals against assessments, etc.

- (1) Any person aggrieved by any assessment or other decision of the Commissioners or by their refusal to refund any estate duty, may, within one month after notice of the assessment or decision has been served on the executor of the deceased or within one month after notice of refusal has been served on the applicant for the refund, give notice in writing to the Commissioners specifying his objections to the assessment, decision, or refusal to refund and his reasons for such objections, and, if any such objection is disallowed by the Commissioners, may within one month after service of notice of such disallowance on the person aggrieved, appeal to the High Court against the assessment, decision or refusal.
- (2) No appeal against an assessment shall be entertained unless the duty assessed is paid into Court or security for the payment of the duty is given to the satisfaction of the High Court.
- (3) On an appeal, no objection to an assessment, decision, or refusal to refund shall be entertained unless it has been previously disclosed to the Commissioners in accordance with the foregoing provisions or unless the failure to do so is accounted for to the satisfaction of the High Court.
- (4) Subject to the foregoing provisions of this section, the High Court may, on an appeal, reverse or alter an assessment, decision or refusal to refund to such extent and in such manner as the circumstances require.
- (5) The High Court may, if it thinks the interests of justice so require, extend the time for appealing under this section notwithstanding that the time for appealing has elapsed.
- (6) The costs of the appeal shall be at the discretion of the High Court.
- (7) The Chief Justice may make Rules of Court for regulating appeals before the High Court under this section, and for the fees payable in respect thereof.

Recovery of estate duty

26. Recovery of estate duty by civil suit

Estate duty in arrear shall be recoverable by civil suit as a debt due to the Government from any person liable.

27. Summary recovery of estate duty

Estate duty in arrear may, on the *ex parte* application of the Commissioners to any competent court and without the institution of a suit, be recovered from the executor in manner following—

- (a) on production of the assessment and on proof of service of the assessment on the executor and that the duty is in arrear, the court shall make an order for the payment by the executor of the duty in arrear and the costs of the application out of the estate of the deceased and may direct the immediate execution of the order;
- (b) a statement in writing by any Commissioner shall be sufficient evidence of the amount of duty in arrear;
- (c) the order shall as soon as possible be served on the executor who may at any time within fourteen days after such service apply to the court for the order to be discharged, and the order may then be discharged on the ground which would be a valid defence to proceedings for recovery of the duty;
- (d) property liable to attachment and sale in execution of the order may be seized immediately after the order is made, but shall not be sold until the time for applying for discharge of the order has elapsed and any application for such a discharge has been disposed of.

28. Stay of execution pending appeal

Where, in any proceedings for the recovery of estate duty or for the discharge of an order for payment of estate duty, it appears that an appeal against the assessment is pending or that the time for so appealing has not yet elapsed, the court may, if it thinks fit, grant a stay of execution for such period and on such terms as it thinks just.

29. Estate duty a charge on deceased's estate

- (1) The whole estate duty shall be a first charge on the estate of the deceased:
Provided that no property shall be so chargeable as against a *bona fide* purchaser thereof for valuable consideration without notice.
- (2) For the purpose of enforcing such a charge the High Court shall have jurisdiction to appoint a receiver of the property and of the rents, profits, and income thereof, and to order a mortgage or sale of the property.
- (3) The High Court may also appoint such a receiver as aforesaid where it considers payment of any estate duty to be in jeopardy although it has not yet become due.

Certificates of discharge and compositions

30. Certificate of discharge from estate duty

- (1) The Commissioners on being satisfied that the full estate duty has been or will be paid in respect of the whole estate of the deceased may, if they think fit, give a certificate discharging from any further claim for estate duty the property specified in the certificate.
- (2) Where a person, other than an executor, liable for any estate duty applies after the lapse of two years from the death of the deceased to the Commissioners, and delivers to them and verifies a full statement to the best of his knowledge and belief of the estate of the deceased and the several persons entitled thereto, the Commissioners may, if they think fit, on receiving from that person such part of the estate duty as, in the opinion of the Commissioners, ought to be borne by him, give a certificate discharging from any further claim for estate duty that person and also the property specified in the certificate.
- (3) A certificate of the Commissioners under this section shall not discharge any person or property from estate duty in case of fraud or failure to disclose material facts, and shall not affect the rate of duty payable in respect of any other part of the estate of the deceased, and the duty in respect of such other part shall be at such rate as would be payable if the value thereof were added to the value of the property in respect of which a certificate of discharge has been given.
- (4) Provided nevertheless that a certificate purporting to be a discharge of the whole estate duty payable in respect of any property included in the certificate shall exonerate a *bona fide* purchaser for valuable consideration without notice from the duty notwithstanding any such fraud or failure.

31. Power to accept composition for estate duty

- (1) Where for any reason it is difficult to ascertain exactly the amount of estate duty payable in respect of any property, or so to ascertain the same without undue expense in proportion to the value of the property, the Commissioners, on the application of any person liable for the duty thereon, and upon his giving to them all the information in his power affecting the liability of the property for estate duty, may, if they think fit, assess such sum as they consider proper as the estate duty on that property and accept payment of that sum as a composition for and in full discharge of all claims for estate duty in respect of that property, and shall then give a certificate of discharge accordingly.
- (2) Provided that the certificate shall not discharge any person from any duty in case of fraud or failure to disclose material facts.

Fixed duty on small estates

32. Option to pay fixed duties on estates not exceeding £500

- (1) Where the gross value of the property in respect of which duty is payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, does not exceed £500, the executor may, if he thinks fit, instead of paying duty at the graduated rates, pay a fixed duty as follows— where the gross value does not exceed £300, a fixed duty of £1 10s., and where the gross value exceeds £300 and does not exceed £500, a fixed duty of £2 10s.
- (2) Where the fixed duty of £1 10s. or £2 10s. has been deposited or paid, and it is afterwards found that the gross value of the property on which duty is payable exceeds £300 or £500, as the case may be, the Commissioners, if they are satisfied that there were reasonable grounds for the original

estimate of the value of the property, may allow an amount equal to the fixed duty deposited or paid to be deducted from the estate duty payable in respect of the property.

- (3) Where the fixed duty of £1 10s. or £2 10s. is paid within twelve months of the death of the deceased interest on such duty shall not be payable.

Miscellaneous provisions

33. No grant of representation to be made without certificate of Commissioners

- (1) No grant of representation to the deceased shall be made unless a certificate of the Commissioners is produced to the effect that a proper estate duty affidavit as to the estate of the deceased has been made and delivered to the Commissioners, or, where the executor or other person accountable for duty does not know the value of any property and undertakes to the satisfaction of the Commissioners to pay all estate duty in any manner arising in respect thereof, or for any other reason, the Commissioners permit the grant to be made.
- (2) And the Commissioners may, if they think fit, refuse to give such a certificate until the estate duty has been paid or security for the payment thereof has been given to the satisfaction of the Commissioners.
- (3) Every grant of representation after the commencement of this Act shall state that the certificate required by this section has been produced and shall give its date and such other particulars as to the certificate or the estate of the deceased as may be prescribed.
- (4) The foregoing provisions of this section shall not apply where a fixed duty is paid and accepted in lieu of estate duty, or where the estate appears to the Court or authority granting representation to be exempt from estate duty.
- (5) Particulars of any fixed duty accepted in lieu of estate duty or that the estate appears to be exempt from estate duty shall be stated in the grant of representation.

34. Duty of court administering estate to direct payment of duty

Where any part of the estate of the deceased is administered by any court, it shall be the duty of the court to give directions for the due payment of all unpaid estate duty payable on the estate of the deceased.

35. Service of notices

Where notice of any act, decision, requirement, valuation, or assessment of or by the Commissioners is by this Act required or authorized to be served on or given to any person, the notice shall be sufficient if it records the substance of that act, decision, requirement, valuation or assessment and is signed by the secretary to the Commissioners or by any Commissioner, and shall be sufficiently served if it is left at the last known place of abode or business in Malawi of the person to be served, or if it is sent by post in a registered letter addressed to him by name at his last known place of abode or business, and if that letter is not returned through the post office undelivered; and service by post shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.

36. Proof of Commissioners' acts

Any document purporting to record, contain, or be any act, decision, requirement, notice, valuation, or assessment of or by the Commissioners and purporting to be signed by one Commissioner or by the secretary to the Commissioners, shall be received in evidence without proof, and shall be *prima facie* evidence of that act, decision, requirement, notice, valuation, or assessment.

37. Affidavit to be free of stamp duty

Every estate duty and other affidavit required to be made by this Act shall be free of stamp duty.

38. Exception as to property in the United Kingdom and Commonwealth countries

- (1) Where the Commissioners are satisfied that in the United Kingdom, or in any Commonwealth country to which this section applies, estate duty is, by reason of a death, payable in respect of any property situate in the United Kingdom or in such Commonwealth country, they shall allow a sum equal to the amount of that duty to be deducted from the estate duty payable in respect of that property on the same death.
- (2) The Minister may, by notice published in the *Gazette*, apply this section to any Commonwealth country where he is satisfied that by the law of such country either no estate duty is leviable in respect of property situate in Malawi when passing on death, or that the law of such Commonwealth country as respects any estate duty so leviable is to the like effect as the provisions contained in subsection (1).
- (3) The Minister may revoke any such notice where it appears that the law of the Commonwealth country has been so altered that it would not authorize the making of a notice under this section.

39. Arrangements for relief from double estate duty

- (1) If the Minister declares by order that arrangements specified in the order have been made with the Government of any country outside Malawi, with a view to affording relief from double taxation in relation to estate duty payable under this Act and any duty of a similar character imposed under the laws of that country, and that it is expected that those arrangements should have effect, the arrangements shall, notwithstanding anything in this Act contained, have effect so far as they provide for relief from estate duty or for determining the place where any property is to be treated as being situated for the purpose of estate duty.
- (2) On the making of an order under this section with respect to arrangements relating to the United Kingdom or a Commonwealth country, [section 38](#) shall cease to have effect in respect of property to which such arrangements apply except in so far as such arrangements otherwise provide.

40. Power to make Regulations

The Minister may make Regulations for carrying this Act into effect, and in particular and without prejudice to the generality of the foregoing power, prescribing—

- (a) anything which by this Act is to be prescribed;
- (b) the accounts to be kept by the Commissioners and the procedure to be observed by them in carrying out the provisions of this Act;
- (c) the forms of estate duty and other affidavits;
- (d) the manner in which documents are to be delivered to the Commissioners;
- (e) the manner in which estate duty is to be paid;
- (f) the method of carrying out any arrangements having effect under [section 39](#).

41. General penalty

- (1) Every person who wilfully fails to perform any duty imposed on him by this Act or who contravenes this Act or any regulation made thereunder shall be guilty of an offence against this Act.
- (2) Any person who attempts to commit or abets an offence against this Act shall himself be guilty of an offence against this Act.
- (3) Every person guilty of an offence against this Act shall be liable to a fine of K5,000, or, if in the opinion of the court, the offence was committed with a view to hindering or preventing the collection or evading the payment of any estate duty or with a fraudulent intent, to such fine and to imprisonment for one year.

[15 of 1997]

Schedule (Section 4)

[18 of 1997]

The rates *per centum* of estate duty shall be according to the following scale—

	Rate
Where the principal value of the estate per cent	<i>per cent</i>
does not exceed K30,000	Nil
exceeds K30,000 but does not K40,000	5
exceeds K40,000 but does not exceed K80,000	6
exceeds K80,000 but does not exceed K140,000	7
exceeds K140,000 but does not exceed K200,000	8
exceeds K200,000 but does not exceed K400,000	9
exceeds K400,000 but does not exceed K600,000	10
exceeds K600,000	11