



Office of the First Legislative Counsel

12th March, 2025

Mr. Andrew Oaeko
Secretary
Office of the Secretary
Department of Treasury
P.O.Box 542
WAIGANI 131
National Capital District

My Dear Secretary,

RE. *INCOME TAX BILL 2025.*

I advise that drafting of the *Income Tax Bill 2025* is completed.

Enclosed is a copy of the Bill in triplicate and the Certificate of Compliance.

You may now proceed to seek approval from NEC to have the Bill tabled in Parliament.

Yours sincerely,

MARLEEN TOLIMAN AKOP
FIRST LEGISLATIVE COUNSEL

CC: *Prime Minister*

Minister for Treasury

Acting Chief Secretary to Government

Secretary to the National Executive Council

Department of Prime Minister & National Executive Council
5th Floor – Melanesian Haus, Waigani

Tel: (675) 301 9280
Email: marleen_akop@pnglaw.gov.pg

PO Box 639, Waigani, NCD
Papua New Guinea



CERTIFICATE.

I, certify that I have drafted the *Income Tax Bill 2025* (Draft of 05/03/2025) in accordance with the National Executive Council Decision No: 290/2024 dated 25th November, 2024, and the Drafting Instructions.

MARLEEN TOLIMAN AKOP
FIRST LEGISLATIVE COUNSEL.

12th March, 2025.



No. of 2025.

Income Tax Bill 2025.

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A BILL

for

AN ACT

entitled

Income Tax Bill 2025,

Being an Act to -

- (a) modernise and simplify the law relating to income tax; and
 - (b) repeal and replace the ***Income Tax Act 1959***,
- and for related purposes,

MADE by the National Parliament to come into operation on 01st January, 2026.

PART I. - PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act, to the extent that it regulates or restricts the exercise of any one or more of the following rights or freedoms referred to in Subdivision III.3.C. (*qualified rights*) of the ***Constitution***, namely -

- (a) the right to freedom from arbitrary search and entry conferred by Section 44; and
- (b) the right to freedom of expression conferred by Section 46; and
- (c) the right to freedom of employment conferred by Section 48; and
- (d) the right to privacy conferred by Section 49; and
- (e) the right to freedom of information conferred by Section 51; and
- (f) the right to freedom of movement conferred by Section 52; and
- (g) the right to protection from unjust deprivation of property conferred by Section 53; and
- (h) the equality of citizens conferred by Section 55,

of the ***Constitution*** is a law that is made for the purpose of giving effect to the public interest in the public welfare.

(2) For the purposes of Section 41 of the ***Organic Law on Provincial Governments and Local-level Governments***, it is declared that this law relates to a matter of national interest.

2. ACT BINDS THE STATE.

This Act binds the State.

PART II. - INTERPRETATION OF TERMS.

3. INTERPRETATION.

(1) In this Act, unless the contrary intention appears -

- “acquisition”, in relation to an asset, has the meaning given to it in Section 86;
- “additional profits tax” or “APT” means additional profits tax imposed under Section 108;
- “amount” includes an amount-in-kind;
- “approved form” has the meaning given to it in the ***Tax Administration Act 2017***;

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- “approved superannuation fund” means a superannuation fund authorised by the Central Bank under Section 8 of the *Superannuation (General Provisions) Act 2000*;
- “assessable income” has the meaning given to it in Section 17;
- “asset” means any personal or real property, and includes –
- (a) any option, right, chose-in-action, goodwill, or other intangible property; and
 - (b) any other resource that has a measurable value and that is likely to give rise to future economic benefits;
- “associate” has the meaning given to it in Section 4;
- “bank” has the meaning given to it in the *Banks and Financial Institutions Act 2000*;
- “beneficial owner”, in relation to a membership interest in an entity, has the meaning given to it in Section 5;
- “business” includes –
- (a) any profession, trade, vocation, calling, manufacture, or commercial activity conducted for profit, but not including an employment; and
 - (b) the conduct of –
 - (i) a profit-making undertaking or scheme; or
 - (ii) a venture or concern in the nature of trade; or
 - (c) any activity of a body corporate or partnership;
- “business asset” means an asset, whether revenue or capital in nature, which is used in the conduct of a business wholly or partly to derive assessable income;
- “business income” has the meaning given to it in Section 23;
- “business intangible” means any of the following used in a business –
- (a) a copyright, patent, design or model, plan, secret formula or process, trademark, or other like property or right that has a limited useful life and is used wholly or partly to derive assessable income; and
 - (b) a customer list, distribution channel, or unique name, symbol, or picture, or other marketing intangible that has a limited useful life and is used wholly or partly to derive assessable income; and
 - (c) contractual rights (including arising as a result of a prepayment of expenses) with a limited term, but which exceeds 1 year, used wholly or partly to derive assessable income; and
 - (d) an expenditure incurred wholly or partly to derive assessable income that provides an advantage or benefit for a period of more than 1 year, other than expenditure incurred to acquire any tangible personal or real property, or an intangible asset; and
 - (e) preliminary expenditure; and
 - (f) anything treated as a business intangible for the purposes of this Act;
- “capital gains tax” means capital gains tax imposed under Section 16;
- “commencement date” means the date specified in Section 165(1);
- “Commissioner General” means the Commissioner General of the Internal Revenue Commission appointed under the *Internal Revenue Commission Act 2014*, and includes any person acting in that capacity;
- “company” means –
- (a) a body corporate, statutory corporation, or unincorporated body or association of persons that is incorporated or formed in Papua New Guinea or elsewhere, but does not include a partnership; and
 - (b) a body established under a foreign law that has legal characteristics fundamentally similar to that of a body corporate or statutory corporation incorporated or formed in PNG; and
 - (c) a prescribed unit trust; and
 - (d) a landowner resources trust; and
 - (e) a superannuation fund;

“consideration”, in relation to an asset, has the meaning given to it in Section 95;

“cost”, in relation to an asset, has the meaning given to it in Section 88;

“debt obligation” means an obligation to make a payment of money to another person, including accounts payable and the obligations arising under promissory notes, bills of exchange, and bonds;

“depreciable asset” means -

- (a) tangible personal property or a structural improvement to real property used in a business that -
 - (i) has an ascertainable useful life exceeding 1 year; and
 - (ii) is likely to lose value as a result of normal wear and tear or obsolescence; and
 - (iii) is used wholly or partly to derive assessable income; and
- (b) a business intangible;

“derived” means -

- (a) for income tax, received or the arising of the right to receive as determined for a person under Section 43; or
- (b) for additional profits tax, the arising of the right to receive as determined under Section 45; or
- (c) for any other tax imposed under this Act, received;

“disposal” has the meaning given to it in Section 87;

“distribution”, in relation to a beneficiary of a trust, means -

- (a) an entitlement to the income of the trust; and
- (b) the amount of a loan, payment for goods or services, the fair market value of an asset or service provided, or the amount of a debt obligation released by a trust in favour of a beneficiary of the trust to the extent that the transaction is not on commercial terms or is otherwise, in substance, a distribution of income of the trust;

“dividend” means -

- (a) a distribution of profits by a company to a member, and includes an entitlement to income of a unit holder in a prescribed unit trust or a beneficiary in a landowner resources trust; and
- (b) a distribution of profits by the liquidator of a company to a member in the course of the liquidation of the company whether paid before or during liquidation; and
- (c) an amount returned by a company to a member in respect of a membership interest in the company on a partial reduction in the capital of the company to the extent that the amount returned exceeds the amount by which the nominal value of the membership interest was reduced; and
- (d) an amount returned by a company to a member on redemption or cancellation of a membership interest in the company, including on liquidation or termination of a company, to the extent that the amount returned exceeds the nominal value of the membership interest; and
- (e) an amount paid by a company to a member on a reconstruction, reorganisation, or amalgamation of the company in respect of a membership interest in the company, to the extent that the amount paid exceeds the nominal value of the membership interest before the reconstruction, reorganisation, or amalgamation; and
- (f) the amount of any loan, payment for an asset or services, value of any asset or services provided, or any debt obligation released, by a company to, or in favour of, a member or an associate of a member, to the extent that the transaction is not on commercial terms or is otherwise, in substance, a distribution of profits by the company;

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“employee” means an individual engaged in employment;

“employer” means a person who engages or remunerates an employee;

“employment” means the relationship under which an individual is engaged, whether on a permanent or temporary basis, to perform services under a contract of service within the meaning in the *Employment Act* (Cap. 373), and includes the following -

- (a) the performance of services by an individual under a contract where the payments made under the contract are substantially for the labour of the individual; and
- (b) a directorship or other office in the management of a company; and
- (c) a position entitling the holder to a fixed or ascertainable remuneration; and
- (d) the holding of, or acting in, any public office;

“employment income” has the meaning given to it in Section 19;

“entertainer” includes a sportsperson;

“entity” means a partnership, trust, or company;

“exempt asset” has the meaning given to it in Section 84;

“fair market value” has the meaning given to it in Section 6;

“financial institution” means a licensed financial institution under the *Banks and Financial Institutions Act 2000*;

“financial reporting standards” means -

- (a) for an entity preparing their financial accounts in accordance with International Financial Reporting Standards, those standards as may be modified by this Act or Regulations; or
- (b) for any other person, International Financial Reporting Standards or other accounting standards that are generally accepted in Papua New Guinea as may be modified by this Act or Regulations;

“fiscal year” means the fiscal year as declared, from time to time, by the Minister under the *Public Finances (Management) Act 1995*;

“fishing operations” means the following activities undertaken in the course of conducting a business -

- (a) operations relating to the taking or catching of fish, turtles, crustacea, or shellfish, but not whales or animals listed as protected species by the Conservation and Environment Protection Authority; and
- (b) pearling operations; and
- (c) oyster farming; and
- (d) any activity within the definition of “fishing” in Section 2 of the *Fisheries Management Act 1998*;

“foreign asset” means -

- (a) real property located outside Papua New Guinea; and
- (b) a membership interest in an entity that is a non-resident person; and
- (c) an option or right to acquire an asset referred to in Paragraph (a) or (b);

“foreign income” means any income to the extent that it is not PNG source income;

“foreign income tax” means any tax on income or gains, including withholding tax, imposed by the government of a foreign country or territory, or a political subdivision of a government of a foreign country or territory, but does not include penalty, additional or penal tax, or interest payable in respect of such tax;

“fortnight” means a period of 14 consecutive days;

“group”, in relation to an entertainer, includes a sporting team;

“income tax” means income tax imposed under Section 11;

“income taxpayer” means a person liable for income tax under this Act, and includes a person who has a nil taxable income or a net loss for a tax year;

“insurance premium” includes a premium relating to reinsurance and any other amount payable in respect of the placement of insurance outside PNG;

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“intangible asset” means -

- (a) property or a right included under Paragraph (a), (b), (c), or (f) of the definition of “business intangible”; and
- (b) goodwill;

“interest” means -

- (a) an amount, whether described as interest, discount, premium, or otherwise, whether periodical or a lump sum, as consideration for the use of money or being given time to pay; and
- (b) an amount, however described, that is functionally equivalent to an amount referred to in Paragraph (a), including notional interest amounts under derivative instruments or hedging agreements relating to borrowings, and payments of defaulted interest by a guarantor; and
- (c) an amount payable under a finance lease that is treated as interest under Section 50; and
- (d) a commitment, guarantee, service, or similar fee payable in respect of a debt or other instrument or agreement giving rise to interest under Paragraph (a), (b), or (c);

“international agreement” has the meaning given to it in the *Tax Administration Act 2017*;

“International Financial Reporting Standards” means the most recent International Financial Reporting Standards issued by the International Accounting Standards Board or any successor entity taking over the role of issuing International Financial Reporting Standards;

“international organisation” means an organisation to which the *International Organisations Privileges and Immunities Act* (Chapter 87) applies;

“international traffic” in relation to a ship or aircraft, means any operation of the ship or aircraft except as between two places in PNG;

“international transportation income tax” means international transportation income tax imposed under Section 15;

“landowner resources project” means -

- (a) a mining or petroleum project; and
- (b) a natural resource project in Papua New Guinea, other than a project referred to in Paragraph (a), that is declared by the Minister by Regulation to be a landowner resources project;

“landowner resources trust” means a trust that satisfies the following conditions -

- (a) the trust property comprises, or includes, an interest in a landowner resources project or a right to receive benefits, including royalties, from a landowner resources project; and
- (b) the beneficiaries of the trust are -
 - (i) citizens of Papua New Guinea who have a beneficial interest in the trust by reason of being -
 - (A) landowners of the area where the landowner resources project is located; or
 - (B) born in, or a part of, a clan whose village is situated in a region or province where the landowner resources project is located; or
 - (ii) incorporated land groups representing citizens of Papua New Guinea; and
- (c) the Commissioner General has declared the trust to be a landowner resources trust by notice in the Gazette;

“liquidation” includes the termination, dissolution, or winding up of a company;

“liquidator” includes any person winding up a company whether or not formally appointed as a liquidator, and the trustee or any other person terminating, dissolving, or winding up a company;

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- “livestock” does not include beasts of burden or working beasts;
- “member”, in relation to an entity, means a person with a membership interest in the entity;
- “membership interest”, in relation to an entity, means -
- (a) a share in a company, a unit in a prescribed unit trust, or an interest in a landowner resources trust; or
 - (b) an interest in a partnership; or
 - (c) an interest or unit in a trust, other than a trust included under Paragraph (a); or
 - (d) any other ownership interest in the entity;
- “mining project” has the meaning given to it in Section 100;
- “natural resource amount” means -
- (a) an amount (including a premium or like amount) as consideration for the right to take a living or non-living resource from the land or sea; or
 - (b) an amount calculated in whole or part by reference to the quantity or value of a living or non-living resource taken from the land or sea;
- “net loss” means a net loss under Section 35;
- “non-approved superannuation fund” means a superannuation fund that is not an approved superannuation fund;
- “non-cash benefit” means any benefit that is not in cash;
- “non-profit body” means a company or trust that is approved by the Commissioner General under Section 7 as a non-profit body;
- “non-resident entertainer” means an entertainer who is a non-resident person;
- “non-resident person” means a person who is not a resident person;
- “non-resident tax” means non-resident tax imposed under Section 14;
- “non-resident trust” means a trust that is not a resident trust;
- “Papua New Guinea” or “PNG” means the Independent State of Papua New Guinea as defined in the Constitution, and includes the “waters of Papua New Guinea” as defined in section 2 of the *Maritime Zones Act 2015*;
- “partnership” has the meaning given to it in the *Partnership Act* (Chapter 148);
- “performance”, in relation to an entertainer or group of entertainers, includes a sporting event;
- “permanent establishment” has the meaning given to it in Section 8;
- “person” means an individual, entity, the Government, a Provincial Government, Local-level Government, foreign government, political subdivision of a foreign government, or international organisation;
- “petroleum project” has the meaning given to it in Section 100;
- “PNG asset” means -
- (a) PNG real property; or
 - (b) a membership interest in an entity if, at any time during the 365 days preceding the disposal of the interest, more than 50% of the value of the interest is derived, directly or indirectly through one or more interposed entities, from PNG real property held by the entity; or
 - (c) a membership interest in a resident company, resident partnership, or resident trust; or
 - (d) an option over, or right to acquire, an asset referred to in Paragraphs (a), (b) and (c);
- “PNG real property” means -
- (a) land, or a structural improvement to land, located in PNG; or
 - (b) a leasehold or other interest in land, or in a structural improvement to land, located in PNG; or
 - (c) a tenement granted under the *Mining Act 1992* or the *Oil and Gas Act 1998*, or any similar right granted under a law of PNG or an agreement entered into by the State; or

- (d) a right granted under a law of PNG, or an agreement entered into by the State, for the taking of a living or non-living resource from the land or sea; or
- (e) information relating to operations under a tenement, right, or agreement referred to in Paragraph (c) or (d);

“PNG source income” has the meaning given to it in Section 9;

“preliminary expenditure” means expenditure incurred by a person before the commencement of a business, where the only income to be derived by the person from the conduct of the business will be assessable income, other than expenditure incurred to acquire tangible personal or real property, a business intangible within Paragraphs (a), (b), (c), (d) and (f) of the definition of “business intangible”, or an intangible asset;

“prescribed unit trust” means a unit trust treated as a prescribed unit trust in the Regulations;

“primary production business” means the business of -

- (a) cultivating land to produce crops or flowers, but not timber operations; or
- (b) maintaining animals for the purposes of selling them or selling their bodily produce; or
- (c) conducting fishing operations; or
- (d) manufacturing of dairy produce by the person who produced the raw material used in that manufacture;

“property income” has the meaning given to it in Section 24;

“provide”, in relation to a non-cash benefit, includes allow, confer, give, grant, transfer, or perform;

“public hospital” means a hospital that is declared to be a public hospital under the ***Public Hospitals Act 1994***;

“quarter” means the period of three months ending on 31st March, 30th June, 30th September, and 31st December;

“receivable” has the meaning given to it in Section 45(2);

“received”, in relation to a person, includes -

- (a) applied on behalf of the person either at the instruction of the person or under any law; or
- (b) reinvested, accumulated, or capitalised for the benefit of the person; or
- (c) credited to an account or carried to a reserve or a fund for the benefit of the person; or
- (d) otherwise made available to the person;

“rent” means any consideration for the grant of a lease of, licence to occupy, or easement over, real property, including a premium, fine, or like amount;

“resident company” has the meaning given to it in Section 10(6);

“resident individual” has the meaning given to it in Section 10(2);

“resident partnership” has the meaning given to it in Section 10(7);

“resident person” has the meaning given to it in Section 10(1);

“resident trust” has the meaning given to it in Section 10(8);

“resource project” has the meaning given to it in Section 100;

“resource right” has the meaning given to it in Section 100;

“royalty” means a periodic or lump sum amount as consideration for -

- (a) the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematography films, and films and tapes for radio, television, or internet broadcasting; or
- (b) the use of, or the right to use, or receipt of or right to receive, visual images or sounds, or both, transmitted by satellite, cable, optic fibre, or similar technology in connection with television, radio, or internet broadcasting; or

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- (c) the use of, or the right to use, any patent, invention, trademark, design or model, plan, secret formula or process, or other like property or right; or
 - (d) the use of, or the right to use, any computer software, or the acquisition of any copy of computer software for the purposes of using it; or
 - (e) the use of, or the right to use, any information concerning industrial, commercial, or scientific experience; or
 - (f) the use of, or the right to use, any industrial, commercial, or scientific equipment; or
 - (g) the supply of assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, property or a right referred to in Paragraphs (a), (b), (c), (d), (e) and (f);
- “salary and wages tax” means the salary and wages tax imposed under Section 13;
- “share”, in relation to a company, includes any ownership interest in the company;
- “small business tax” means the small business tax imposed under Section 12;
- “small business taxpayer” means a person liable for small business tax;
- “spouse”, in relation to an individual, means another individual of the opposite gender who
- (a) is married to the first-mentioned individual, including in accordance with custom; or
 - (b) although not married to the first-mentioned individual, is living with that individual in a marriage-like relationship;
- “structural improvement”, in relation to land, includes a building, road, driveway, car park, pipeline, bridge, tunnel, airport runway, canal, dock, wharf, retaining wall, fence, power lines, water or sewerage pipes, septic tank, drainage, landscaping, or dam;
- “superannuation fund” has the meaning given to it in the *Superannuation (General Provisions) Act 2000*;
- “tax” means a tax imposed under this Act, including withholding tax and provisional income tax;
- “tax credit” means a tax credit allowed to a person under this Act;
- “tax treaty” has the meaning given to it in the *Tax Administration Act 2017*;
- “tax year” -
- (a) means -
 - (i) for a company, the accounting year of the company determined under Section 42; or
 - (ii) for any other person, the fiscal year; and
 - (b) includes a transitional accounting year of a company under Section 45(6);
- “taxable asset” has the meaning given to it in Section 83;
- “taxable income” has the meaning given to it in Section 17;
- “technical fee” means a fee for administrative, management, technical, professional, or consultancy services, including a fee for the supply of administrative, management, technical, or other personnel, but does not include employment income;
- “timber operations” means -
- (a) the planting or tending of trees for felling; or
 - (b) the felling of standing timber; or
 - (c) the removal of felled timber; or
 - (d) the milling or other processing of felled timber;
- “trading stock” means -
- (a) anything produced, manufactured, purchased, or otherwise acquired for the purposes of manufacture, production, sale, or exchange to derive assessable income; and
 - (b) any raw materials or consumables used in a manufacturing or production process referred to in Paragraph (a); and

- (c) livestock of a primary production business conducted to derive assessable income;

“trust” has the meaning given to it in the *Trusts and Executors Act* (Chapter 289) and -

- (a) includes an arrangement entered into outside Papua New Guinea that has legal characteristics substantially similar to those of a trust settled or created in PNG; and
- (b) does not include a prescribed unit trust, landowner resources trust, or a superannuation fund;

“trustee” has the meaning given to it in the *Trusts and Executors Act* (Chapter 289) and -

- (a) includes a person who has a fiduciary duty under an arrangement treated as a trust under Paragraph (a) of the definition of “trust”; and
- (b) does not include the trustee of a prescribed unit trust, a landowner resources trust, or a superannuation fund;

“turnover”, in relation to an individual conducting a business, means the business income received by the individual that is included in the assessable income of the individual without deduction of expenditures or losses;

“withholding agent” means a person who is required to withhold tax under Part 10 from a payment made by the person;

“withholding income” means income from which a withholding agent is required to withhold tax under Part 10;

“written down value”, in relation to a depreciable asset, means the cost of the asset reduced by -

- (a) depreciation deductions allowed in respect of the asset or that would have been allowed but for Section 37(4); and
- (b) any initial allowance under Section 39 in respect of the asset.

(2) For the purposes of this Act, a dividend or distribution paid by a non-profit body, or a former non-profit body, is treated as paid first out of exempt income under Clause (1)(a) of Part V of Schedule 3.

(3) A company is a group company in relation to another company where either of the following applies -

- (a) one company owns, directly or through one or more interposed entities, 95% of the issued shares in the other company; or
- (b) another company owns, directly or through one or more interposed entities, 95% of the issued shares in both companies.

4. ASSOCIATES.

(1) In this section, “relative” means -

- (a) a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant, or adopted child of the individual, or of his or her spouse; or
- (b) the spouse of the individual or of any person specified in Paragraph (a).

(2) Two persons are associates if the relationship between the persons is such that -

- (a) one person may reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of the other person; or
- (b) both persons may reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of a third person.

(3) Notwithstanding Subsection (2), two persons are not associates solely by reason of the fact that one person is an employee or client of the other person, or both persons are employees or clients of a third person, unless Subsection (4) applies to the persons.

- (4) Without limiting the generality of Subsection (2), the following persons are associates -
- (a) an individual and a relative of the individual except where the Commissioner General is satisfied that neither person may reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of the other person; or
 - (b) a partnership and a partner in the partnership where the partner, either alone or together with an associate or associates under another application of this Section, has a 50 percent or greater interest in the income or capital in the partnership; or
 - (c) a trust and a person who benefits or may benefit under the trust through the exercise of a power of appointment or otherwise; or
 - (d) a company and a member of the company where the member, either alone or together with an associate or associates under another application of this Section, controls either directly or indirectly through one or more interposed entities -
 - (i) 50% or more of the voting power in the company; or
 - (ii) 50% or more of the rights to dividends; or
 - (iii) 50% or more of the rights to capital; or
 - (e) two companies where the same person, either alone or together with an associate or associates under another application of this Section, controls either directly or indirectly through one or more interposed entities -
 - (i) 50% or more of the voting power in the company; or
 - (ii) 50% or more of the rights to dividends; or
 - (iii) 50% or more of the rights to capital.

5. BENEFICIAL OWNER

- (1) The beneficial owner of a membership interest in an entity is the individual who -
- (a) ultimately owns the interest either directly or indirectly through one or more interposed entities; or
 - (b) controls the exercise of rights attaching to the interest, or benefits from the interest, through an agreement, trust, or any other form of influence.
- (2) For the purposes of Subsection (1) -
- (a) an entity that holds less than 50 percent of the membership interests in a widely held company is treated as the beneficial owner of those interests; and
 - (b) the following persons are treated as the beneficial owner of a membership interest in a company held by the person -
 - (i) the Government, a Provincial Government, a Local-level Government, a foreign government, a political subdivision of a foreign government, or an international organisation; and
 - (ii) a non-profit body; and
 - (iii) an approved superannuation fund.

(3) A membership interest in a company beneficially owned by an individual at any time is treated as beneficially owned by the same individual at a later time if the individual has died and, at that later time, the interest is owned by the trustee of the individual's estate or by a person who received the interest as beneficiary of the individual's estate.

(4) A person is not treated as the beneficial owner of a membership interest in a company if any contract, agreement, or arrangement has been entered into in relation to the membership interest with the purpose, or purposes that include the purpose, of enabling the company to take advantage of a tax loss or obtain any other tax benefit.

- (5) For the purposes of Subsection (2)(a), “widely held company” means -
- (a) a company whose membership interests are listed for quotation on the Papua New Guinea National Stock Exchange (PNGX); or
 - (b) a company with more than 50 members and at least 75% of the value of the membership interests in the company, voting power in the company, and rights to dividends payable by the company are held by more than 25 members and, for this purpose, a member and an associate of the member are counted as a single person.

6. FAIR MARKET VALUE.

(1) The fair market value of an asset, property, service, or benefit at a particular time is the value of the asset, property, service, or benefit in the ordinary open market at that time.

(2) Where it is not possible to determine the fair market value of an asset, property, service, or benefit at a particular time under Subsection (1), the fair market value is the consideration that a similar asset, property, service, or benefit would fetch in the ordinary open market at that time, adjusted to take account of the differences between the similar asset, property, service, or benefit and the actual asset, property, service, or benefit.

(3) For the purposes of Subsection (2), an asset, property, service, or benefit is similar to another asset, property, service, or benefit, as the case may be, where it is the same as, or closely resembles, the other asset, property, service, or benefit having regard to its character, quality, quantity, functionality, materials, and reputation.

(4) Where the fair market value of an asset, property, service, or benefit cannot be determined under Subsection (1) or (2), the fair market value is the amount determined by the Commissioner General provided the valuation is consistent with generally accepted valuation principles.

(5) This Section is subject to Section 73.

7. NON-PROFIT BODY.

(1) In this section, “charitable purposes” means relief of the poor, or education and medical relief, or any other object of general public utility not involving an activity for profit.

(2) A company or irrevocable trust is a non-profit body where all the following conditions are satisfied:

- (a) for a company, the company is established solely -
 - (i) for charitable purposes; or
 - (ii) as a religious, scientific, or public educational institution; or
 - (iii) for the purpose of operating a hospital or medical clinic otherwise than for the purposes of profit or gain; or
 - (iv) for the advancement of the arts or science; or
 - (v) for the encouragement or promotion of an amateur sport or game in PNG in which humans are the sole participants; or
 - (vi) for the purpose of promoting the development of aviation, or of the agricultural, pastoral, horticultural, viticultural, manufacturing, human or industrial resources of PNG; or
 - (vii) as a trade union, or an association of employers or employees, under any Act relating to the settlement of industrial disputes; or
 - (viii) for any other purpose as prescribed in the Regulations; or
- (b) for an irrevocable trust, the trust is established solely for purposes specified in Paragraph (a)(i) or (iii); and

- (c) no part of the income, funds, or assets of the company or trust are used, or are available for use, for the private benefit of a member of the company, or settlor or beneficiary of the trust; and
- (d) the company or trust keeps books of account; and
- (e) subject to Subsection (3), the Commissioner General is satisfied that not less than 80 percent of the income of the company or trust is to be utilised annually for the purpose for which the company or trust was established; and
- (f) the Commissioner General has approved, in accordance with the procedure in the Regulations, that the company or trust is a non-profit body and the approval is currently in force.

(3) Notwithstanding Subsection (2)(e), the Commissioner General may allow a company or irrevocable trust approved as a non-profit body to accumulate income for a specified period where satisfied that the accumulation is necessary for achieving the main object for which the non-profit body was established.

(4) A company or irrevocable trust may apply to the Commissioner General, in the approved form, for approval as a non-profit body.

(5) The Commissioner General shall approve an application by a company or irrevocable trust as a non-profit body if -

- (a) for a company, the conditions in Subsection (2)(a), (c), (d), and (e) are satisfied; and
- (b) for an irrevocable trust, the conditions in Subsection (2)(b), (c), (d) and (e) are satisfied.

(6) The approval of a company or irrevocable trust as a non-profit body takes effect from the date specified in the notice of approval and remains in force until the earlier of -

- (a) the date that the company or trust ceases to satisfy the conditions in Subsection (2); or
- (b) the date the approval lapses as set out in the notice of approval, which must be no more than five years from the date of approval.

(7) A company or irrevocable trust whose approval has lapsed in accordance with Subsection (6)(b) may reapply under Subsection (4) for approval as a non-profit body.

(8) A company or irrevocable trust shall immediately inform the Commissioner General, by notice in writing, when it no longer satisfies the conditions for approval as a non-profit body as specified in Subsection (2) for the purposes of applying this Act in the context of the treaty.

(9) The Commissioner General may, by notice in writing, revoke an approval either on notification under Subsection (8), or on the Commissioner General's own motion, when reasonably satisfied that a company or irrevocable trust no longer satisfies the conditions for approval as a non-profit body as specified in Subsection (2).

8. PERMANENT ESTABLISHMENT.

(1) Subject to this Section, a "permanent establishment" is a fixed place of business through which the business of a person is wholly or partly conducted.

(2) The following are treated as a permanent establishment -

- (a) a place of management, branch, office, factory, warehouse, or workshop, but not including an office that has representation of a person's business as its sole activity; and

- (b) a mine site, oil or gas well, quarry, or other place of exploration for, or exploitation of, natural resources, including an installation, boat, or ship used in the exploration for, or exploitation of, natural resources; and
- (c) the furnishing of services, including consultancy services, by a person, including through employees or other personnel engaged by the person for such purpose, but only where activities of that nature continue for a period or periods aggregating more than 183 days in any 12 month period; and
- (d) the use, maintenance, or installation of substantial machinery or equipment for a period or periods aggregating more than 90 days in any 12 month period.

(3) Subject to Subsection (4), a building site, or a construction, assembly, or installation project, or a supervisory activity connected with such site or project, is a permanent establishment only where the site, project, or activity continues for more than 90 days in any 12 month period.

(4) Where a person operates a building site, or conducts a project or activity referred to Subsection (3), any connected activity conducted by an associate of the person is added to the period of time during which the first-mentioned person has operated the building site or conducted the project or activity for the purpose of determining whether the 90 day period is exceeded.

(5) Notwithstanding Subsections (1) and (2), where a person (referred to as the "agent") acts on behalf of another person (referred to as the "principal"), the agent is a permanent establishment of the principal when the agent -

- (a) regularly negotiates or signs contracts on behalf of the principal, whether the contracts are concluded in the name of the principal or the agent; or
- (b) maintains a stock of goods from which the agent regularly delivers goods on behalf of the principal.

(6) Subject to Subsection (7), any presence, activity, or agency that is a permanent establishment under a tax treaty specified in Schedule 5 but which is not a permanent establishment under the preceding Subsections is treated as a permanent establishment for the purposes of this Act.

(7) The treatment of a presence, activity, or agency as a permanent establishment under Subsection (6) is only for the purposes of applying this Act in the context of the treaty.

9. PNG SOURCE INCOME.

(1) Employment income is PNG source income -

- (a) to the extent that it is derived by an employee in respect of an employment exercised in PNG, wherever the income is paid; or
- (b) when it is paid to an employee by, or on behalf of, the Government or a political subdivision of the Government, wherever the employment is exercised; or
- (c) for an amount included in employment income under Section 20, if the employment giving rise to the benefits under an employee share scheme is exercised in PNG.

(2) For the purposes of Subsections (1)(a) and (c), services performed outside PNG by an employee who is a resident individual for his or her employer, or an associate of his or her employer, during a temporary absence from PNG are treated as part of the employee's employment in PNG.

(3) Employment income derived by an employee who is a resident individual is PNG source income if -

- (a) the income is derived from employment exercised as an officer or member of the crew of an aircraft or ship; and
- (b) the aircraft or ship is operated by a resident person in international traffic.

Income Tax

(4) Business income derived by a resident person is PNG source income except to the extent that it is attributable to a business conducted by the resident through a permanent establishment located outside PNG.

(5) Business income derived by a resident person is PNG source income if the income is derived from the operation of an aircraft or ship in international traffic.

(6) Business income derived by a non-resident person is PNG source income to the extent that it is attributable to -

- (a) a business conducted by the non-resident person through a permanent establishment located in PNG; or
- (b) sales in PNG made by the non-resident person of goods or merchandise of the same or similar kind as those sold by the non-resident person through a permanent establishment located in PNG; or
- (c) any other business activity conducted by the non-resident person in PNG of the same or similar kind as that conducted by the non-resident person through a permanent establishment located in PNG.

(7) Notwithstanding the preceding Subsections of this Section, income derived by a person is PNG source income if it is -

- (a) a dividend paid by a resident company or a non-profit body or a former non-profit body that is a resident trust; or
- (b) a pay-out by a superannuation fund that is a resident company; or
- (c) rent derived from the lease of PNG real property; or
- (d) a gain arising from the disposal of an asset by a resident person except where the asset is a foreign asset; or
- (e) a gain arising from the disposal of a PNG asset by a non-resident person; or
- (f) an insurance premium relating to the insurance or reinsurance of a risk in PNG; or
- (g) income derived, directly or indirectly, from a performance by an entertainer or group of entertainers in PNG; or
- (h) a natural resource amount when it relates to the taking of minerals, petroleum, or other living or non-living resource from the land in, or territorial waters or exclusive economic zone of, PNG; or
- (i) interest, a royalty, annuity, pension (other than a pension covered by Paragraph (b)), technical fee, or other income -
 - (i) paid by a resident person, other than as an expenditure of a business conducted by the resident through a permanent establishment located outside PNG; or
 - (ii) paid by a non-resident person as an expenditure of a business conducted by the non-resident through a permanent establishment located in PNG.

(8) Any income that PNG has the right to tax under a tax treaty is treated as PNG source income.

10. RESIDENT PERSON.

(1) A resident person means -

- (a) a resident individual, resident company, resident partnership, or resident trust; and
- (b) the Government, a Provincial Government, Local-level Government, or a body or authority controlled by the Government, a Provincial Government, or a Local-level Government.

(2) Subject to Subsections (4) and (5), an individual is a resident individual where the individual -

- (a) resides in PNG; or

- (b) has his or her domicile in PNG unless the individual has a permanent place of abode outside PNG; or
- (c) is physically present in PNG for a period of, or periods amounting in aggregate to, 183 days or more in a tax year unless the individual has his or her usual place of abode outside PNG and does not intend to take up residence in PNG; or
- (d) is a citizen of PNG who is an employee of the Government posted abroad.

(3) For the purposes of Subsection (2)(c) -

- (a) an individual is treated as physically present in PNG during any period that he or she is temporarily absent from PNG for business, employment, recreation, or a similar purpose; and
- (b) presence in PNG for any part of a day is counted as a whole day.

(4) An individual who is a resident individual under Subsection (2) for a tax year (the "current tax year"), but who was not a resident individual for the preceding tax year is treated as a resident individual in the current tax year only for the period commencing on the first day on which the individual was physically present in PNG.

(5) An individual who is a resident individual under Subsection (2) for the current tax year but who is not a resident individual for the following tax year is treated as a resident individual in the current tax year only for the period ending on the last day on which the individual was physically present in PNG.

(6) A company is a resident company where the company -

- (a) is incorporated, created, or formed in PNG; or
- (b) has its central management and control in PNG; or
- (c) is a prescribed unit trust or a landowner resources trust; or
- (d) is a superannuation fund that is established or managed in PNG.

(7) A partnership is a resident partnership where the partnership -

- (a) is formed in PNG; or
- (b) has its central management and control in PNG.

(8) A trust is a resident trust where the trust -

- (a) was settled or established in PNG; or
- (b) is the estate of a deceased resident individual; or
- (c) is administered in PNG.

PART III. - IMPOSITION OF TAX.

11. INCOME TAX.

(1) In this section -

"non-profit company" means a company that is a non-profit body;

"refundable tax credit" means a tax credit allowed under Section 12(8)(b), 13(7), 60(3), 62(5)(b), 138(9) or 160.

(2) Subject to this Act, income tax is imposed for each tax year at the rate or rates specified in Part 1 of Schedule 1 on a person who has taxable income for the year.

(3) The income tax imposed on a person for a tax year under Subsection (2) is calculated by applying the rate or rates of tax applicable to the person under Part 1 of Schedule 1 to the taxable income of the person for the year.

Income Tax

(4) A tax credit allowed to a person for a tax year is offset against the person's income tax liability calculated under Subsection (3) for the tax year.

(5) Where a person is allowed more than one tax credit for a tax year, the tax credits are applied in the following order:

- (a) the dependant tax credit allowed under Section 56; and
- (b) the foreign tax credit allowed to the person under Section 69 for the year; and
- (c) the infrastructure tax credit allowed under Section 128; and
- (d) any refundable tax credit allowed to the person for the year.

(6) This section does not apply to business income derived by an individual that is subject to small business tax.

(7) Notwithstanding anything in this Act, income tax is not imposed on the taxable income of a non-profit company where the taxable income of the company does not exceed K4,000.00 for a tax year.

(8) Where the taxable income of a non-profit company for a tax year does not exceed K6,000.00, the maximum income tax payable by the company for the year is 50% of the amount by which the taxable income of the company exceeds K4,000.00.

12. SMALL BUSINESS TAX.

(1) In this section -

“business” does not include professional services;

“professional services” means medical, dental, legal, accounting, financial, managerial, engineering, architectural, consulting, or other similar services.

(2) Subject to this Act, small business tax is imposed on an individual conducting business as a sole trader who satisfies the following conditions -

- (a) the individual conducts the business solely in PNG; and
- (b) the individual is not a registered person for the purposes of the *Goods and Services Tax Act 2003*; and
- (c) the business income of the individual was not subject to income tax under Section 11 for the previous tax year; and
- (d) the total turnover of the individual for the previous tax year did not exceed the GST registration threshold specified in Section 43 of the *Goods and Services Tax Act 2003*.

(3) In determining the total turnover of an individual for a tax year for the purposes of Subsection (2)(d), the Commissioner General may have regard to the turnover of an associate or associates of the individual for the year.

(4) Where the total turnover of an individual subject to tax under this Section for a tax year is less than the amount specified in Part II of Schedule 1 -

- (a) the individual is liable for small business tax annually; and
- (b) the amount of small business tax payable by the individual for a tax year is the amount specified in Part I of Schedule 1.

(5) Where the total turnover of an individual subject to tax under this Section for a tax year is the amount specified in Part II of Schedule 1 or more -

- (a) the individual is liable for small business tax quarterly; and
- (b) the amount of small business tax payable by the individual for a quarter is determined under Part I of Schedule 1.

Income Tax

(6) An individual subject to small business tax may elect for Section 11 to apply to the individual for a tax year instead of this Section.

(7) An individual must make an election under Subsection (6) for a tax year, in the approved form, by the due date for furnishing the individual's income tax return for that year or by such later date as the Commissioner General may allow.

(8) Where an individual has made an election under Subsection (6) for a tax year within the time specified in that Subsection -

- (a) the election applies from the commencement of the tax year to which the election relates and remains in force indefinitely or until the Commissioner General permits the individual to be subject to this Section under Subsection (11); and
- (b) any small business tax paid by the individual during the tax year in which the election is made is allowed as a tax credit against the income tax liability of the individual for the year.

(9) Subject to Subsection (10), an individual subject to income tax under Section 11 for a tax year who satisfies Subsection (2)(a), (b), and (d) may apply, in the approved form, to the Commissioner General for permission for the individual to be subject to the small business tax.

(10) An individual who has made an election under Subsection (7) for Section 11 to apply to the individual cannot make an application under Subsection (9) until at least three years after the end of the first tax year in relation to which Section 11 applies.

(11) The Commissioner General may approve an application under Subsection (9) when satisfied that there are reasonable grounds to do so and the approval applies from the date specified in the notice of approval.

(12) An approval under Subsection (11) may be subject to such conditions as the Commissioner General may specify in the notice of approval.

(13) The small business tax payable by an individual is a final tax for the individual on the business income on which it is imposed.

13. SALARY AND WAGES TAX.

(1) Subject to this Act, salary and wages tax is imposed for each fortnight at the rate or rates specified in Part 1 of Schedule 1 on an employee who has received employment income that is Papua New Guinea source income during the fortnight other than employment income that is exempt income.

(2) Section 11 applies to employment income that is foreign income derived by an employee who is a resident employee.

(3) The salary and wages tax imposed on an employee for a fortnight under Subsection (1) is calculated by applying the rate or rates applicable to the employee under Part 1 of Schedule 1 to the gross amount of PNG source employment income received by the employee during the fortnight.

(4) A tax credit allowed to an employee under Section 160(2) for tax withheld from employment income under Section 149 during a fortnight is offset against the employee's salary and wages tax liability calculated under Subsection (3) for the fortnight.

Income Tax

(5) The salary and wages tax payable by an employee in respect of PNG source employment income received by the employee during a fortnight is discharged if the tax has been withheld by the employer from the payment of employment income in accordance with Section 149 and Section 158(2)(b) and (3) does not apply to the employee.

(6) The salary and wages tax payable by an employee is a final tax on the employment income of the employee to which the tax applies for a tax year if the employee is not required to furnish an income tax return for the year by virtue of Section 136(1) and the employee does not choose to furnish an income tax return under Section 136(5).

(7) If Subsection (6) does not apply to an employee, the employment income of the employee is subject to tax under Section 11 with a tax credit allowed for any salary and wages tax paid by the employee.

(8) The salary and wages tax payable by an employee is in addition to any other tax payable by the employee under this Act.

14. NON-RESIDENT TAX.

(1) Subject to this Act, non-resident tax is imposed at the rate specified in Part 1 of Schedule 1 on -

- (a) a non-resident person who has derived a dividend, interest, royalty, annuity, insurance premium, natural resource amount, or technical fee that is Papua New Guinea source income; and
- (b) a non-resident person with a permanent establishment in Papua New Guinea that has a repatriated profit for a tax year as determined under Section 71; and
- (c) a non-resident entertainer or group of non-resident entertainers who has derived an amount from participation in a performance taking place in Papua New Guinea.

(2) The non-resident tax imposed on a non-resident person -

- (a) under Subsection (1)(a), is calculated by applying the rate of tax specified in Part 1 of Schedule 1 to the gross amount of the dividend, interest, royalty, annuity, insurance premium, natural resource amount, or technical fee derived by the person; or
- (b) under Subsection (1)(b) for a tax year, is calculated by applying the rate of tax specified in Part I of Schedule 1 to the repatriated profit of the Papua New Guinea permanent establishment of the non-resident person for the tax year calculated under Section 71; or
- (c) under Subsection (1)(c), is calculated by applying the rate of tax specified in Part I of Schedule 1 to the gross amount derived from the performance by the non-resident entertainer or group of non-resident entertainers.

(3) Where the amount, or part of the amount, payable for a performance by an entertainer, including as member of a group is derived by an entity, this section applies to the gross amount derived by the entity as if the entity is an entertainer.

(4) Subsection (1)(a) and (c) does not apply to the following:

- (a) an amount that is exempt income; or
- (b) an amount that is attributable to a business conducted by the non-resident person through a permanent establishment of the person in PNG.

(5) The amount referred to in Subsection (4)(b) is taxable under Section 11.

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(6) For the purposes of this section -

- (a) the repatriated profit of a permanent establishment of a non-resident person for a tax year is derived by the non-resident person on the last day of the tax year to which the profit relates; and
- (b) for any other amount taxable under this Section, the amount is derived on the date that it is received by the non-resident person.

(7) The non-resident tax imposed under Subsection (1)(a) and (c) is a final tax on the income on which it is imposed and, except when Section 158(2)(b) and (3) applies, the liability of the non-resident person for the tax is discharged if the amount of the tax has been withheld from the payment of the income under Section 152.

15. INTERNATIONAL TRANSPORTATION INCOME TAX.

(1) Subject to this Act, international transportation income tax is imposed at the rate specified in Part I of Schedule 1 on the gross amount derived by a non-resident person for the carriage of passengers, livestock, mail, merchandise, or goods embarked or loaded in Papua New Guinea and destined for a place outside Papua New Guinea.

(2) This Section does not apply to the following -

- (a) an amount that is exempt income; or
- (b) an amount derived in respect of the following:
 - (i) a passenger who is in Papua New Guinea solely as a result of being in transit between two places outside Papua New Guinea; or
 - (ii) the transshipment of livestock, mail, merchandise, or goods.

(3) International transportation income tax is a final tax on the income on which it is imposed and the liability of the non-resident person for the tax is discharged if the tax has been paid in accordance with Section 139 or 140, as the case may be.

16. CAPITAL GAINS TAX.

(1) Subject to this Act, capital gains tax is imposed at the rate specified in Part 1 of Schedule 1 on a person who has made a capital gain on the disposal of a taxable asset.

(2) The capital gains tax imposed on a person under Subsection (1) is calculated by applying the rate specified in Part 1 of Schedule 1 to the amount of the capital gain reduced by any capital loss carried forward in accordance with Section 82.

PART IV. - INCOME TAX.

Division 1. - Taxable Income.

17. CALCULATION OF TAXABLE INCOME.

The taxable income of a person for a tax year is the total assessable income of the person for the year reduced by the total amount of deductions allowed to the person for the year.

Division 2. - Assessable Income.

18. INCLUSIONS IN ASSESSABLE INCOME.

- (1) Subject to this Act, the assessable income of a person for a tax year includes the following amounts:
- (a) employment income, business income, and property income derived by the person during the year; and
 - (b) any amount expressly included under this Act in the assessable income of the person for the year; and
 - (c) any amount derived by way of insurance or indemnity for, or in respect of, any loss of -
 - (i) trading stock that would have been considered in calculating taxable income if the loss had not occurred; or
 - (ii) a profit or income that would have been included in assessable income if the loss had not occurred; and
 - (d) any income according to ordinary concepts derived by the person during the year not covered by the preceding Paragraphs.
- (2) For the avoidance of doubt, the assessable income of a person includes amounts derived by the person from an illegal act, including bribes, kickbacks, the proceeds of crime, or similar amounts.
- (3) An amount is not included in the assessable income of a person where the amount is -
- (a) exempt income; or
 - (b) subject to non-resident tax or international transportation income tax; or
 - (c) employment income for which salary and wages tax is a final tax under Section 13(6); or
 - (d) subject to withholding tax as a final tax under Section 161.
- (4) The assessable income of a resident person includes income derived from all sources in and outside PNG.
- (5) The assessable income of a non-resident person includes only PNG source income.
- (6) An amount included in assessable income under Subsection (1)(c) is treated as income of the same character as the income or profit for which the insurance pay-out or indemnity is compensation.
- (7) Unless this Act provides otherwise, Division 6 of this Part applies in determining when an amount is derived by a person for the purposes of this Act.

19. EMPLOYMENT INCOME.

- (1) In this section -
- “prescribed benefits” means benefits prescribed in the Regulations for the purposes of a salary packaging arrangement;
 - “salary packaging arrangement” means an arrangement between an employer and employee under which a part of the employee’s remuneration consists of prescribed benefits approved by the Commissioner General in accordance with the Regulations.
- (2) The employment income of an employee means the following amounts:
- (a) salary, wages, or other remuneration received by the employee from an employer, including leave pay, payment in lieu of leave, overtime pay, bonus, commission, stipend, or gratuity; and

- (b) the value of any non-cash benefit provided to the employee by an employer as determined under Schedule 2; and
- (c) the amount of any allowance received by the employee from an employer, including a cost of living, subsistence, rent, utilities, education, entertainment, meeting, or travel allowance except to the extent to which the allowance is expended by the employee in the performance of his or her duties of employment; and
- (d) the amount of any expenditure incurred by the employee that is paid or reimbursed by an employer except to the extent that the expenditure was incurred by an employee on behalf of the employer in the performance of his or her duties of employment; and
- (e) an amount included in the employment income of the employee under Section 20; and
- (f) subject to Sections 21 and 22, a bonus, gratuity, retiring allowance, severance pay, redundancy payment, long service leave payment, or other similar amount received by the employee from an employer on retirement from, or termination of, employment, whether paid voluntarily or under an agreement or as a result of legal action; and
- (g) a pension, annuity, or supplement to a pension or annuity received by an employee from an employer or former employer in respect of past employment; and
- (h) any other amount derived by an employee that is included in employment income under this Act.

(3) A travel allowance comes within the exception in Subsection (2)(c) or a reimbursement of travel expenses comes within the exception in Subsection (2)(d) where the allowance or reimbursement is paid by an employer to an employee for accommodation, food, drink, or incidental expenses that the employee may incur, or has incurred, when travelling away from their home overnight in the course of performing their duties of employment.

(4) The Regulations may prescribe reasonable limits for the excluded amount under Subsection (2)(c) or (d).

(5) For the purposes of this Act, an amount is treated as received by, or provided to, an employee regardless of whether it -

- (a) is received from or provided by the employer of the employee, an associate of the employer, or by a third party under an arrangement with the employer or an associate of the employer; or
- (b) is received by, or provided to, the employee or an associate of the employee; or
- (c) relates to a past employment or a prospective employment.

(6) The value of prescribed benefits provided by an employer to an employee for a tax year under a salary packaging arrangement must not exceed 40 percent of the total amount of employment income of the employee for the year including the value of the prescribed benefits.

(7) If the value of prescribed benefits provided by an employer to an employee under a salary packaging arrangement for a tax year exceeds 40 percent of the total amount of employment income of the employee for the year including the value of the prescribed benefits, the excess is taxed as salary or wages.

20. EMPLOYEE SHARE SCHEME BENEFITS.

(1) In this section -

“employee’s contribution”, in relation to shares allotted to an employee under an employee share scheme, means the sum of the consideration, if any, given by the employee -

- (a) for the shares; and
- (b) for the grant of any right or option to acquire the shares; and

“employee share scheme” means an agreement or arrangement under which a company that is an employer may allot shares in the company -

- (a) to an employee of the company or an employee of a company that is an associate of the first-mentioned company; or
- (b) to the trustee of a trust and, under the trust deed, the trustee may transfer the shares to an employee of the company or an employee of a company that is an associate of the first-mentioned company.

(2) The value of a right or option to acquire shares granted to an employee under an employee share scheme is not included in the employment income or assessable income of the employee.

(3) Subject to Subsection (4), where an employee is allotted -

- (a) shares under an employee share scheme; or
- (b) shares as a result of the exercise of an option or right to acquire the shares under an employee share scheme,

the fair market value of the shares at the date of allotment reduced by the employee's contribution for the shares is included in the employment income of the employee for the tax year in which the shares are allotted to the employee.

(4) Where shares allotted to an employee under an employee share scheme are subject to a restriction on the transfer of the shares -

- (a) the amount referred to in Subsection (3) is included in the employment income of the employee on the earlier -
 - (i) of the date that the employee is able to freely transfer the shares; or
 - (ii) of the date that the employee disposes of the shares; and
- (b) the amount included in the employment income of the employee is the fair market value of the shares at the time the employee is able to freely transfer the shares or disposes of the shares, as the case may be, reduced by the employee's contribution for the shares.

(5) For the purposes of this Act, where Subsection (3) or (4) applies, the cost of the shares to the employee is the sum of the employee's contribution for the shares plus the amount included in employment income under this section.

(6) A gain derived on the disposal by an employee of a right or option to acquire shares under an employee share scheme is income included in the employment income of the employee for the tax year in which the disposal occurs.

21. REDUNDANCY PAYMENTS.

(1) In this section -

“approved redundancy scheme” means a scheme for the redundancy of employees that satisfies the following conditions:

- (a) at least 10 employees are genuinely made redundant under the scheme; and
- (b) the scheme is approved by the Commissioner General as an approved redundancy scheme;

“eligible employee” means an employee who satisfies the following conditions -

- (a) the employee is a resident individual; and
- (b) the employee has at least 5 years of continuous service with the employer; and
- (c) the employee has received a redundancy payment under an approved redundancy scheme; and
- (d) the termination of the employee's employment occurred before the earlier of -
 - (i) the day that the employee turned 65 years of age; or

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- (ii) if the employee's employment would have been terminated when he or she reached a particular age or completed a particular period of service, the day that he or she would reach that age or complete that period of service; and
 - (e) the employee has not previously received an amount referred to in Subsection (2);
- “non-redundancy amount” means -
- (a) an amount received in lieu of superannuation benefits to which an employee may have become entitled at the time the payment was received or at a later time; or
 - (b) a superannuation pay-out; or
 - (c) a pension or an annuity (whether or not the payment is a superannuation pay-out); or
 - (d) an unused annual leave payment; or
 - (e) an unused long service leave payment; or
 - (f) a payment that is an advance or a loan to an employee; or
 - (g) a payment that is a dividend under this Act; or
 - (h) an amount included in assessable income in relation to an employee share scheme; or
 - (i) a capital payment for, or in respect of, personal injury to an employee; or
 - (j) a capital payment for, or in respect of, a legally enforceable contract in restraint of trade;
- “redundancy payment” in relation to an employee, means -
- (a) so much of a payment made to the employee by an employer under an approved redundancy scheme that exceeds the amount that the employee could reasonably be expected to receive in consequence of a voluntary termination of his or her employment and is not a non-redundancy amount; and
 - (b) the payment is made due to the employee's position becoming permanently redundant and there was no arrangement between the employer and employee, or between the employer and another person, for the future employment of the employee; and
 - (c) for a dismissal that is not at arm's length, the payment does not exceed the amount that could reasonably be expected to have been made if the dismissal was at arm's length.

(2) The concessional component of a redundancy payment paid to an eligible employee under an approved redundancy scheme during a tax year is taxed at the rate specified in Part 1 of Schedule 1.

(3) The concessional component of a redundancy payment made by an employer to an eligible employee is the lesser of -

- (a) the amount calculated under Subsection (4); or
- (b) the amount specified in Part 2 of Schedule 1.

(4) The amount for the purposes of Subsection (3)(a) is calculated according to the following formula:

$$A + (B \times C)$$

where -

- A. is the base amount specified in Part 2 of Schedule 1; and
- B. is the service amount specified in Part 2 of Schedule 1; and
- C. is the number of completed years of service during which the eligible employee was employed by the same employer.

(5) The amount, if any, of a redundancy payment paid to an employee under an approved redundancy scheme that exceeds the concessional component is added to the other employment income of the employee and taxed accordingly.

(6) An application by an employer for approval of a scheme as an approved redundancy scheme is made in accordance with the Regulations.

22. QUALIFYING LONG SERVICE LEAVE PAYMENTS.

(1) In this section, "qualifying long service leave payment", in relation to an employee, means a payment that satisfies the following conditions:

- (a) the payment is made to the employee in consequence of the termination of the employee's employment; and
- (b) the payment is for long service leave that has accrued to the employee but not taken as leave before termination of the employee's employment; and
- (c) the long service leave accrued to the employee at a rate not exceeding six months for every 15 years of service with the employer or an associate of the employer.

(2) A qualifying long service leave payment derived by an employee is taxed at the rate specified in Part I of Schedule 1.

23. BUSINESS INCOME.

(1) The business income of a person is in the following amounts:

- (a) the gross revenue derived by the person from the conduct of a business, including, but not limited to, the consideration for the disposal of trading stock and the fees derived from the provision of services; and
- (b) the income derived by the person from the investment of the capital of a business, including dividends, interest, royalties, and rents; and
- (c) the net foreign currency exchange gain of the person for a tax year calculated under Division 7 of this Part; and
- (d) the net gain derived by the person from -
 - (i) the conduct of a venture or concern in the nature of a trade; or
 - (ii) the conduct of a profit-making undertaking or scheme; or
 - (iii) the disposal of a business asset held by the person on revenue account, other than trading stock to which Paragraph (a) applies or an asset to which Subparagraph (i) or (ii) applies; and
- (e) any bounty or subsidy received in, or in relation to, the carrying on of a business; and
- (f) any income according to ordinary concepts, not referred to in the previous Paragraphs, derived by the person from the conduct of a business; and
- (g) any other amount derived by the person that is included in business income under this Act.

(2) For the purposes of Subsection (1)(d)(i) and (ii) and subject to Subsection (3), the net gain derived by a person from a venture or concern in the nature of trade, or a profit-making undertaking or scheme, is the amount by which the gross proceeds derived by the person from the venture, concern, undertaking, or scheme exceeds the expenditures or losses incurred by the person in conducting the venture, concern, undertaking, or scheme.

(3) An expenditure or loss is taken into account in calculating the net gain under Subsection (2) only where, in the absence of Section 30(2)(c)), the expenditure or loss would be allowable as a deduction under this Act.

(4) The net gain arising on the disposal of an asset to which Subsection (1)(d)(iii) applies is the amount by which the consideration for the disposal of the asset exceeds the cost of the asset at the time of disposal.

24. PROPERTY INCOME.

(1) The property income of a person means the following amounts:

- (a) a dividend; and
- (b) interest; and
- (c) royalty; and
- (d) rent; and
- (e) pension or annuity; and
- (f) any other amount derived by the person from the provision, use, or exploitation of property.

(2) The property income of a person does not include an amount that is included in employment income or business income of the person.

25. PURCHASED ANNUITIES.

(1) In this section -

“annuity” includes a pension that was purchased from a life assurance company or other financial institution;

“life expectancy factor”, in relation to a person deriving an annuity, means the number of whole years of the life expectancy of the person as ascertained under prescribed life tables at the time the first payment of the annuity occurs;

“relevant number”, in relation to an annuity, means -

- (a) for an annuity payable for a number of years, that number of years; or
- (b) for an annuity payable only during the lifetime of a person, the life expectancy factor of the person; or
- (c) in any other case, the number of years that the annuity is reasonably expected to be payable;

“residual capital value”, in relation to an annuity, means the capital amount payable on termination of the annuity; and

“undeducted purchase price”, in relation to an annuity, means so much of the purchase price of the annuity that has not been, and will not be, allowed as a deduction under this Act.

(2) Where an annuity was purchased by a person, the amount of each annuity payment included in the property income of the person or subject to non-resident tax is reduced by the capital component of the annuity payment.

(3) Subject to Subsection (4), the capital component of an annuity payment is calculated according to the following formula:

$$(A-B)/C$$

where -

- A. is the undeducted purchase price of the annuity; and
- B. is the residual capital value of the annuity; and
- C. is the relevant number in relation to the annuity.

(4) Where an annuity payment is derived by more than one person, the capital component of the annuity payment for a person deriving the annuity is calculated according to the following formula:

$$A \times B/C$$

where -

- A. is the amount ascertained under Subsection (3); and
- B. is the amount of the annuity payment derived by the person; and
- C. is the total amount of the annuity payment derived by all persons entitled to the annuity.

26. RECAPTURED DEDUCTIONS.

(1) Where a person has been allowed a deduction for an expenditure or loss incurred, or bad debt written off, in a tax year in the calculation of the taxable income or net loss of the person for the year and in a subsequent tax year -

- (a) that person has received, in cash or in kind, an amount as a reimbursement or recovery of, or an indemnity for, the expenditure or loss, or debt; or
- (b) that person's obligation to pay the expenditure is remitted.

(2) Where this section applies in this Act, the amount received or remitted is -

- (a) included in the assessable income of the person for the tax year in which it is received or remitted; and
- (b) treated as income of the same character as the income to which the deduction related.

Division 3. - Exempt Income.

27. EXEMPT INCOME.

(1) An amount is exempt income for the purposes of this Act where -

- (a) the amount is listed in Schedule 3; or
- (b) the amount is otherwise treated as exempt income under a provision of this Act.

(2) The treatment of an amount as exempt income is limited to the person who has derived the amount (referred to as the "recipient") and does not extend to any person receiving a payment from the recipient that has been made wholly or partly out of exempt income.

(3) The treatment of any income derived by a person as exempt income does not exempt the person from furnishing a return or information as required by the Commissioner General or from including in the person's return such information concerning exempt income as may be required by the return or the Commissioner General.

28. TAX EXEMPTIONS AND CONCESSIONS IN OTHER LAWS OR IN AGREEMENTS.

(1) A provision in any other law or agreement enacted or entered into on or after the commencement of this Act specifying that an amount is exempt income or is subject to a reduced rate of tax, has no legal effect unless also provided for in this Act.

(2) A provision in any other law or agreement enacted or entered into on or after the commencement of this Act providing for concessional treatment of any expenditure for tax purposes has no legal effect unless also provided for in this Act.

(3) Notwithstanding Subsections (1) and (2), the application of this Act is subject to the application of any fiscal stability agreement entered into on or after the commencement of this Act under Section 2 of the ***Resource Contracts Fiscal Stabilization Act 2000***.

Division 4. - Allowable Deductions.

29. ALLOWABLE DEDUCTIONS.

- (1) Subject to this Act, a person is allowed a deduction for a tax year for the following amounts:
- (a) an expenditure or loss to the extent incurred by the person during the year in the production of assessable income or a dividend exempt under Clause (1)(a) of Part IV of Schedule 3; and
 - (b) the cost of trading stock disposed of by the person during the year as determined under Section 51; and
 - (c) the amount allowed as a deduction for depreciation of the person's depreciable assets for the year as determined under Division 5 of this Part; and
 - (d) subject to Subsection (2), a loss incurred by a person during the year from -
 - (i) the conduct of a venture or concern in the nature of a trade; or
 - (ii) the conduct of a profit-making undertaking or scheme; or
 - (iii) the disposal of a business asset of the person that is held by the person on revenue account, other than trading stock to which Paragraph (b) applies or an asset to which Subparagraph (i) or (ii) applies; and
 - (e) the net foreign currency exchange loss of the person for the tax year calculated under Division 7 of this Part; and
 - (f) a loss incurred by an employer through embezzlement, fraudulent misappropriation, or theft by an employee of money that has been included in the assessable income of the employer in any tax year; and
 - (g) any other amount allowed as a deduction to the person under this Act for the year.

(2) A person is allowed a deduction for a loss under Subsection (1)(d) only when the person has notified the Commissioner General, in writing, of the venture, concern, undertaking, scheme, or acquisition of the asset.

- (3) A notification under Subsection (2) must be lodged with the Commissioner General -
- (a) for a venture or concern in the nature of trade, or a profit-making undertaking or scheme, within 10 days of commencement of the venture, concern, undertaking, or scheme; or
 - (b) for an asset held on revenue account, within 10 days of the acquisition of the asset.

(4) For the purposes of Subsection (1)(d)(i) and (ii) and subject to Subsection (5), the loss incurred by a person from the conduct of a venture or concern in the nature of trade, or from a profit-making undertaking or scheme, is the amount by which the expenditures or losses incurred by the person in conducting the venture, concern, undertaking, or scheme exceed the gross proceeds derived by the person from the venture, concern, undertaking, or scheme.

(5) An expenditure or loss is taken into account in calculating a loss under Subsection (4) only where, in the absence of Section 30(2)(c), the expenditure or loss is allowable as a deduction under this Act.

(6) The loss arising on the disposal of an asset to which Subsection (1)(d)(iii) applies is the amount by which the cost of the asset at the time of disposal exceeds the consideration for the disposal.

- (7) Unless this Act provides otherwise -
- (a) Division 6 of this Part applies in determining when an expenditure is incurred by a person; and

- (b) a loss referred to in Subsection (1)(f) is incurred in the tax year in which the employer discovered the loss; and
- (c) any other loss is incurred by a person at the time that all the events giving rise to the loss have occurred.

(8) Expenditure, including interest, incurred by a person in connection with the construction or acquisition of an item of plant or a capital asset, which would otherwise be an allowable deduction under this section, is not an allowable deduction to the extent it is incurred prior to the later of the date on which the person -

- (a) first derives assessable income; or
- (b) first uses the plant or capital asset for the purpose of producing assessable income.

(9) Expenditure incurred by a person in connection with the construction or acquisition of an item of plant or a capital asset that is not allowed as a deduction by virtue of Subsection (8) is treated as forming part of the cost of the asset for all the purposes of this Act.

(10) If an expenditure or loss is allowed as a deduction under two or more provisions of this Act, whether in the same tax year or a different tax year or years, the deduction is allowed under the provision that is the most appropriate having regard to all the circumstances.

30. NON-DEDUCTIBLE EXPENDITURES AND LOSSES.

(1) In this section -

“public officer” includes -

- (a) a member or officer of the executive, judiciary, or legislature of a government; or
- (b) an officer or employee of a government, a public authority, or an international organisation; or
- (c) a member of Parliament or a Minister of State in PNG or a foreign country;

“government” means the Government, a Provincial Government, a Local-level

Government, a foreign government, or a political subdivision of a foreign government.

(2) Subject to this Act, no deduction is allowed for the following:

- (a) an expenditure or loss to the extent to which it is of a domestic or private nature; and
- (b) an expenditure or loss incurred by an employee in deriving employment income; and
- (c) an expenditure or loss that is taken into account in calculating a net gain included in business income under Section 23(1)(d) or a loss allowed as a deduction under Section 29(1)(d); and
- (d) a dividend or other distribution of profits, or an amount of capital withdrawn, or a sum employed as capital; and
- (e) an investment, expenditure, or loss that is capital or capital in nature; and
- (f) an amount that a person has transferred, in its financial accounts, to a reserve or provision for expenditures or losses not yet incurred but expected to be incurred in a future tax year; and
- (g) an expenditure or loss to the extent recovered or recoverable under a policy of insurance or a contract of indemnity, guarantee, or surety; and
- (h) income tax, salary and wages tax, capital gains tax, or additional profits tax paid or payable in PNG or a tax on income or gains paid or payable in a foreign country, and any penal or additional tax, penalty, or late payment interest payable in respect of such a tax liability; and
- (i) a fine or penalty imposed for violation of any law or regulation in PNG or elsewhere; and

- (j) an amount paid or payable to an associate other than an amount -
 - (i) included in the assessable income of the associate or that is foreign income of a non-resident associate; and
 - (ii) in respect of which the associate is subject to salary and wages tax or non-resident tax; and
 - (iii) in respect of which the associate is not subject to tax in PNG solely as a result of the application of a tax treaty; and
- (k) for a loss on the disposal of a business asset to an associate; and
- (l) for a bribe, kickback, or other inducement paid or provided by a person to a public officer, including a foreign public officer, or other person, intended to influence the recipient of the payment or any other person to act or to fail to act so as to obtain an improper benefit or advantage for the first-mentioned person or an associate of such person; and
- (m) for an expenditure or loss incurred in the conduct of an illegal activity.

(3) Subject to Subsection (4) and for the avoidance of doubt, Subsection (2)(h) does not apply to deny a withholding agent a deduction for tax withheld from a payment of withholding income if the gross amount of the payment, before withholding tax, is otherwise deductible under this Act.

(4) Where a withholding agent is allowed a deduction for a payment from which the withholding agent is required to withhold tax under Part 10 and the withholding tax is not paid to the Commissioner General by the due date, or extended due date, for payment, the deduction is not allowed until the tax year in which the withheld tax has actually been paid to the Commissioner General.

(4) The exceptions in Subsection (2)(j)(i), (ii), and (iii) do not apply to an amount paid to an associate to the extent that another provision of this Act denies a deduction for the amount regardless of whether it is included in the assessable income of the associate, subject to salary and wages tax or non-resident tax, or excluded from PNG tax under a tax treaty.

(5) Where Subsection (2)(k) applies, the associate acquiring the business asset takes over the written down value of the asset at the time of the disposal.

31. ENTERTAINMENT EXPENDITURE.

(1) In this section -

“entertainment” means the provision of -

- (a) food, drink, or recreation, including as a result of membership of a club, other than -
 - (i) the provision of food or drink to the extent to which it is provided in respect of travel for employment or business; or
 - (ii) the provision of food, drink, or recreation in an arm’s length transaction in the ordinary course of the person’s core business where that business involves providing food, drink, or recreation to customers or clients; or
 - (iii) the provision of food or drink to an employee pursuant to the terms of an industrial instrument or award relating to overtime; or
 - (iv) the provision of food or drink for the purposes of promoting a person’s business to the public as specified in the Regulations; or
 - (v) the provision of food or drink to a person that is reasonably incidental to the person’s attendance at a work seminar (held between 8am to 5pm on working days) and is not by way of, or in connection with, the recreation of the person; or

- (b) accommodation or travel, in connection with, or to facilitate the provision of, food, drink, or recreation treated as entertainment expenditure under Paragraph (a);

“recreation” includes amusement, sport, or similar leisure-time pursuits, including when undertaken on a vehicle, vessel, or aircraft.

(2) A deduction is not allowed for expenditure incurred by a person on entertainment other than entertainment provided by an employer to an employee the cost of which is -

- (a) included in the employment income of the employee; or
- (b) exempt income of the employee under Paragraph 1(d)(ii) of Part III of Schedule 3.

32. FEES FOR TAX AGENT SERVICES.

(1) In this section and Section 135, “registered tax agent” and “tax agent services” have the meanings given to them in the *Tax Administration Act 2017*.

(2) A person is allowed a deduction for fees incurred by the person for tax agent services but only where the services are provided to the person by a registered tax agent.

33. CHARITABLE DONATIONS.

(1) In this section -

“amateur sporting body” means a company approved as a non-profit body that is established solely for the encouragement or promotion of an amateur sport or game in PNG in which humans are the sole participants referred to in Section 7(2)(a)(v);

“candidate” means a person who has nominated or who nominates for election to the Parliament and includes a former candidate;

“charitable body” means a company or irrevocable trust approved as a non-profit body that is established solely for a charitable purpose referred to in Section 7(2)(a)(i);

“Central Fund” means the Central Fund established under the *Organic Law on the Integrity of Political Parties and Candidates*;

“registered political party” means a political party registered, or treated as registered, under Section 26 of the *Organic Law on the Integrity of Political Parties and Candidates*.

(2) Subject to this section, a person is allowed a deduction for the amount of a donation made by the person during a tax year -

- (a) to a charitable body or an amateur sporting body; or
- (b) to the Government in response to an emergency call issued by the Government -
 - (i) to defend the sovereignty and integrity of the country; or
 - (ii) to prevent, or provide relief in relation to, man-made or natural disasters or an epidemic or pandemic; or
 - (iii) for any other similar cause; or
- (c) to any of the following:
 - (i) the Central Fund; or
 - (ii) a registered political party; or
 - (iii) a candidate.

(3) For a donation of property, other than money, by a person -

- (a) a deduction is allowed only if the property was acquired by the person in the 12 months immediately preceding the making of the donation of the property; and
- (b) the amount of the donation is the lesser of -
 - (i) the person’s cost in acquiring the property; or
 - (ii) the fair market value of the property at the time of the donation.

(4) A deduction is allowed under Subsection (2) only if the amount of the donation is not less than the amount specified in Part II of Schedule 1.

(5) The amount of a deduction under Subsection (2)(c) is -

- (a) for a donation under Subsection (2)(c)(i), unlimited; and
- (b) for a donation under Subsection (2)(c)(ii) or (iii), limited to the amount specified in Part II of Schedule 1.

(6) The total deduction allowed to a person under Subsection (2) for a tax year is limited to 10% of the total assessable income of the person for the year.

34. SCIENTIFIC RESEARCH EXPENDITURE.

(1) In this section -

“scientific research” means experimental activities whose outcome cannot be known or determined in advance on the basis of current knowledge, information, or experience, but may be determined only by undertaking a systematic process of research based on the principles of established science;

“scientific research institution” means -

- (a) a registered higher education institution under the *Higher Education (General Provisions) Act 2014*; or
- (b) a public research institute under the *Higher Education (General Provisions) Act 2014*.

(2) A person is allowed a deduction for 100% of any scientific research expenditure to the extent incurred by the person during a tax year in deriving assessable income.

(3) Subject to Subsection (4), scientific research expenditure is -

- (a) expenditure incurred by a person directly in undertaking scientific research to create new improved materials, products, production processes, or services for the purpose of developing the person’s business; or
- (b) a contribution made by the person to a scientific research institution that is used by the institution in undertaking scientific research referred to in Paragraph (a) for the purposes of developing the person’s business.

(4) The following expenditure is not a scientific research expenditure:

- (a) an expenditure incurred by a person for the acquisition of a depreciable asset other than a depreciable asset that is specialist research equipment that can be used only for the purpose of undertaking scientific research; and
- (b) an expenditure incurred by a person for the acquisition of real property; and
- (c) an expenditure incurred by a person for the purpose of ascertaining the existence, location, extent, or quality of a natural deposit; and
- (d) an expenditure specified in the Regulations as not being scientific research expenditure.

(5) The Commissioner General may consult with the Department of Higher Education, Research, Science, and Technology in determining whether a particular activity proposed or undertaken by a person constitutes scientific research.

35. NET LOSS CARRIED FORWARD.

(1) Where the total amount of deductions allowed to a person for a tax year (other than a deduction allowed under this section) exceeds the total amount of assessable income of that person for that year, the amount of the excess is the person’s net loss for the year.

(2) Subject to this Act, where a person has a net loss for a tax year, the net loss is carried forward to the following tax year and the person is allowed a deduction for the net loss in calculating the person's taxable income for the following tax year.

(3) Subject to Subsection (4), where a net loss of a person for a tax year is not wholly deducted under Subsection (2), the undeducted amount is carried forward to the next following tax year and the person is allowed a deduction for the undeducted amount of the net loss in calculating the person's taxable income for that tax year, and so on until the net loss is fully deducted.

(4) A net loss is not to be carried forward for more than seven tax years after the end of the tax year in which the net loss was incurred.

(5) Where a person has a net loss carried forward under this section for more than one tax year, the net loss of the earliest tax year is to be deducted first.

(6) A net loss under this section is calculated separately for business income included in assessable income and property income included in assessable income.

(7) A reference in this section to assessable income does not include employment income.

Division 5. - Depreciation of Depreciable Assets.

36. GENERAL PRINCIPLES OF DEPRECIATION.

(1) A person is allowed a deduction for a tax year for the amount by which the depreciable assets held by the person have declined in value during the year through use in deriving assessable income.

(2) Depreciable assets are classified into five classes as set out in Clause (1) of Schedule 4 with depreciation rates applicable for each class as specified in that Clause unless the Act provides otherwise.

(3) Subject to Subsection (4), a person must determine the amount of the depreciation deduction allowed under Subsection (1) for all classes of asset on an individual asset basis using the straight-line method under Section 37.

(4) A person may elect to determine the amount of the depreciation deduction allowed under Subsection (1) for Classes 1, 2, and 3 assets on a pooling basis using the diminishing value method under Section 38.

(5) An election made under Subsection (4) -

- (a) applies to all Classes 1, 2, and 3 depreciable assets of the person; and
- (b) must be notified to the Commissioner General in the approved form by the due date for furnishing the person's income tax return for the tax year in which the election is made; and
- (c) is irrevocable.

(6) Classes 4 and 5 assets are depreciated only on an individual asset basis using the straight-line method under Section 37.

(7) A person is not allowed a depreciation deduction for the cost of a building until the construction of the building is certified as complete.

(8) Subsection (7) applies even if the person uses the building, or part of the building, before construction of the building is certified as complete.

(9) Subject to this Act, a depreciable asset is held -

- (a) for a depreciable asset that is a business intangible that is expenditure that does not involve the acquisition of an asset, by the person who has incurred the expenditure; or
- (b) for any other depreciable asset, by the person who is the owner of the asset, or treated as the owner of the asset under this Act.

37. STRAIGHT-LINE DEPRECIATION.

(1) This section applies where, for the purposes of Section 36(1), a person calculates the depreciation deduction for depreciable assets on an individual asset basis under the straight-line method.

(2) Subject to Subsections (4) and (5), a person calculates the depreciation deduction allowed to the person for a tax year for a depreciable asset under the straight-line method by applying the depreciation rate applicable to the asset as specified in Schedule 4 against the cost of the asset.

(3) The total deductions allowed, or that would be allowed but for Subsection (4), to a person in respect of a depreciable asset to which this section applies for the current tax year and all previous tax years shall not exceed the cost of the asset.

(4) Where a person uses a depreciable asset to which this section applies partly to derive assessable income and partly for another use, the amount allowed as a deduction under Section 36(1) is the proportion of the amount calculated under Subsection (2) that relates to the derivation of assessable income.

(5) Where a person does not use a depreciable asset to which this section applies for the whole of a tax year to derive assessable income, the depreciation deduction for the year is calculated in accordance with the following formula -

$$A \times B/C$$

where -

- A. is the depreciation deduction calculated under Subsection (1) after taking into account Subsection (4); and
- B. is the number of days in the tax year that the person used the depreciable asset to derive assessable income; and
- C. is the number of days in the tax year.

38. DIMINISHING VALUE DEPRECIATION.

(1) This section applies where, for the purposes of Section 36(1), a person calculates the depreciation deduction for depreciable assets on a pooling basis under the diminishing value method with Classes 1, 2, and 3 assets treated as separate depreciation pools.

(2) A person calculates the depreciation deduction allowed to the person for a tax year for a depreciation pool by applying the depreciation rate applicable to the pool as specified in Schedule 4 against the written down value of the pool at the end of the year.

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(3) The written down value of a depreciation pool at the end of a tax year is the written down value of the pool at the end of the previous tax year (after allowing for the deduction under this section for that year) adjusted as follows -

- (a) subject to Subsection (4), increased by -
 - (i) 50% of the cost of depreciable assets added to the pool during the tax year; and
 - (ii) 50% of the cost of depreciable assets added to the pool during the previous tax year; and
- (b) subject to Subsection (5), decreased by the consideration for the disposal of depreciable assets in the pool during the tax year.

(4) If a person who makes an election under Section 36(4) during a tax year for pooling to apply holds Class 1, 2, and 3 depreciable assets that are being depreciated under Section 37 at the time of making the election, the following applies -

- (a) the person shall add the whole of the written down value of the depreciable assets as at the end of the previous tax year to the relevant pool; and
- (b) the assets cease to be depreciated under Section 37 from the commencement of the current tax year.

(5) Where Subsection (4) applies, a person must provide the Commissioner General with notice in writing of the written down value of all depreciable assets added to a depreciation pool during a tax year by the due date for furnishing the person's income tax return for that year.

(6) If the consideration for the disposal of a depreciable asset exceeds the total cost of the asset added to the pool under Subsection (3)(a), the amount of the decrease under Subsection (3)(b) is limited to the cost of the asset added to the pool.

(7) If a depreciable asset to which this section applies is acquired by a person for use partly to derive assessable income and partly for another use, the cost of the asset to be included in the asset's depreciation pool is the proportion of the cost that relates to the use of the asset to derive assessable income.

(8) If the asset is subsequently disposed of and subject to Subsection (6), the written down value of the pool is reduced by the proportion referred to in Subsection (7) of the consideration for the disposal of the asset.

(9) Where the written down value of a depreciation pool of a person at the end of a tax year after taking account of the depreciation deduction calculated under Subsection (2) for the year is less than the amount specified in Part II of Schedule 1 -

- (a) a deduction is allowed for the year for the undepreciated amount of the written down value of the pool; and
- (b) the written down value of the pool at the end of the year is zero.

(10) Where the written down value of a depreciation pool of a person at the end of a tax year is a negative amount, that amount is included in the assessable income of the person for the year, and the written down value of the pool at the end of the year is zero.

(11) If all the depreciable assets in a depreciation pool are disposed of by the end of a tax year -

- (a) a deduction is allowed for the amount of the written down value (if any) of the pool at the end of the year; and
- (b) the written down value of the pool at the end of the tax year is zero.

39. INITIAL ALLOWANCE.

(1) In this section -

“eligible property” means plant or machinery used solely in manufacturing to produce assessable income;

“manufacturing” does not include an assembly operation, or activities under a resource project.

(2) A person who places an item of eligible property into service for the first time during a tax year is allowed a deduction (referred to as an “initial allowance”) for that year equal to 20% of the cost of the property.

(3) The cost of an item of eligible property to which Subsection (2) applies is reduced by the amount of the initial allowance deduction in respect of the property allowed under that Subsection for the purposes of calculating the depreciation deduction under Section 37, or the amount of the addition to the depreciation pool under Section 38, for the property, as the case may be.

(4) The initial allowance deducted under Subsection (2) for an item of eligible property is treated as a depreciation deduction for the purposes of calculating the written down value of the property.

40. DISPOSAL OF DEPRECIABLE ASSET.

(1) Where a person disposes of a depreciable asset to which Section 37 applies during a tax year -

(a) the person is not allowed a depreciation deduction for the tax year for the asset; and

(b) any balancing charge on disposal of the asset is included in the assessable income of the person for the tax year and any balancing deduction on disposal is allowed as a deduction for the tax year.

(2) A person has a balancing charge in relation to the disposal of a depreciable asset if the consideration for the disposal exceeds the written down value of the asset at the time of the disposal and, subject to Subsection (4), the amount of the balancing charge is calculated according to the following formula:

$$A - B$$

where -

A. is the lesser of -

(a) the consideration for the disposal of the asset; or

(b) the cost of the asset; and

B. is written down value of the asset at the time of the disposal.

(3) A balancing deduction arises on disposal of a depreciable asset if the written down value of the asset at the time of disposal exceeds the consideration for the disposal of the asset and, subject to Subsection (4), the amount of the balancing deduction is the amount of the excess.

(4) Where Section 37(4) has applied to a depreciable asset to which this section applies, the amount under Subsection (2) of the balancing charge on disposal included in assessable income or the balancing deduction on disposal allowed as a deduction under Subsection (3) is the proportional part of the balancing charge or balancing deduction that relates to the use of the asset to derive assessable income.

41. REPAIRS.

(1) Subject to Subsections (2) and (3), a person is allowed a deduction for a tax year for expenditure incurred on a repair made to a depreciable asset during the tax year.

(2) No deduction is allowed under Subsection (1) for expenditure of a capital nature.

(3) Where a person uses a depreciable asset referred to in Subsection (1) partly to derive assessable income and partly for another use, the amount allowed as a deduction under Subsection (1) is the proportion of the amount that relates to the derivation of assessable income.

Division 6. - Tax Accounting.

42. ACCOUNTING YEAR.

(1) In this Section, "transitional period" means the period between the end of the last full accounting year prior to the change and the date on which the new accounting year commences.

(2) The accounting year of a company is the period of 12 months ending on the date of the annual balance of the financial accounts of the company.

(3) A company shall not change its accounting year for tax purposes unless it obtains prior written approval from the Commissioner General and complies with any conditions that may be attached to the approval.

(4) The Commissioner General may, by notice in writing, revoke an approval under Subsection (3) if the company fails to comply with any of the conditions attached to the approval.

(5) Where a company's accounting year for tax purposes changes under Subsection (3) or (4) and the transitional period is 6 months or less, the transitional period is treated as part of the last full accounting year prior to the change.

(6) Where a company's accounting year for tax purposes changes under Subsection (3) or (4) and the transitional period is more than 6 months, the transitional period is treated as a separate accounting year (referred to as the "transitional accounting year").

(7) Subject to Subsection (8), where the accounting year of a company does not coincide with the fiscal year, the law applicable for the accounting year is the law applicable for the fiscal year that ends during the accounting year.

(8) Where a transitional accounting year is wholly within a fiscal year, the law applicable to the transitional accounting year is the law for that fiscal year.

43. METHOD OF TAX ACCOUNTING.

(1) An employer and an employee must account for employment income paid by the employer and received by the employee on a cash basis.

(2) Subject to Subsection (1), the following persons must account for assessable income, and expenditures and losses, on an accrual basis -

- (a) a company; and
- (b) a partnership; and
- (c) an individual registered for GST and accounting for GST on an invoice basis.

(3) A person to whom Subsections (1) and (2) do not apply may account for assessable income, and expenditures and losses, on a cash or accrual basis.

(4) The person to whom Subsection (4) applies must use the same accrual basis for determining both the timing of the derivation of assessable income and the timing of the incurring of expenditures and losses.

44. CASH-BASIS ACCOUNTING.

A person accounting for income tax on a cash basis -

- (a) derives an amount when it is received by the person; and
- (b) incurs expenditure when it is paid by the person.

45. ACCRUAL-BASIS ACCOUNTING.

(1) A person accounting for income tax on an accrual basis -

- (a) derives an amount when it is receivable by the person; and
- (b) incurs expenditure when it is payable by the person.

(2) For the purposes of Subsection (1)(a), an amount is receivable by a person when the person becomes entitled to recover the amount as a debt owing to the person and the whole amount of a debt is recoverable by a person even if the person has allowed the debtor an extension of time to pay or to pay the amount in instalments.

(3) For the purposes of Subsection 1)(b), an amount is payable by a person when all the events that determine the liability to pay have occurred and the amount of the liability can be determined with reasonable accuracy.

(4) If a person accounting for income tax on an accrual basis has been allowed a deduction for expenditure incurred and the person has not paid the liability or part of the liability to which the deduction relates within 12 months after the expenditure was incurred, the unpaid amount of the liability -

- (a) is included in the assessable income of the person for the tax year in which the 12-month period ended; and
- (b) has the same character as the income to which the deduction relates.

(5) If the amount of an unpaid liability is included in the assessable income of a person under Subsection (4) and the person subsequently pays the liability or a part of the liability, the person is allowed a deduction for the amount paid in the tax year in which the payment is made.

46. INCOME TAX ACCOUNTING AND GST.

(1) In this section -

- (a) “GST-registered person” means a person registered for goods and services tax under the *Goods and Services Tax Act 2003*; and
- (b) the terms “input tax”, “output tax”, and “taxable supply” have their meanings given under the *Goods and Services Tax Act 2003*.

(2) The assessable income of a GST-registered person does not include -

- (a) any output tax received or receivable by the person on a taxable supply made by that person; or
- (b) any GST refunded by the Commissioner General to the person.

(3) A GST-registered person is not allowed a deduction for input tax paid or payable by the person on a taxable supply made to, or an import made by, the person to the extent that the person is allowed a deduction for the input tax under Section 31 of the *Goods and Services Tax Act 2003*.

(4) The cost of an asset acquired by a GST-registered person does not include any input tax paid or payable in respect of an amount included in the cost of the asset under Section 88 to the extent that the person is allowed a deduction for the input tax under Section 31 of the ***Goods and Services Tax Act 2003***.

47. CHANGE IN TAX ACCOUNTING METHOD.

(1) If the circumstances of a person change resulting in the person's method of accounting under this Act changing, the person must notify the Commissioner General in writing of the change within 20 days of the change occurring.

(2) Except when Subsection (1) applies, a person may change their method of accounting under this Act only with the approval of the Commissioner General.

(3) A person may apply, in the approved form, to the Commissioner General for a change in the person's method of accounting under this Act and the Commissioner General may, by notice in writing, approve the application but only when satisfied that the change is necessary to properly calculate the taxable income of the person.

(4) Approval for a person to change their method of accounting under this Act may be subject to such conditions as specified by the Commissioner General in the notice of approval.

(5) Where a person's method of accounting changes under Subsection (1) or (3), the person must make adjustments in the tax year in which the change occurred to items of income, deduction, or credit, or to any other items affected by the change, so that no item is omitted and no item is taken into account more than once.

48. BAD DEBTS.

(1) A person is allowed a deduction for a tax year for a bad debt where all the following conditions are satisfied:

- (a) the amount of the debt -
 - (i) was previously included in the assessable income of the person; or
 - (ii) is money lent by the person in the normal course of carrying on a business of money lending to derive assessable income; and
- (b) the debt or part of the debt is written off as bad in the person's financial accounts for the tax year.

(2) The amount of the deduction allowed to a person under this section for a tax year must not exceed the amount of the debt written off as bad in the person's financial accounts for that year.

49. LONG-TERM CONTRACTS.

(1) In this section, "long-term contract" means a construction or engineering contract that takes more than 12 months to complete.

(2) A person undertaking a long-term contract must include in assessable income for each tax year of the contract the percentage of the estimated total taxable income of the person under the contract determined in accordance with the percentage of completion method under financial reporting standards.

(3) Subsection (4) applies where, at the end of the final tax year of a long-term contract –

- (a) a person has a final year loss in relation to the contract that the person is permitted to carry forward under Section 35; and

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- (b) the person is unable to do so for the reason that the person ceases to carry on business in PNG at the end of the contract.

(4) Where Subsection (3) applies and subject to Subsection (5), the person may carry the final year loss back to the preceding tax year and the loss is allowed as a deduction in that year.

(5) Subsection (4) does not apply if the person can transfer the loss to a group company under Section 66.

(6) A final year loss can be carried back for only one tax year.

(7) A person has a final year loss under a long-term contract where both the following conditions are satisfied:

- (a) the total taxable income estimated to be made under the contract for the purposes of the percentage of completion method exceeds the actual total taxable income under the contract; and
- (b) the amount of the excess under Paragraph (a) exceeds the amount to be included in assessable income under Subsection (2) for the tax year in which the contract was completed.

(8) The amount of a final year loss is the amount of the excess under Subsection (7)(b).

50. FINANCE LEASES.

(1) In this section, "finance lease" means a lease of an asset where the lease payments include an explicit or implicit credit charge.

(2) This section applies where a person (referred to as the "lessor") has leased a business asset, other than real property, to another person (referred to as the "lessee") under a finance lease.

(3) Where this Section applies, this Act applies to the lessor and lessee on the following basis -

- (a) the lessee, and not the lessor, is treated as the owner of the business asset; and
- (b) the lessee is treated as having acquired the business asset at the commencement of the lease; and
- (c) the lessor is treated as having made a loan to the lessee at the commencement of the lease and each lease payment is in part repayment of the principal under the loan and in part payment of interest.

(4) The cost to a lessee of a leased asset treated as owned by the lessee under Subsection (3)(a) is -

- (a) where the lessor and lessee are not associates and an amount is stated as the cost or value of the asset in the lease agreement, that amount; or
- (b) in any other case, the fair market value of the asset at the commencement of the lease.

(5) The amount of the loan referred to in Subsection (3)(c) is the amount determined under Subsection (4) as the cost of the leased asset.

(6) The interest part of each payment made under the loan is calculated by reference to the interest rate implicit in the lease agreement.

51. TRADING STOCK.

(1) The amount that a person is allowed as a deduction for a tax year for the cost of trading stock disposed of by the person during the year is calculated according to the following formula -

$$(A + B) - C$$

where -

- A. is the person's opening value of trading stock for the year; and
- B. is the cost of trading stock acquired by the person during the year; and
- C. is the person's closing value of trading stock for the year.

(2) The opening value of a person's trading stock for a tax year is -

- (a) the closing value of the person's trading stock for the previous tax year; or
- (b) if the person commenced business during the year, the cost of trading stock acquired by the person prior to the commencement of the business.

(3) The closing value of a person's trading stock for a tax year is the lower of the cost or fair market value of the person's trading stock on hand at the end of the year.

(4) A person who is accounting for income tax on a cash basis calculates the cost of trading stock that they have manufactured or produced under either the direct-cost method or absorption-cost method.

(5) A person who is accounting for income tax on an accrual basis calculates the cost of trading stock manufactured or produced under the absorption-cost method.

(6) If a particular item of trading stock is not readily identifiable, a person may account for that trading stock under the first-in-first-out or weighted average method.

(7) For the purposes of this section, "absorption-cost method", "direct-cost method", "first-in-first-out method" and "weighted average method" have their meanings under financial reporting standards.

52. CURRENCY TRANSLATION.

(1) Subject to Subsection (4), an amount taken into account under this Act must be expressed in Kina.

(2) Subject to Subsections (3) and (4), if an amount is in a currency other than Kina, the amount must be translated to Kina at the Bank of PNG exchange rate applying between the foreign currency and Kina on the date the amount is taken into account for the purposes of this Act.

(3) With the prior written permission of the Commissioner General, amounts taken into account in calculating the business income and deductions relating to such income of a person for a tax year may be translated to Kina at the Bank of PNG average exchange rate for the tax year between the foreign currency and Kina.

(4) Subject to Subsection (5), if a person derives business income and incurs expenditure in a currency (referred to as the "functional currency") other than Kina, the person may, with the written permission of the Commissioner General, take amounts into account under this Act in the functional currency.

(5) A person may be granted permission to use a functional currency under Subsection (4) only if the person keeps its financial accounts in the functional currency.

(6) If a person who has permission to use a functional currency derives an amount or incurs an expenditure that is not in the functional currency, the amount or expenditure must be translated to the functional currency based on the translation rate used in the person's financial accounts.

(7) If a person has permission to use a functional currency for a tax year, the person must calculate the tax payable under this Act for the year in the functional currency and either -

- (a) translate the functional currency amount to Kina as specified in Subsection (3); or
- (b) with the written permission of the Commissioner General, pay the tax due in the functional currency.

(8) If a person has permission to use a functional currency, a reference in this Act to "foreign currency" does not include the functional currency but does include Kina.

Division 7. - Foreign Currency Exchange Gains and Losses.

53. FOREIGN CURRENCY EXCHANGE GAIN OR LOSS.

(1) In this Section -

"foreign currency transaction" means any of the following transactions entered into in the conduct of a business to derive assessable income -

- (a) a dealing in a foreign currency; or
 - (b) the issuing of, or obtaining a debt obligation, denominated in a foreign currency;
- or
- (c) any other dealing denominated in a foreign currency;

"hedging contract" means a contract entered into by a person, or an associate of the person, for the purpose of eliminating or reducing the risk of adverse financial consequences that might result for the person under another contract from currency exchange rate fluctuations.

(2) A foreign currency exchange gain is a gain that is attributable to a currency exchange rate fluctuation derived by a person in respect of a foreign currency transaction.

(3) A foreign currency exchange loss is a loss that is attributable to a currency exchange rate fluctuation incurred by a person in respect of a foreign currency transaction.

(4) The amount of a foreign currency exchange gain derived, or a foreign currency exchange loss incurred, by a person in respect of a foreign currency transaction, is adjusted to take account of the position under a hedging contract entered into by the person or an associate in relation to the transaction.

(5) A person derives a foreign currency exchange gain or incurs a foreign currency exchange loss at the time that the gain or loss is realised.

54. NET FOREIGN CURRENCY EXCHANGE GAIN OR LOSS.

(1) For the purposes of Section 23(1)(c), the net foreign currency exchange gain of a resident person for a tax year is calculated according to the following formula -

$$A - B$$

where -

- A. is the total foreign currency exchange gains derived by the resident person during the tax year; and
- B. is the total foreign currency exchange losses incurred by the resident person during the tax year.

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(2) For the purposes of Section 23(1)(c), the net foreign currency exchange gain of a non-resident person for a tax year is calculated according to the following formula -

$$A - B$$

where -

- A. is the total foreign currency exchange gains derived by the non-resident person in conducting business through a permanent establishment in PNG during the year; and
- B. is the total foreign currency exchange losses incurred by the non-resident person in conducting business through a permanent establishment in PNG during the tax year.

(3) The Regulations may provide requirements for the substantiation of a foreign currency exchange loss of a person taken into account in calculating component 'B' of the formula in Subsection (1) or (2) for a tax year.

(4) For the purposes of Section 29(1)(e), where component 'B' of the formula in Subsection (1) or (2) for a person exceeds component 'A' for a tax year, the amount of the excess is the net foreign currency exchange loss of the person for the year.

(5) A foreign currency exchange gain or loss is taken into account under this Section only if it is on revenue account.

Division 8. - Application of Income Tax to Persons.

Subdivision 1. - Individuals.

55. TAXATION OF INDIVIDUALS.

An individual is a separate taxpayer for the purposes of this Act.

56. PERSONAL TAX CREDIT.

(1) In this section -

“dependant”, in relation to a resident individual for a tax year, means an individual who satisfies the following conditions -

(a) the individual is -

- (i) a spouse of the resident individual; or
- (ii) an unmarried child less than 16 years of age of the resident individual; or
- (iii) a student who is a child of the resident individual; or
- (iv) an invalid relative of the resident individual; or
- (v) a parent of the resident individual or of his or her spouse, where the parent is also a resident individual; and

(b) the individual either -

- (i) has a taxable income for the tax year that does not exceed the amount specified in Part II of Schedule 1; or
- (ii) if subject only to salary and wages tax, has employment income that does not exceed a fortnightly amount as specified in Part II of Schedule 1;

“invalid relative”, in relation to a resident individual, means an individual who is not less than 16 years of age and is a child, brother, or sister of the resident individual and in respect of whom the resident individual produces to the Commissioner General a certificate issued by a medical officer of the Public Service certifying that the individual is permanently incapacitated from work;

“student” means an individual who is not less than 16 years of age but is less than 25 years of age and is receiving full-time education at a school, college or university.

(2) Subject to Subsections (3) and (4), a resident individual who maintains a dependant during a tax year is entitled to a tax credit for the tax year equal to -

- (a) for one dependant, the lesser of -
 - (i) 15% of the individual's assessed tax liability for the tax year before allowance of tax credits; or
 - (ii) the amount specified in Part II of Schedule 1; and
- (b) for each other dependant, the lesser of -
 - (i) 10% of the individual's assessed tax liability for the tax year before allowance of tax credits; or
 - (ii) the amount specified in Part II of Schedule 1.

(3) The tax credit allowed to a resident individual under Subsection (2) for a tax year in relation to a dependant is apportioned on any reasonable basis as determined by the Commissioner General where -

- (a) the resident individual contributes to the maintenance of the dependant for part only of the tax year; or
- (b) an individual becomes, or ceases to be, a dependant of the resident individual during the tax year; or
- (c) two or more persons contribute to the maintenance of the dependant during the tax year.

(4) The tax credit allowed to a resident individual for a tax year under this Section -

- (a) must not exceed the greater of -
 - (i) 35 percent of the tax payable by the resident individual for the tax year before allowance of any tax credit; or
 - (ii) the amount specified in Part II of Schedule 1; and
- (b) cannot reduce the resident individual's tax liability below zero and any excess credit is not refundable to, nor carried forward by, the resident individual.

57. ELECTION EXPENSES OF CANDIDATES IN NATIONAL ELECTIONS.

(1) Expenditure incurred in a tax year by a person in being elected as a member, or in contesting an election for membership, of the National Parliament of Papua New Guinea is an allowable deduction for that year.

(2) When a deduction has been allowed or is allowable under Subsection (1) in respect of any expenditure and that expenditure or any part of it is reimbursed to the person or paid for the person by any other person or by any organisation, the amount reimbursed or paid is included in the assessable income of the person for the tax year in which is reimbursed or paid.

Subdivision 2.- Partnerships.

58. PRINCIPLES FOR THE TAXATION OF PARTNERSHIP INCOME.

(1) In this Subdivision -

“non-resident partner” means a partner who is not a resident person;

“resident partner” means a partner who is a resident person.

(2) Subject to this Act, this Subdivision specifies how the income tax applies to amounts derived from, and expenditures and losses incurred in relation to, activities conducted by persons in partnership.

(3) A partnership is liable to furnish an income tax return in accordance with Section 135(3), but the partners, and not the partnership, are liable to pay income tax in respect of the partnership's activities as set out in this Subdivision.

(4) Any election, notice, or statement required to be furnished in relation to a partnership's activities must be furnished by the partnership and binds all the partners.

(5) Where a partnership has a non-resident partner or partners, for the purposes of the *Tax Administration Act 2017*, each resident partner in the partnership is treated as a representative of each non-resident partner in the partnership.

59. CALCULATION OF PARTNERSHIP NET INCOME OR PARTNERSHIP LOSS

(1) Subject to Subsection (3), the net income of a partnership for a tax year is calculated according to the following formula:

$$A - B$$

where -

- A** is the assessable income of the partnership for the year calculated as if the partnership were a resident person; and
- B** is the total amount of deductions allowed under this Act for expenditures or losses to the extent incurred by the partnership in deriving the assessable income referred to in component "A", other than the deduction allowed under Section 35.

(2) Subject to Subsection (3), a partnership has a partnership loss for a tax year where, for the year, component "B" exceeds component "A" in the formula in Subsection (1) and the amount of the excess is the amount of the partnership loss.

(3) For the purposes of calculating the net income or partnership loss of a partnership under this Section, and notwithstanding Sections 14(7) and 15(3), the assessable income of the partnership includes amounts subject to non-resident tax or international transportation income tax.

60. TAXATION OF PARTNERS.

(1) The assessable income for a tax year of a partner in a partnership that has a net income for the tax year includes -

- (a) for a partner who is a resident person for the whole of the tax year, the partner's share of the net income of the partnership for the year; and
- (b) for a partner who is a non-resident person for the whole of the tax year, the partner's share of the net income of the partnership for the year that is attributable to PNG source income other than income subject to non-resident tax or international transportation income tax; and
- (c) for a partner who is a resident person for a part of the tax year and a non-resident person for the other part of the tax year, the total of the following amounts -
 - (i) the partner's share of the net income of the partnership for the part of the tax year that the partner was a resident person; and
 - (ii) the partner's share of the net income of the partnership for the part of the tax year that the partner was a non-resident person that is attributable to PNG source income other than income subject to non-resident tax or international transportation income tax.

(2) The allowable deductions of a partner in a partnership that has a partnership loss for a tax year include -

- (a) for a partner who is a resident person for the whole of the tax year, the partner's share of the partnership loss of the partnership for the year; and

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- (b) for a partner who is a non-resident person for the whole of the tax year, the partner's share of the partnership loss of the partnership for the year that is attributable to PNG source income other than income subject to non-resident tax or international transportation income tax; and
- (c) for a partner who is a resident person for a part of the tax year and a non-resident person for the other part of the tax year, the total of the following amounts -
 - (i) the partner's share of the partnership loss of the partnership for the part of the tax year that the partner was a resident person; and
 - (ii) the partner's share of the partnership loss of the partnership for the part of the tax year that the partner was a non-resident person that is attributable to PNG source income other than income subject to non-resident tax or international transportation income tax.

(3) Where the assessable income of a resident partner under Subsection (1) includes the partner's share of income subject to non-resident tax or international transportation income tax, the resident partner is entitled to a tax credit for the partner's share of the non-resident tax or international transportation income tax paid in relation to the income.

(4) Income derived, or expenditure or losses incurred, by a partnership retain their character as to geographic source and type of income, expenditure or loss, in the hands of the partners, and are allocated to the partners on a pro rata basis.

(5) Subject to Subsection (6), a partner's share of the net income of a partnership or a partnership loss of a partnership is equal to the partner's percentage interest in the income of the partnership as set out in the partnership agreement.

(6) Where the allocation of income to the partners as set out in a partnership agreement does not reflect the contribution of the partners to the partnership's operations, or there is no written partnership agreement, a partner's share of the net income of partnership or partnership loss of a partnership is equal to the partner's percentage interest in the capital of the partnership.

(7) Subsection (8) applies where -

- (a) a share of the net income of a partnership for a tax year is included in the assessable income of a partner; and
- (b) the partnership is so constituted or controlled, or its operations so conducted, that the partner does not have the real and effective control and disposal of that share, or a part of that share (uncontrolled partnership share).

(8) Where the conditions in Subsection (7) are satisfied, the Commissioner General may assess the partnership for the additional amount of tax that would have been payable if the uncontrolled partnership share had been received by the partner or partners who have real and effective control and disposal of the share and the partnership is liable to pay the tax so assessed.

(9) Where Subsection (8) applies to a share of the net income of a partnership, that share is not included in the assessable income of any partner.

(10) For the purpose of this Section, but without limiting its application, a partner is treated as not having the real or effective control and disposal of any money received by the partner that is applied to meet the private or domestic obligations of any other partner.

Subdivision 3. - Trusts.

61. PRINCIPLES FOR THE TAXATION OF TRUST INCOME.

(1) Subject to this Act, this Subdivision applies to amounts derived, and expenditures and losses incurred, through trusts.

(2) A trustee of a trust is not liable for income tax in respect of the income of the trust except as provided for in this Subdivision.

(3) Any election, notice, or statement required to be furnished in relation to a trust's activities must be furnished by the trustee and binds the beneficiaries.

(4) The trustee of a trust is required to furnish an income tax return in accordance with Section 135(5) in relation to the trust.

(5) For the purposes of the *Tax Administration Act 2017*, the trustee of a trust is treated as a representative of each beneficiary of the trust who is a non-resident person.

62. TAXATION OF A BENEFICIARY OF A TRUST.

(1) In this section -

“entitled”, in relation to an amount, means a vested and indefeasible interest in the amount;
“resident beneficiary”, in relation to a trust, means a beneficiary of the trust who is a resident person.

(2) An amount derived by a trustee of a trust during a tax year to which a beneficiary of the trust is entitled is treated as derived by the beneficiary in that year.

(3) If a beneficiary is treated as having derived an amount under Subsection (2), the beneficiary is treated as having incurred any expenditure or loss incurred by the trustee that -

- (a) directly relates to the derivation of the amount to which Subsection (2) applies; and
- (b) is reasonably apportioned to the derivation of the amount to which Subsection (2) applies.

(4) For the purposes of Subsections (2) and (3) -

- (a) an amount, or expenditure or loss, retains its character and geographic source in the hands of the beneficiary; and
- (b) an amount is treated as derived, and expenditures and losses are treated as incurred by the beneficiary at the time the amount was derived or incurred by the trustee.

(5) Where an amount to which a resident beneficiary is entitled under Subsection (2) is subject to non-resident tax or international transportation income tax -

- (a) Sections 14(7) and 15(3) do not apply to the amount; and
- (b) the resident beneficiary is entitled to a tax credit for the non-resident tax or international transportation income tax paid by the trustee in respect of the amount to the extent that the amount is included in the assessable income of the beneficiary.

(6) The assessable income of a resident beneficiary includes a distribution received by the beneficiary from a non-resident trust except to the extent that the distribution represents an amount derived by the trustee of the non-resident trust -

- (a) to which Subsection (2) applies; or
- (b) that has been taxed to the trustee under Section 63; or

- (c) that would have been exempt income or not otherwise subject to income tax if derived directly by the resident beneficiary.

63. TAXATION OF A TRUSTEE.

(1) The trustee of a trust is liable for income tax for a tax year at the rate or rates specified in Part 1 of Schedule 1 on the taxable trust income of the trust for the year.

(2) The income tax imposed on a trustee for a tax year under Subsection (1) is calculated by applying the rate or rates of tax applicable to the trust under Part 1 of Schedule 1 to the taxable trust income of the trust for the year.

(3) The taxable trust income of a resident trust for a tax year is the total assessable income of the trust for the year calculated as if the trust is a person reduced by the sum of the following -

- (a) any part of that amount to which Section 62(2) applies for the year; and
- (b) the total deductions allowed under this Act in respect of expenditures or losses incurred by the trust for the year, other than expenditures or losses that relate to amounts to which Paragraph (a) applies.

(4) The taxable trust income of a non-resident trust for a tax year is the total assessable income of the trust for the year that is PNG source income calculated as if the trust is a person reduced by the sum of the following -

- (a) any part of that amount to which Section 62(2) applies for the year; and
- (b) the total deductions allowed under this Act in respect of expenditures or losses incurred by the trust for the year that relate to the PNG source income of the trust, other than expenditures or losses that relate to amounts to which Paragraph (a) applies.

(5) Where a trustee has paid income tax on the taxable trust income of a trust under this section, that income is not taxed again to the beneficiary.

(6) The trustee of a trust is personally liable for an income tax liability under this Section that is not satisfied out of the assets of the trust and, if there is more than one trustee of the trust, the trustees are jointly and severally liable.

Subdivision 4. - Companies.

64. TAXATION OF COMPANIES.

A company is liable for income tax separately from its members.

65. LIMITATION ON CARRY FORWARD OF TAX LOSSES BY COMPANIES.

(1) In this section, "tax loss" means -

- (a) a net loss carried forward under Section 35; and
- (b) a foreign loss carried forward under Section 70; and
- (c) an excess amount carried forward under Section 101.

(2) Where there is a change in the beneficial owner of 50 percent or more of the membership interests in a company, any tax loss of the company for a tax year before the change (referred to as the "loss year") is not allowed as a deduction in a tax year after the change (referred to as the "income year") unless both the following conditions are satisfied -

- (a) the company carries on the same business in the income year, and in all tax years between the loss year and income year, that it carried on in the loss year; and

- (b) the company does not engage in any new business or investment with the principal purpose of taking advantage of the loss so as to reduce the income tax payable on the amounts derived from the new business or investment.

(3) If there is a change in the beneficial owner of 50 percent or more of the membership interests in a company, the company shall notify the Commissioner General, in writing, of the change within 15 days of the change occurring.

66. TRANSFER OF CORPORATE LOSSES.

- (1) In this section -

“company” means an body corporate;

“licensee” has the meaning given to it in Section 100; and

“representative” has the meaning given to it in Section 10 of the *Tax Administration Act 2017*.

- (2) This section applies if -

- (a) a resident company (referred to as the “loss company”) has a loss under Section 35 for a tax year; and
- (b) another resident company (referred to as the “income company”) has taxable income for the tax year; and
- (c) the loss company is a group company in relation to the income company for that year; and
- (d) subject to Subsection (3), the loss company and income company agree that the loss or a part of the loss is transferred by the loss company to the income company for the tax year.

(3) If this section applies, the amount of the loss transferred under the agreement referred to in Subsection (2)(d) is -

- (a) treated as incurred by the income company for the tax year; and
- (b) treated as not constituting a loss of the loss company.

(4) The amount of the loss transferred by a loss company to an income company for a tax year must not exceed the taxable income of the income company for the tax year.

- (5) An agreement referred to in Subsection (2)(d) must -

- (a) be in writing and signed by the representatives of the loss company and the income company; and
- (b) be entered into before the date that the income tax return of the income company for the tax year was furnished to the Commissioner General, or within such further time as the Commissioner General may allow; and
- (c) state the tax year of the loss company to which the loss relates.

- (6) This section applies to a licensee only as provided for in Section 101.

67. CORPORATE REORGANISATIONS.

- (1) In this section, “company” means a body corporate.

- (2) This section applies where the following conditions are satisfied -

- (a) a resident company or a permanent establishment in Papua New Guinea of a non-resident company (referred to as the “transferor”) disposes of an asset to a resident company or a permanent establishment in Papua New Guinea of a non-resident company (referred to as the “transferee”); and

- (b) if the asset is a depreciable asset of the person subject to depreciation on a pooling basis under Section 38, all the assets in the depreciation pool are transferred by the transferor to the transferee; and
- (c) the transferee will be subject to income tax under this Act or, if the asset is a taxable asset, the transferee will be subject to capital gains tax under this Act, in respect of a subsequent disposal of the asset; and
- (d) the transferor is a group company in relation to the transferee; and
- (e) the transferor and transferor have elected for this Section to apply.

(3) Where this section applies -

- (a) no gain or loss is taken to arise on the disposal of the asset for the transferor; and
- (b) where all the assets in a depreciation pool are transferred, the transferee is treated as having acquired the pool for an amount equal to the written down value of the pool at the time of the transfer of the assets in the pool; and
- (c) in any other case, the transferee is treated as having acquired the asset for an amount equal to -
 - (i) for a depreciable asset to which Section 37 applies, the transferor's written down value for the asset as at the time of the disposal; and
 - (ii) for any other asset, the transferor's cost for the asset at the time of the disposal.

(4) Where Subsection (2) applies to the disposal of an asset to a permanent establishment in Papua New Guinea of a non-resident, the asset is a Papua New Guinea asset for the purposes of this Act.

(5) An election under Subsection (2)(e) must be lodged with the Commissioner General, in writing, on or before the due date for furnishing the tax return in which the disposal is reported or within such further time as the Commissioner General may allow.

68. MUTUAL ASSOCIATIONS.

(1) In this section -

“company” means a body corporate;

“mutual association” -

- (a) means a body, association, or society that is organised and operated exclusively for the benefit of members; and
- (b) includes a society registered under the *Co-operative Societies Act 1982* and a savings and loan society within the meaning given under the *Savings and Loan Societies Act 2015*.

(2) A mutual association is treated as carrying on a business for the purposes of this Act.

(3) Any dealings between a mutual association and its members are taken into account in determining the income tax liability of the association and the income tax or small business tax liability of the members.

(4) An amount paid by a mutual association to a member for goods or services supplied by the member to the association is -

- (a) included in the business income of the member; and
- (b) allowed as a deduction to the association.

(5) An amount received by a mutual association from a member as customer is -

- (a) included in the business income of the association; and

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- (b) allowed as a deduction to the member if the member is subject to income tax, but only when incurred by the member to derive assessable income.
- (6) A rebate, bonus, or similar amount paid by a mutual association to a member -
 - (a) is allowed as a deduction to the association; and
 - (b) is included in the business income of the member to the extent that the amount is -
 - (i) additional payment for goods or services supplied by the member to the association; or
 - (ii) for a member subject to income tax, a reimbursement of an expenditure of the member that has been allowed as a deduction.

Division 9. - International Tax.

69. FOREIGN TAX CREDIT.

- (1) In this section and Section 70 -
 - “assessable foreign income”, in relation to a resident person, means foreign income included in the assessable income of the resident person;
 - “average rate of PNG income tax”, in relation to a resident person for a tax year, means the PNG income tax payable by the resident person for the year, before the allowance of any tax credit under this Act, as a percentage of the taxable income of the resident person for the year;
 - “foreign business income” means business income that is foreign income;
 - “foreign property income” means property income that is foreign income;
 - “net foreign income”, in relation to a resident person for a tax year, means the total assessable foreign income of the resident person for the year reduced by any deductions allowed to the resident person under this Act for the year that -
 - (a) relate exclusively to the derivation of the assessable foreign income; and
 - (b) are reasonably apportioned to the derivation of assessable foreign income in accordance with Section 79.
- (2) This section applies where -
 - (a) a resident person has derived assessable foreign income; and
 - (b) the resident person has paid foreign income tax in respect of the assessable foreign income.
- (3) Where this Section applies, the resident person is allowed a tax credit (referred to as a “foreign tax credit”) of an amount equal to the lesser of -
 - (a) the foreign income tax paid; or
 - (b) the PNG income tax payable in respect of the assessable foreign income.
- (4) A foreign tax credit allowed under Subsection (3) is applied, in accordance with Section 11(5), to reduce the amount of income tax payable in respect of the taxable income of the resident person for the tax year in which the assessable foreign income is derived.
- (5) For the purposes of Subsection (3)(b), the Papua New Guinea income tax payable in respect of the assessable foreign income derived by a resident person in a tax year is calculated by applying the average rate of Papua New Guinea income tax applicable to the resident person for the year against the net foreign income of the resident person for the year.
- (6) The foreign tax credit of a resident person for a tax year is calculated separately for assessable income that is foreign business income and assessable income that is foreign property income.

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(7) Where Subsection (6) applies, deductions are apportioned for the purposes of Paragraph (b) of the definition of “net foreign income” in Subsection (1) in accordance with Section 79 on the basis that foreign business income and foreign property income are separate classes of income.

(8) A resident person is allowed a foreign tax credit under this Section for foreign income tax only where -

- (a) the resident person has paid the foreign income tax within 2 years after the end of the tax year in which the assessable foreign income was derived by the resident person or within such further time as the Commissioner General allows; and
- (b) the resident person has a receipt and any additional documentary evidence as required by the Commissioner General provided by the foreign tax authority that evidences the payment of the foreign income tax.

(9) A foreign tax credit cannot reduce the tax liability of a resident person for a tax year below zero and any unapplied foreign tax credit of a resident person for a tax year is neither refunded nor carried forward to the following tax year.

70. FOREIGN LOSSES.

(1) Subject to Subsection (2), an amount that a resident person is allowed as a deduction under this Act in deriving assessable foreign income is deductible only against that income.

(2) Where a resident person has a foreign loss for a tax year, the amount of the loss is carried forward to the next following tax year and allowed as a deduction in that year against the resident person's assessable foreign income for the following year.

(3) Where a resident person is not able to wholly deduct a foreign loss under Subsection (2), the un-deducted amount is carried forward to the following tax year and applied as specified in Subsection (2) in that year, and any un-deducted amount continues to be carried forward until the loss is fully deducted, but a resident person cannot carry a foreign loss forward for more than seven tax years after the end of the tax year in which the loss was incurred.

(4) Where a resident person has a foreign loss carried forward under this Section for more than one tax year, the foreign loss of the earliest tax year is to be deducted first.

(5) This section applies separately to the foreign business income and the foreign property income of a resident person and, for this purpose, Section 79 applies on the basis that foreign business income and foreign property income are separate classes of income.

(6) In this section, “foreign loss”, in relation to a resident person for a tax year, means the amount by which the deductible expenditures incurred by the resident person in deriving assessable foreign income exceeds the amount of that income for the year.

71. REPATRIATED PROFIT OF PNG PERMANENT ESTABLISHMENT.

(1) The repatriated profit of a Papua New Guinea permanent establishment of a non-resident company for a tax year is calculated in accordance with the following formula -

$$(A + (B - C)) - D$$

where -

- A. is the total cost of assets, net of liabilities, of the permanent establishment at the commencement of the tax year; and

- B. is the net profit of the permanent establishment for the tax year calculated in accordance with financial reporting standards; and
- C. is the income tax payable on the taxable income of the permanent establishment for the tax year; and
- D. is the total cost of assets, net of liabilities, of the permanent establishment at the end of the tax year.

(2) In calculating the repatriated profit of a permanent establishment for a tax year, the total cost of assets of the permanent establishment at the commencement of the tax year is the total cost of assets at the end of the previous tax year.

72. TAX ON RECHARGED TECHNICAL FEES OR ROYALTIES.

(1) In this section “technical services” means any services the remuneration for which is a technical fee.

(2) This Section applies where all the following conditions are satisfied -

- (a) a non-resident person (referred to as the “supplier”) supplies technical services or leases out equipment, other than through a permanent establishment in Papua New Guinea; and
- (b) the services are supplied, or equipment leased, to a person (referred to as the “recipient”) who is -
 - (i) a resident person, other than in relation to a business conducted by the resident person through a permanent establishment outside Papua New Guinea; and
 - (ii) a non-resident person conducting a business in Papua New Guinea through a Papua New Guinea permanent establishment; and
- (c) the technical fee for the technical services or royalty for the leased equipment is paid to the supplier by a non-resident associate of the recipient; and
- (d) the technical fee or royalty is recharged by the associate to the recipient.

(3) Where this section applies, this Act applies as if the non-resident associate is supplying the technical services or leased equipment to the recipient and the recharged amount is the technical fee for the services or royalty for the leased equipment, as the case may be.

73. CROSS-BORDER TRANSFER PRICING.

(1) In this section -

“arm’s length conditions” in relation to a transfer pricing arrangement, means the conditions that might reasonably be expected to operate between independent persons dealing wholly independently with one another in comparable circumstances to those applicable under the transfer pricing arrangement and, subject to Subsection (4), the arm’s length conditions must be determined by reference to -

- (a) the actual commercial or financial relations that operate between the parties to the transfer pricing arrangement; and
- (b) the form and substance of those relations;

“cross-border transaction” means a transaction between -

- (a) a resident person and a non-resident person except where the transaction takes place wholly in PNG; and
- (b) two resident persons where the transaction relates to a business carried on through a permanent establishment outside PNG by one or both residents; and
- (c) two non-resident persons except where the transaction relates to businesses carried on through permanent establishments in PNG by both non-residents;

“transfer pricing arrangement” means a transaction, or a series of transactions, that satisfies all the following conditions -

- (a) the transaction is for the supply or acquisition of goods, services, money, intangibles, or an asset; and
- (b) the transaction is between associates; and
- (c) the transaction is a cross-border transaction.

(2) A person who has entered into a transfer pricing arrangement must determine the income, expenditures, gains, losses, or tax credits arising under the arrangement consistent with arm’s length conditions as specified in the Regulations.

(3) If a person has failed to comply with Subsection (2), the Commissioner General may adjust the income, expenditures, gains, losses, or tax credits of the person, and of any other person affected by the transfer pricing arrangement, in accordance with the Regulations.

(4) In the adjustment referred to in Subsection (3), the Commissioner General may disregard the actual commercial or financial relations of the parties to a transfer pricing agreement where -

- (a) the form of those relations is inconsistent with the substance of those relations; or
- (b) independent parties dealing wholly independently with one another in comparable circumstances would not have entered into the actual commercial or financial relations and the Commissioner General can replace the actual conditions with the arm’s length conditions; or
- (c) independent parties dealing wholly independently with one another in comparable circumstances would have entered into other actual commercial or financial relations and the Commissioner General can replace the actual conditions with the arm’s length conditions.

(5) Subject to Subsection (4), for the purposes of this Act and the Regulations referred to in Subsections (2) and (3) -

- (a) a permanent establishment is treated as a separate and distinct person (referred to as the “PE person”) from the person in respect of whom it is a permanent establishment (referred to as the “headquarters person”); and
- (b) the PE person and the headquarters person are treated as associates and any dealing between the PE person and the headquarters person is treated as a non-arm’s length transaction; and
- (c) the PE person and the headquarters person are located where their activities are located.

(6) The Commissioner General may choose not to apply Subsection (5) where the foreign country in which the headquarters person or PE person, as the case may be, is located does not apply the same rule as expressed in Subsection (5).

74. TRANSFER PRICING DOCUMENTATION.

The Regulations shall provide for -

- (a) the furnishing of country-by-country reports to the Commissioner General for each fiscal year by specified persons including -
 - (i) a Local File referring specifically to material and controlled transactions of the person; and
 - (ii) a Master File containing standardised information relevant for all the members of a multinational group to which the person belongs; and

- (iii) a Country-by-Country Report containing certain information relating to the global allocation of the multinational group's income and taxes paid together with certain indicators of the location of economic activity within the group, in accordance with the contents, requirements and specifications in the Regulations or as required by the Commissioner General; and
- (b) the transfer pricing documentation that must be kept by a person who has entered into a transfer pricing arrangement.

75. TAX TREATIES.

- (1) Subject to this Section, the provisions of a tax treaty or a multilateral convention listed in Schedule 5 have force of law according to their terms from the date that the treaty or convention entered into force.
- (2) Where there is any conflict between the terms of a tax treaty having legal effect in Papua New Guinea and this Act, the tax treaty prevails over the provisions of this Act.
- (3) Notwithstanding Subsection (2), a tax treaty does not override Section 73 or Part 8.

76. USE OF LOW TAX ENTITIES.

- (1) In this section -
 - “effective corporate tax rate”, in relation to an entity for a tax year, means the tax rate calculated by the following formula -

$$A/B$$

where -

- A. is income tax paid or payable by the entity for the year in a foreign country or territory; and
- B. is the financial accounting profits of the entity for the year calculated according to financial reporting standards;

“low tax entity” means an entity resident in a foreign country or territory, or part of a foreign country or territory and -

- (a) the entity has an effective corporate tax rate below 15%; or
- (b) the entity's place of residence -
 - (i) either does not tax foreign income of residents or taxes foreign income of residents only if the income is remitted into the country; or
 - (ii) has laws providing for the secrecy of financial or corporate information that facilitate the concealment of the identity of the beneficial owner of any income or asset;

“property income” has the meaning in Section 24 and, for this purpose, section 24(2) does not apply.

- (2) Where a resident person has a 50% or greater interest held, directly or indirectly, in a low tax entity during a tax year, the assessable income of the resident person includes the amount (referred to as “attributed income”) calculated according to the following formula:

$$A \times B$$

where -

- A. is the percentage interest of the resident person in the low tax entity; and

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B. is the total property income derived by the low tax entity during the year, other than property income in respect of which the low tax entity has been subject to income tax under Section 11.

(3) Component **B** of the formula in Subsection (2) is reduced by the amount of any foreign income tax or non-resident tax paid by the low tax entity in respect of the property income.

(4) In determining the percentage interest of a person in an entity -

(a) the amount of the interest is the higher of the person's percentage interest in -

(i) the voting power in the entity; and

(ii) the right to dividends or income entitlements payable by the entity; and

(iii) the right to capital in the entity; and

(b) account is taken of any direct or indirect interests in the entity held by an associate or associates of the person whether resident or non-resident persons.

(5) A company or partnership is a resident of a foreign country or territory for a tax year where the company or partnership -

(a) is incorporated, created, or formed in the foreign country or territory; or

(b) has its central management and control in the foreign country or territory at any time during the tax year.

(6) A trust is a resident of a foreign country or territory for a tax year where the trust -

(a) is settled or established in the foreign country or territory; or

(b) has its administration in a foreign country or territory at any time during the tax year.

(7) A dividend paid by a low tax entity to a resident person is exempt income to the extent that it is paid out of attributed income.

(8) For the purposes of Subsection (7), a dividend is treated as paid first out of attributed income.

77. THIN CAPITALISATION.

(1) In this section -

“arm's length debt amount”, in relation to a foreign-controlled resident company, means the amount of debt that a financial institution, not being an associate of the foreign-controlled resident company, would be prepared to lend to the company in an arm's length transaction having regard to all the circumstances of the company and as determined under the Regulations;

“average debt”, in relation to a foreign-controlled resident company for a tax year, is the amount calculated in accordance with the following formula -

$$A/B$$

where -

A. is the sum of the amount of debt of the company at the end of each calendar month in the tax year; and

B. is the number of calendar months in the year that the company conducted business in PNG;

“average equity”, in relation to a foreign-controlled resident company for a tax year, is the amount calculated in accordance with the following formula -

$$A/B$$

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where -

- A. is the sum of the amount of equity of the company at the end of each calendar month in the tax year; and
- B. is the number of calendar months in the year that the company conducted business in PNG;

“debt”, in relation to a foreign-controlled resident company, means the debt obligations of the company as determined in accordance with financial reporting standards;

“debt obligation” does not include accounts payable that have been outstanding for less than 120 days;

“equity”, in relation to a foreign-controlled resident company, means the equity of the company as determined in accordance with financial reporting standards;

“excess debt”, in relation to a foreign-controlled resident company for a tax year, means the amount by which the company’s average debt for the year exceeds two times the company’s average equity for the year;

“foreign-controlled resident company” means a resident company in which more than 50% of the membership interests in the company are held by a non-resident either alone or together with an associate or associates.

(2) Subject to Subsection (3), where a foreign-controlled resident company, other than a financial institution, has an average debt to average equity ratio in excess of 2 to 1 for a tax year, a deduction is disallowed for the interest paid by the company during that year calculated in accordance with the following formula:

$$A \times B/C$$

where -

- A. is the company’s total amount of deductible interest expenditure for the year before the application of this section; and
- B. is the company’s excess debt for the year; and
- C. is the company’s average debt for the year.

(3) Subject to Subsection (4), where the average debt to average equity ratio of a foreign-controlled resident company exceeds 2 to 1 for a tax year, Subsection (1) does not apply if the amount of the average debt of the company for the year does not exceed the arm’s length debt amount.

(4) Subsection (3) applies only where the non-resident person deriving the interest is entitled to the benefit of the Non-discrimination Article in a tax treaty and this Section is not excluded from the application of the Non-discrimination Article in the treaty.

(5) This section applies to a non-resident company with a permanent establishment in PNG on the following basis -

- (a) the permanent establishment is treated as a foreign-controlled resident company; and
- (b) the average debt to average equity ratio of the permanent establishment is calculated by reference -
 - (i) to the debt obligations of the non-resident company attributable to the permanent establishment; and
 - (ii) to the equity of the non-resident company attributable to the operations of the company conducted through the permanent establishment.

Division 10. - Miscellaneous Income Tax Rules.

78. NON-CASH BENEFITS.

(1) Subject to Section 20, in determining whether a non-cash benefit derived by a person is income included in the assessable income of the person, and the amount so included, any restriction on transfer of the benefit and the fact that the benefit is not otherwise convertible to cash are disregarded.

(2) Subject to Subsection (3), where a person derives a non-cash benefit, the amount of the non-cash benefit that is included in the assessable income of the person is the fair market value of the benefit at the time that the benefit is derived, determined without regard to any restriction on transfer.

(3) The valuation rules in Schedule 2 apply to a non-cash benefit that is included in the employment income of an employee under Section 19(2)(b).

79. APPORTIONMENT OF EXPENDITURES OR LOSSES.

- (1) This section applies to an expenditure or loss incurred by a person that relates to -
- (a) the derivation of more than one class of income; or
 - (b) the derivation of a class of income and some other purpose.

(2) Where this section applies, the expenditure or loss is apportioned on any reasonable basis taking account of the relative nature and size of the activities or purposes to which the expenditure or loss relates.

- (3) In this section, the following are separate classes of income -
- (a) employment income; and
 - (b) other income included in assessable income; and
 - (c) exempt income.

80. CESSATION OF ORIGIN OF INCOME.

- (1) This section applies where -
- (a) an amount is derived by a person in a tax year from a business, activity, or investment that had ceased before the amount was derived; and
 - (b) had the amount been derived by the person before the business, activity, or investment ceased it would have been included in the assessable income of the person.

(2) Where this section applies, this Act applies to the amount on the basis that the business, activity, or investment of the person had not ceased at the time the amount was derived.

PART V. - CAPITAL GAINS.

81. CAPITAL GAIN.

(1) A person makes a capital gain on the disposal of a taxable asset where the consideration for the disposal of the asset exceeds the cost of the asset at the time of the disposal, and the capital gain is the amount of the excess.

(2) A forfeited deposit to which Section 95(5)(b) applies or an excess amount to which Section 98(6)(b) applies is treated, for the purposes of this Act, as a capital gain derived on the disposal of a taxable asset if the forfeited deposit or excess amount relates to a taxable asset.

82. CAPITAL LOSS.

(1) A person makes a capital loss on the disposal of a taxable asset where the cost of the asset at the time of the disposal exceeds the consideration for the disposal, and the capital loss is the amount of the excess.

(2) Subject to Subsections (3) and (4), a capital loss can be carried forward indefinitely to offset against capital gains on the disposal of taxable assets until the loss has been fully offset.

(3) A capital loss made by a person is offset against a capital gain of the person under Subsection (2) only where the amount of the capital loss is substantiated to the satisfaction of the Commissioner General.

(4) Section 65 applies with the necessary changes made to the carry forward of a capital loss under Subsection (2).

83. TAXABLE ASSETS.

(1) Subject to Subsection (2), the following assets are taxable assets -

- (a) a resource right; and
- (b) information relating to a resource right; and
- (c) a membership interest in an entity where more than 50% of the value of the interest is derived, directly or indirectly, from an asset or assets referred to in Paragraphs (a), (b) and (d); and
- (d) an option or right to acquire an asset referred to in the preceding Paragraphs (a), (b) and (c).

(2) The following assets are not taxable assets -

- (a) an exempt asset; and
- (b) trading stock, and the cost of acquiring trading stock and the consideration derived for the disposal of trading stock is dealt with under the income tax; and
- (c) an asset to which Section 23(1)(d) or 29(1)(d) applies.

(3) The more than 50% threshold in Subsection (1)(c) may be satisfied at any time in the period of 365 days immediately preceding the disposal of the membership interest.

84. EXEMPT ASSETS.

An asset that is used by a person solely to derive exempt income is an exempt asset.

PART VI. - UNIFORM RULES ON ASSETS.

85. JOINTLY OWNED ASSETS.

(1) For the purposes of this Act, where an asset is jointly owned by two or more persons (other than in partnership or under a trust), any income, gains, expenditures, and losses relating to the asset are apportioned among the owners in accordance with their respective interests in the asset.

(2) Where the interests of the owners of a jointly owned asset cannot be ascertained, the owners of the asset are treated as having an equal interest in the asset.

86. ACQUISITION.

(1) Subject to this Part, a person acquires an asset at the time that legal ownership of the asset passes to the person.

(2) Where a right is granted to a person, the person acquires the right at the time that the right is granted to the person.

(3) Where a person constructs or creates, or arranges for the construction or creation of, an asset that the person owns, the person acquires the asset when the construction or the work that resulted in the creation of the asset commences.

87. DISPOSAL.

(1) In this section, "appointed person" has the meaning given to it in Section 3 of the *Tax Administration Act 2017* but does not include an executor of a deceased estate.

(2) Subject to this Part, a person disposes of an asset at the time the person has sold, exchanged, or otherwise transferred legal ownership of the asset, or the asset is destroyed.

(3) Subject to this Part and in addition to the circumstances specified in Subsection (2), a person disposes of an asset that is a right at the time that the right is cancelled, redeemed, expired, or surrendered.

(4) Where a person creates an asset in another person being an asset that did not previously exist, the first-mentioned person is treated as having made a disposal of the asset to the other person at the time the asset is created.

(5) Where an asset is transmitted by succession or under a will, the deceased is treated as having disposed of the asset at the time the asset is transmitted.

(6) A disposal includes the disposal of a part of an asset.

(7) The vesting of an asset of a person (referred to as the "owner") in an appointed person is not a disposal of the asset for the purposes of this Act, and any acts done in relation to the asset by the appointed person are treated as done by the owner.

(8) The legal ownership of the assets of a trust is held by the person or persons who, from time to time, hold the position of trustee of the trust and a change in the person or persons who hold the position of trustee does not, of itself, constitute a disposal of the assets of the trust.

88. COST.

(1) In this section, "impairment write down", in relation to an intangible asset of a person, means the write down of the value of the intangible asset in the financial accounts of the person because the fair market value of the asset is less than the cost of the asset.

(2) The cost of an asset is determined under this Section unless the Act provides otherwise.

(3) The cost of an asset of a person, other than an intangible asset, is the sum of the following amounts -

- (a) the total consideration given by the person for the asset, including the fair market value of any consideration in kind determined at the time the asset is acquired and, where the asset is constructed, produced, or developed, the cost of construction, production, or development of the asset; and
- (b) any incidental expenditure incurred by the person in acquiring and disposing of the asset other than expenditure allowed as a deduction to the person under this Act; and
- (c) any expenditure incurred by the person in installing the asset; and

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- (d) any expenditure incurred by the person to reconstruct or improve the asset with the purpose or effect of increasing the value of the asset; and
- (e) for real property that is not a depreciable asset, interest on borrowings to acquire or improve the property, rates, land rent, land fees, and the costs of repair, maintenance, and insurance incurred by the person other than expenditure allowed as a deduction to the person under this Act.

- (4) The cost of an intangible asset of a person is the sum of the following amounts:
 - (a) the total expenditure incurred by the person in acquiring, creating, improving, and renewing the intangible asset; and
 - (b) any incidental expenditure incurred by the person in acquiring and disposing of the intangible asset.

(5) The cost of a business intangible of a person referred to in Section 3(d), (e), or (f) in the definition of "business intangible" is the amount of the expenditure.

(6) The cost of an intangible asset of a person is not reduced by any impairment write down in relation to the asset made in the financial accounts of the person.

(7) The cost of an asset of a person does not include the amount of any grant, subsidy, rebate, or other financial assistance given to the person in respect of the acquisition of the asset, except to the extent to which the amount is included in the assessable income of the person.

- (8) Where the acquisition of an asset by a person constitutes -
 - (a) the derivation of an amount included in the assessable income of the person, the cost of the asset is the amount so included plus any amount paid by the person for the asset; or
 - (b) the derivation of exempt income of the person, the cost of the asset is the exempt amount plus any amount paid by the person for the asset.

89. COST WHEN AN ASSET HAS BEEN DAMAGED.

(1) Where an asset is damaged, the cost of the asset is reduced by any amount received for the damage under -

- (a) an insurance policy, indemnity, or other agreement; or
- (b) a settlement; or
- (c) a judicial decision.

(2) Where Subsection (1) applies, and the amount received exceeds the cost of the damaged asset -

- (a) the owner of the damaged asset is treated as having made a gain equal to the amount of the excess at the time that the amount is received; and
- (b) the gain has the same tax treatment under this Act as a gain on disposal of the damaged asset; and
- (c) the cost of the damaged asset is set at zero.

90. SPLITTING OR MERGING OF ASSETS.

(1) Where a person disposes of a part of an asset, the cost of the asset allocated to the part of the asset disposed of is calculated in accordance with the following formula -

$$A \times B / (B + C)$$

where -

A. is the cost of the asset; and

- B. is the consideration for the part of the asset disposed of; and
- C. is the fair market value of the retained part of the asset at the time of the disposal.

(2) Where Subsection (1) applies -

- (a) the retained part of the asset is treated as a separate asset; and
- (b) the cost of the retained part of the asset is the balance of component A of the formula in Subsection (1) remaining after taking account of the amount allocated under Subsection (1) to the disposed part of the asset.

(3) Where the asset to which Subsection (1) applies is a depreciable asset, the reference to the cost of the asset in component A of the formula in Subsection (1) is a reference to the written down value of the asset at the time of disposal of part of the asset.

(4) The following applies where a person merges two or more assets (referred to as the "original assets") into a single asset (referred to as the "merged asset"):

- (a) the original assets are treated as having been disposed of at the time of the merger of the assets; and
- (b) no gain or loss is recognised in respect of the disposal of the original assets referred to in Paragraph (a); and
- (c) the person is treated as having acquired the merged asset at the time of the merger of the assets; and
- (d) the cost of the merged asset is the total of the following amounts -
 - (i) the cost of the original assets at the time of the merger of the assets; and
 - (ii) the costs incurred by the person in merging the original assets into the merged asset.

(5) Where an original asset under Subsection (4) is a depreciable asset, the reference to "cost" in Subsection (4)(d) is a reference to the written down value of the asset at the time of merger of the assets.

91. COST OF LAND AND STRUCTURAL IMPROVEMENTS.

(1) Where a structural improvement to land is a depreciable asset, the structural improvement and the land on which the structural improvement is located are treated as separate assets.

(2) Where the structural improvement and land are acquired for a single consideration, the consideration is apportioned as between the cost of the asset that is the structural improvement and the cost of the asset that is the land.

(3) Apportionment under Subsection (2) is to be undertaken at the time of acquisition of the land and according to generally accepted valuation principles for land.

92. COST OF BONUS SHARES.

(1) In this section, "shares" includes any membership interest in a company.

(2) Where a member of a company holds shares in the company (original shares) and the company issues other shares (bonus shares) for no consideration in respect of the original shares and the bonus shares are not a dividend then, for the purposes of this Act, the amount or amounts paid or payable for the original shares is deemed to have been paid or payable by the member in respect of the original and bonus shares in such proportions as the Commissioner General considers appropriate in the circumstances.

(3) A company issues shares for no consideration if the company -

- (a) credits its capital account with profits in connection with the issue of the shares; or

- (b) credits its capital account with the amount of a dividend to a member and the member does not have a choice as to whether to be paid the dividend or be issued with the shares.

93. COST OF SPECIFIED PROPERTY.

- (1) In this section -
 - “scheme” has the meaning given to it in Section 131;
 - “specified property” means a chose in action.
- (2) Expenditure incurred by a person in acquiring specified property is taken into account under this Act only to the extent that the Commissioner General considers reasonable in the circumstances.
- (3) A reference in Subsection (2) to “taken into account” means -
 - (a) for expenditure incurred in the acquisition of trading stock, allowed as a deduction;
 - (b) for expenditure incurred in the circumstances specified in Section 23(1)(d) or 29(1)(d), taken into account in the calculation of a net gain or loss referred to in those sections; or
 - (c) for expenditure incurred in the acquisition of a taxable asset, included in the cost of the asset.
- (4) In forming an opinion for the purposes of Subsection (2) as to the extent to which it is reasonable that expenditure incurred by a person in the acquisition of specified property is taken into account, the Commissioner General must have regard -
 - (a) to the source of funds used by the person in acquiring the specified property, including whether the funds were provided by an associate; and
 - (b) to any scheme entered into or carried out, at any time, as a result of which there has been, or there could reasonably be expected to have been, a substantial reduction in the value of the specified property including, but not limited to, as a result of -
 - (i) the declaration and payment of a dividend; or
 - (ii) dividend stripping or a similar arrangement; or
 - (iii) the issue or allotment of other specified property; or
 - (iv) a change in the rights attached to the specified property; or
 - (v) the transfer of property by the entity to which the specified property relates; and
 - (c) any other relevant matters.

94. RIGHT TO OCCUPY REAL PROPERTY.

- (1) This section applies where, during a tax year -
 - (a) a person (called “the transferor”) has an indefinitely continuing right to occupy or use real property in PNG; and
 - (b) a person (called “the transferee”) has incurred capital expenditure to acquire that right or a right to occupy or use part of the property; and
 - (c) the capital expenditure by the transferee does not (except through an application of this section) confer ownership rights in the transferee in respect of that property.
- (2) Where this section applies and subject to Subsection (3), the transferor and transferee may agree that part or all of the expenditure incurred by the transferee is treated as expenditure incurred in the purchase of the right.
- (3) Subject to Subsection (4), the amount of the expenditure to which Subsection (2) applies cannot exceed the lesser of -
 - (a) the amount of the capital expenditure referred to in Subsection (1)(b); or

- (b) the total of -
 - (i) the depreciated value of the property or, where the right to occupy or use only part of that property has been purchased, the proportionate part of the depreciated value of the property; and
 - (ii) any amounts included in the assessable income of the transferor as a result of the sale.

(4) Subsection (3) does not apply where the Commissioner General is of the opinion that the circumstances are such that the deemed expenditure should be based on the actual consideration given for the purchase of those rights.

(5) An agreement referred to in Subsection (2) does not have any effect unless the parties lodge with the Commissioner General, a duly stamped notice signed by them or on their behalf that specifies the amount of deemed expenditure in accordance with Subsections (2) and (3).

- (6) A notice under Subsection (5) must be lodged with the Commissioner General -
 - (a) on or before the date on which the first return under this Act after the date of the transfer of the rights is furnished; or
 - (b) within such further time as the Commissioner General allows.

- (7) Where a notice is given under Subsection (5) -
 - (a) the transferee is treated, subject to Subsection (3), as having purchased the real property at a cost equal to the amount of expenditure specified in the notice; and
 - (b) the transferor is treated as having sold the real property for consideration equal to the amount specified in Paragraph (a).

95. CONSIDERATION

(1) The consideration for the disposal of an asset is determined under this section unless the Act provides otherwise.

(2) Subject to this Act, the consideration for the disposal of an asset by a person is the total amount received or receivable by the person for the asset, including the fair market value of any consideration in kind determined at the time of disposal.

(3) Where an asset has been destroyed, the consideration for the disposal of the asset includes any compensation, indemnity, or damages received or receivable by the person as a result of the destruction of the asset, including amounts received or receivable under -

- (a) an insurance policy, indemnity, or other agreement; or
- (b) a settlement; or
- (c) a judicial decision.

(4) Where two or more assets are disposed of by a person in a single transaction and the consideration for each asset is not separately specified, the total consideration is apportioned among the assets disposed of in proportion to their respective fair market values determined at the time of the disposal.

(5) Where a deposit paid to the owner of an asset is wholly or partly forfeited to the owner of the asset because a prospective sale or other disposal of the asset does not proceed -

- (a) the owner of the asset is treated as having made a gain equal to the amount of the forfeited deposit at the time that the deposit is forfeited; and
- (b) the gain has the same tax treatment under this Act as a gain on disposal of the asset to which the deposit relates.

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(6) Where a person is unable to provide documentary evidence of the consideration for the disposal of an asset by the person, the consideration is the fair market value of the asset at the time of the disposal.

96. DEEMED DISPOSALS.

(1) In this Section, "non-business asset" means an asset that is not used in the conduct of a business.

(2) The application by a person of a non-business asset to use as a business asset is, at the time that the asset is first used as a business asset, treated as -

- (a) a disposal of the non-business asset by the person for a consideration equal to the fair market value of the asset at the time that the asset is first used as a business asset; and
- (b) an acquisition of a business asset by the person for a cost equal to the amount specified in Paragraph (a).

(3) The application by a person of a business asset to use as a non-business asset is, at the time that the asset is first used as a non-business asset, treated as -

- (a) a disposal of the business asset by the person for a consideration equal to the fair market value of the asset at the time that the asset is first used as a non-business asset; and
- (b) an acquisition of a non-business asset by the person for a cost equal to the amount specified in Paragraph (a).

(4) Subsection (5) applies where -

- (a) for any reason (including the formation or dissolution of a partnership or a variation in the constitution of a partnership or in the interests of the partners) a change has occurred in the ownership of, or in the interests of persons in, an asset; and
- (b) the person, or one or more of the persons, who owned the asset before the change has or have an interest in the asset after the change.

(5) Where the conditions in Subsection (4) are satisfied, this Act applies as if the person or persons who owned the asset before the change had, on the day on which the change occurred, disposed of the whole of the asset to the person or persons, who owned the asset after the change.

(6) Subject to Subsection (7), the consideration for a disposal under Subsection (5) is the amount specified in the agreement resulted in the change occurring as the value of the asset for the purposes of the agreement.

(7) The consideration for a disposal under Subsection (5) is the fair market value of the asset at the date the change in ownership occurred where -

- (a) no amount is specified in the agreement referred to in Subsection (6); or
- (b) the Commissioner General is not satisfied that the amount so specified in such an agreement
is a fair and reasonable value of the asset; or
- (c) there is no written agreement evidencing the change.

97. GRANT AND EXERCISE OF AN OPTION.

(1) In this section, "option" means an agreement under which a person has a right to purchase an asset from, or a right to sell an asset to, another person within an agreed period of time for a specified consideration.

(2) This section applies where a person (referred to as the "grantor") grants an option to another person (referred to as the "grantee") in relation to an asset.

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- (3) Where this section applies, the following applies to the grantor on the grant of the option:
 - (a) the grantor is treated as having made a disposal of the option to the grantee at the time of execution of the agreement under which the option is granted; and
 - (b) the cost for the grantor for the option is limited to any non-deductible incidental costs incurred by the grantor in granting the option; and
 - (c) the consideration for the option is the amount received by the grantor for the option.
- (4) Where this section applies, the following applies to the grantee on the grant of an option -
 - (a) the grantee is treated as having acquired the option at the time that the option is granted; and
 - (b) the cost for the grantee for the option is the consideration given for the option and any non-deductible incidental costs incurred by the grantee in relation to the grant of the option.
- (5) Where the grantee exercises the option -
 - (a) the grantor's consideration for the asset transferred by the grantor on exercise of the option does not include the consideration given for the option but only where the grantor has been subject to tax on any income or capital gain made in respect of the grant of the option; and
 - (b) the cost for the grantee for the asset transferred on exercise of the option includes the amount specified in Subsection (4)(b).
- (6) Where the option expires without being exercised by the grantee, the grantee makes a loss equal to the amount specified in Subsection (4)(b).
- (7) This section does not apply to an option to which Section 20 applies.

98. DEFERRAL OF RECOGNITION OF GAIN OR LOSS.

- (1) For the purposes of this Act, no gain or loss is taken to arise on the disposal of an asset -
 - (a) between spouses or former spouses as part of a divorce settlement or under a separation agreement where the spouses have jointly elected for this section to apply; or
 - (b) by reason of the transmission of the asset on the death of a person to the executor or administrator of the estate of the deceased person, or a beneficiary of the estate; or
 - (c) by reason of the destruction or compulsory acquisition of the asset where -
 - (i) the person reinvests the consideration for the disposal in an asset of a like kind (referred to as a "replacement asset") within six months after the disposal or within such further time as the Commissioner General may allow; and
 - (ii) the person has elected for this Section to apply; and
 - (d) that is a depreciable asset (referred to as the "replaced asset") where -
 - (i) the person disposing of the asset acquires a depreciable asset of a like kind to be wholly used in the production of assessable income (referred to as the "replacement asset") within six months after the disposal or within such further time as the Commissioner General may allow; and
 - (ii) the person has elected for this section to apply.
- (2) Subsection (1)(a) and (b):
 - (a) apply to the disposal of an asset only if the transferee spouse or beneficiary acquiring the asset will be subject to tax under this Act in respect of a subsequent disposal of the asset; and
 - (b) for the disposal of an asset that is a depreciable asset or trading stock of the transferor spouse or deceased, apply only if the asset is a depreciable asset or trading stock of the transferee spouse or beneficiary, as the case may be.

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(3) Where Subsection (1)(a) or (b) applies, the person acquiring the asset is treated as acquiring an asset for a consideration equal to -

- (a) for a depreciable asset, the written down value of the asset for the person disposing of the asset at the time of the disposal; and
- (b) for any other asset, the cost of the asset for the person disposing of the asset at the time of the disposal.

(4) Where Subsection (1)(c) or (d) applies and the cost of the replacement asset exceeds the consideration for the replaced asset, the cost of the replacement asset for the person is -

- (a) for a depreciable asset, the written down value of the replaced asset at the time of disposal, increased by the amount of the excess; and
- (b) for any other asset, the cost of the replaced asset at the time of the disposal, increased by the amount of the excess.

(5) Where Subsection (1)(c) or (d) applies and the consideration for the replaced asset exceeds the cost of the replacement asset, the cost of the replacement asset for the person is -

- (a) for a depreciable asset, the written down value of the replaced asset at the time of disposal, reduced by the amount of the excess but not below zero; and
- (b) for any other asset, the cost of the replaced asset at the time of the disposal, reduced by the amount of the excess but not below zero.

(6) Any part of the excess referred to Subsection (5) that is not used to reduce the written down value of the asset is -

- (a) for a depreciable asset or an asset that is revenue in nature, included in the assessable income of the person in the tax year in which the replacement asset was acquired; and
- (b) for a taxable asset, treated as a capital gain derived at the time that the replacement asset is acquired.

(7) This Section does not apply to a depreciable asset subject to depreciation on a pooling basis under Section 38.

(8) An election under Subsection (1) must be lodged with the Commissioner General, in writing, on or before the due date for furnishing the tax return in which the disposal is reported or within such further time as the Commissioner General may allow.

99. TRANSACTIONS WITH ASSOCIATES.

Subject to Section 73, where a person (referred to as the “*transferor*”) disposes of an asset to an associate (referred to as the “*transferee*”) -

- (a) the transferor is treated as having disposed of the asset for consideration equal to the fair market value of the asset at the time of the disposal; and
- (b) the transferee is treated as having acquired the asset for consideration equal to the amount determined under Paragraph (a).

PART VII. - TAXATIONAL OF SPECIFIC SECTORS.

Division 1. - Extractive Industries.

100. PART VII INTERPRETATION.

(1) In this Act, unless the context otherwise requires -
“co-ordinated development agreement” means -

- (a) an agreement between the licensees of two or more development rights which provides for the unit development or co-ordinated petroleum development of one or more petroleum pools underlying the development rights, including agreements referred to in Sections 64 and 65 of the *Oil and Gas Act 1998*; or

- (b) any other agreement between the licensees of two or more petroleum rights under which the licensees of one petroleum right agree to compensate the licensees of another petroleum right for expenditure incurred or income foregone;

“development expenditure” means capital expenditure incurred by a licensee in undertaking, or in connection with, development operations and -

- (a) includes expenditure incurred by a licensee in acquiring a development right, an interest in a development right, or development information; and
- (b) does not include expenditure incurred in acquiring a depreciable asset within Paragraph (a) of the definition of “depreciable asset” in Section 3;

“development information” means information relating to the extraction of minerals, or oil or gas, under a development right;

“development operations” means activities undertaken by a licensee in accordance with the terms of a development right or an agreement made with the State in contemplation of the issue of, or under, a development right, and includes -

- (a) any activities undertaken in advance of the grant of a development right, other than activities that are exploration operations, that relate to activities undertaken under the development right; and
- (b) any exploration activities that may be required to be undertaken during the term of the development right and relate to the resource that is the subject of the development right;

“development right” means -

- (a) a special mining lease granted under Section 33 of the *Mining Act 1992*; and
- (b) a mining lease granted under Section 38 of the *Mining Act 1992*; and
- (c) a petroleum development licence issued under Section 57 of the *Oil and Gas Act 1998*;

“exploration expenditure” means expenditure incurred by a licensee in undertaking, or in connection with, exploration operations and -

- (a) includes -
 - (i) expenditure incurred by a licensee in acquiring an exploration right, an interest in an exploration right, or exploration information; and
 - (ii) expenditure incurred by a licensee on studies undertaken to evaluate the economic feasibility of recovering, processing, and selling a resource after the making of a discovery under an exploration right and incurred before the issue of a development right; and
- (b) does not include expenditure incurred in acquiring a depreciable asset within Paragraph (a) of the definition of “depreciable asset” in Section 3;

“exploration information” means information relating to the search for minerals, or petroleum or gas, under an exploration right and any information arising from studies referred to in Paragraph (a)(ii) of the definition of “exploration expenditure”;

“exploration operations” means activities undertaken by a licensee in accordance with the terms of an exploration right or an agreement made with the State in contemplation of the issue of, or under, an exploration right, and includes any activities undertaken in advance of the grant of an exploration right that relate to activities under the exploration right;

“exploration right” means -

- (a) an exploration licence granted under Section 20 of the *Mining Act 1992*; and
- (b) a petroleum prospecting licence issued under Section 23 of the *Oil and Gas Act 1998*; and
- (c) a petroleum retention licence issued under Section 40 of the *Oil and Gas Act 1998*;

“farm-out agreement” means an agreement referred to in Section 107(1);

“licence area” means the area covered by a resource right;

“licensee” means a person to whom a resource right has been granted or issued;

“mining project” means operations under a mining right and includes exploration or development operations;

“mining right” means -

(a) an exploration licence granted under Section 20 of the *Mining Act 1992*; and

(b) a special mining lease granted under Section 33 of the *Mining Act 1992*; and

(c) a mining lease granted under Section 38 of the *Mining Act 1992*;

“petroleum project” means operations under a petroleum right and includes exploration or development operations;

“petroleum right” means -

(a) a petroleum prospecting licence issued under Section 23 of the *Oil and Gas Act 1998*; and

(b) a petroleum retention licence issued under Section 40 of the *Oil and Gas Act 1998*; and

(c) a petroleum development licence issued under Section 57 of the *Oil and Gas Act 1998*;

“resource” means minerals or petroleum, as the case may be;

“resource project” means a mining or petroleum project;

“resource right” means a mining or petroleum right;

“services” includes the leasing of equipment;

“subcontractor” means a person supplying services to a licensee in relation to a resource project, other than a person supplying services as an employee.

(2) A resource project based on an exploration right of a licensee and a resource project based on a development right of the licensee are, for the purposes of Sections 101, and 108 to 112 (inclusive), treated as a single resource project provided the licence area of the development right of the licensee is wholly within the licence area of the exploration right of the licensee.

(3) The Regulations may provide for the treatment of payments made between licensees under a co-ordinated development agreement.

(4) For the avoidance of doubt, expenditure incurred by a licensee in undertaking exploration or development operations, as the case may be, includes expenditure paid or payable by the licensee to another person to reimburse or fund that other person to undertake activities relating to such operations on behalf of the licensee.

(5) Unless the context otherwise requires, any term that is used but not defined in this Act but is defined in the *Mining Act 1998* or the *Oil and Gas Act 1998* as the case may be, has the meaning in that Act for the purposes of this Division.

101. RING FENCING OF RESOURCE PROJECTS.

(1) A deduction allowed under this Act for any expenditure or loss incurred by a licensee in undertaking, or in connection with, a resource project during a tax year is allowed only against the assessable income derived by the licensee from the project.

(2) Where a deductible expenditure or loss is incurred partly to derive assessable income from a resource project and partly for another purpose, including to derive assessable income from another resource project, Section 79 applies on the basis that the assessable income derived by a licensee in undertaking a resource project is a separate class of income.

(3) For the avoidance of doubt and subject to Sections 73 and 77, Subsection (1) applies to interest allowed as a deduction under this Act to the extent that the debt obligation in respect of which the interest is payable has been used in connection with a resource project.

(4) Where the total amount of deductions allowed under this Act to a licensee in respect of a resource project undertaken by the licensee during a tax year exceeds the total amount of assessable income of the licensee derived from the project for the year, the excess amount is carried forward and allowed as a deduction against amounts included in the assessable income of the licensee from the resource project in the next following tax year of the licensee.

(5) Any part of an excess amount that is not deducted under Subsection (4) is carried forward to the next following tax year of the licensee and allowed as a deduction in that year and so on until the amount has been fully deducted or all operations of the licensee under the resource project cease.

(6) Where a licensee has an excess amount carried forward under this section for a resource project for more than one tax year, the excess of the earliest tax year is allowed as a deduction first.

(7) Subsection (8) applies where all the following conditions are satisfied:

- (a) the licensee's right to undertake the resource project has been terminated, transferred, or expired without being renewed; and
- (b) the licensee has a loss or losses carried forward under this section in relation to the resource project.

(8) Where the conditions in Subsection (7) are satisfied, the licensee may elect, by notice in writing to the Commissioner General, to treat the loss or the total amount of losses carried forward under this section as a deduction in relation to a different resource project undertaken by the licensee.

(9) If a licensee is not undertaking another resource project at the time that the licensee's right to undertake a resource project was terminated, transferred, or expired without being renewed, the licensee may transfer the loss or losses to another licensee that is a group company in relation to the first-mentioned licensee in accordance with Section 66.

(10) A licensee must lodge a notice of an election under Subsection (8) with the Commissioner General by the due date for furnishing the licensee's income tax return for the tax year in which the licensee's right to undertake the resource project was terminated, transferred, or expired without being renewed or within such further time as the Commissioner General may allow by notice in writing.

(11) For the purposes of Section 65, activities undertaken under a development right are treated as the same business as activities undertaken under an exploration right provided the activities are undertaken under the same resource project.

102. INDIRECT TRANSFER OF A RESOURCE RIGHT.

(1) A licensee must notify the Commissioner General, in writing, where there is a change in beneficial owner or owners of 10% or more of the membership interests in the licensee within 15 days of the change occurring or within such further time as the Commissioner General may allow.

(2) Subject to Subsection (3), if the person disposing of the interest to which the notice under Subsection (1) relates is a non-resident person, the licensee is liable, as agent of the non-resident person, for any tax payable under this Act by the non-resident person in respect of the disposal.

(3) Subsection (2) does not apply where the disposal is by way of a trade in shares on a prescribed stock exchange.

(4) A licensee liable as agent for a non-resident person under Subsection (2) must furnish a tax return and pay the tax due in respect of the disposal of the interest by the non-resident person within 20 days after the date of the disposal or within such further time as the Commissioner General may allow.

(5) The tax paid by a licensee on behalf of the non-resident person in accordance with Subsection (2) is credited against the tax liability of the non-resident person under this Act.

(6) A licensee who pays tax to the Commissioner General under this section as agent of a non-resident person is entitled to recover the tax paid from the non-resident person.

(7) The liability of a licensee under this Section is a "secondary liability" for the purposes of the *Tax Administration Act 2017*.

103. TAXATION OF LICENSEES AND SUBCONTRACTORS.

(1) In this section, "non-resident subcontractor" means a subcontractor that is a non-resident person.

(2) A licensee and a subcontractor are liable to tax in accordance with this Act, but subject to the modifications in this Division.

(3) Where there is any inconsistency in the taxation of a licensee or subcontractor as between this Division and the other provisions in this Act (other than Section 75), this Division prevails.

(4) The rate of income tax applicable to a licensee is 30%.

(5) The rate of non-resident tax on -

(a) a technical fee paid by a licensee to a non-resident subcontractor without a permanent establishment in PNG is 15%; or

(b) a royalty paid by a licensee to a non-resident subcontractor without a permanent establishment in PNG for the lease of any machinery or equipment used in a resource project -

(i) for a royalty paid to a non-resident subcontractor that is an associate, is 30%;
or

(ii) for a royalty paid to any other non-resident subcontractor, is 10%.

104. DEDUCTION FOR EXPLORATION EXPENDITURE.

(1) A licensee is allowed a deduction for exploration expenditure in the tax year in which the expenditure is incurred.

(2) If the cost of acquiring an asset by a licensee is exploration expenditure deducted under Subsection (1) and the licensee subsequently disposes of the asset, the business income of the licensee for the tax year in which the asset was disposed of includes the lower of the following amounts -

(a) the consideration for the disposal; or

(b) the amount deducted under Subsection (1).

(3) If the consideration for the disposal of an asset exceeds the amount deducted under Subsection (1) -

(a) the excess is included in the business income of the licensee under Section 23(1)(d)(iii) if the asset is held by the licensee on revenue account; or

(b) the excess is a capital gain if the asset is a taxable asset of the licensee.

- (4) The following applies to plant or machinery acquired by a licensee solely and exclusively for the purpose of undertaking exploration operations, and which is being used for that purpose -
- (a) for such plant and machinery depreciated on an individual asset basis under the straight-line method under Section 37, the depreciation rate is 100%; and
 - (b) for such plant and machinery depreciated on a pooling basis under the diminishing value method under Section 38, such plant or machinery constitutes a separate depreciation pool with a depreciation rate of 100%.

(5) Division 5 of Part IV applies to depreciable assets used in undertaking, or in connection with, exploration operations subject to the modifications in this section.

105. DEDUCTION FOR DEVELOPMENT EXPENDITURE.

(1) In this section, "commencement of commercial production" means the first day of the first period of 30 consecutive days during which the average level of production on the 25 highest production days in the 30-day period reaches a level considered to be commercial production as determined by -

- (a) for development operations under a mining project, the Director of the Department responsible for minerals matters under Section 10 of the *Mining Act 1992* or any successor position to that of Director; or
- (b) for development operations under a petroleum project, the Director of the Department responsible for petroleum matters under Section 11 of the *Oil and Gas Act 1998* or any successor position to that of Director.

(2) For the purposes of Division 5 of Part IV, development expenditure is a business intangible with an effective life equal to the estimated period of years of the development operations under the resource project to which the expenditure relates.

(3) Subject to Subsections (4) and (5), a depreciable asset used in development operations is depreciated as follows:

- (a) for a depreciable asset with an effective life of less than 10 years, the asset is depreciated using the pooling system on a diminishing value basis under Section 38 at a depreciation rate of 25%; and
- (b) for any other depreciable asset, the asset is depreciated on an individual asset basis using the straight-line method under Section 37 at a depreciation rate of 10%.

(4) Subject to Subsection (5), if, at the end of a tax year -

- (a) the estimated remaining period of years of a resource project is less than four whole years, the depreciation rate under Subsection (3)(a) for the remaining period of the project is equal to the percentage determined by dividing 100 by the estimated remaining period of years of the resource project; and
- (b) the estimated remaining period of years of a resource project is less than ten whole years, the depreciation rate under Subsection (3)(b) for the remaining period of the project is equal to the percentage determined by dividing 100 by the estimated remaining period of years of the resource project.

(5) Where the Commissioner General is not satisfied that the estimate made by a licensee of the remaining period of years of a resource project is a reasonable estimate, the estimated remaining period of years of the resource project for the purposes of Subsection (4) is such period, being not more than four or ten, as the case may be, as the Commissioner General determines as reasonable based on all available information.

(6) The depreciable assets to which Subsection (3)(a) applies form a separate depreciation pool for the purposes of Section 38.

Income Tax

(7) If, in relation to a resource project, a licensee incurs development expenditure or expenditure on the acquisition of a depreciable asset for use in development operations before the commencement of commercial production, this Act applies on the basis that the expenditure was incurred at the time of commencement of commercial production.

(8) The amount of the deduction for development expenditure or expenditure on the acquisition of a depreciable asset to which Subsection (3)(b) applies for the tax year in which the commencement of commercial production occurs is calculated according to the following formula:

$$A \times B/C$$

where -

- A. is the amount of the expenditure incurred before the commencement of commercial production; and
- B. is the number of days in the period beginning on the date of commencement of commercial production and ending on the last day of the tax year in which commercial production commenced; and
- C. is the number of days in the tax year in which commercial production commenced.

(9) If a licensee disposes of an interest in a development right (other than under a farm-out agreement), any gain arising on the disposal is reduced by any development expenditure incurred by the licensee to which Subsection (2) applies that is not included in the cost of the development right, and has not been deducted or recouped by the licensee at the time of the disposal.

106. CONTRIBUTIONS TO A DECOMMISSIONING FUND.

(1) In this section -

“decommissioning fund” means a fund or account required to be established under a resource right to provide for the future payment of remedial work in respect of a resource project covered by the resource right that is managed jointly by the licensee and -

- (a) for a mining project, the Director of the Department responsible for minerals matters under Section 10 of the *Mining Act 1992* or any successor position to that of Director; or
- (b) for a petroleum project, the Director of the Department responsible for petroleum matters under Section 11 of the *Oil and Gas Act 1998* or any successor position to that of Director; and

“remedial work” means work undertaken by a licensee or by another person on behalf of a licensee -

- (a) for a mining project, in rehabilitating or partly rehabilitating a mine site to its original state or an approximation of its original state; or
- (b) for a petroleum project, in decommissioning or partly decommissioning an oil or gas well and restoring the area of the well to its original state or an approximation of its original state.

(2) A contribution by a licensee to a decommissioning fund made in accordance with the terms of a resource right granted to the licensee is allowed as a deduction in the tax year in which the contribution was made.

(3) The deductions under Subsection (2) for contributions made to a decommissioning fund -

- (a) are allowed from the date that the contributions are required to be made under the terms of the resource right; and
- (b) the total deductible amount of the contributions must not exceed the amount of the required contributions under the resource right; and

Income Tax

- (c) the determination of the required contributions to be made under the resource right must take account of the expected accumulation of the interest income derived on the balance of the fund.

(4) Subject to Subsection (5), expenditure incurred by a licensee in carrying out remedial work in respect of a resource project is allowed as a deduction in the tax year in which the expenditure is incurred.

(5) A deduction is not allowed under Subsection (4) to the extent that the remedial work is paid for, directly or indirectly, from money made available out of the licensee's decommissioning fund.

(6) Amounts accumulated in a decommissioning fund or withdrawn from a decommissioning fund to pay for remedial work as required under a resource right are exempt income of the licensee.

(7) The contributions to a decommissioning fund, and the interest income derived on investment of those contributions, must remain in the fund until used in undertaking remedial work in respect of the resource project to which the fund relates.

(8) If contrary to Subsection (7), an amount is withdrawn from a decommissioning fund of a licensee other than to pay for remedial work as required under a resource right, the amount withdrawn is included in the assessable income of the licensee for the tax year in which the amount was withdrawn and the licensee is liable for a penalty equal to 10% of the amount included in assessable income.

(9) Any surplus in a decommissioning fund of a licensee at the time of completion of the resource project to which the fund relates that is returned to the licensee is included in the assessable income of the licensee for the tax year in which the operations are completed.

(10) Subsections (8) and (9) do not apply to any withdrawal or surplus that is not paid out of, or does not constitute, interest or deductible contributions to the decommissioning fund and, for this purpose, amounts paid out of a decommissioning fund are treated as paid first out of interest and deductible contributions.

107. FARM-OUT ARRANGEMENTS.

- (1) This section applies where the following conditions are satisfied -

- (a) a licensee (referred to as the "transferor") has entered into an agreement with a person (referred to as the "transferee") for the transfer of a part of the transferor's interest in a resource right; and
- (b) the consideration given by the transferee for the transferred interest wholly or partly includes the transferee undertaking some or all of the transferor's work commitments in respect of the interest in the resource right retained by the transferor.

- (2) Where this section applies -

- (a) the value of any work undertaken by the transferee in relation to the part of the interest retained by the transferor is not included in -
 - (i) the consideration received by the transferor for the transferred interest; or
 - (ii) the assessable income of the transferor; or
- (b) the following applies to any amount in money received or receivable by the transferor for the transferred interest -
 - (i) Section 26(2) applies to the amount in money on the basis that it is a recovery by the transferor of any deductions allowed for expenditure incurred by the transferor in respect of the transferred interest; and
 - (ii) if the amount in money exceeds the amount of deducted expenditure to which Section 26(2) applies, the excess is treated by the transferor and transferee as consideration for the transferred interest.

108. ADDITIONAL PROFITS TAX.

(1) An additional profit tax, or APT, is imposed for each tax year at the rate specified in Part 1 of Schedule 1 on a licensee who has a positive amount of accumulated net project receipts for a resource project for the year.

(2) The APT imposed on a licensee for a resource project for a tax year under Subsection (1) is calculated by applying the rate of tax referred to in Subsection (1) to the positive amount of accumulated net project receipts for a resource project for the year.

(3) A tax credit allowed to a licensee for a tax year under Section 148 is offset against the licensee's APT liability calculated under Subsection (2) for the tax year.

(4) The APT imposed under Subsection (1) is in addition to the income tax payable by the licensee on the taxable income of the licensee for the resource project for the year.

109. ACCUMULATED NET PROJECT RECEIPTS.

(1) The accumulated net project receipts of a licensee for a resource project for a tax year is calculated according to the following formula:

$$(A \times B) + C$$

where -

- A. is the accumulated net project receipts of the licensee for the project at the end of the previous tax year; and
- B. is 113%; and
- C. is the net project receipts of the licensee for the project for the current tax year.

(2) If a licensee pays APT for a resource project for a tax year, the amount of the accumulated net project receipts of the licensee for the project at the end of the year is zero.

110. NET PROJECT RECEIPTS.

(1) The net project receipts of a licensee for a resource project for a tax year is the gross project receipts for the project for the year reduced by the total deductible project expenditure of the licensee for the project for the year.

(2) The net project receipts of a licensee for a resource project for a tax year may be a negative amount.

111. GROSS PROJECT RECEIPTS.

(1) The gross project receipts of a licensee for a resource project for a tax year is the total of the following amounts:

- (a) the total assessable income derived by the licensee from the resource project for the year, other than a gain on disposal of a business asset; and
- (b) the consideration derived by the licensee for the disposal of a business asset in the year used in the resource project, but only if the expenditure incurred in acquiring the asset was deducted in calculating the net project receipts of the resource project; and
- (c) any amount that is a reimbursement or recovery of, or indemnity for, any expenditure previously deducted in calculating the net project receipts of the licensee for the project for any tax year, other than an amount included in Paragraph (a).

(2) If an amount referred to in Subsection (1) is attributable to a resource project of the licensee and to some other activity (including another resource project of the licensee), only that part of the amount that reasonably relates to the first-mentioned resource project is included in gross project receipts of the licensee for that project.

112. DEDUCTIBLE PROJECT EXPENDITURE.

(1) The total deductible project expenditure of a licensee for a resource project for a tax year is the total of the following amounts:

- (a) the total allowable deductions of the licensee for the project for the year, including exploration expenditure, but excluding the following:
 - (i) depreciation deductions and any initial allowance; and
 - (ii) the net loss carried forward under Section 35; and
 - (iii) interest (including interest capitalised under Section 29(8) for the year), finance charges, and hedging costs; and
- (b) the licensee's cost incurred in acquiring a depreciable asset and any other business asset during the year for use in the resource project, other than a cost referred to in Paragraph (a); and
- (c) any income tax payable by the licensee in respect of the taxable income of the licensee for the resource project for the year and any capital gains tax payable by a licensee during the year in respect of the disposal of a taxable asset the cost of which is included in deductible project expenditure under Paragraph (a) or (b).

(2) If an amount referred to in Subsection (1) is attributable to a resource project of the licensee and to some other activity (including another resource project), only that part of the amount that reasonably relates to the first-mentioned resource project is included in deductible project expenditure of the licensee for that project.

113. LANDOWNER RESOURCES TRUST.

(1) To the extent that a landowner resources trust derives assessable income from a resources project, either as an equity participant in the project or through any other derivation of assessable income from the project, and whether the project is carried on by the trust or any other person, this Division applies to the trust on the basis that it is a licensee.

(2) Where a landowner resources trust owns all the issued shares of a company that derives income referred to in Subsection (1), a dividend paid out of profits derived from such income is exempt income of the trust.

(3) For the purposes of Subsection (2), if a company has derived assessable income referred to in Subsection (1) and other assessable income, a dividend paid by the company is treated as paid first out of profits derived from income referred to in Subsection (1).

(4) Subject to Subsection (3), a dividend paid by a landowner resources trust to a beneficiary of the trust is exempt income of the beneficiary.

(5) In this section, a reference to a landowner resources trust includes a reference to the trustee of a landowner resources trust acting in that capacity.

(6) This section applies, with the necessary changes made, to a landowner resources trust with an interest in a landowner resources project referred to in Paragraph (b) of the definition of "landowner resources project" in Section 3.

114. USE OF DEPRECIABLE ASSET FOR MORE THAN ONE RESOURCE PROJECT.

(1) Where, during a tax year, a licensee uses a depreciable asset in more than one resource project, the depreciation deduction must be apportioned between the resource projects based on the extent of the use of the asset for each project.

(2) Where a depreciable asset to which Subsection (1) applies is disposed of by a licensee, the consideration for the disposal must be apportioned between the resource projects based on the extent of the use of the asset for each project.

(3) If a licensee using a depreciable asset wholly for a resource project transfers the asset for use wholly in another resource project, the licensee is treated as having -

- (a) disposed of the asset for the purposes of the first-mentioned project for a consideration equal to the written down value of the asset at the time of the transfer; and
- (b) acquired the asset for the purposes of the second-mentioned project for a consideration equal to the amount specified in Paragraph (a).

Division 2. - Insurance.

115. PROVISION FOR UNEXPIRED RISKS OF A GENERAL INSURANCE COMPANY.

(1) In this section, "general insurance business" has the meaning given to it in the *Insurance Act 1995*.

(2) A company carrying on a general insurance business is allowed a deduction for a tax year for the balance of the company's provision for unexpired risks as at the end of the tax year.

(3) The amount of the deduction allowed under Subsection (2) must not exceed the amount required for the provision under financial reporting standards.

(4) A company carrying on a general insurance business for a tax year must include in the assessable income of the company for the tax year the amount allowed as a deduction to the company under Subsection (3) in the prior tax year.

116. TAXATION OF LIFE ASSURANCE COMPANIES.

(1) The assessable income of a life assurance company does not include premiums received for policies of life assurance issued or consideration received for annuities granted.

(2) Expenditure incurred by a life assurance company exclusively in deriving amounts referred in Subsection (1) is not an allowable deduction.

(3) So much only of the expenditure incurred in a tax year in the general management of the business of a life assurance company as bears to that expenditure the same proportion as its assessable income bears to its total income is an allowable deduction.

(4) For the purposes of Subsection (3) -

- (a) the expenditure exclusively incurred in deriving assessable income, or exclusively incurred in deriving income that is not assessable income, is deemed not to be expenditure incurred in the general management of the business of the life assurance company; and
- (b) the total income of the life assurance company includes amounts referred to in Subsection (1).

Income Tax

(5) Where an actuarial valuation of liabilities of a life assurance company is made as at the end of a tax year, the "calculated liabilities" of the company at that date are -

- (a) where the basis of the valuation is compound interest at the rate of 4% per annum or more, the amount of that valuation; or
- (b) where the basis of the valuation is compound interest at a rate less than 4% and not less than 3½% per annum, 95% of that valuation; or
- (c) where the basis of the valuation is compound interest at a rate less than 3½% and not less than 3% per annum, 90% of that valuation; or
- (d) where the basis of the valuation is compound interest at a rate less than 3% per annum, 85% of that valuation.

(6) Where an actuarial valuation of liabilities is not made as at the end of a tax year, a calculation must be made of the proportion that the last preceding actuarial valuation of liabilities, as at some other date, bears to the value of all the assets of the company at that date, and the amount which bears the proportion to the value of all the assets of the company at the end of the tax year is deemed to be an actuarial valuation of liabilities made as at the end of that year on the same basis as that last preceding valuation.

(7) An amount equal to 3% of that part of the calculated liabilities of a life assurance company at the end of a tax year that bears to the calculated liabilities the same proportion as the value at that date of the assets from which the company derives assessable income bears to the value at that date of all the assets of the company is an allowable deduction.

(8) When the calculated liabilities at the end of a tax year exceed the value at that date of all the assets of the company, the company is not liable to pay income tax in respect of the income derived in that year from the business of life assurance.

Division 3. - Superannuation.

117. EMPLOYER CONTRIBUTIONS TO A SUPERANNUATION FUND.

(1) Subject to Subsections (2) and (3), an employer is allowed a deduction for the amount of a contribution paid by the employer in a tax year to an approved superannuation fund for the benefit of an employee.

(2) The total amount allowed as a deduction under Subsection (1) for a tax year is limited to 15% of the taxed employment income of the employee for the tax year.

(3) A deduction is allowed under Subsection (1) for a contribution made by an employer for the benefit of an employee only if the contribution is borne by the employer.

(4) An employer is not allowed a deduction for a contribution made to a non-approved superannuation fund.

(5) A contribution made by an employer to an approved or non-approved superannuation fund for the benefit of an employee is not included in the assessable income of the employee.

118. TAXATION OF A SUPERANNUATION FUND.

(1) An approved superannuation fund is liable for income tax on its taxable income for a tax year at the rate specified in Part 1 of Schedule 1.

(2) A non-approved superannuation fund is liable for income tax on its taxable income for a tax year at the rate specified in Part I of Schedule 1.

(3) The income derived during a tax year from investments held in a retirement savings account is, to the extent prescribed, exempt income.

(4) A contribution made to an approved or non-approved superannuation fund is exempt income of the fund.

119. TAXATION OF PAY-OUTS BY A SUPERANNUATION FUND.

(1) In this Division -

“retirement savings account” means moneys allocated by the trustee of an approved superannuation fund to a member for the purpose of paying that member’s entitlement to a pay-out by the fund in the form of periodic payments;

“taxed contribution”, in relation to an approved superannuation fund, means a contribution made to the fund to the extent that the contributor has not been allowed a deduction for the contribution.

(2) Subject to Subsection (3), a lump sum or pension paid by an approved superannuation fund to a member of the fund, or a dependent of a member of the fund, is liable to tax as follows:

- (a) any part of the pay-out that represents taxed contributions made to the fund is exempt income; and
- (b) the part of a pay-out not covered by Paragraph (a) is taxed at the rate specified in Part I of Schedule 1.

(3) A lump sum pay-out from an approved superannuation fund to a member of the fund where the member contributes the lump sum amount into a retirement savings account with the same or another approved superannuation fund shall not be taxed.

(4) An amount withdrawn from a retirement savings account during a tax year, not exceeding the prescribed amount, is exempt income.

(5) A lump sum or pension paid by a non-approved superannuation fund to a member of the fund, or a dependent of a member of the fund, is exempt income.

Division 4. - Primary Production.

120. VALUATION OF LIVESTOCK ACQUIRED BY NATURAL INCREASE.

(1) Subject to Subsection (2), the cost of an animal that a person conducting a primary production business holds as livestock, that was acquired by the person through natural increase, is the prescribed amount for the animal for the tax year in which the person acquired the animal.

(2) A person conducting a primary production business may elect to treat the actual cost of an animal referred to in Subsection (1) as the cost of the animal.

(3) A person must make an election under Subsection (2) in the approved form, and the election must be lodged with the Commissioner General by the due date for furnishing the person’s income tax return for the tax year in which the person acquired the animal, or by such later date as the Commissioner General may allow by notice in writing to the person.

(4) If there is no prescribed amount for an animal held by a person carrying on a primary production business, the cost of the animal is the actual cost incurred in acquiring the animal.

(5) Where Subsection (1) applies to a person conducting a primary production business, the person is not allowed a deduction for the actual cost of livestock acquired by natural increase.

121. INVOLUNTARY DISPOSALS OF LIVESTOCK BY AN INCOME TAXPAYER.

(1) In this section and Section 122 -

“disposal”, in relation to livestock, includes the death of the livestock;

“profit” in relation to the disposal of livestock to which this section applies, means the consideration for the disposal of the livestock reduced by the total of the following amounts:

- (a) for livestock held at the commencement of the tax year in which the livestock was disposed of, the closing value of the livestock for trading stock purposes at the end of the previous tax year as determined under Section 51; and
- (b) for livestock acquired during the tax year, the cost of the livestock, including as determined under Section 120 for livestock acquired by natural increase.

(2) This section applies where an individual who is an income taxpayer conducting a primary production business -

- (a) disposes of livestock during a tax year as a result of any of the following -
 - (i) the loss or destruction of pastures or fodder due to fire, drought, or flood and the Commissioner General is satisfied that the individual will use the consideration for the disposal to acquire replacement livestock; or
 - (ii) the livestock is destroyed under PNG law providing for the control or eradication of a disease or the livestock dies from such a disease; or
 - (iii) the land of the individual on which the livestock is pastured is compulsorily acquired under a PNG law; or
 - (iv) the taking of a lease of the individual's land by the State for the eradication of cattle tick; and
- (b) apart from this Section, the consideration for the disposal of the livestock would be included in the assessable income of the individual; and
- (c) the individual has a profit on disposal of the livestock.

(3) Where this Section applies, the individual may elect to include 20% of the profit on disposal of the livestock in the individual's assessable income for the tax year in which the livestock was disposed of and 20% in the individual's assessable income for each of the following four tax years.

(4) An election under Subsection (3) must be made in the approved form and lodged by the individual with the Commissioner General by the due date for furnishing the individual's income tax return for the tax year in which the individual disposed of the livestock or such later date as the Commissioner General may allow by notice in writing to the individual.

(5) Where an individual has made an election under Subsection (3) -

- (a) the consideration for the disposal of the livestock is not included in the individual's assessable income; and
- (b) the individual is not allowed a deduction for the value of the livestock in the tax year of disposal.

(6) Subject to Subsection (7), where an individual who has made an election under Subsection (3) ceases to be an income taxpayer because of death, insolvency, permanent departure from PNG, or other reason, the individual, or the executor of the estate of a deceased individual, must include the untaxed amount of the individual's profit in the individual's assessable income for the tax year in which the individual ceased to be an income taxpayer.

(7) Where an individual who has made an election under Subsection (3) becomes subject to tax under the small business tax, the untaxed amount of the consideration for the disposal of the livestock, at the time the individual becomes a small business taxpayer, is taxed in accordance with Section 122.

122. INVOLUNTARY DISPOSALS OF LIVESTOCK BY A SMALL BUSINESS TAXPAYER.

(1) This section applies if a small business taxpayer conducting a primary production business -

- (a) disposes of livestock during a quarter as a result of any of the events specified in Section 121(2)(a); and
- (b) apart from this Section, the consideration for the disposal of the livestock would be included in the turnover of the small business taxpayer.

(2) Where this section applies, the small business taxpayer may elect to include 20% of the consideration on disposal of the livestock in the person's turnover for the tax year in which the livestock was disposed of and 20% in the person's turnover for each of the following four tax years.

(3) A small business taxpayer liable to small business tax under Section 12(5) who has made an election under Subsection (2) is required to include 5% of the consideration for the disposal in the turnover of the person for the quarter in which the livestock was disposed of and 5% of the consideration in each of the following 19 quarters.

(4) An election under Subsection (2) must be made in the approved form and lodged by the small business taxpayer with the Commissioner General before the due date for furnishing the taxpayer's small business tax return for the quarter in which the taxpayer disposed of the livestock, or such later date as the Commissioner General may allow by notice in writing to the person.

(5) Subject to Subsection (6), where a small business taxpayer who has made an election under Subsection (2) ceases to be a small business taxpayer because of death, insolvency, permanent departure from Papua New Guinea, or other reason, the small business taxpayer, or the executor of the estate of a deceased small business taxpayer, must include the untaxed amount of the consideration for the disposal in the turnover of the small business taxpayer for the quarter in which the small business taxpayer ceased to be a small business taxpayer.

(6) Where a small business taxpayer who has made an election under Subsection (2) becomes subject to tax under the income tax, the untaxed amount of the consideration for the disposal of the livestock, at the time the small business taxpayer ceased to be a small business taxpayer, is taxed in accordance with Section 121.

123. PRIMARY PRODUCTION EXPENDITURE.

(1) In this section, "agricultural production business" means a business referred in Section 3 in the definition of "primary production" in Paragraphs (a) and (b).

(2) A person conducting a primary production business on land in PNG to derive assessable income is allowed a deduction as determined under Subsection (3) for expenditure incurred by the person during a tax year on any of the following:

- (a) the eradication or extermination of animal or vegetable pests from the land; or
- (b) the destruction and removal of timber, scrub, or undergrowth indigenous to the land; or
- (c) the destruction of weed or plant growth detrimental to the land; or
- (d) the preparation of the land for agriculture; or
- (e) the ploughing and grassing of the land for grazing purposes; or

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- (f) the draining of swamp or low-lying lands to improve the agricultural or grazing value of the land; or
 - (g) the prevention or combating of soil erosion on the land, other than by the erection of fences; or
 - (h) the construction of dams, earth tanks, underground tanks, irrigation channels or similar structural improvements, or the sinking of bores or wells, for the purpose of conserving or conveying water for use in conducting a primary production business on the land; or
 - (i) the construction of levee banks or similar improvements; or
 - (j) the construction on the land of roads, including bridges, culverts, or similar works forming part of a road; or
 - (k) the planting of the land with trees, including the purchase of seed, seedlings, cuttings, and similar material; or
 - (l) where the Commissioner General is satisfied that the land is in a district that is subject to the ravages of animal pests, the construction or alteration of fences on the land, being fences the sole purpose of which is to prevent animal pests entering upon the land or any part of the land; or
 - (m) the construction and improvement of plantation employees' accommodation, but not including the manager's residence or housing for any other employee deriving employment income exceeding the amount specified in Part 2 of Schedule 1; or
 - (n) plant or machinery used solely in an agricultural production business; or
 - (o) boats used by resident persons solely for the purpose of conducting fishing operations and any ancillary equipment fitted to such boats.
- (3) The deduction allowed under this section -
- (a) where the expenditure referred to in Subsection (1) is for the acquisition of a depreciable asset, the depreciation rate for the purposes of Division 5 of Part 4, is 100%; or
 - (b) for any other expenditure, is 100% of the amount of the expenditure.

Division 5. - Timber Operations.

124. COST OF FELLED TREES AS TRADING STOCK.

(1) Subject to Subsection (2), a person conducting the business of timber operations is allowed a deduction under Subsection (4) for a tax year for the capital cost of acquiring land that is carrying trees and either of the following applies:

- (a) the person felled some or all of the trees during the tax year for sale or for use by the person in manufacture to derive assessable income; or
- (b) another person felled some or all of the trees during the tax year under a right that the first-mentioned person granted to the other person in consideration for a royalty paid to the first-mentioned person.

(2) Subsection (1) applies only if the agreement for the sale of the land specifies the number of trees on the land and the part of the consideration that relates to those trees.

(3) A person conducting the business of timber operations is allowed a deduction under Subsection (4) for a tax year for the cost of acquiring a right to fell trees and either of the following applies:

- (a) the person felled some or all of the trees during the tax year for sale or for use by the person in manufacture to derive assessable income; or
- (b) another person felled some or all of the trees during the tax year under a right that the first-mentioned person granted to the other person in consideration for a royalty paid to the first-mentioned person.

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(4) A person to whom Subsections (1) and (3) applies may deduct in a tax year so much of the capital cost of the land or right, as the case may be, that is attributable to the felled trees during the year.

125. EXPENDITURE ON INFRASTRUCTURE FOR TIMBER OPERATIONS.

(1) A person conducting timber operations in Papua New Guinea to derive assessable income is allowed a deduction for expenditure incurred by the person on an access road, port, housing and welfare, or structural improvements in relation to such operations being expenditure that is not otherwise deductible under this Act.

(2) The expenditure referred to under Subsection (1) is deducted on a straight-line basis for a period of years equal to the lesser of -

- (a) a number equal to the number of whole years that the access road, port, housing and welfare, or structural improvement is estimated to be used by the person in conducting timber operations to derive assessable income; or
- (b) 15 years.

(3) If an asset of a person to which this Section applies has been disposed of by the person during a tax year, the business income of the person for that year includes the lesser of -

- (a) the consideration for the disposal; or
- (b) the amount deducted under this Section in relation to the asset.

Division 6. - Environment related Expenditure.

126. ENVIRONMENTAL PROTECTION EXPENDITURE.

(1) A person is allowed a deduction as determined under Subsection (2) for environmental protection expenditure incurred by the person during a tax year.

(2) The deduction allowed under Subsection (1) -

- (a) where the expenditure is for the acquisition of a depreciable asset, the depreciation rate for the purposes of Division 5 of Part 4, is 100%; and
- (b) for any other expenditure, it is 100% of the amount of the expenditure.

127. ENVIRONMENTAL IMPACT STUDY EXPENDITURE.

(1) In this section -

“environmental impact study expenditure” means expenditure to the extent incurred by a person for the sole or dominant purpose of assessing the environmental impact of an activity undertaken by the person in the production of assessable income, other than expenditure deductible under Section 104, 105, or 106;

“environmental protection expenditure” means expenditure, other than excluded expenditure, incurred by a person in relation to a site in Papua New Guinea for the sole or dominant purpose -

- (a) of preventing, combating, or remedying -
 - (i) pollution resulting, or likely to result, from activities that were, are, or are likely, to be carried on by the person in the production of assessable income; or
 - (ii) pollution of, or arising from, a site on which the person carried on, carries on, or proposes to carry on an activity (such activity including leasing of, or granting a right to use, that site) in the production of assessable income; or
- (b) of treating, cleaning up, removing, or storing -
 - (i) waste resulting, or likely to result, from an activity that was, is, or is proposed to be, carried on by the person in the production of assessable income; or

- (ii) waste that is on, or arising from, a site on which the person carried on, carries on, or proposes to carry on, an activity (such activity including leasing of, or granting a right to use, that site) in the production of assessable income; or

“excluded expenditure” means expenditure to the extent that it is -

- (a) incurred in respect of acquiring land, or a right, power, or privilege to do with land; or
- (b) of a capital nature in respect of constructing a building, structure, or structural improvement; or
- (c) of a capital nature in constructing an extension, alteration, or improvement to a building, structure, or structural improvement; or
- (d) for a bond or security for the performance of environmental protection activities; or
- (e) in respect of residential accommodation, health, education, recreation, or similar facilities, facilities for meals, or works carried out in connection with such accommodation or facilities; or
- (f) taken into account in calculating an amount of depreciation that is allowable as a deduction; or
- (g) environmental impact study expenditure to which Section 127 applies; or
- (h) expenditure deductible under Section 104, 105, or 106; or
- (i) any other expenditure as may be prescribed by Regulation.

(2) For the purposes of this Act, environmental impact study expenditure incurred by a person is treated as a business intangible with a useful life equal to the lesser -

- (a) of the period of whole years of the project to which the expenditure relates; or
- (b) of 10 years.

Division 7. - Tax Concessions.

128. PRESCRIBED INFRASTRUCTURE DEVELOPMENT EXPENDITURE.

(1) In this section, “eligible taxpayer” means -

- (a) a licensee as defined in Section 100; or
- (b) a person conducting a primary production business.

(2) Where an eligible taxpayer has, during a tax year, incurred prescribed infrastructure development expenditure, the amount of the expenditure incurred is treated as income tax paid by the eligible taxpayer for the tax year in an amount equal to the lesser -

- (a) of 2% of the assessable income derived by the eligible taxpayer for the tax year; or
- (b) of the eligible taxpayer’s assessed tax liability for the tax year before the allowance of any tax credit; or
- (c) the amount of the prescribed infrastructure development expenditure incurred during the tax year.

(3) The amount of prescribed infrastructure development expenditure treated under Subsection (2) as income tax paid by an eligible taxpayer for a tax year is credited against the eligible taxpayer’s income tax liability for the later of -

- (a) the tax year in which the prescribed infrastructure development expenditure is approved and incurred; or
- (b) the tax year in which the infrastructure development for which the prescribed infrastructure development expenditure under Subsection (1) was approved and incurred is certified as completed.

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(4) An eligible taxpayer must lodge a statement of proposed prescribed infrastructure development expenditure for a tax year with the Department responsible for national planning and monitoring matters for approval in accordance with the Regulations -

- (a) for an infrastructure development that commences during the year, by the commencement date of the project; or
- (b) for any other infrastructure development, by the commencement of the tax year.

(5) Subject to Subsection (6), where an eligible taxpayer has incurred prescribed infrastructure development expenditure in a tax year in excess of the amount treated as income tax under Subsection (2), the excess is carried forward to the next following tax year and treated as prescribed infrastructure development expenditure for that next tax year, and so on until the expenditure has been fully treated as income tax.

(6) Prescribed infrastructure development expenditure incurred by an eligible taxpayer may be carried forward under Subsection (5) for no more than 7 tax years after the end of the tax year in which the expenditure is allowed as a credit under Subsection (2).

(7) Where an eligible taxpayer has an excess carried forward under Subsection (5) for more than one tax year, the excess of the earliest tax year is to be credited first.

129. RURAL DEVELOPMENT INCENTIVE.

(1) In this section -

“rural development area” means a prescribed rural area but not including any such area in which is situated a Petroleum Development Licence issued under the *Oil and Gas Act 1998* or a Special Mining Lease issued under the *Mining Act 1992*;

“rural development business” means a prescribed industry, which may include a service, primary, or other industry, but does not include -

- (a) the exploration, exploitation, extraction, processing, or transportation of the non-renewable natural resources of Papua New Guinea; or
- (b) a business that is not conducted through a fixed place of business located in the rural development area.

(2) The rural development income of a person for a tax year is the amount remaining after deducting from the assessable income derived by the person in carrying on a rural development business in a rural development area all allowable deductions relating to the rural development business for the year.

(3) The rural development income of a person is exempt income for the period -

- (a) commencing on the date that the person commenced conducting the rural development business in the rural development area; and
- (b) ending on the last day of the tenth full tax year following the date specified in Paragraph (a).

(4) For the purposes of this Act, Section 79 applies on the basis that the income derived by a person from the conduct of a rural development business in a rural development area to which Subsection (2) applies is a separate class of income.

(5) If the price in a transaction between a person to whom Subsection (2) applies and an associate of the person is not consistent with the arm's length price, the Commissioner General may, for all purposes of this Act, substitute the arm's length price for the actual price in the transaction.

(6) Where a person carrying on a rural development business to which Subsection (2) applies sells the business, the period of exemption under Subsection (3) available to the purchaser of the business is limited to the unexpired period of the exemption available to the seller at the time of the sale.

(7) If, in any tax year, the deductions which would have been allowable deductions but for rural development income being exempt income exceed the amount of assessable income referred to in Subsection (2) resulting in a loss, the loss is treated as a loss incurred in deriving assessable income and is deductible in accordance with the provisions of Section 35 in calculating rural development income in the following tax year.

PART VIII. - ANTI-AVOIDANCE.

130. INCOME SPLITTING.

(1) This section applies where a person attempts to split income with an associate for the purpose, or purposes that include the purpose, of lowering the total income tax payable on the income -

- (a) by the person transferring income, or the right to income, directly or indirectly, to the associate; or
- (b) by the person transferring or donating property, including money, directly or indirectly, to the associate with the result that the associate receives or enjoys the income from that property or from the investment of the money; or
- (c) by the person making a payment to the associate for services provided by the associate in excess of the fair market value of the services or where the person has no economic need for the services; or
- (d) by any other means.

(2) Where this section applies, the Commissioner General must adjust the taxable income and tax credits of both persons to prevent any reduction in tax payable as a result of the splitting of income.

(3) In determining whether a person has attempted to split income, the Commissioner General must consider the value, if any, given by the associate for the transfer.

131. TAX AVOIDANCE SCHEMES.

(1) In this section -

“scheme” includes -

- (a) an agreement, arrangement, promise, or undertaking, whether express or implied and whether or not enforceable by legal proceedings; and
- (b) any plan, proposal, course of action, or course of conduct; and
- (c) for the avoidance of doubt, a scheme includes any unilateral action;

“tax benefit” means -

- (a) a reduction in a liability of a person to pay tax; and
- (b) a postponement of a liability of a person to pay tax; and
- (c) any other avoidance of a liability of a person to pay tax.

(2) Tax avoidance scheme applies where the Commissioner General is satisfied that -

- (a) a scheme has been entered into or carried out; and
- (b) a person has obtained a tax benefit in connection with the scheme; and
- (c) having regard to the substance of the scheme, it would be concluded that a person, or one of the persons, who entered into or carried out the scheme, did so for the sole or principal purpose of enabling the person to obtain the tax benefit referred to in Paragraph (b).

(3) Notwithstanding anything in this Act, when this section applies, the Commissioner General shall determine the tax liability of a person who obtained a tax benefit, and of any other person related to the scheme, as if the scheme had not been entered into or carried out or in such manner as in the circumstances the Commissioner General considers appropriate for the prevention or reduction of the tax benefit.

(4) Where the Commissioner General makes a determination under Subsection (3), the Commissioner General shall serve a notice of a tax assessment (including an amended assessment) on any person whose tax liability is adjusted as a result of the determination so as to give effect to the determination.

(5) Where a tax assessment under Subsection (4) is an amended assessment, the notice of the amended assessment must be served within the time limit specified in Section 18 of the ***Tax Administration Act 2017***.

132. COUNTERING ARRANGEMENTS TO CONVERT AN EMPLOYEE INTO AN INDEPENDENT CONTRACTOR.

(1) An individual who has entered into a contract for service with another person is treated as an employee of the other person unless the individual substantially satisfies the following:

- (a) the individual is in business on their own account, and is responsible for the success or failure of the business and can make a profit or loss; and
- (b) the individual can decide the work that is done, and when, where, and how the work is done; and
- (c) the individual can hire someone else to do the work; and
- (d) the individual is responsible for fixing any unsatisfactory work in their own time and on their own account; and
- (e) a fixed remuneration is agreed for the work, which does not depend on how long the job takes to finish; and
- (f) the total assessable income of the individual does not consist of more than 80% of the total remuneration received for services rendered to one person; and
- (g) the individual finances the acquisition of business assets and the covering of their operating costs, and provides their own tools and equipment necessary for the work to be done; and
- (h) the individual can work for more than one person.

(2) If an individual is treated as an employee of a person under this section then for the purposes of the Act, the amounts paid by the person to the individual are treated as employment income and the person is responsible to withhold tax under Section 149 from the payments made.

PART IX. - GENERAL PROCEDURAL RULES.

133. APPLICATION OF THE TAX ADMINISTRATION ACT.

The ***Tax Administration Act 2017*** applies for the purposes of the administration of this Act but subject to this Part and Part 10.

Division 1. - Income Tax Procedural Rules.

134. INCOME TAX RECORD-KEEPING.

(1) An income taxpayer shall keep such accounts, documents, and records as are necessary to enable the calculation of the income tax (including a nil amount) payable by, or the net loss of, the income taxpayer for a tax year.

(2) An income taxpayer is disallowed a deduction where the income taxpayer is unable, without reasonable excuse, to produce documentary evidence relating to the circumstances giving rise to the claim for the deduction.

(3) An expenditure incurred by an income taxpayer is -

- (a) not included in the cost of an asset of the income taxpayer; or
- (b) taken into account in the calculation of a net gain or loss of the income taxpayer from the conduct of a venture or concern in the nature of trade or a profit making undertaking or scheme,

where the income taxpayer is unable, without reasonable excuse, to produce documentary evidence relating to the circumstances giving rise to the inclusion of the amount in the cost of the asset or the taking into account of the amount in the calculation of a net gain or loss.

(4) An income taxpayer shall maintain evidence that any income derived by the income taxpayer is exempt income.

(5) The Regulations may specify records that must be maintained by an income taxpayer.

135. FURNISHING OF INCOME TAX RETURN.

(1) Subject to Section 136, an income taxpayer must furnish an income tax return for a tax year with the Commissioner General -

- (a) for a company where the return is prepared by a registered tax agent, within 9 months after the end of the tax year; or
- (b) for any another company, within 6 months after the end of the tax year; or
- (c) for any other income taxpayer, within 3 months after the end of the tax year.

(2) An income tax return for a tax year furnished by a non-resident conducting business in Papua New Guinean through a permanent establishment must include the repatriated profit of the permanent establishment for the year.

(3) A partnership shall furnish an income tax return for a tax year with the Commissioner General within 3 months after the end of the tax year.

(4) A partnership income tax return required to be furnished under Subsection (3) is separate from the income tax return that a partner in the partnership is required to furnish under this Section.

(5) A trustee of a trust shall furnish an income tax return for the trust with the Commissioner General within 3 months after the end of the tax year.

(6) A trustee income tax return required to be furnished under Subsection (5) is separate from -

- (a) the income tax return that the trustee is required to furnish under this Section in their personal capacity; and
- (b) the income tax return that a beneficiary of the trust is required to furnish under this Section.

136. INCOME TAX RETURN NOT REQUIRED.

(1) The following persons are not required to furnish an income tax return for a tax year -

- (a) subject to Subsection (2), an individual, where the only assessable income derived by the individual during the tax year consists solely of employment income from which amounts have been withheld under Section 149; or

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- (b) a non-resident person whose only Papua New Guinea source income is subject to non-resident tax under Section 14(1)(a) or (c); or
- (c) a person specified in the Regulations as not required to furnish an income tax return.

(2) Where an individual is not required to furnish an income tax return under Subsection (1)(a) for a tax year and the individual's salary and wages tax liability for the year exceeds the amount withheld from that individual's employment income for the year, the Commissioner General shall serve the individual with a notice of a tax assessment for the additional tax payable.

(3) Any additional tax payable by an individual under Subsection (2) is due on the date for payment specified in the notice of the tax assessment.

- (4) The Commissioner General may serve a notice of assessment under Subsection (2) -
- (a) in the case of fraud or wilful neglect, at any time; or
 - (b) in any other case, within 2 years after the end of the tax year to which the assessment relates.

(5) An individual who is not required to furnish an income tax return for a tax year under Subsection (1)(a) may choose to furnish a return for the year if the amount withheld under Section 149 from the individual's employment income for the year exceeds the individual's income tax liability for the year or if the individual wishes to claim a deduction under Section 33 or 57.

(6) An individual who chooses to furnish an income tax return under Subsection (5) shall furnish the return within 1 year after the end of the tax year to which the return relates or within such further time as the Commissioner General, by notice in writing, allows.

137. PAYMENT OF INCOME TAX.

(1) Subject to Subsection (3), the income tax payable by an income taxpayer for a tax year is due on the date that the income tax return of the income taxpayer for the year is due to be furnished with the Commissioner General.

(2) The non-resident tax payable for a tax year by a non-resident person conducting business in Papua New Guinea through a permanent establishment is due at the same time as the non-resident person's income tax is due for the year.

(3) Where the income tax return furnished by an income taxpayer under Section 135 for a tax year is not a self-assessment return, the income tax payable for the tax year is due on the date specified in the notice of assessment for the tax year served on the taxpayer by the Commissioner General.

(4) The due date specified in Subsection (3) for income tax payable by an income taxpayer for a tax year applies also to -

- (a) any non-resident tax referred to in Subsection (2) payable by the taxpayer for the year; and
- (b) any additional profits tax referred to in Subsection 147(2) payable by the taxpayer for the year.

138. PROVISIONAL INCOME TAX.

(1) In this section, "instalment period", in relation to an income taxpayer for a tax year, means the period of three months ending on the last day of the third, sixth, and ninth months of the income taxpayer's tax year.

Income Tax

(2) Subject to Subsection (3), an income taxpayer is liable to pay three instalments of provisional tax for a tax year by the last day of the month following the end of the third, sixth, and ninth months of the income taxpayer's tax year.

(3) This section does not apply to an income taxpayer for a tax year where the income taxpayer is an individual and the taxable income of the individual for the tax year is reasonably expected to be below the tax-free threshold for the income tax specified in Part 1 of Schedule 1.

(4) Subject to Subsections (5) and (6), the amount of each instalment referred to in Subsection (1) of an income taxpayer for a tax year is calculated according to the following formula -

$$\frac{1}{3} \times (A - B)$$

where -

A is the income taxpayer's most recent assessed income tax liability for a tax year, including under a self-assessment, after reduction of any foreign tax credit allowed to the income taxpayer for that year and multiplied by the uplift factor specified in the Regulations; and

B is so much of **A** that was paid by amounts withheld under Part X.

(5) Subject to Subsection (6), where an income taxpayer -

(a) had a net loss under the most recently furnished income tax return; or

(b) has commenced to be an income taxpayer during the current tax year,

the amount of each instalment under Subsection (4) for the current tax year is 2% of the income taxpayer's total assessable income for the instalment period to which the instalment relates other than assessable income subject to withholding tax.

(6) An income taxpayer may elect for a variation in the amount of each instalment of provisional tax payable by the income taxpayer for the current tax year where the income taxpayer has reasonable grounds for believing that -

(a) the income tax payable for the current tax year will be less than that payable for the previous tax year; or

(b) the income taxpayer will have a nil income tax liability or a net loss for the current tax year.

(7) An election by an income taxpayer under Subsection (6) for a tax year shall -

(a) be in the approved form; and

(b) be lodged with the Commissioner General by the due date for the income taxpayer's first provisional tax payment for the tax year or such later date as the Commissioner General may allow; and

(c) where Subsection (6)(b) applies, include an estimate of the income taxpayer's income tax liability for the current tax year.

(8) Where an income taxpayer makes an election under Subsection (6), the amount of each instalment (including a nil amount) is to be based on the income taxpayer's estimated income tax liability for the current year.

(9) Each instalment of income tax paid by an income taxpayer for a tax year is allowed as a tax credit against the income tax liability of the income taxpayer for the year and any excess credit is applied in accordance with Section 51 of the *Tax Administration Act 2017*.

139. COLLECTION OF INTERNATIONAL TRANSPORTATION INCOME TAX FROM NON-RESIDENT SHIP OWNERS OR CHARTERERS.

- (1) Subject to Subsection (2), before the grant of a clearance for a ship owned or chartered by a non-resident person for departure from Papua New Guinea, the captain or chief commanding officer of the ship, or the shipping agent in Papua New Guinea for the non-resident person, must -
- (a) furnish the Commissioner General with an international transportation income tax return showing the gross amount derived from the carriage of passengers, livestock, mail, merchandise, or goods embarked or loaded in PNG in respect of the ship and the international transportation income tax payable in relation to that amount; and
 - (b) pay the international transportation income tax due in respect of the ship at the time that the return is furnished.
- (2) The Commissioner General may, by notice in writing, allow a non-resident owner or charterer of a ship to furnish an international transportation income tax return and pay international transportation income tax within 20 days after departure of the ship from PNG provided the non-resident owner or charterer of the ship has made satisfactory arrangements for payment of any international transportation income tax due in respect of the ship.
- (3) A ship operated by a non-resident owner or charterer is to be cleared to leave Papua New Guinea only where -
- (a) the international transportation income tax due in respect of the ship has been paid or Subsection (2) applies in relation to the ship; or
 - (b) no international transportation income tax is payable in respect of the ship.
- (4) This Section does not relieve the non-resident owner or charterer of the ship from liability to pay any international transportation income tax due that is not paid by the captain or chief commanding officer of the ship, or the owner or charterer's shipping agent in PNG.
- (5) The captain, chief commanding officer, or shipping agent in Papua New Guinea to whom Subsection (1) applies is treated as the representative of the non-resident owner or charterer of the ship for the purposes of the *Tax Administration Act 2017*.

140. COLLECTION OF INTERNATIONAL TRANSPORTATION INCOME TAX FROM NON-RESIDENT AIRCRAFT OWNERS OR CHARTERERS.

- (1) Subject to Subsection (2), before the grant of a clearance for an aircraft owned or chartered by a non-resident person for departure from Papua New Guinea, the pilot of the aircraft or the agent in Papua New Guinea for the non-resident person must -
- (a) furnish an international transportation income tax return with the Commissioner General showing the gross amount derived from the carriage of passengers, livestock, mail, merchandise, or goods embarked or loaded in Papua New Guinea in respect of the aircraft and the international transportation income tax payable in relation to that amount; and
 - (b) pay the non-resident international transportation income tax due in respect of the aircraft at the time that the return is furnished.
- (2) On application in writing by the non-resident owner or charterer of an aircraft that regularly flies to PNG, the Commissioner General may allow the owner or charterer to furnish international transportation income tax returns and pay international transportation income tax quarterly.

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(3) Where Subsection (2) applies, the due date for furnishing an international transportation income tax return for a quarter and paying the tax due under the return is the last day of the month following the end of the quarter.

(4) An aircraft operated by a non-resident owner or charterer is to be cleared to leave PNG only where -

- (a) the international transportation income tax due in respect of the aircraft has been paid or Subsection (2) applies in relation to the aircraft; or
- (b) no international transportation income tax is payable in respect of the aircraft.

(5) Where Subsection (1) applies, this Section does not relieve the non-resident owner or charterer of the aircraft from liability to pay any international transportation income tax due that is not paid by the pilot of the aircraft or the owner or charterer's agent in PNG.

(6) The pilot or agent in PNG to whom Subsection (1) applies is treated as the representative of the non-resident owner or charterer of the aircraft for the purposes of the *Tax Administration Act 2017*.

Division 2. - Small Business Tax Procedural Rules.

141. SMALL BUSINESS TAX RECORD-KEEPING.

(1) A small business taxpayer must keep the following:

- (a) a record of sales, including cash and credit sales; and
- (b) where the small business taxpayer employs employees, a record of the employment income paid to employees; and
- (c) quarterly inventory records.

(2) The records referred to in Subsection (1) must be retained for 3 years after the end of the quarter to which they relate.

(3) A small business taxpayer must maintain evidence for the period specified in Subsection (2) that any income derived by the small business taxpayer is exempt income.

(4) A small business taxpayer must maintain a bank account solely for business purposes unless exempted by the Commissioner General.

(5) The Regulations may specify the records that must be maintained by a small business taxpayer.

142. FURNISHING OF SMALL BUSINESS TAX RETURN.

(1) A small business taxpayer to whom Section 12(4) applies must furnish a small business tax return for a tax year with the Commissioner General within 28 days after the end of the tax year.

(2) A small business taxpayer to whom Section 12(5) applies must furnish a small business tax return for a quarter with the Commissioner General within 28 days after the end of the quarter.

143. PAYMENT OF SMALL BUSINESS TAX.

(1) The small business tax payable by a small business taxpayer to whom Section 12(4) applies for a tax year is due on the date that the small business tax return for the year is due.

(2) The small business tax payable by a small business taxpayer to whom Section 12(5) applies for a quarter is due on the date that the small business tax return for the quarter is due.

Division 3. - Capital Gains Tax Procedural Rules.

144. CAPITAL GAINS TAX RECORD-KEEPING.

- (1) A person must keep records -
 - (a) relating to the acquisition and disposal of a taxable asset; and
 - (b) relating to the calculation of a capital gain or capital loss on disposal of a taxable asset; and
 - (c) evidencing that an asset is an exempt asset.

(2) The Commissioner General may disallow the inclusion of an amount of expenditure in the cost of a taxable asset of a person where the person is unable, without reasonable excuse, to produce a receipt or other record of the expenditure.

145. FURNISHING OF CAPITAL GAINS TAX RETURN.

- (1) A person disposing of a taxable asset must furnish a capital gains tax return in relation to the disposal with the Commissioner General -
 - (a) where the transfer document is required to be stamped under the *Stamp Duties Act* (Chapter 117), by the earlier of -
 - (i) the due date for stamping; or
 - (ii) the 21st day of the month following the month in which the disposal of the asset occurred; or
 - (b) in any other case, by the 21st day of the month following the month in which the disposal of the asset occurred.

(2) A person who makes a capital loss on disposal of a taxable asset can carry the capital loss forward under Section 82 only if the person has furnished a capital gains tax return in relation to the disposal in accordance with Subsection (1).

146. PAYMENT OF CAPITAL GAINS TAX.

The capital gains tax payable by a person in respect of the disposal of a taxable asset is due on the due date for furnishing the person's capital gains tax return in respect of the disposal.

Division 4. - Additional Profits Tax Procedural Rules.

147. ADDITIONAL PROFITS TAX RETURN AND PAYMENT.

(1) A licensee must furnish an additional profits tax return for a tax year with the Commissioner General by the same date as the licensee's income tax return is due for that year.

(2) The additional profits tax payable by a licensee for a tax year is payable at the same time as the licensee's income tax is due for the year.

148. PROVISIONAL TAX PAYMENTS OF ADDITIONAL PROFITS TAX.

(1) A licensee who is liable for additional profits tax for a resource project for a tax year is liable to pay three instalments of the tax on the same days that the provisional tax payments payable by the licensee for that year under Section 138 are due.

(2) The amount of each instalment is one-third of the licensee's liability for additional profits tax for the resource project for the preceding tax year.

(3) A licensee is not liable for instalments of additional profits tax for a resource project for a tax year if the licensee did not have an additional profits tax liability in the previous tax year.

(4) Section 138(6), (7), (8), and (9) apply to instalments of additional profits tax with the necessary changes made.

PART X. - WITHHOLDING TAX.

149. WITHHOLDING OF TAX FROM EMPLOYMENT INCOME AND SUPERANNUATION PAYMENTS.

(1) Subject to Subsection (2), an employer must withhold tax from the gross amount of employment income paid to an employee as specified in Schedule 6.

(2) Subsection (1) does not apply to an amount included in employment income under Sections 19(2)(e) and 20.

(3) For the purposes of this section, the value of non-cash benefits determined under Schedule 2 provided by an employer to an employee is included in employment income for the fortnight in which the benefit is provided to the employee.

- (4) The obligation of an employer to withhold tax under Subsection (1) -
- (a) is not reduced or extinguished because the employer has a right, or is otherwise obliged, to withhold any other amount from employment income of an employee; and
 - (b) applies notwithstanding any law that provides that the employment income of an employee is not to be reduced or subject to the legal process of attachment.

(5) An approved or non-approved superannuation fund must withhold tax from a payment made by the fund to a member of the fund, or a dependant of a member, as specified in Schedule 6.

150. WITHHOLDING OF TAX FROM PRESCRIBED ROYALTY PAYMENTS.

(1) In this section -

“customary landowner” means the traditional owner or owners of customary land in relation to which activities giving rise to a prescribed royalty payment are undertaken;

“prescribed royalty” means an amount paid to, or on behalf of, a customary landowner that -

- (a) arises out of any of the following activities:
 - (i) activities, including incidental or ancillary activities, undertaken under a resource project; and
 - (ii) fishing operations, including incidental or ancillary activities relating to fishing operations; and
 - (iii) timber operations, including incidental or ancillary activities relating to timber operations; and
- (b) is payable by reason of the activity being performed on, or in the vicinity of, customary land or waters adjacent to customary land.

(2) A person who pays a prescribed royalty to a customary landowner must withhold tax from the gross amount of the payment at the rate specified in Part 1 of Schedule 1.

151. WITHHOLDING OF TAX FROM DIVIDEND AND INTEREST PAYMENTS TO RESIDENTS.

(1) Subject to Subsections (2) and (3), a resident company that pays a dividend to a resident individual, resident partnership, or resident trust shall withhold tax from the gross amount of the dividend at the rate specified in Part 1 of Schedule 1.

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(2) A resident company shall not withhold tax under Subsection (1) from a dividend paid to a resident partnership or resident trust to the extent that another resident company is entitled to the dividend as specified by the trustee of the trust or the partnership in a notice in writing, in the approved form, given to the first-mentioned resident company prior to the payment of the dividend.

(3) A non-profit body, or a company or trust that was formerly a non-profit body, that pays a dividend out of income that is exempt income under Clause (1) of Part I of Schedule 1 to a resident person must withhold tax from the gross amount of the dividend at the rate specified in Schedule 1 for the dividend.

(4) A resident company or a permanent establishment in PNG of a non-resident person that pays interest to a resident individual, resident partnership, or resident trust must withhold tax from the gross amount of the interest at the rate specified in Part IV of Schedule 1.

152. WITHHOLDING OF TAX FROM PAYMENTS TO NON-RESIDENTS.

(1) Subject to Subsection (2), a resident person or a permanent establishment in PNG of a non-resident person making a payment of income that is subject to non-resident tax under Section 14(1)(a) or (c) must withhold tax from the gross amount paid at the non-resident tax rate specified in Part 1 of Schedule 1 for the income.

(2) Subsection (3) applies where the following conditions are satisfied:

- (a) a resident partnership or resident trust derives income referred to in Section 14(1)(a); and
- (b) a non-resident partner or non-resident beneficiary, as the case may be, is entitled to the whole or part of the income referred to in Paragraph (a); and
- (c) the income would have been subject to non-resident tax if it had been paid directly to the non-resident partner or non-resident beneficiary.

(3) Where the conditions in Subsection (2) are satisfied, the resident partnership or the trustee of the resident trust, as the case may be, must withhold tax from the income in accordance with Subsection (1) to the extent that a non-resident partner or non-resident beneficiary, as the case may be, is entitled to the income.

(4) A non-profit body, or a company or trust that was formerly a non-profit body, that pays a dividend out of income that is exempt income under Clause (1) of Part IV of Schedule 3 to a non-resident person must withhold tax from the gross amount of the dividend paid at the non-resident tax rate specified in Part 1 of Schedule 1 for the dividend.

(5) Subject to Subsections (6) and (7), where the person disposing of a taxable asset is a non-resident person (referred to as the "*transferor*"), the person acquiring the asset (referred to as the "*transferee*") must withhold tax from the gross amount of the consideration given for the asset at the rate specified in Part 1 of Schedule 1.

(6) Subsection (5) does not apply where Section 102 applies.

(7) The transferor or transferee may apply to the Commissioner General, in the approved form, for a variation in the rate of withholding tax under Subsection (4), and the Commissioner General may, by notice in writing to the transferee, vary the rate of withholding tax to such other rate (including a zero rate) as notified.

(8) This Part applies to tax withheld under Subsection (5) on the basis that -

- (a) the transferee is a withholding agent; and

- (b) the consideration for the disposal of a taxable asset is withholding income.

153. WITHHOLDING OF TAX FROM BUSINESS INCOME PAYMENTS AND PAYMENTS FOR PRESCRIBED PRODUCTS.

- (1) In this section -

“authorised dealer” means any person authorised by the law of Papua New Guinea to acquire prescribed products for resale or to act as a central marketing body;

“business income payee” means a person who receives or is entitled to receive a business income payment;

“business income payment” means a payment of a kind specified in Schedule 7 to be a business income payment;

“paying authority” means a person making a business income payment other than an individual making payments that are wholly or principally of a private or domestic nature;

“prescribed product” means a product prescribed for the purposes of this Section; and

“relevant period”, concerning an application for a nil withholding authority, means -

- (a) the period of four years immediately preceding the date of the application; or
- (b) for an applicant who has not conducted business for the period specified in Paragraph (a), the period determined by the Commissioner General.

(2) A paying authority making a business income payment to a business income payee must withhold tax from the gross amount of the payment at the rate specified in Part 1 of Schedule 1 unless the business income payee provides the paying authority with a copy of a nil withholding authority issued to the payee and in force at the time of the payment.

(3) A business income payee may apply, in the approved form, to the Commissioner General for the issue of a nil withholding authority.

(4) The Commissioner General shall issue a nil withholding authority, and such official copies of the authority as the Commissioner General determines, to a business income payee (referred to as the “applicant”) if the Commissioner General is satisfied that -

- (a) the applicant has regularly conducted business in PNG during the relevant period; and
- (b) for each business conducted during the relevant period by the applicant, the applicant has -
 - (i) maintained accounting and tax records that correctly record and explain the transactions and financial position of the business, including preparing annual statements of income and expenditure, and assets and liabilities; and
 - (ii) conducted the business at or from established premises advertised to the public as being premises from which the business is carried on; and
 - (iii) conducted all financial transactions relating to the business through a bank account or bank accounts that are separate from any private or domestic bank account maintained by the applicant; and
- (c) the applicant has satisfactorily complied with their obligations under all Acts administered by the Commissioner General during the relevant period; and
- (d) the applicant has satisfied the matters referred to in the preceding Paragraphs and there are reasonable grounds for believing that the applicant will continue to satisfy the matters referred to in the preceding Paragraphs after a nil withholding authority is issued.

(5) A nil withholding authority remains in force for the period specified in the authority unless revoked earlier by the Commissioner General under Subsection (6).

(6) The Commissioner General shall revoke a nil withholding authority issued to a business income payee if the payee has failed to comply with any of the requirements specified in Subsection (4)(a), (b), and (c).

(7) An authorised dealer who has made a payment for a prescribed product must withhold tax from the gross amount of the payment at the rate specified in Part 1 of Schedule 1.

(8) The Commissioner General may, for the purposes of meeting the unique circumstances of a particular case or of a specific class of cases, by notice in writing to a person -

- (a) exempt that person from an obligation to withhold tax under Subsection (7); or
- (b) vary the amount of tax to be withheld under Subsection (7) from a payment for a particular prescribed product.

154. NO WITHHOLDING FROM EXEMPT INCOME.

A withholding agent is not liable to withhold tax from withholding income that is exempt income of the recipient.

155. TIME OF WITHHOLDING.

(1) Subject to Subsection (2), a withholding agent required to withhold tax from withholding income paid by the agent shall withhold the tax at the earlier of the time the withholding income is -

- (a) applied on behalf of the recipient of the income either at the instruction of the recipient or under any law; or
- (b) reinvested, accumulated, or capitalised for the benefit of the recipient; or
- (c) credited to an account for the benefit of the recipient; or
- (d) actually paid or otherwise made available to the recipient.

(2) A resident partnership or trustee of a resident trust must withhold tax under Section 152(3) at the time that the partner or beneficiary is entitled to the income.

156. WITHHOLDING TAX RECORDS.

A withholding agent must keep records of the following -

- (a) the amount of withholding income paid by the agent; and
- (b) the amount of tax withheld by the agent from each payment of withholding income.

157. WITHHOLDING TAX CERTIFICATE.

(1) A withholding agent who has withheld tax from withholding income under this Part must, by the due date for payment of withholding tax under Section 158, furnish the recipient of the withholding income with a withholding tax certificate, in the approved form, showing the amount of the payment made and the tax withheld from the payment.

(2) The Regulations may require a withholding agent to provide an annual withholding tax statement to a recipient of withholding income the withholding agent pays.

158. PAYMENT OF WITHHOLDING TAX TO COMMISSIONER GENERAL.

(1) A withholding agent must furnish a withholding tax return and pay withholding tax to the Commissioner General -

- (a) for withholding tax under Section 149, by the 7th day of the month following the month in which the employment income was paid; and
- (b) for any other withholding tax, by the 21st day of the month following the month in which the withholding income was paid.

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(2) Subject to Subsection (3), the Commissioner General may recover withholding tax from either the withholding agent or the recipient of the withholding income where the withholding agent -

- (a) fails to withhold the tax as required under this Part; or
- (b) having withheld the tax, fails to pay the withheld tax to the Commissioner General as required under Subsection (1).

(3) The Commissioner General may recover withholding tax from the recipient of the withholding income under Subsection (2)(b) only where the recipient is a party to an arrangement under which the withheld tax is not paid to the Commissioner General.

(4) A withholding agent who pays withholding tax to the Commissioner General in the circumstances referred to in Subsection (2)(a) is entitled to recover the tax from the recipient of the withholding income.

(5) Notwithstanding the recovery of withholding tax from the recipient of the withholding income under Subsection (2), a withholding agent who fails to withhold the tax continues to be liable for the following -

- (a) any legal action in relation to the failure; and
- (b) the imposition of late payment interest and penalty with respect to the failure.

159. ANNUAL WITHHOLDING TAX STATEMENT.

(1) A withholding agent shall furnish an annual withholding tax statement for a fiscal year with the Commissioner General within 3 months after the end of the year.

(2) An annual withholding tax statement is treated as a tax return for the purposes of the *Tax Administration Act 2017*.

160. CREDIT FOR WITHHOLDING TAX.

(1) In this section, "taxpayer" means -

- (a) an income taxpayer; or
- (b) an employee liable for salary and wages tax.

(2) Except where Section 161 applies, a taxpayer deriving withholding income during a tax year from which tax has been withheld under this Part is allowed a tax credit for the withholding tax against the income tax or salary and wages tax liability of the taxpayer, as the case may be, for the year and any excess credit is applied in accordance with Section 51 of the *Tax Administration Act 2017*.

(3) A non-resident person receiving consideration for the disposal of a taxable asset from which tax has been withheld under Section 152(5) is allowed a credit for the withheld tax against the capital gains tax liability of the non-resident in respect of the disposal and any excess credit is applied in accordance with Section 51 of the *Tax Administration Act 2017*.

161. WITHHOLDING TAX IS A FINAL TAX.

(1) This section applies to tax withheld from withholding income under -

- (a) Section 149(1) where, under Section 136(1), the employee is not required to furnish an income tax return other than where Section 137(2) applies; and
- (b) Section 150; and
- (c) Section 151(1); and
- (d) Section 151(3); and
- (e) Section 152(1) and (4).

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(2) Where this section applies, the tax withheld from withholding income specified in Subsection (1) is a final tax on the income, and the income is not included in the assessable income of the recipient of the income.

PART XI. – MISCELLANEOUS.

162. REGULATIONS.

The Head of State may, acting on advice, make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are convenient to be prescribed for carrying out or giving effect to this Act, and in particular for prescribing matters providing for and in relation to penalties in respect of offences against this Act.

PART XII. -TRANSITIONAL PROVISIONS.

163. REPEAL.

Subject to Section 164, the following Acts are hereby repealed –

- (a) *Income Tax Act 1959*; and
- (b) *Income Tax (Rates) Act 1975*; and
- € *Income Tax (Salary and Wages Tax) (Rates) Act 1979*; and
- (d) *Income Tax, Dividend (Withholding) Tax and Interest (Withholding) Tax Rates Act 1984*; and
- € *Income Tax (International Agreements) Act 1997*.

164. TRANSITIONAL AND SAVING.

(1) In this section –

“repealed Act” means the *Income Tax Act 1959* repealed under Section 163;

“repealed legislation” means the Acts specified in Section 163.

(2) The repealed legislation continues to apply to tax years prior to the tax year in which this Act comes into force.

(3) A reference in this Act to a previous tax year includes, where the context requires, a reference to a tax year under the repealed Act.

(4) The amount of a deduction that a person is allowed under Section 37 in respect of the cost of a depreciable asset acquired by a person in a tax year before this Act first applied to the person and the cost was not deductible under the repealed Act is calculated for a tax year after this Act applies on the assumption that Section 37 had always applied to the depreciable asset.

(5) If a depreciable asset referred to in Subsection (4) is disposed of after the commencement date, Section 40 applies to the proportional part of any gain or loss on disposal that relates to the use of the depreciable asset to derive assessable income after the commencement date.

(6) Subject to Subsection (12), the following applies to a depreciable asset acquired before the commencement date and in respect of which depreciation deductions were allowed under the repealed Act:

- (a) the asset continues to be depreciated under Section 37 in accordance with the rate determined under Schedule 4 until the cost of the asset has been fully depreciated and taking account of Section 37(4); and

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- (b) Section 40 applies on the basis that the written down value of the asset takes account of depreciation deductions allowed under the repealed Act.
- (7) A reference in Section 26 to a previously deducted expenditure, loss, or bad debt includes a reference to expenditure, loss, or bad debt deducted under the repealed Act.
- (8) The repealed Act continues to apply to a finance lease, as defined in Section 50(1), and a long-term contract, as defined in Section 49(1), entered into before the commencement date.
- (9) The tax year of a company under the repealed Act continues to apply unless the Commissioner General decides otherwise by notice in writing to the company.
- (10) The cost of a taxable asset acquired by a person before the commencement date is -
 - (a) at the election of the person, the cost of the asset determined under Part VI; or
 - (b) where Paragraph (a) does not apply, the fair market value of the asset at the commencement date.
- (11) An election under Subsection (10)(a) -
 - (a) must be furnished with the Commissioner General by the due date for filing the capital gains tax return in relation to the disposal of the asset; and
 - (b) is effective only where the Commissioner General is satisfied that the person has substantiated the cost of the asset.
- (12) Division 10 of Part III of the repealed Act continues to apply to a resource project that commenced prior to the commencement date.
- (13) For the purposes of Section 119, “taxed contribution” includes a contribution made to an approved superannuation fund to the extent that it was not deducted under the repealed Act.
- (14) Regulations made under Section 162 may contain provisions of a saving or transitional nature consequent upon the making of this Act.
- (15) Regulations referred to in Subsection (14) made within six months after the commencement date of this Act take effect from the commencement date, but only if the Regulations are for the benefit of the persons to whom the Regulations apply.
- (16) The repealed legislation (including any previously repealed provisions of that legislation) -
 - (a) continues to apply to ensure the fiscal stability guaranteed by the terms of a fiscal stability agreement entered into prior to the commencement date under Section 2 of the ***Resource Contracts Fiscal Stabilization Act 2000***; and
 - (b) if there is any conflict between the continued operation of the repealed legislation under Paragraph (a) and this Act, the continued operation of the repealed legislation has priority.
- (17) For taxes imposed by reference to the tax year, this Act applies to tax years commencing on or after the commencement date.

165. COMMENCEMENT AND APPLICATION OF ACT.

- (1) This Act commences on 1 January 2026.
- (2) For taxes imposed by reference to the tax year, this Act applies to tax years commencing on or after 1 January 2026.

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SCHEDULE 1.

Sec. 11(2), 11(3), 12(4), 12(5), 13(1), 13(3), 14(1), 14(2), 15(1), 16(1), 16(2), 21(2), 21(3), 21(4), 22(2), 33(4), 33(5), 38(8), 56(1), 56(2), 56(4), 63(1), 63(2), 108(1), 118(1), 118(2), 119(2), 123(2), 138(3), 150(2), 151(1), 151(3), 151(4), 152(1), 152(4), 152(5), 153(2), and 153(7)

TAX RATES AND SPECIFIED AMOUNTS

PART I TAX RATES AND TAX AMOUNTS

(1) The rates of income tax applicable to a resident individual for a tax year are -

Parts of Taxable Income	Rate of Tax
The part of taxable income that does not exceed K20,000	0%
Exceeds K20,000 but does not exceed K33,000	30%
Exceeds 33,000 but does not exceed K70,000	35%
Exceeds K70,000 but does not exceed K250,000	40%
Exceeds K250,000	42%

(2) The rates of income tax applicable to a non-resident individual for a tax year are -

Parts of Taxable Income	Rate of Tax
The part of taxable income that does not exceed K20,000	22%
Exceeds K20,000 but does not exceed K33,000	30%
Exceeds K33,000 but does not exceed K70,000	35%
Exceeds K70,000 but does not exceed K250,000	40%
Exceeds K250,000	42%

(3) The rates of salary and wages tax for a resident employee for a fortnight are -

Parts of Employment Income for a fortnight	Rate of Tax
The part of employment income that does not exceed K770	0%
Exceeds K770 but does not K1,270	30%
Exceeds K1,270 but does not exceed K2,693	35%
Exceeds K2,693 but does not exceed K9,615	40%
Exceeds K9,615	42%

Income Tax

- (4) The rates of salary and wages tax for a non-resident employee for a fortnight are -

Parts of Employment Income for a fortnight	Rate of Tax
The part of employment income that does not exceed K770	22%
Exceeds K770 but does not exceed K1,270	30%
Exceeds K1,270 but does not exceed K2,693	35%
Exceeds K2,693 but does not exceed K9,615	40%
Exceeds K9,615	42%

- (5) The rate of income tax applicable to a company -
- (a) for an approved superannuation fund.....25%
 - (b) for a non-approved superannuation fund.....30%
 - (c) for a financial institution licensed to operate as a commercial bank under the *Banks and Financial Institutions Act 2000* are -
 - (i)

Rate of Income Tax	
Rate	Year
35% of the taxable income under K300 million	In fiscal year 2026 and future fiscal years

; and

(ii)

Rate of Income Tax	
Rate	Year
43% on the taxable income over K300 million	In fiscal year 2026
42% on the taxable income over K300 million	In fiscal year 2027
41% on the taxable income over K300 million	In fiscal year 2028
40% on the taxable income over K300 million	In fiscal year 2029
39% on the taxable income over K300 million	In fiscal year 2030
38% on the taxable income over K300 million	In fiscal year 2031
37% on the taxable income over K300 million	In fiscal year 2032
36% on the taxable income over K300 million	In fiscal year 2033
35% on the taxable income over K300 million	In fiscal year 2034 and future fiscal years

- (d) for any other company.....30%

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- (6) The rate of income tax applicable to a trust -
- (a) for a trust that is a deceased estate and during the first 3 years of administration of the estate, the rates of tax specified in Clause 1 for a deceased resident individual or Clause 2 for a deceased non-resident individual; or
 - (b) where Paragraph (a) does not apply to the trust.....42%
- (7) The small business tax amount under Section 12(4) is.....K250
- (8) The small business tax payable under Section 12(5) for a quarter is K62.50 plus 2% of turnover for the quarter above K15,000
- (9) The rates of non-resident tax are -
- (a) for an insurance premium.....3%
 - (b) for an amount paid to a non-resident entertainer or group of entertainers.....10%
 - (c) for a royalty -
 - (i) paid to an associate.....30%
 - (ii) any other royalty.....10%
 - (d) for interest, a technical fee, annuity, or natural resource amount.....15%
 - (e) for a dividend paid by a non-profit body or a former non-profit body out of income that is exempt income under Clause (1) of Part V of Schedule 3.....30%
 - (f) for any other dividend or the repatriated profits of a PNG permanent establishment of a non-resident person.....15%
- (10) The rate of tax applicable to the concessional component of a redundancy payment.....15%
- (11) The rate of tax applicable to a qualifying long service leave payment is -

Years of Service	Rate of Tax
Not less than 15 years	2%
Not less than 9 years but less than 15 years	Lesser of (i) 8%; or (ii) the rates of tax under Clause (1) or (2) as applicable to the employee
Not less than 5 years but not greater than 9 years	Lesser of (i) 15%; or (ii) the rates of tax under Clause (1) or (2) as applicable to the employee
Less than 5 years	Rates of tax under Clause (1) or (2) as applicable to the employee

- (12) The rate of tax on a pay-out by an approved superannuation fund referred to in Section 119(2)(b) is -
- (a) for a pay-out made to a member suffering from a permanent disability or to a dependent of a deceased member of the fund.....2%
 - (b) for a payment made to a member who has made contributions for not less than 7 years and the member is either not less than 50 years of age or is subject to enforced early retirement.....2%

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(c) for any other pay-out -

Years of Contributions	Rate of Tax
Not less than 15 years	0%
Not less than 9 years but less than 15 years	Lesser of (i) 8%; or (ii) the rates of tax under Clause (1) or (2) as applicable to the member
Not less than 5 years but not greater than 9 years	Lesser of (i) 15%; or (ii) the rates of tax under Clause (1) or (2) as applicable to the member
Less than 5 years	Rates of tax under Clause (1) or (2) as applicable to the member

- (13) The rate of international transportation income tax is.....2.4%
- (14) The rate of withholding tax under Section 150 on prescribed royalty payments is...5%
- (15) The rate of withholding tax under Section 151(1) on dividends paid to a resident individual, resident partnership, or resident trust is.....15%
- (16) The rate of withholding tax under Section 151(3) on dividends paid by a non-profit body or a former non-profit body is.....30%
- (17) The rate of withholding tax under Section 151(4) on interest is.....15%
- (18) The rate of withholding tax under Section 152(5) on a capital gain is.....10%
- (19) The rate of withholding tax under Section 153 on a business income payment is.....10%
- (20) The rate of withholding tax under Section 153 on a payment for a prescribed product is.....5%
- (21) The rate of capital gains tax is.....15%
- (22) The rate of additional profits tax is.....30%.

PART 2

SPECIFIED AMOUNTS

- (1) The amount specified for the purposes of Section 12(4) and (5) is PGK60,000.00.
- (2) The amount specified for the purposes of Section 21(3)(b) is PGK50,000.00.
- (3) The base amount for the purposes of Section 21(4) is PGK5,000.00.

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- (4) The service amount for the purposes of Section 21(4) is PGK2,000.00.
- (5) The amount specified for the purposes of Section 33(4) is PGK50.00.
- (6) The amount specified for the purposes of Section 33(5) -
 - (a) for a donation to a registered political party, K500,000.00 for a tax year; or
 - (b) for a donation to a candidate, K500,000.00 in respect of any one election;
- (7) The amount specified for the purposes of Section 38(8) is PGK 1,000.00.
- (8) The amount specified for the purposes of Section 56(2)(a)(ii) is PGK450.00.
- (9) The amount specified for the purposes of Section 56(2)(b)(ii) is PGK300.00.
- (10) The amount specified for the purposes of Section 56(4)(a)(ii) is PGK1,050.00.
- (11) The amount specified for the purposes of Paragraph (b)(i) of the definition of “dependant” in Section 56(1) is PGK1040.00.
- (12) The amount specified for the purposes of Paragraph (b)(ii) of the definition of “dependant” in Section 56(1) is PGK40.00.
- (13) The amount specified for the purposes of Section 123(2)(m) is PGK35 per week.

SCHEDULE 2.

Sec. 19(2)(b)

VALUATION OF EMPLOYEE NON-CASH EMPLOYEE BENEFITS

1. VALUE OF A NON-CASH BENEFIT.

- (1) The value of a non-cash benefit included in the employment income of an employee under Section 19(2)(b) is determined in accordance with this Schedule.
- (2) The value of a non-cash benefit is included in the employment income of an employee for the fortnight in which the benefit is provided to the employee.

2. DEBT WAIVER BENEFIT.

- (1) The waiver by an employer of the obligation of an employee to pay or repay an amount owing by the employee to the employer is a debt waiver benefit.
- (2) The value of a debt waiver benefit is the amount of the debt waived.
- (3) A debt waiver benefit is provided by an employer to an employee at the time that the debt is waived.

3. HOUSING BENEFIT.

- (1) Accommodation or housing provided by an employer to an employee is a housing benefit.
- (2) The value of a housing benefit provided by an employer to an employee for a fortnight is the amount prescribed in the Regulations.

4. DISCOUNTED INTEREST LOAN BENEFIT.

(1) Subject to Sub-clause (3), a loan provided by an employer to an employee is a discounted interest loan benefit where the interest rate under the loan is less than the market lending rate.

(2) The value of a discounted interest loan benefit for a fortnight is calculated according to the following formula -

$$A - B$$

Where -

- A. is the interest that would have been paid by the employee on the loan for the fortnight if the loan had been made at the market lending rate for the fortnight; and
- B. is the interest, if any, actually paid by the employee on the loan for the fortnight.

(3) Sub-clause (1) does not apply to the extent that the loan funds are used by the employee to derive amounts included in the employee's assessable income.

(4) In this clause, "market lending rate", in relation to a fortnight, means the finalised average commercial bank lending rate as published by the Bank of Papua New Guinea for the latest month prior to the fortnight.

5. MOTOR VEHICLE BENEFIT.

(1) A motor vehicle provided by an employer to an employee wholly or partly for the private use of the employee is a motor vehicle benefit.

(2) A motor vehicle benefit includes any maintenance and running expenses paid by the employer in relation to the private use of a motor vehicle referred to in Sub-clause (1).

(3) Subject to Sub-clauses (4) and (5), the value of a motor vehicle benefit for a fortnight is the amount calculated in accordance with the following formula -

$$(A \times 10\%) / 26$$

where -

- A. is the cost to the employer of acquiring the motor vehicle or, where the vehicle is leased by the employer, the fair market value of the vehicle at the commencement of the lease.

(4) The value of a motor vehicle benefit calculated under Sub-clause (3) is reduced by the following -

- (a) any payment made by the employee for the use of the motor vehicle or for maintenance and running expenses; and
- (b) the proportion of the use of the vehicle by the employee in the conduct of employment; and
- (c) the proportion of the fortnight that the vehicle was not provided to the employee for private use.

(5) The value of a motor vehicle benefit where the motor vehicle is more than ten years old is two-thirds of the amount of the benefit calculated under Sub-clauses (3) and (4).

(6) A reference in this clause to a motor vehicle being provided to an employee for private use includes a motor vehicle that is made available to an employee for private use even when the employee did not actually use the vehicle for private use on a particular day.

(7) In this clause, “motor vehicle” means a road vehicle designed to carry a load of less than 1 tonne and fewer than 9 seated passengers and includes a motorcycle or similar vehicle.

6. DISCOUNTED GOODS OR SERVICES BENEFIT.

(1) The transfer of property or provision of services by an employer to an employee is a discounted goods or services benefit.

(2) Subject to Sub-clause (3), the value of a discounted goods or services benefit is -

- (a) where the employer supplies the same goods or services to customers in the ordinary course of business, 75% of the normal selling price of the goods or services; or
- (b) in any other case, the cost to the employer of acquiring the goods or expenditure incurred by the employer in providing the services.

(3) The value of a discounted goods or services benefit determined under Sub-clause (2) is reduced by any payment made by the employee to the employer for the goods or services.

(4) For the purposes of Sub-clause (2)(a), where the discounted goods or services benefit is the provision of free or subsidised air travel by an employer that is an airline operator, the normal selling price is the lowest economy fare for the flight taken by the employee.

(5) A discounted goods or services benefit is provided to an employee in the fortnight that the goods are transferred to the employee or the services provided to the employee.

(6) In this clause, “services” includes the use of property or the making available of any facility.

7. PRIVATE EXPENDITURE BENEFIT.

(1) The payment of expenditure by an employer is a private expenditure benefit to the extent that the expenditure gives rise to a private benefit to an employee, but not including expenditure paid by an employer that is a non-cash benefit of an employee under another clause of this Schedule, other than Clause 8(1).

(2) The value of a private expenditure benefit is the amount of the expenditure treated as a private expenditure benefit under Sub-clause (1).

(3) A private expenditure benefit is provided to an employee in the fortnight that the expenditure is paid by the employer.

8. RESIDUAL BENEFIT.

(1) A non-cash benefit provided by an employer to an employee that is not covered by another clause in this Schedule is a residual benefit.

(2) The value of a residual benefit is the fair market value of the benefit determined at the time it is provided, as reduced by any payment made by the employee to the employer for the benefit.

SCHEDULE 3.

Sec. 27(1)(a)

EXEMPT INCOME.

PART I. - GOVERNMENT AND FOREIGN GOVERNMENTS.

- (1) The following are exempt income -
- (a) the income of the National Government arising from the performance of normal Government functions; and
 - (b) the income of the Bank of Papua New Guinea; and
 - (c) the income of a public authority constituted by, or under, an Act, other than a public authority treated as taxable under the Regulations; and
 - (d) the income of a Provincial Government or Local-level Government received pursuant to the *Organic Law on Provincial Governments and Local-level Governments 1998*, other than income derived from a commercial enterprise conducted by a Provincial Government or Local-level Government; and
 - (e) the income of the government of a foreign country or foreign territory to the extent provided for under the *Diplomatic and Consular Privileges and Immunities Act 1975* or an international agreement.

PART II. - INTERNATIONAL ORGANISATIONS.

- (1) Income is exempt income to the extent provided for under -
- (a) the *International Organisations (Privileges and Immunities) Act 1975*; and
 - (b) the *Loans and Assistance (International Agencies) Act 1971*; and
 - (c) the *Loans (Overseas Borrowings) Act 1973*; and
 - (d) the *Loans (Overseas Borrowings) (No. 2) Act 1976*; and
 - (e) the *Asian Development Bank Act 1971* and the *Asian Development Bank (Privileges and Immunities) Regulation 1976*; and
 - (f) the *International Financial Organisations Act 1977*; and
 - (g) the *Aid Status (Privileges and Immunities) Act 1977*; and
 - (h) the *United Nations and Specialised Agencies (Privileges and Immunities) Act 1975*.
- (2) The income of the following international trade financial institutions is exempt income -
- (a) the Multilateral Investment Guarantee Agency; and
 - (b) the Export Finance and Insurance Corporation of Australia; and
 - (c) the European Investment Bank.

PART III. - INDIVIDUALS.

- (1) The following are exempt income -
- (a) maintenance or child support payments; and
 - (b) a scholarship awarded to an individual for full-time study at a university, college, or other approved tertiary educational institution; and
 - (c) the income of an individual to the extent provided for under the *Diplomatic and Consular Privileges and Immunities Act 1975* or the *Defence (Visiting Forces) Act 1975*; and

- (d) the official salary and foreign income derived by -
 - (i) a representative in PNG of a foreign government, other than an individual to which Clause (1)(c) applies, or a member of the official staff of such a representative provided -
 - (A) the representative or member is domiciled in the foreign country or territory so represented for the purposes of performing official duties; and
 - (B) the foreign country or territory grants an equivalent exemption to government officials of PNG temporarily resident in the foreign country or territory for similar purposes; and
 - (ii) an officer of the government of a foreign country or territory temporarily in PNG to render services on behalf of that country or territory, or the Government of PNG, in accordance with an arrangement between the Government of the foreign country or territory and PNG provided that the foreign country or territory grants an equivalent exemption to government officials of PNG temporarily in that foreign country or territory; and
- (e) the value of the following benefits provided by an employer to an employee -
 - (i) a benefit that is provided to employees on an infrequent or irregular basis and the value of which does not exceed the amount prescribed in the Regulations; and
 - (ii) a meal or refreshment provided in a canteen, cafeteria, or dining room operated by, or on behalf of, the employer solely for the benefit of employees and that is available to all non-casual employees on equal terms; and
 - (iii) one annual leave fare paid or reimbursed to the employee for the employee and his or her dependents to travel from the employee's place of employment to the employee's place of origin or recruitment provided the fare has been wholly used for the purpose of annual leave; and
 - (iv) additional leave fares for travel within PNG paid or reimbursed to an employee employed solely in connection with a mining lease, special mining lease, or mining project or prospecting authority granted under the *Mining Act 1992*, or a pipeline licence, petroleum prospecting licence, petroleum retention licence, or a petroleum development licence granted under the *Oil and Gas Act 1998* provided the fares have been wholly used for the purpose of leave; and
 - (v) additional leave fares paid or reimbursed to an employee where the Commissioner General is satisfied that the additional leave fares are justified having regard to remoteness or hardship as a result of the employee being located in a remote area away from urban centres and the fare has been wholly used for the purpose of leave; and
 - (vi) recreational leave fares and accommodation within PNG paid or reimbursed to an employee, to a value not exceeding the total annual value of the benefit allowable under Subparagraphs (iii), (iv), and (v) provided the fares and accommodation have been wholly used for the purposes of recreational leave; and
 - (vii) a reimbursement paid to an employee by an employer for, or the discharge by an employer of, medical insurance premiums of the employee, but only if this benefit is available to all non-casual employees on equal terms; and
 - (viii) an allowance or reimbursement paid to an employee by an employer for, or the discharge by an employer of, the annual fees payable to a school or college for the purposes of educating a student child of the employee, but not including fees for tertiary studies; and
 - (ix) a benefit for which the employer is denied a deduction under this Act for the cost of providing the benefit; and

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- (x) a benefit by way of a subsidy provided by an employer to an employee, who is a citizen of PNG, towards the capital cost of purchasing a residential dwelling under a first home buyers scheme approved by the Commissioner General; and
 - (xi) repayable amounts advanced by an employer to an employee who is a first homeowner for the purpose of purchasing property used for housing the cost of which was equal to PGK700,000.00 or less where these advances have been debited against amounts owed in respect of recreation leave, furlough, superannuation, or gratuity entitlements; and
 - (xii) benefits paid in cash as a substitute for benefits otherwise provided in kind (being benefits that, had they been provided in kind would not have been convertible into cash) pursuant to a determination of the Parliamentary Salaries and Remuneration Commission but not including, where there is a value prescribed by the Parliamentary Salaries and Remuneration Commission for such benefit provided in kind or as an allowance for the purposes of Section 19, the value so prescribed; and
- (f) foreign employment income, including a pension related to foreign employment, derived by a resident individual, but only where the income is subject to tax in the country of employment; and
- (g) the income derived by a non-resident individual, other than an entertainer, from the rendering of services in PNG as an employee where all the following conditions are satisfied -
- (i) the individual is in PNG for a period of, or periods amounting in aggregate to, no more than 90 days in a tax year; and
 - (ii) the income is subject to tax in the individual's country of residence; and
 - (iii) the individual is remunerated by a non-resident person other than where the remuneration is an expenditure of a permanent establishment of the non-resident in PNG; and
- (h) a pension, benefit, or lump sum payment paid to a Member of Parliament or a former Member under the *Parliamentary Members Retirement Benefits Act 1979*; and
- (i) the PNG source employment income received by an individual enlisted or appointed to the naval, military, or air force of a government of a foreign country as a member of those forces to the extent that the income is not paid, given, or granted by PNG or Australia; and
- (j) the amount derived by an individual as a reversionary bonus on a policy of life assurance; and
- (k) the official employment income and foreign income to the extent prescribed derived by an individual in PNG who is an employee or officer of a Government of a foreign country or foreign territory that is a prescribed donor of agreed international aid to PNG and the income is not exempt in the individual's country or territory of residence; and
- (l) the foreign income of an individual who -
- (i) is in PNG solely to render assistance to a prescribed aid organisation; and
 - (ii) derives no remuneration for rendering the services; and
 - (iii) derives no PNG source income; and
- (m) the official employment income and foreign income of an officer of, or citizen of the United States of America employed by the Peace Corps and who is temporarily in Papua New Guinea to render services under the *Peace Corps Understanding*; and
- (n) the remuneration paid by the State to a non-resident as a Commissioner under the *Commissions of Inquiry Act 1951* or a non-resident as counsel or technical or professional expert to assist a Commission under Section 4A of the *Commissions of Inquiry Act 1951*; and

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- (o) the income derived by an individual as -
- (i) a representative of any association or club established in any country for the control of any outdoor athletic sport or game in that country by any person visiting PNG in that capacity for the purpose of engaging in contests in PNG in that sport or game; or
 - (ii) a representative of the Papua New Guinea NRL or WNRL franchise club, by any player, and any non-citizen as staff or an official, but only to the extent that the income derived by that individual in that capacity is not taxable in another jurisdiction; or
 - (iii) a representative of any government, visiting PNG on behalf of that government, or by any member of the entourage of that representative, in his or her official capacity as such a representative or member; or
 - (iv) a representative of any society or association established for educational, scientific, religious, or philanthropic purposes, by any person visiting PNG in that capacity for the purpose of attending international conferences or for the purpose of undertaking investigation or research for that society or association; or
 - (v) a representative of the press outside PNG, by any person visiting PNG in that capacity for the purpose of reporting the proceedings relating to any matters referred to in the preceding Paragraphs or in Paragraph (1)(h) of Part 6 of this Schedule.

(2) If the Commissioner General is satisfied that a non-cash benefit has been provided in two or more parts for the purpose of taking advantage of Clause (1)(e)(i), the non-cash benefit is exempt under Clause (1)(e)(i) only if the total value of all parts provided does not exceed the prescribed amount for the purposes of Clause (1)(e)(i).

(3) In this Part -

- “first homeowner” means an individual who qualifies for a stamp duty exemption under Clause 1(3) of Schedule 1 of the *Stamp Duties Act (Cap. 117)*;
- “foreign employment income” means employment income that is foreign income;
- “NRL” means the professional rugby league competition in Australasia called the National Rugby League;
- “subject to tax” means subject to a tax that is substantially similar in nature to the salary and wages tax or income tax imposed under this Act;
- “WNRL” means the NRL competition for women.

PART IV. - DIVIDENDS AND INTEREST.

(1) The following are exempt income -

- (a) subject to Clauses (2) and (3), a dividend paid by a resident company to another resident company; and
- (b) a dividend paid by a non-resident company -
 - (i) directly or indirectly to a resident company that is an approved superannuation fund; and
 - (ii) to any other resident company but only if the resident company has a participation interest in the non-resident company; and
- (c) a dividend paid wholly and exclusively out of profits from the sale or revaluation of assets not acquired for resale at a profit where the dividend is satisfied by the issue of shares, other than redeemable shares, of the company declaring the dividend; and
- (d) the first PGK200.00 for a tax year of interest derived by a resident individual from a financial institution; and

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- (e) interest paid by a resident company to a non-resident person in respect of debentures issued by the resident company provided that all the following conditions are satisfied –
 - (i) the company issued the debentures outside PNG; and
 - (ii) the debentures are denominated in a currency other than Kina; and
 - (iii) the debentures were issued with a view to public subscription or other wide distribution; and
 - (iv) the company issued the debentures for the purpose of raising funds for use by the company in a business carried on in PNG; and
 - (v) the interest is paid outside PNG.
- (2) Clause (1)(a) applies to a dividend to the extent to which the dividend is not subject to withholding tax under Section 151(2).
- (3) Clause (1)(a) does not apply to a dividend that is paid by a non-profit body or former non-profit body out of income that is exempt income under Clause (1)(a) of Part 5 of this Schedule.
- (4) For the purposes of Clause (1)(c), a share issued by a company is a redeemable share if -
 - (a) the share is, or at the option of the company is to be, liable to be redeemed; or
 - (b) the share was issued in pursuance of, or as part of, an agreement or arrangement, whether oral or in writing, that had the purpose, or purposes that included the purpose, of enabling the company, by means of the redemption, purchase, or cancellation, or of a reduction in the paid-up value, of that share or of any other share in the company, to pay, transfer or apply to, on behalf of or at the direction of the person to whom the share was issued or any other person, whether upon the exercise of an option by the company or by any other person or not, any money or other property other than shares in the company.
- (5) In this Part, “participation interest”, in relation to a non-resident company, means a 10% or greater interest in the voting power of the company.

PART V. - SOCIAL POLICY EXEMPTIONS.

- (1) The following are exempt income -
 - (a) the income derived by a non-profit body, other than business income that is not directly related to the core function of the body; and
 - (b) the income derived by a fund established for the purpose of enabling scientific research to be conducted by, or in conjunction with, a public university or public hospital, to the extent that the fund is being applied for the purpose for which it was established.

PART VI. - SECTOR EXEMPTIONS AND TECHNICAL ASSISTANCE.

- (1) The following are exempt income:
 - (a) the business income derived by a non-resident company from fishing operations in PNG's territorial waters where the following conditions are satisfied -
 - (i) the fishing operations are carried out by the non-resident under an agreement with the State that was signed on or before 25 May 1992; and
 - (ii) the State receives or is entitled to receive fees from the fishing operations of the non-resident in accordance with the *Treaty on Fisheries between the State and the United States of America*; and
 - (b) the employment income of an employee of a non-resident company carrying on fishing operations to which Paragraph (a) applies;

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- (c) royalties paid by a non-resident person for the charter of a vessel for fishing operations to which Paragraph (a) applies, but only if the Agreement referred to in Paragraph (a) provides for such charter;
- (d) the income of a non-resident person operating a ship or airline in international traffic but only if an equivalent exemption from income tax is granted to PNG resident persons by the country in which the non-resident person is resident; and
- (e) the income derived by a person to the extent provided for under an agreement entered into between the Government and a foreign government or an international organisation; and
- (f) the income of an investor, business establishment, or enterprise operating within an economic zone to the extent provided by Section 60(3)(a) of the *Special Economic Zones Authority Act 2019*; and
- (g) a dividend paid by a company that is an investor, business establishment, or enterprise operating within an economic zone to the extent that the dividend is paid out of income exempt under Sub-clause (f);
- (h) the income derived by any association or club in any foreign country or territory as its share of the proceeds of sporting matches played in PNG by a team controlled by that association or a club visiting PNG from that foreign country or territory and recognised by the authority controlling that class of match in PNG as being representative of that foreign country or territory; and
- (i) the income derived by a Savings and Loan Society; and
- (j) interest derived by a lender on money lent to a Manus Special Economic Region Company to the extent that the certificate held by the company under the *Manus Special Economic Region Act 2022* specifies that such interest is exempt; and
- (k) income derived by a person to the extent treated as exempt income under Australia-PNG Development Cooperation Treaty.

(2) For the avoidance of doubt and subject to any agreement providing otherwise, an exemption provided to a person under an agreement referred to in Clause (1)(e) applies only to the person named in the agreement and not to employees, contractors, or subcontractors of the person.

(3) In this Schedule, “Manus Special Region Company” has the meaning given to it in the *Manus Special Economic Region Act 2022*.

SCHEDULE 4.

Sec. 36(2)

DEPRECIATION RATES

(1) Subject to Clauses (2) and (3), the rates of depreciation applicable to depreciable assets are set out in the following table -

Class	Depreciable Asset	Straight-line Rate	Diminishing Value Rate
1	Motor vehicles; buses and minibuses with a seating capacity of less than 30 passengers; goods vehicles with a load capacity of less than 7 tonnes; computers and data handling equipment; software; and construction and earthmoving equipment	25%	40%
2	Buses with a seating capacity of 30 or more passengers; goods vehicles designed to carry or pull loads of 7 or more tonnes; specialised trucks; tractors; trailers and trailer-mounted containers; and plant and machinery used in manufacturing, mining, forestry, or farming operations	20%	30%
3	Vessels, barges, tugs, and similar water transportation equipment; aircraft; office furniture, fixtures, and equipment; and any depreciable asset not included in another Category (other than a business intangible)	12.5%	20%

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4	Structural improvement	5%	-
5	Business intangibles	Rate determined under Clause (4)	-

(2) The rate of depreciation applicable to a depreciable asset that has a cost of less than PGK1,000 is 100%.

(3) The rate of depreciation applicable to a depreciable asset that is plant and equipment for heating by solar power is 100%.

- (4) The straight-line rates of depreciation applicable to business intangibles are -
- (a) for preliminary expenditure, 25%; and
 - (b) for a business intangible with a useful life of more than 10 years, other than a business intangible referred to in Paragraph (a) or (c) of this clause, 10%; and
 - (c) for any other business intangible, 100% divided by the number of years in the useful life of the intangible.

SCHEDULE 5.

Sec. 75(1)

TAX TREATIES.

- (1) Australia Agreement.

Agreement between Australia and the Independent State of Papua New Guinea for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income done at Canberra on 24 May 1998.

- (2) Canada Agreement.

Agreement between Canada and the Independent State of Papua New Guinea for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income done at Vancouver on 16 October 1987.

- (3) China Agreement.

Agreement between the Government of the Peoples' Republic of China and the Government of the Independent State of Papua New Guinea for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and the Protocol to that Agreement both done at Beijing on 14 July 1994.

- (4) Fiji Agreement.

Agreement between the Government of the Republic of Fiji and the Government of the Independent State of Papua New Guinea for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income done on 29 April 1998.

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(5) **Indonesia Agreement.**

Agreement between the Government of the Republic of Indonesia and the Government of the Independent State of Papua New Guinea for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income done at Port Moresby on 12 March 2010.

(6) **Korea Agreement.**

Agreement between the Government of the Republic of Korea and the Government of the Independent State of Papua New Guinea for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and the Protocol to that Agreement both done at Manila on 23 November 1996.

(7) **Malaysia Agreement.**

Agreement between the Government of Malaysia and the Government of the Independent State of Papua New Guinea for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income done at Port Moresby on 20 May 1993.

(8) **New Zealand Agreement.**

Agreement between the Government of New Zealand and the Government of the Independent State of Papua New Guinea for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income done at Port Moresby on 29 October 2012.

(9) **Singapore Agreement.**

Agreement between the Government of the Republic of Singapore and the Independent State of Papua New Guinea for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and the Protocol to that Agreement both done at Singapore on 19 October 1991.

(10) **United Kingdom Agreement.**

Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Independent State of Papua New Guinea for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income done at London on 17 September 1991.

(11) **Multilateral Instrument.**

Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (as amended).

(12) **Mutual Administrative Assistance Agreements.**

Convention on Mutual Administrative Assistance in Tax Matters (as amended) and any other international tax treaty affecting cooperation and exchange of information or mutual administrative assistance agreements to which Papua New Guinea is signatory.

SCHEDULE 6.

Sec. 149(1), (5)

WITHHOLDING OF TAX FROM EMPLOYMENT INCOME AND SUPERANNUATION PAYMENTS

1. APPLICATION OF SCHEDULE.

This Schedule applies for the purposes of Section 149(1) and (5).

2. WITHHOLDING OF TAX FROM EMPLOYMENT INCOME.

(1) In this Clause, "non-resident individual" is an individual who is not a resident individual.

(2) Every employer obliged under Section 149(1) to withhold salary and wages tax from a payment of employment income to an employee must withhold tax in accordance with this Clause unless Clause 3 applies.

(3) Where an employee has provided the employer with an employment declaration, the amount of salary and wages tax to be withheld from a payment of employment income for a fortnight is calculated according to the following formula –

$$(A \times B) - C/26$$

where -

- A. is the amount of employment income paid by the employer to the employee for the fortnight; and
- B. is the rates of salary and wages tax -
 - (a) for an employee who is a resident individual, specified in Clause (3) of Part I of Schedule 1; or
 - (b) for an employee who is a non-resident individual, specified in Clause (4) of Part I of Schedule 1; and
- C. is the dependant tax credit allowed to the employee for the tax year.

(4) Where an employee has not provided the employer with an employee declaration, the amount of salary and wages tax to be withheld from a payment of employment income for a fortnight is calculated according to the following formula -

$$D \times E$$

where -

- D. is the amount of employment income paid by the employer to the employee for the fortnight; and
- E. is the maximum rate of salary and wages tax -
 - (a) for a resident individual, specified in Clause (3) of Part I of Schedule 1; or
 - (b) for an employee who is a non-resident individual, specified in Clause (4) of Part I of Schedule.

3. REDUNDANCY AND LONG SERVICE LEAVE PAYMENTS.

(1) An employer must withhold salary and wages tax from the concessional component of a redundancy payment to an employee at the rate specified in Clause (10) of Part I of Schedule 1.

(2) An employer must withhold salary and wages tax from a qualifying long service leave payment to an employee at the rate or rates specified in Clause (11) of Part I of Schedule 1.

4. MULTIPLE PAYMENTS IN A FORTNIGHT.

Where employment income for a fortnight or a part of a fortnight is paid in 2 or more separate sums, all sums paid during the fortnight are treated as having been paid on the last day of the fortnight and salary and wages tax is to be withheld from the aggregate amount in accordance with Clause 2.

5. PAYMENT OF EMPLOYMENT INCOME FOR A PERIOD MORE THAN A FORTNIGHT.

Where an employee is paid employment income for a period of time in excess of a fortnight, the employee is treated as having received an amount of employment income for each fortnight or part of a fortnight in that period calculated by dividing the employment income by the number of days in the period and multiplying the resultant amount -

- (a) in the case of each fortnight, by 14; or
- (b) in the case of part of a fortnight, by the number of days in that part of the fortnight.

6. EMPLOYMENT INCOME PAID IN ADVANCE.

Where employment income is paid by an employer to an employee in advance by reason of the employee being on leave or otherwise absent from employment, or for any other reason, the gross amount paid is divided by the number of fortnights for which the payment is in lieu and the employer must make fortnightly withholdings accordingly under Clause 2.

7. TAXED LEAVE PAYMENTS.

Where an employee receives a paid leave fare that is not exempt income under Part 3 of Schedule 3, the actual cost of the fares is treated as employment income paid in respect of the period during which the leave fares accrued but not exceeding 26 fortnights preceding the date on which the leave fare is paid.

8. PIECE WORK AND SERVICES CONTRACT TREATED AS EMPLOYMENT.

(1) This Clause applies where -

- (a) an individual receives employment income in respect of piece work performed by the employee; or
- (b) an employee is engaged in employment referred to in Paragraph (a) of the definition of "employment" in Section 3.

(2) An employee referred to in Paragraph (1) is treated as receiving employment income for the period of time from the commencement of performance of the work or services until the work or services are completed.

(3) Where employment income of an employee referred to in Paragraph (1)(b) is paid for services rendered rather than for a period of time, the employee is treated as being entitled to receive the employment income for the period during which the services are rendered but not exceeding a period of 26 fortnights preceding the date on which payment of the services is made.

9. WITHHOLDING TAX FROM SUPERANNUATION PAY-OUTS.

An approved superannuation fund making a pay-out referred to in Section 115(2)(b) must withhold tax from the pay-out at the rate or rates applicable to the member under Clause (12) of Part 1 of Schedule 1.

SCHEDULE 7.

Sec. 153(1)

BUSINESS INCOME PAYMENTS.

(1) This Schedule applies for the purposes of the definition of "business income payment" in Section 153(1).

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(2) An amount is a business income payment where the amount is paid, or is liable to be paid, under a contract that, in whole or in part, is for the carrying out of, or the provision of work involving, any of the following activities -

- (a) the construction, erection, installation, alteration, modification, repair, improvement, demolition, destruction, dismantling, or removal of any structure, roadworks, or thoroughfare and, without limiting the generality of the foregoing, including -
 - (i) the painting, decorating, proofing, or other treatment of the internal or external surfaces of any structure other than signwriting or the production of murals or other similar works; and
 - (ii) the installation in, or the fixing or fitting in or to, any structure of -
 - (A) a system of, or device for, heating, cooking, refrigeration, insulation, lighting, power supply, water supply, irrigation, sanitation, drainage, fire or security protection, sound, communication, air-conditioning, ventilation, or any other system or device forming or to form an integral part of any structure; or
 - (B) walls, ceilings, linings or floors of any description; or
 - (C) roof-tiles, ceramic tiles, quarry tiles, stone, or any other interior or exterior cladding or covering of any description; or
 - (D) any built-in furniture, any electrical or plumbing fittings (including kitchen or sanitary ware) so as to become fixtures; and
 - (iii) internal or external cleaning that is carried out in the course of, or in connection with, the construction, erection, installation, alteration, modification, repair, improvement, demolition, destruction, dismantling or removal of any structure, roadworks or thoroughfare; and
 - (iv) any other activity, being an activity carried out on a structure or on land or on land on which a structure is to be located or on roadworks or thoroughfares or on land on which roadworks or thoroughfares are to be located, that forms an integral part of, is preparatory to, or is for rendering complete any of the activities referred to in this Regulation other than in this Subparagraph and, without limiting the generality of the foregoing, includes site clearance, earthmoving, excavation, laying of foundations, erection of scaffolding, site restoration, landscaping or access works; and
 - (v) the provision of building and construction services of a professional nature (including the preparation of plans and specifications) performed in connection with any of the above activities; and
- (b) the transportation by road of goods or materials (including construction materials, agricultural produce, livestock, waste, natural resources or merchandise of any description); and
- (c) the reconditioning, servicing, repair or maintenance of a motor vehicle or of any component, accessory or part of a motor vehicle, or the painting of a motor vehicle or of any component, accessory or part of a motor vehicle in connection with such reconditioning, servicing, repair or maintenance, including the removal of fittings or replacement of any component, accessory or part of a motor vehicle; and
- (d) the construction of items of joinery (including veneering, laminating, polishing, staining or painting of cupboards or cabinets) that are to become fixtures in any structure; and
- (e) the provision of security services.