

No. 29 of 2022.

Income Tax (P'nyang LNG Project)(Amendment) Act 2022.

Certified on : 30 MAY 2022



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No. 29 of 2022.

AN ACT

entitled

Income Tax (P'nyang LNG Project)(Amendment) Act 2022,

Being an Act to amend the *Income Tax Act 1959*, and for related purposes,

MADE by the National Parliament.

1. INTERPRETATION (AMENDMENT OF SECTION 4).

Section 4 of the Principal Act is amended in Subsection (1) -

- (a) in the definition of “assessable income from gas operations” in Paragraph (a) by inserting after the words “and other than from the sale of Papua LNG Project Petroleum” the following words:

“or P'nyang LNG Project Petroleum”; and

- (b) in the definition of “gas operations” -

- (i) inserting at the end of the definition before the concluding words a new Paragraph (d):

“(d) in respect of the P'nyang LNG Project, P'nyang LNG Project Operations;”; and

- (ii) by inserting after the words “Papua LNG Project” in the concluding words the following:

“and the P'nyang LNG Project;”; and

- (c) by inserting the following new definitions in alphabetical order:

“P'nyang LNG Gas Agreement” means the P'nyang LNG Project Gas Agreement dated 22 February 2022 between the Independent State of Papua New Guinea and each of Esso PNG P'nyang Limited, Ampolex (Papua New Guinea) Limited, Oil Search Limited, Oil Search (PNG) Limited and Merlin Petroleum Company, as amended, novated or replaced from time to time;

“P'nyang LNG Project” has the meaning given to Project in the P'nyang LNG Gas Agreement;

“P'nyang LNG Project Affiliate” has the meaning given to Project Affiliate in the P'nyang LNG Gas Agreement;

“P'nyang LNG Project Entity” has the meaning given to Project Entity in the P'nyang LNG Gas Agreement;

“P'nyang LNG Project Financing” has the meaning given to Project Financing in the P'nyang LNG Gas Agreement;

“P'nyang LNG Project First Cargo” means the date on which the loading of the first cargo of LNG (excluding any testing or commissioning volumes) from the P'nyang LNG Project is completed;

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- “P'nyang LNG Project Operations” has the meaning given to Project Operations in the P'nyang LNG Gas Agreement;
“P'nyang LNG Project Participant” has the meaning given to Project Participant in the P'nyang LNG Gas Agreement;
“P'nyang LNG Project Petroleum” has the meaning given to Project Petroleum in the P'nyang LNG Gas Agreement;”.

2. EXEMPTION OF CERTAIN INTEREST INCOME (AMENDMENT OF SECTION 35).

Section 35 of the Principal Act is amended in Subsection (2) by inserting immediately after Paragraph (h) the following new paragraph:

- “(i) interest derived by a non-resident lender under or in connection with any P'nyang LNG Project Financing (such interest being exempt notwithstanding Section 155R).”.

3. EXEMPTION OF CERTAIN DIVIDENDS (AMENDMENT OF SECTION 42).

Section 42 of the Principal Act is amended by inserting immediately after Subsection (3) the following new subsection:

- “(3A) The assessable income of a shareholder does not include the amount of any dividends that are paid or credited, or deemed to be paid or credited, or to the extent sourced, from income that was assessable income from gas operations that are P'nyang LNG Project Operations.”.

4. RESTRICTION ON INTEREST DEDUCTION (AMENDMENT OF SECTION 155H).

Section 155H of the Principal Act is amended in Subsection (3)(a) -

- (a) by inserting immediately after the words “where the resource project is the Papua LNG Project” the following words:

“or the P'nyang LNG Project”; and

- (b) by inserting immediately after the words and comma “and, for the Papua LNG Project” the following words:

“and the P'nyang LNG Project.”.

5. PROJECT BASIS OF ASSESSMENT (AMENDMENT OF SECTION 158A).

Section 158A of the Principal Act is amended in Subsection (1) by inserting immediately after the words and figure “made pursuant to the *Oil and Gas Act 1998*” the following words:

“and includes the P'nyang LNG Project.”.

6. ADDITIONAL ALLOWANCE CAPITAL EXPENDITURE (AMENDMENT OF SECTION 158D).

Section 158D of the Principal Act is amended by inserting immediately after Subsection (4) the following new subsection:

- “(5) For the purposes of this Division, without limitation to Section 158D(1)(b) allowable capital expenditure of a taxpayer in relation to the P'nyang LNG Project includes any payment made to a LNG Project Company in consideration for access to and the use of the LNG Project downstream facilities pursuant to any commercial arrangement entered into between that taxpayer and a LNG Project Company.”.

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7. ADDITIONAL DEDUCTIONS FOR PNG LNG PROJECT PARTICIPANTS (AMENDMENT OF SECTION 158J).

Section 158J of the Principal Act is amended -

- (a) by repealing the heading and replacing it with the following new heading:

“ADDITIONAL DEDUCTIONS FOR PNG LNG PROJECT PARTICIPANTS AND P'NYANG LNG PROJECT PARTICIPANTS.; and

- (b) in Subsection (1) by inserting immediately after the words “This section applies to” the following:

“a taxpayer that is a P'nyang LNG Project participant in respect of the P'nyang LNG Project, and”.

- (c) in Subsection (2), by repealing the word “Where” and replacing it with the following:

“In relation to a taxpayer, where”; and

- (d) in Subsection (3), by repealing the word “In” in the first line and replacing it with the following:

“In relation to a taxpayer, in”; and

- (e) in Subsection (4) -

- (i) in the definition of “Capital Expenditure”, by inserting immediately after the words “in relation to” the following:

“a P'nyang LNG Project Participant means the total allowable capital expenditure incurred by the P'nyang LNG Project Participant in relation to the P'nyang LNG Project, and in relation to”; and

- (ii) in the definition of “Cumulative Gas Operating Profit”, by inserting immediately after the word “means” the following:

“in relation to the P'nyang LNG Project, the sum of the assessable income from gas operations derived up until the tenth anniversary of the date of the P'nyang LNG Project First Cargo reduced by deductions allowable under Section 68 related to that income (excluding deductions related to the P'nyang LNG Project Financing), and in relation to the LNG Project”; and

- (iii) in the definition of “First Project Income Year”, by inserting immediately after the word “means” the following:

“in relation to the P'nyang LNG Project, the calendar year in which the P'nyang LNG Project First Cargo occurs, and in relation to the LNG Project”.

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8. NEW SECTION 158K.

The Principal Act is amended by inserting immediately after Section 158J the following new section:

“158K. TRANSFER OF P'NYANG LNG PROJECT CAPITAL EXPENDITURE FOR IMMEDIATE DEDUCTION.

(1) Where, at the end of a year of income (the “Transfer Year”), a P'nyang LNG Project Entity has either or both -

(a) an amount of allowable capital expenditure in respect of the P'nyang LNG Project that is undeducted under Section 155E;

or

(b) an amount of other undeducted capital expenditure in respect of the P'nyang LNG Project,

the P'nyang LNG Project Entity may by notice transfer an amount equal to all or part of the aggregate of those amounts (the “Transferred Amount”) to another resource project (including the LNG Project and the Papua LNG Project) of the P'nyang LNG Project Entity or of one or more of its P'nyang LNG Project Affiliates (each a “P'nyang Transferee”).

(2) One or more notices under Subsection (1) may be issued in respect of a Transfer Year.

(3) Where a P'nyang LNG Project Entity has issued a notice to a P'nyang Transferee under Subsection (1) -

(a) subject to the following paragraphs of this subsection, the P'nyang LNG Project Entity, in respect of the P'nyang LNG Project, is not entitled to a deduction under Section 155E(1) or otherwise in respect of the Transferred Amount for the purposes of an assessment under Section 158A and its amount of undeducted allowable capital expenditure or other undeducted capital expenditure, as applicable, is reduced by the Transferred Amount, but for all other purposes of the Act continues to be treated as having incurred the expenditure to which the Transferred Amount relates; and

(b) any allowable capital expenditure to which the Transferred Amount relates continues to be included in the calculation of the P'nyang LNG Project Entity's Base Capital Expenditure or Subsequent Capital Expenditure, as applicable, under Section 158J in respect of the P'nyang LNG Project; and

(c) the expenditure to which the Transferred Amount relates continues to be included in the calculation of the P'nyang LNG Project Entity's liability to additional profits tax under Subdivision E of Division 10 and will continue to be included in the project deductions of the P'nyang LNG Project Entity in respect of the P'nyang LNG Project under that Division; and

(d) any amount received or otherwise derived by the P'nyang LNG Project Entity as consideration for or in respect of the transfer under the notice -

(i) will not be assessable for income tax or any other tax; and

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- (ii) will not be regarded as the recoupment by the P'nyang LNG Project Entity of any expenditure, whether in respect of the P'nyang LNG Project or any other resource project; and
 - (iii) will not be included in the P'nyang LNG Project Entity's project receipts in respect of the P'nyang LNG Project or any other resource project for the purposes of Subdivision E of Division 10.

- (4) Where a P'nyang LNG Project Entity has issued a notice to a P'nyang Transferee under Subsection (1) -
 - (a) the Transferred Amount will be deemed to be attributable to the resource project specified in the notice; and
 - (b) the whole of the Transferred Amount is an allowable deduction of the P'nyang Transferee in the Transfer Year in respect of the resource project specified in the notice; and
 - (c) the transfer under the notice does not result in the P'nyang Transferee being treated as having incurred the expenditure to which the Transferred Amount relates for the purposes of the Act; and
 - (d) any allowable capital expenditure to which the Transferred Amount relates is not included in the calculation of the P'nyang Transferee's Base Capital Expenditure or Subsequent Capital Expenditure, as applicable, under Section 158J; and
 - (e) the expenditure to which the Transferred Amount relates is not included in the calculation of the P'nyang Transferee's liability to additional profits tax under Subdivision E of Division 10, and is not included in the project deductions of the P'nyang Transferee under that Division, in respect of any resource project of the P'nyang Transferee; and
 - (f) in respect of any amount paid, payable or otherwise incurred by the P'nyang Transferee as consideration for or in respect of the transfer -
 - (i) the P'nyang Transferee is not entitled to a deduction for income tax or any other tax; and
 - (ii) it will not be regarded as expenditure incurred by the P'nyang Transferee, whether in respect of the P'nyang LNG Project or any other resource project; and
 - (iii) it will not be included in the P'nyang Transferee's project deductions for the purposes of Subdivision E of Division 10.

- (5) In relation to a notice issued under Subsection (1) -
 - (a) the notice must state that it is issued under Subsection (1), and be signed by the P'nyang LNG Project Entity issuing the notice and the relevant P'nyang Transferee and specify -
 - (i) the Transfer Year; and
 - (ii) the Transferred Amount; and
 - (iii) the P'nyang Transferee and the particular resource project of the P'nyang Transferee; and

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- (b) a copy of the notice must be provided to the Commissioner General and each relevant P'nyang Transferee on or before the date the P'nyang Transferee provides the Commissioner General with its return for the resource project specified in the notice in respect of the Transfer Year; and
- (c) any error, including as to the amount specified as the Transferred Amount, does not invalidate the notice; and
- (d) the notice may be amended by the P'nyang LNG Project Entity and the relevant P'nyang Transferee to correct for any error therein and any such amendment -
 - (i) is not a notice issued under Subsection (1); and
 - (ii) is an amendment to the notice issued under Subsection (1); and
 - (iii) does not affect the validity of the notice issued under Subsection (1); and
 - (iv) shall apply for all purposes of this Act from the time that the notice issued under Subsection (1) was issued; and
 - (v) must be notified to the Commissioner General.

9. INTERPRETATION (AMENDMENT OF SECTION 159A).

Section 159A of the Principal Act is amended in Subsection (1) in the definition of “uplift commencement date” by inserting after the words “PNG LNG Gas Agreement” in Paragraph (b), the words “; and” and then inserting immediately after Paragraph (b) the following new paragraph:

“(c) for the P'nyang LNG Project, subject to Paragraph (a)(ii) of this definition, 12 April 2010.”

10. LIABILITY FOR ADDITIONAL PROFITS TAX (AMENDMENT OF SECTION 159C).

Section 159C of the Principal Act is amended in Subsection (1) by inserting immediately after “at the rate of 30%” the following:

“or, where the resource project is the P'nyang LNG Project, at the rate of 15%”.

11. LIABILITY TO INTEREST (WITHHOLDING) TAX (AMENDMENT OF SECTION 186).

Section 186 of the Principal Act is amended in Subsection (4) by inserting immediately after Paragraph (c) the following new paragraph:

“(d) where interest is received by a P'nyang LNG Project Entity, or a P'nyang LNG Project Affiliate of a P'nyang LNG Project Entity, under or in connection with any P'nyang LNG Project Financing.”.

12. INTERPRETATION (AMENDMENT OF SECTION 197A).

Section 197A of the Principal Act is amended by inserting immediately after Subsection (4) the following new subsection:

“(5) For the purposes of applying this Division in connection with the P'nyang LNG Project, this Division shall be interpreted consistently with the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, as approved by the Council of the Organisation for Economic Cooperation and Development.”.

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13. CREDITS IN RESPECT OF PRESCRIBED INFRASTRUCTURE DEVELOPMENTS (AMENDMENT OF SECTION 219C).

Section 219C of the Principal Act is amended -

- (a) in Subsection (1) by inserting immediately before “eligible taxpayer” the following definition:

““Approved P'nyang Project” means a project approved by the State to be an Approved P'nyang Project for the purposes of this Section;”, and

- (b) in the definition of “eligible taxpayer” -
by inserting immediately after “, who shall be in a taxable position” by inserting the word “; or” and a new Paragraph (d) “a taxpayer who is P'nyang LNG Project Participant”.”.

- (c) after Subsection (14), insert the following new subsections:

“(15) Where a P'nyang LNG Project Participant has, in a year of income, incurred expenditure in relation to an Approved P'nyang Project, such P'nyang LNG Project Participant may, in that year of income or a subsequent year of income, by notice transfer all or part of such expenditure (not being expenditure which has previously been utilised as a credit or the subject of another transfer notice) to one or more of its P'nyang LNG Project Affiliates under and for the purposes of this section. A notice issued under this Subsection must specify the amount of expenditure transferred, the year or years in which the expenditure was incurred and the Approved P'nyang Project to which it relates.

“(16) Where a P'nyang LNG Project Participant has given a notice under Subsection (15) to a P'nyang LNG Project Affiliate, the expenditure specified in such notice is deemed, for the purposes of Subsections (3), (4), (5), (17) and (18), to be expenditure incurred by such P'nyang LNG Project Affiliate in relation to an approved P'nyang Project in the year specified in such notice, and not to have been incurred by the P'nyang LNG Project Participant that gave the notice.

“(17) In addition to any deemed tax payment under Subsection (2), where a P'nyang LNG Project Participant or a P'nyang LNG Project Affiliate incurs, or is deemed by Subsection (16) to have incurred, expenditure in relation to an Approved P'nyang Project, the amount of the expenditure is, subject to this Section, deemed to be income tax paid in respect of the liability for income tax of such P'nyang LNG Project Participant or P'nyang LNG Project Affiliate, as applicable, assessed for the year of tax relating to that year of income limited to the lesser of -

(a) 2.00% of the assessable income derived; or

(b) 50% of the amount of tax payable,

by such P'nyang LNG Project Participant or P'nyang LNG Project Affiliate, as applicable.

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(18) Expenditure incurred or income tax deemed to be paid under Subsection (16) or (17) may be carried forward, separately from expenditure deemed to be income tax paid under Subsection (2), and the provisions of Subsections (3), (4) and (5) shall apply in the same manner they apply to expenditure incurred or tax deemed to be paid under the provisions of Subsection (2), provided that expenditure may not be deemed to be income tax for a year of tax that is more than 20 years after the year in which the expenditure was actually incurred.

- (19) Despite anything else in this section, Subsection 5B does not -
- (a) apply to any eligible taxpayer that is a P'nyang LNG Project Participant in relation to a prescribed infrastructure development; or
 - (b) apply to expenditure incurred or income tax deemed to be paid under Subsection (16) or (17) or otherwise in any way limit the operation of Subsections (15), (16), (17) and (18) in relation to an Approved P'nyang Project.”

I hereby certify that the above is a fair print of the ***Income Tax (P'nyang LNG Project)(Amendment) Act 2022***, which has been made by the National Parliament.

Clerk of the National Parliament.

30 MAY 2022

I hereby certify that the ***Income Tax (P'nyang LNG Project)(Amendment) Act 2022***, was made by the National Parliament on 21 April 2022.

Speaker of the National Parliament.

30 MAY 2022