

NOT FOR LOAN



No. 35 of 1998.

Income Tax (Budget Provisions 1999) Act 1998.

Certified on : 17.12.98

INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 1998.

Income Tax (Budget Provisions 1999) Act 1998.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 1998.

AN ACT

entitled

Income Tax (Budget Provisions 1999) Act 1998,

Being an Act to amend the *Income Tax Act 1959,*

MADE by the National Parliament -

- (a) in respect of Section 19 - to be deemed to have come into operation on 1 January 1993; and
- (b) in respect of Sections 5 and 21 - to be deemed to have come into operation on 1 January 1997; and
- (c) in respect of Sections 12(c) and 15(c) - to be deemed to have come into operation on 1 January 1998; and
- (d) in respect of Section 7 - to be deemed to have come into operation on 2 March 1998; and
- (e) in respect of Section 11 - to come into operation on 1 July 1999; and
- (f) in respect of the remainder - to come into operation on 1 January 1999.

1. INTERPRETATION (AMENDMENT OF SECTION 4).

Section 4 of the Principal Act is amended -

- (a) in the definition of "assessable income from gas operations", by adding the following new Paragraph:-

"(d) assessable income from the sale of petroleum, at a price ascertained by reference to the norm price, deemed to be assessable income from those operations pursuant to Section 165B(7A)."; and

- (b) in the definition of "assessable income from petroleum operations" by adding the following new Paragraph:-

"(d) assessable income from the sale of petroleum, at a price ascertained by reference to the norm price, deemed to be assessable income from petroleum operations pursuant to Section 164B(7A).";

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

Section 35(2)(b) of the Principal Act is repealed.

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3. EXEMPTION OF CERTAIN TRAVEL BENEFITS (AMENDMENT OF SECTION 40AA).

Section 40AA(a) of the Principal Act is repealed and is replaced with the following:-

- “(a) (i) one annual leave fare for himself and his family paid from his place of employment to the employee’s place of origin or recruitment; and
- (ii) additional leave fares for travel within Papua New Guinea to a person employed solely in, or in connection with a mining lease, special mining lease or mining project or prospecting authority granted under the *Mining Act*, or a pipeline licence or a petroleum development licence granted under the *Petroleum Act*; and
- (iii) additional leave fares, where due to remoteness, or hardship as a result of being located in a remote area away from urban centres, and the Commissioner General is satisfied that the conditions warrant additional leave fares due to remoteness or hardship; or”.

4. TAX EXEMPTION PERIOD (AMENDMENT OF SECTION 450).

Section 450 of the Principal Act is amended by repealing the figures “2000” and replacing them with the following:-

“2003”.

5. CERTAIN ITEMS OF ASSESSABLE INCOME (AMENDMENT OF SECTION 47).

Section 47(2) of the Principal Act is amended by repealing the figures and letters “164F(2)(g)” and replacing them with the following:-

“164B(7)(c) or Section 165B(7)(c)”.

6. INCOME APPLICABLE (AMENDMENT OF SECTION 65E).

Section 65E(1)(j) of the Principal Act is repealed.

7. NEW DIVISION III.7A.

Part III of the Principal Act is amended by inserting after Division 7 the following new Division:-

“*Division 7A. - Amalgamation of Companies.*

“145A. INTERPRETATION.

In this Division, unless the contrary intention appears -

“amalgamated company” means a company which results from and continues after amalgamation, and may be one of the amalgamating companies or a new company;

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“amalgamating company” means a company which amalgamates with one or more companies under an amalgamation and ceases to exist after amalgamation:

“amalgamation” means an amalgamation occurring under the *Companies Act 1997*;

“financial arrangement” means -

- (a) any debt or debt instrument: or
- (b) any arrangement whereby a person obtains money in consideration for a promise by any person to provide money to any person at some future time or times, or upon the occurrence or non-occurrence of some future event or events (including the giving of, or failure to give, notice); or
- (c) any arrangement which is of a substantially similar nature (including, without restricting the generality of the preceding provisions of this subparagraph, sell back and buy-back arrangements, debt defeasances, and assignments of income):

“qualifying amalgamation” means any amalgamation where each of the amalgamating companies and the amalgamated company is, at the time of the amalgamation, resident in Papua New Guinea and is not -

- (a) a company which, under a double tax avoidance agreement, is treated as not being resident in Papua New Guinea for the purposes of the double tax avoidance agreement: or
- (b) a company which derives only exempt income.”.

145B. NOTICE OF AMALGAMATION.

The amalgamated company shall give notice of amalgamation to the Commissioner General before the expiration of 30 days of the date of filing of the application for registration of amalgamation with Registrar of Companies as prescribed under Section 236 of the *Companies Act 1997* enclosing therewith a copy of application with all accompanying documents.

145C. TAX CONSEQUENCES SPECIFIED.

Notwithstanding anything to the contrary contained in any other law for the time being in force, the tax consequences of the amalgamation of companies shall be governed by the express provisions of this Division.

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145D. CANCELLATION OF SHARES HELD BY AMALGAMATING COMPANY ON AMALGAMATION.

Where shares in any amalgamating company are held by another amalgamating company or by the amalgamated company in a qualifying amalgamation and cancelled on amalgamation, then for the purposes of this Act, the shares shall be deemed to have been disposed of by the shareholder company immediately before the amalgamation for a consideration equal to -

(a) in the case of any shares held as trading stock by the shareholder company at the beginning of the income year in which the amalgamation takes place, at the election of the amalgamated company -

(i) the cost; or

(ii) the market selling price;

of the shares at the time of the amalgamation; and

(b) in any other case, the cost to the shareholder company of the shares.

145E. DEDUCTION TO AMALGAMATED COMPANY FOR BAD DEBTS, EXPENDITURE, ETC., ON QUALIFYING AMALGAMATION.

Where -

(a) the amalgamated company in any period writes off as a bad debt any debt acquired from the amalgamating company at the time of the amalgamation or incurs any expenditure or loss by virtue of anything done or not done by the amalgamating company; and

(b) the amount would have been allowed as a deduction to the amalgamating company but for the amalgamation.

the amount shall be allowed as a deduction to the amalgamated company for the period.

145F. AMALGAMATED COMPANY TO ASSUME UNEXPIRED ACCRUAL EXPENDITURE AND INCOME OF AMALGAMATING COMPANY ON QUALIFYING AMALGAMATION.

Where the amalgamated company assumes the unexpired accrual expenditure or income of the amalgamating company -

(a) the unexpired portion of any amount of accrual expenditure of the amalgamating company for the income year shall be deemed to be the unexpired portion of an amount of accrual expenditure of the amalgamated company for the income year; and

(b) any amount derived by the amalgamated company at any time after the amalgamation which would have been income of the amalgamating company but for the amalgamation, shall be income of the amalgamated company.

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145G. TRANSFER OF PROPERTY OR OBLIGATION.

(1) Where an amalgamated company, on a qualifying amalgamation acquires -

- (a) trading stock, the amalgamating company shall be deemed to have disposed of and the amalgamated company shall be deemed to have purchased it at cost price paid by the amalgamating company; and
- (b) any obligation or any property other than a property on which depreciation has been allowed, it shall be deemed that the obligation or the property has been acquired by the amalgamated company at the same value at which it was acquired by the amalgamating company; and
- (c) any property on which depreciation has been allowed to the amalgamating company, it shall be deemed to have been acquired by the amalgamated company at the cost of acquisition as reduced by the amount of depreciation allowed to the amalgamating company.

(2) In any cases other than those referred to in Subsection (1) the amalgamating company shall be treated as having disposed of the property or relieved itself of the obligation and the amalgamated company shall be treated as having acquired the property or assumed the obligations on the date of amalgamation for a consideration equal to the market value of the property, or market price for assuming such obligation.

145H. TRANSFER OF FINANCIAL ARRANGEMENT ON QUALIFYING AMALGAMATION.

(1) Where -

- (a) the amalgamated company uses the same method of calculating income and expenditure under the financial arrangement as the amalgamating company used; and
- (b) the amalgamated company elects to include the deemed income accrued or expenditure incurred by the amalgamating company in the year of amalgamation in its return of income for that year; and
- (c) the amalgamating company does not include any deemed income accrued or expenditure incurred by it in the year of amalgamation in its return of income to the date of amalgamation; and
- (d) the amalgamated company and the amalgamating company were members of a wholly owned group at all times in the income year of amalgamation.

then no tax consequences will arise in respect of transfer of a financial arrangement by the amalgamating company to the amalgamated company.

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“(2) Where the condition specified in Subsection (1)(a) is satisfied, but other conditions specified in Subsection (1) are not satisfied, the consideration for the transfer of the financial arrangement shall be a sum considered fair and reasonable to the satisfaction of the Commissioner General.

“(3) Where the amalgamating company and the amalgamated company use different methods of calculating income and expenditure under the financial arrangement and other conditions specified in Subsection (1) are not satisfied, the transfer of a financial arrangement by the amalgamating company to the amalgamated company shall be deemed to have been made at the market price.

“145I. LOSSES OF PREVIOUS YEARS OF AMALGAMATING COMPANY ON QUALIFYING AMALGAMATION.

Where an amalgamating company has incurred a loss, so much of the loss incurred in any of the seven years immediately preceding the year of amalgamation and during the year of amalgamation up to the date of amalgamation, as has not been allowed as a deduction from its income of any of those years, is allowable as a deduction to the amalgamated company in accordance with the following provisions:-

- (a) in a case where the amalgamating company is a subsidiary of the amalgamated company, the loss would have been allowed as deduction during the year of amalgamation in accordance with the provisions of Section 101F;
- (b) in a case where the amalgamation is not covered by Paragraph (a), the loss shall be allowed as deduction to the amalgamated company only if there is at least 50% shareholder continuity in the amalgamating company from the beginning of the year in which loss was incurred until the date of amalgamation; and
- (c) for the amalgamated company to offset the loss against its income, 50% shareholder continuity test must be met from the beginning of the year in which loss was incurred until the date of deduction.

“145J. TRANSFER OF RETAINED PROFITS TO AMALGAMATED COMPANY.

Where retained profits of the amalgamating company are transferred to the amalgamated company under a qualifying amalgamation, the transfer shall not be treated as distribution of dividend.

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145K. AMALGAMATED COMPANY TO ASSUME RIGHTS AND OBLIGATIONS OF AMALGAMATING COMPANY.

Subject to the provisions of this Division, the amalgamated company shall comply with all obligations of and meet all liabilities of, and be entitled to all rights, powers and privileges of, the amalgamating company under the laws pertaining to taxation with respect to the income year in which the amalgamation occurs and all preceding income years."

8. ALLOWABLE CAPITAL EXPENDITURE (AMENDMENT OF SECTION 156).

Section 156(1)(b) of the Principal Act is amended by repealing the following:-

"(other than interest exempted under the provisions of Section 35)".

9. ALLOWABLE CAPITAL EXPENDITURE (AMENDMENT OF SECTION 163AE).

Section 163AE(2) of the Principal Act is amended by repealing the following:-

"(other than interest income exempted under Section 35)".

10. RESIDUAL EXPLORATION EXPENDITURE (AMENDMENT OF SECTION 163AI).

Section 163AI(1)(g) of the Principal Act is amended by repealing the following:-

"(other than interest exempted under the provisions of Section 35)".

11. NEW SUBDIVISION III.10F.

Division III.10 of the Principal Act is amended by inserting new Subdivision:-

"Subdivision F. - Mining Levy.

163ZZA. MINING LEVY.

Subject to this Act, a tax by the name of mining levy is imposed on assessable income from mining operations carried on in Papua New Guinea by a taxpayer and shall be payable at the rate of 4% of the assessable income before allowing any deduction under this subdivision.

163ZZB. PAYMENT OF MINING LEVY.

Every person liable to pay mining levy shall compute the amount of mining levy due for the month and -

- (a) pay that levy within 21 days after the end of the month to which it relates; and
- (b) furnish to the Commissioner General a remittance advice in the form authorised by the Commissioner General, signed by or on behalf of the taxpayer.

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163ZZC. NOTICE OF ASSESSMENT.

Where a taxpayer is liable to pay mining levy under this Subdivision and the mining levy due has either not been paid or the amount paid is less than the amount payable, the Commissioner General shall give to it notice of the assessment and it shall forthwith pay the amount of mining levy outstanding.

163ZZD. AMENDMENT OF ASSESSMENT.

The Commissioner General may, at any time amend an assessment by making such alterations in, or additions to, the assessment as he thinks necessary, notwithstanding that tax may have been paid in respect of the assessment.

163ZZE. DEDUCTION OF LEVY.

The amount of mining levy payable shall be an allowable deduction under Section 68 from assessable income."

12. ELIGIBLE EXPLORATION EXPENDITURE (AMENDMENT OF SECTION 164B).

Section 164B of the Principal Act is amended -

(a) by repealing Subsection (7)(c) and replacing it with the following:-

"(c) rent, interest or, subject to Subsection (7A), other income derived by the taxpayer in the course of carrying out the exploration; and"

(b) by inserting after Subsection (7), the following new subsection:-

"(7A) Where in a year of income a taxpayer derives income from the sale of petroleum from operations conducted pursuant to a petroleum prospecting licence the eligible exploration expenditure of the taxpayer in relation to that petroleum prospecting licence shall be reduced by that income to the following extent and the excess, if any, shall be deemed to be assessable income from petroleum operations of the taxpayer:-

(a) the income is first applied to reduce any eligible exploration expenditure incurred by the taxpayer in relation to that petroleum prospecting licence in the year of income in which the income was derived; and

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- (b) any income in excess of any amount applied to reduce eligible exploration expenditure pursuant to Paragraph (a) is applied to reduce eligible exploration expenditure incurred by the taxpayer in relation to that petroleum prospecting licence, or any other petroleum prospecting licence over the same area in previous years of income, firstly against the earliest incurred eligible exploration expenditure within 11 years prior to the year of income that was derived.”; and
- (c) by inserting after Subsection (9), following new subsection:-
 - “(10) Where income described in Subsections (7)(c) and (7A) exceeds the total accumulated Eligible Exploration Expenditure incurred within the 11 years of exploration prior to the year of income in which that income was derived, such income will be included as assessable income from petroleum operations of the taxpayer.”.

13. DEDUCTION FOR CURRENT YEAR EXPLORATION EXPENDITURE (AMENDMENT OF SECTION 164F).

Section 164F of the Principal Act is amended -

- (a) in Subsection (2)(a), by inserting after the words “year of income” the following:-

“after taking into account any reduction in the eligible exploration expenditure in that year of income pursuant to Section 164B(7) or (7A); or”: and

- (b) in Subsection (4) by repealing Paragraph (a) and replacing it with the following:-

“(a) 10% of the total eligible expenditure incurred in Papua New Guinea by the taxpayer or by a related corporation during that year of income after taking into account any reduction in the eligible exploration expenditure in that year of income pursuant to Sections 164B(7) and (7A).”: and

- (c) by inserting after Subsection (6) the following new subsection:-

“(7) Eligible exploration expenditure incurred in a year of income shall be reduced by any deduction allowed under this section in that year of income.”

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14. ALLOWABLE CAPITAL EXPENDITURE (AMENDMENT OF SECTION 164G).

Section 164G(7) of the Principal Act is amended by repealing the following:-

“(other than interest income exempted under Section 35)”.

15. ELIGIBLE EXPLORATION EXPENDITURE (AMENDMENT OF SECTION 165B).

Section 165B of the Principal Act is amended -

(a) by repealing Subsection (7)(c) and replacing it with the following:-

“(c) rent, interest or subject to Subsection (7A), other income derived by the taxpayer in the course of carrying out the exploration; and”;

(b) by inserting after Subsection (7), the following new subsection:-

“(7A) Where in a year of income a taxpayer derives income from the sale of petroleum or gas from operations conducted pursuant to a petroleum prospecting licence, the eligible exploration expenditure of the taxpayer in relation to that petroleum prospecting licence shall be reduced by that income to the following extent and the excess, if any, shall be deemed to be assessable income from petroleum operations of the taxpayer:-

- (a) the income is first applied to reduce any eligible exploration expenditure incurred by the taxpayer in relation to that petroleum prospecting licence in the year of income in which the income was derived; and
- (b) any income in excess of any amount applied to reduce eligible exploration expenditure pursuant to Paragraph (a) is applied to reduce eligible exploration expenditure incurred by the taxpayer in relation to that petroleum prospecting licence, or any other petroleum prospecting licence over the same area in previous years of income, firstly against the earliest incurred eligible exploration expenditure incurred after 1 January 1985 and within 20 years prior to the year of income in which that income was derived.”; and

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(c) by inserting after Subsection (9), the following new Subsection:-

“(10) Where income described in Subsections (7)(c) and (7A) exceeds the total accumulated Eligible Exploration Expenditure incurred after 1 January 1985 and within the twenty years prior to the year of income in which that income was derived, such income shall be included as assessable income from gas operations or petroleum operations of the taxpayer.”.

16. DEDUCTION FOR CURRENT YEAR EXPLORATION EXPENDITURE (AMENDMENT OF SECTION 165F).

Section 165F of the Principal Act is amended -

(a) in Subsection (2)(a), by inserting after the words, “year of income”, the following:-

“after taking into account any reduction in the eligible exploration expenditure in that year of income pursuant to Section 164B(7) or (7A); or”: and

(b) in Subsection (4) by repealing Paragraph (a) and replacing it with the following:-

“(a) 10% of the total eligible expenditure incurred in Papua New Guinea by the taxpayer or by a related corporation during that year of income after taking into account any reduction in the eligible exploration expenditure in that year of income pursuant to Section 165B(7) and (7A); or”: and

(c) by inserting after Subsection (6), the following new subsection:-

“(7) Eligible exploration expenditure incurred in a year of income shall be reduced by any deduction allowed under this section in that year of income.”.

17. ALLOWABLE CAPITAL EXPENDITURE (AMENDMENT OF SECTION 165G).

Section 165G(6) of the Principal Act is amended by repealing the following:-

“(other than interest income exempted under Section 35)”.

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18. REPEAL AND REPLACEMENT OF DIVISION III.13.

Part III of the Principal Act is amended by repealing Division 13 and replacing it with the following:-

Division 13. - Interest.

“186. LIABILITY TO INTEREST (WITHHOLDING) TAX.

(1) Where interest is paid or credited by a financial institution, the Central Bank or a company to a person resident in Papua New Guinea, the person making the payment of or crediting interest in the account is liable to withhold and pay tax upon that amount at the rate declared by Act.

“(2) Where interest is paid or credited by any person to a non-resident, the person making the payment or crediting interest in the account is liable to withhold and pay tax upon that income at the rate declared by Act.

“(3) Where tax as provided under Subsection (2) has been deducted and paid -

- (a) the interest income shall not be included in assessable income; and
- (b) in computing assessable income of the taxpayer no deduction shall be allowed in respect of any expenditure for or in connection with the earning of interest income.

“(4) The provisions of this section shall not apply -

- (a) where interest paid is exempt under provisions of this Act; or
- (b) where interest is received by a financial institution, Central Bank or the State.

“(5) For the purposes of this Division -

“financial institution” shall have the meaning assigned to it under Section 35(1).

“187. PAYMENT OF INTEREST (WITHHOLDING) TAX.

(1) Interest (Withholding) Tax is due and payable by the person liable to pay the tax within 21 days after the end of the month in which the interest income to which the tax relates was credited or paid (whichever occurs earlier), or such further time as the Commissioner General, in special circumstances, allows.

“(2) Interest (Withholding) Tax, when it becomes due and payable, is a debt due to the Government and payable to the Commissioner General.

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“(3) Any unpaid Interest (Withholding) Tax payable under this Division may be sued for and recovered in a court of competent jurisdiction by the Commissioner General suing in his official name.

“(4) The ascertainment of the amount of any Interest (Withholding) Tax, shall not be deemed to be an assessment within the meaning of any of the provisions of this Act.

“(5) The Commissioner General may serve on a person, by post or otherwise, a notice in which is specified -

- (a) the amount of any Interest (Withholding) Tax that the Commissioner General has ascertained is payable by that person; and
- (b) the date on which tax became due and payable.

“(6) The production of a notice served under Subsection (5) or of a document under the hand of the Commissioner General purporting to be a copy of such a notice, is evidence that the amount of Interest (Withholding) Tax specified in the notice or document became due and payable by the person on whom the notice was served on the date so specified.”.

**19. CERTAIN INCOME NOT INCLUDED IN ASSESSABLE INCOME
(AMENDMENT OF SECTION 189D).**

Section 189D of the Principal Act is amended by inserting after the words “Income upon which dividend (withholding) tax is payable”, the following:-

“and has been paid”.

20. NEW SECTION 219BB.

The Principal Act is amended by inserting the following new section:-

**“219BB. CREDITS IN RESPECT OF DEDUCTION OF INTEREST
(WITHHOLDING) TAX.**

Where the assessable income of a resident taxpayer includes income from interest upon which that taxpayer was liable to Interest (Withholding) Tax, and such tax has been paid, the taxpayer is entitled to a credit of the Interest (Withholding) Tax paid.”.

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21. CREDITS IN RESPECT OF PRESCRIBED INFRASTRUCTURE DEVELOPMENT (AMENDMENT OF SECTION 219C).

Section 219C of the Principal Act is amended -

- (a) in Subsection (1), by repealing the words "that mining project, petroleum project or designated gas project" and replacing them with the following:-

"mining lease, mining project, petroleum project or designated project."; and

- (b) in Subsection (2) -

- (i) by inserting after the words "in respect of a" the following:-

"mining lease."; and

- (ii) in Paragraph (a), by inserting after the words, "income from that" the following:-

"mining lease."; and

- (iii) in Paragraph (b), by inserting after the words, "income from that" the following:-

"mining lease."; and

- (c) in Subsection (4) -

- (i) by inserting after the words "in respect of a" the following:-

"mining lease."; and

- (ii) in Subparagraph (a)(ii), by inserting after the words "income from that" the following:-

"mining lease."; and

- (iii) in Paragraph (b), by inserting after the words "income from that" the following:-

"mining lease.".

22. INTERPRETATION (AMENDMENT OF SECTION 258A).

Section 258A of the Principal Act is amended by adding the following paragraphs:-

- (q) mining levy payable under Section 163ZZA; and
(r) company provisional tax payable under Division VI.1B".

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23. AMOUNT OF NOTIONAL TAX (AMENDMENT OF SECTION 275C).

Section 275C(1) of the Principal Act is amended by inserting after the words "next preceding year of tax", the following:-

"reduced by the amount of company provisional tax payable for that year of tax".

24. NEW DIVISION VI.1B.

PART VI of the Principal Act is amended by inserting after Division 1A the following:-

Division 1B. - Company Provisional Tax.

"275J. APPLICATION.

This Division does not apply to a company that derives assessable income to which Subdivisions III.10CA or III.10C or Divisions III.10A or III.10B apply or holds a special mining lease under the *Mining (Bougainville Copper Agreement) Act* (Chapter 196) or the *Mining (Ok Tedi Agreement) Act* (Chapter 363).

"275K. DEFINITIONS.

(1) In this Division unless the contrary intention appears "income tax" or "tax" does not include tax that a company is liable to pay in the capacity of a trustee.

(2) In Sections 261, 262, 263, 264, 268, 272, 355, 356, 359 and 360, but not in any other section, "income tax" or "tax" includes an instalment of company provisional tax payable in accordance with this Division.

(3) In Sections 263, 264, 268, 272, 355, 359 and 360, but not in any other section, "income tax" or "tax" includes additional tax payable in accordance with Section 275O.

(4) The ascertainment of the amount of any company provisional tax, or the amount of any instalment of tax, in accordance with this Division, shall not be deemed to be an assessment within the meaning of any of the provisions of this Act.

(5) All amounts of instalment of tax shall be calculated to the nearest Kina.

"275L. LIABILITY TO PAY COMPANY PROVISIONAL TAX.

In any year a company is liable to pay company provisional tax for the next succeeding year of tax calculated in accordance with Section 275M.

Income Tax (Budget Provisions 1999)

275M. AMOUNT OF COMPANY PROVISIONAL TAX.

(1) Subject to this section, the provisional tax of a company in respect of a year of tax is an amount equal to the tax assessed in respect of the next preceding year of tax.

(2) Subject to the following provisions of this section, where the rates of income tax payable by companies for a fiscal year are different from the rates declared by Parliament for the next succeeding fiscal year, then the amount of provisional tax calculated shall be varied in accordance with the change in company tax rates announced.

(3) Where -

(a) no assessment has been made of the amount of income tax payable by a company in respect of the year of tax; and

(b) no assessment has been made of the amount of income tax payable by the company in respect of the next preceding year of tax; and

(c) the Commissioner General has reason to believe that income tax will be payable by the company in respect of the year of tax.

then, subject to Section 275N, the provisional tax in respect of the year of tax is such amount as the Commissioner General estimates to be the amount of income tax that will be so payable by the company.

275N. NOTICE OF COMPANY PROVISIONAL TAX PAYABLE.

(1) Where the Commissioner General has determined the company provisional tax for a year of tax he shall issue a notice setting out the amount of tax payable and this shall be paid in three equal instalments no later than 30 April, 31 July and 31 October in the year preceding the year of tax.

(2) Where in relation to a year of tax the Commissioner General has issued a notice setting out the company provisional tax payable, the company may at any time prior to payment of the third instalment, furnish to the Commissioner General an estimate of the company provisional tax payable for the year of tax.

(3) At any time the Commissioner General may re-estimate the company provisional tax payable for the year of tax based on an estimate as provided in Subsection (2), or any other information.

(4) After making an estimate under Subsection (3) the Commissioner General shall issue a notice setting out the amended company provisional tax and instalments due.

Income Tax (Budget Provisions 1999)

275O. UNDER ESTIMATION OF COMPANY PROVISIONAL TAX.

(1) Where the Commissioner General reduces the company provisional tax based on an estimate by the taxpayer and the provisional tax estimated is less than 75% of the income tax ultimately assessed for the year of tax, then additional tax may be charged in accordance with Subsection (2).

(2) Additional tax shall be assessed at 20% of the difference between the company provisional tax estimated by the taxpayer and the company provisional tax originally determined by the Commissioner General or the actual income tax payable, whichever is less.

(3) The Commissioner General may, where he believes there is sufficient reason, remit the whole or any part of the additional tax charged under Subsection (2).

275P. APPLICATION OF PAYMENTS OF PROVISIONAL TAX.

(1) Where provisional tax has been reduced in accordance with re-estimation under Section 275N(3) and the provisional tax already paid exceeds the full amount subsequently assessed, the Commissioner General shall credit the amount of the excess in payment successively of -

(a) any income tax payable by the company in respect of the year of tax whether or not the income tax is due for payment: and

(b) any other tax, duty or levy payable to the Commissioner General in respect of any law administered by him,

and is liable to refund to the company so much of the excess amount as is not so credited.

(2) Where an income tax assessment for a year of tax has been issued and the amount assessed is less than the provisional tax paid in respect of that year of tax, the Commissioner General shall credit the excess tax paid in payment successively of any other tax, duty or levy payable to the Commissioner General in respect of any law administered by him, and is liable to refund of the excess as is not so credited.

275Q. NOTICE OF COMPANY PROVISIONAL TAX TO BE *PRIMA FACIE* EVIDENCE.

The production of a notice specifying an amount payable by a company, purporting to be a copy of such a notice, is *prima facie* evidence that the amount of company provisional tax and all particulars relating to the provisional tax are correct.

Income Tax (Budget Provisions 1999)

275R. TRANSITIONAL PROVISIONS.

For the purposes of this Division, the amount of company provisional tax payable by a company shall be determined in accordance with the following schedule:-

- (a) for the 2000 year of tax, 25% of the amount determined in accordance with Section 275M;
- (b) for the 2001 year of tax, 50% of the amount determined in accordance with Section 275M;
- (c) for the 2002 year of tax, 75% of the amount determined in accordance with Section 275M;
- (d) for the 2003 and subsequent years of tax, 100% of the amount determined in accordance with Section 275M.

25. NEW DIVISION VI.5A.

Part VI of the Principal Act is amended by inserting after Division 5 the following new Division:-

“Division 5A. - Collection of Interest (Withholding) Tax.

312AA. OBJECT OF DIVISION 5A.

The object of this Division is to facilitate the collection of Interest (Withholding) Tax levied under Section 186 and this Division shall be construed and administered accordingly.

312AB. INTERPRETATION.

In this Division unless the contrary intention appears -

“financial institution” shall have the meaning assigned to it in Section 35(1);

“person” includes a company, a trust and a financial institution.

312AC. DEDUCTION FROM GROSS INCOME.

(1) Every person shall before crediting or paying interest to any resident person make a deduction from the gross interest income of an amount as prescribed.

(2) Every person shall at the time when interest is credited to the account of or paid to any non resident person make a deduction from the gross interest income of an amount as prescribed.

(3) A person, who does not make a deduction of Interest (Withholding) Tax as required by this section is guilty of an offence.

Penalty: A fine of not less than K1,000 and not exceeding K2,500.00.

Income Tax (Budget Provisions 1999)

312AD. EXEMPTIONS AND VARIATIONS.

The Commissioner General may, for the purpose of meeting the special circumstances of a case or of the cases included in a class of cases, by notice in writing to a person -

- (a) exempt that person from an obligation imposed on him by Section 312AC; or
- (b) vary the amount to be deducted under that section by that person from the gross interest income.

312AE. DEDUCTIONS TO BE FORWARDED TO THE COMMISSIONER GENERAL.

(1) Where a person has made a deduction of Interest (Withholding) Tax and that deduction was made, or purports to have been made, under Section 312AC, that person shall -

- (a) within 21 days after the end of the month in which the deduction was made -
 - (i) pay to the Commissioner General an amount equal to the deduction; and
 - (ii) furnish to the Commissioner General a remittance advice in the form authorised by the Commissioner General and signed by or on behalf of the person who made the deduction; and

- (b) subject to Subsection (2), before the expiration of two months after the end of the financial year in which the deduction was made, furnish to the Commissioner General a statement with respect to the deduction, in a form authorized by the Commissioner General, signed by or on behalf of the person who made the deduction.

(2) The Commissioner General may by written notice -

- (a) allow further time for the furnishing or;
- (b) waive the requirement to furnish,

a statement under Subsection (1)(b).

(3) A person, who fails to comply with Subsection (1)(a) is guilty of an offence.

Penalty: A fine not exceeding K2,500.00 or imprisonment for a period not exceeding six months.

(4) A person, who fails to comply with Subsection (1)(b) is guilty of an offence.

Penalty: A fine not exceeding K500.00.

Income Tax (Budget Provisions 1999)

“(5) Where an amount payable to the Commissioner General by a person under this section remains unpaid after the expiration of the period within which, by this section, it is required to be paid -

- (a) that amount continues to be payable by that person to the Commissioner General; and
- (b) an additional amount is, in addition to any other penalty to which that person may be liable, payable to the Commissioner General at the rate of 20% per annum on the amount unpaid, computed from the expiration of that period.

“(6) The Commissioner General may, in any case, for reasons that he thinks sufficient, remit any additional amount payable under Subsection (5) or any part of such an additional amount.

“312AF. LIABILITY OF PERSON FAILING TO MAKE DEDUCTION.

(1) Where a person has failed to make a deduction of Interest (Withholding) Tax in accordance with Section 312AC, that person is liable, in addition to any other penalty to which he may be liable, to pay to the Commissioner General an amount equal to any unpaid Interest (Withholding) Tax payable in respect of gross interest income.

“(2) Where a person has paid to the Commissioner General an amount payable by virtue of Subsection (1)(a), that person may recover an amount from the person liable to pay the Interest (Withholding) Tax to which that first-mentioned amount relates.

“312AG. RECOVERY OF AMOUNTS BY COMMISSIONER GENERAL.

(1) An amount payable to the Commissioner General under Division 5A by a person is a debt to the State and payable to the Commissioner General and -

- (a) that amount may be sued for and recovered in a court of competent jurisdiction by the Commissioner General suing in his official name; and
- (b) a court before which proceedings are taken against that person for an offence against this Division may order that person to pay that amount to the Commissioner General.

“(2) The provisions of Section 333 apply in proceedings for the recovery of an amount payable to the Commissioner General under this Division in the same way as those provisions apply in proceedings for the recovery of a pecuniary penalty under this Act.

Income Tax (Budget Provisions 1999)

“(3) The provisions of Section 339 apply to an order for the payment of a sum of money to the Commissioner General made under Subsection (1)(b) in the same way as they apply to an order for the payment of a sum of money to the Commissioner General made under Part VII.”.

26. **ACCESS, ETC., TO BOOKS, ETC., (AMENDMENT OF SECTION 365).**
Section 365(4) of the Principal Act is repealed.

I hereby certify that the above is a fair print of the *Income Tax (Budget Provisions 1999) Act 1998* which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *Income Tax (Budget Provisions 1999) Act 1998* was made by the National Parliament on 24 November 1998.

Speaker of the National Parliament.

Income Tax (Budget Provisions 1999)

“(3) The provisions of Section 339 apply to an order for the payment of a sum of money to the Commissioner General made under Subsection (1)(b) in the same way as they apply to an order for the payment of a sum of money to the Commissioner General made under Part VII.”

26. **ACCESS, ETC., TO BOOKS, ETC., (AMENDMENT OF SECTION 365).**
Section 365(4) of the Principal Act is repealed.

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