

No. 34 of 1992.

Income Tax (Budget Provisions) Act 1992.

Certified on : 16.12.92

INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 1992.

Income Tax (Budget Provisions) Act 1992.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 1992.

AN ACT

entitled

Income Tax (Budget Provisions) Act 1992.

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

MADE by the National Parliament -

- (a) in so far as relating to Sections 1,2,3,4,22 and 29 (in so far as relating to Section 258A(p)) - to be deemed to have come into operation on 10 November 1992; and
- (b) in so far as relating to the remainder - to come into operation on 1 January 1993.

1. INTERPRETATION (AMENDMENT OF SECTION 4).

Section 4 of the Principal Act is amended -

(a) in Subsection (1) -

- (i) by repealing the definition of "Assistant Collector" and replacing it with the following definition:-

"'Assistant Commissioner' means an Assistant Commissioner of Taxes appointed under Section 6;";
and

- (ii) by inserting after the definition of "child" the following definitions:-

"'Commissioner General' means the Commissioner General of Internal Revenue appointed under Section 6;

'Commissioner of Taxation' means the Commissioner of Taxation appointed under Section 6;"; and

- (iii) by inserting after the definition of "employee" the following definition:-

"'entertainment allowance' is an allowance provided to an employee for expenditure incurred by the employee for entertainment which is wholly and exclusively for the purpose of the business of the employer;"; and

- (iv) by inserting after the definition of "mortgage" the following definitions:-

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"'motor vehicle allowance' is an allowance provided to an employee, whether directly or indirectly, for the acquisition or use of a motor vehicle in Papua New Guinea;

'motor vehicle excess benefit tax' is deemed to be an income tax for the purposes of any provision in this Act dealing with the assessment or collection of income tax;

'motor vehicle expenditure' means expenditure and amounts deductible by way of depreciation, incurred in connection with the use of a motor vehicle in Papua New Guinea where such use is substantially in relation to the employment of the user and the expenditure incurred is of a type that would have been deductible under Division III.3;"; and

(v) by inserting after the definition of "provincial law" the following definition:-

"'public utility allowance' means an allowance provided to an employee in connection with his electricity, gas, water or garbage expenses;" and

(vi) by repealing the definition of "the Chief Collector"; and

(b) by repealing Subsection (3) and replacing it with the following:-

"(3) A reference in this Act to the Commissioner General shall, in respect of a matter as to which a person has exercised a power or performed a function delegated to him by the Commissioner General, be deemed to include a reference to the delegate."; and

(c) by adding the following subsection:-

"(11) A reference in this Act to the Chief Collector shall be read as a reference to the Commissioner General.".

2. REPEAL AND REPLACEMENT OF SECTION 6.

Section 6 of the Principal Act is repealed and is replaced with the following:-

***6. COMMISSIONER GENERAL OF INTERNAL REVENUE, COMMISSIONER OF TAXATION, ETC.,**

(1) There shall be a Commissioner General of Internal Revenue, a Commissioner of Taxation and such Assistant Commissioners of Taxation as are required.

"(2) The Commissioner General of Internal Revenue shall be appointed by notice in the National Gazette by the National Executive Council on the recommendation of the Minister.

"(3) The Commissioner General of Internal Revenue has the general administration of this Act.

"(4) The Minister, after considering recommendations from the Commissioner General, by notice in the National Gazette shall appoint a Commissioner of Taxation.

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3. REPEAL AND REPLACEMENT OF SECTION 7.

Section 7 of the Principal Act is repealed and is replaced with the following:-

***7. DELEGATION.**

(1) The Commissioner General may delegate to the Commissioner of Taxation or such Assistant Commissioners as have been appointed, all or any of his powers and functions under this Act or any other Act that is an Act relating to taxation (except this power of delegation).

"(2) A power or function delegated under Subsection (1) may be exercised or performed by the delegate in accordance with the instrument of delegation.

"(3) Where under this Act or any other Act that is an Act relating to taxation, the exercise of a power or the performance of a function by the Commissioner General is dependent upon the opinion, belief or state of mind of the Commissioner General in relation to a matter and that power or function has been delegated under this section, that power or function may be exercised or performed by the delegate upon the opinion, belief or state of mind of the delegate in relation to the matter.

"(4) A delegation under this section is revocable at will and does not prevent the exercise of a power or performance of a function by the Commissioner General.

"(5) A delegation under this section may be made subject to a power of review and alteration by the Commissioner General, within a period specified in the instrument of delegation, of acts done under the delegation and a decision given upon such a review or alteration shall be deemed to be a decision of the Commissioner General."

4. REPEAL AND REPLACEMENT OF SECTION 8.

Section 8 of the Principal Act is repealed and is replaced with the following:-

***8. REPORT BY COMMISSIONER GENERAL.**

(1) The Commissioner General shall furnish to the Minister annually, for presentation to the Parliament, a report on the working of this Act.

"(2) In the report referred to in Subsection (1), the Commissioner General shall draw attention to any breaches or evasions of this Act that have come to his notice."

5. IMPOSITION OF INCOME TAX (AMENDMENT OF SECTION 11).

Section 11(2) of the Principal Act is amended by repealing the amount "K2400.00" and replacing it with the following:-

"K3000.00".

6. NON-PROFIT COMPANIES (AMENDMENT OF SECTION 16).

Section 16 of the Principal Act is amended by repealing the amount "K2400.00" and replacing it with the following:-

"K3000.00".

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7. EXEMPTION OF PENSIONS, ETC., (AMENDMENT OF SECTION 29).

Section 29(1) of the Principal Act is amended -

(a) by repealing Paragraphs (k) and (n); and

(b) by repealing Paragraph (r) and replacing it with the following:-

"(r) repayable amounts advanced to a first home owner for the purpose of purchasing property used for housing the cost of which was K50,000.00 or less where these advances have been debitted against amounts owed in respect of recreation leave, furlough, superannuation or gratuity entitlements."

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

Section 35 of the Principal Act is amended -

(a) in Subsection (1), by repealing the following definitions:-

"eligible housing"

"eligible taxpayer"

"first home buyer"; and

(b) in Subsection (2) -

(i) in Paragraph (b) by repealing the following:-

"(other than a company)"; and

(ii) by repealing Paragraph (c)(ii); and

(iii) by repealing Paragraph (d).

9. NON-APPLICATION OF SUBDIVISION (AMENDMENT OF SECTION 46A).

Section 46A of the Principal Act is amended by repealing Paragraph (a).

10. CAPITAL AMOUNT OF ALLOWANCE, ETC., DEEMED SALARY OR WAGES (AMENDMENT OF SECTION 46B).

Section 46B of the Principal Act is amended -

(a) in Subsection (1), by repealing the words and figures "Subsections (2) and (3)" and replacing them with the following:-

"Subsections (2), (3) and (4)"; and

(b) by repealing Subsection (2) and replacing it with the following:-

"(2) Income referred to in Subsection (1) to the extent that it relates to a payment accrued before 1 January 1993 and does not exceed the total value of -

(a) payments in respect of annual accrued leave (provided that the annual leave entitlement does not exceed six weeks and the payment, being part of a termination payment, is made before 1 January 1994); and

(b) payments in respect of accrued long service leave at a rate not exceeding six months per 15 years of service with an employer or an associated person of that employer where the employee has completed a minimum of six years continuous service and the payment, being part of a termination payment, is made before 1 January 1994; and

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(c) distribution from a superannuation fund being a prescribed sum, and the amount accrued before 1 January 1993; and

(d) distribution from a superannuation fund being a prescribed sum where the distribution is made in respect of contributions made on behalf of that employee for not less than 15 years,

shall be deemed to be salary or wages income taxable at the rate declared by Section 1 of the *Income Tax (Salary or Wages) Tax (Rates) Act 1979.*"; and

(c) by inserting after Subsection (2), the following subsection:-

"(2A) Subsection (4) does not apply to a distribution from a superannuation fund where the distribution is made in respect of contributions made on behalf of that employee for not less than 15 years."; and

(d) by adding the following subsection:-

"(4) Income referred to in Subsections (1), (2) and (3) to the extent that it relates to a payment accrued from 1 January 1993 shall be deemed to be salary or wages paid in respect of a period of 26 fortnights preceding the date on which the payment was made."

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

Section 47(1) of the Principal Act is amended by repealing Paragraph (d) and replacing it with the following:-

"(d) allowances, gratuities, compensations, bonuses and premiums allowed, given or granted to him in respect of or for or in relation directly or indirectly to, any employment or services rendered by him where such benefit so allowed, given or granted would be a taxable benefit under Division III.2B; and

(e) any distribution made to a taxpayer from a superannuation fund being an amount in excess of the prescribed sum."

12. INTERPRETATION (AMENDMENT OF SECTION 65A).

Section 65A of the Principal Act is amended by repealing the definition of "transitional payment".

13. REPEAL OF SECTION 65B.

Section 65B of the Principal Act is repealed.

14. REPEAL AND REPLACEMENT OF SECTION 65C.

Section 65C of the Principal Act is repealed and is replaced with the following:-

"65C. GRATUITY UNDER NEW CONTRACT.

(1) Subject to Subsection (2), where a public servant who is a non-citizen enters into a contract of employment in accordance with Section 8 of the *Public Employment Non-Citizens) Act* (Chapter 342) and that contract includes a condition for the payment of a gratuity, the value of that gratuity shall be deemed to be income derived by way of salary or wages for the year of income in which it is derived and shall be taxable at the rate declared in the *Income Tax (Salary or Wages Tax) (Rates) Act 1979.*

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"(2) Subsection (1) applies only to a payment accrued before 1 January 1993 and any payment accruing after that date shall be deemed to be salary or wages paid in respect of a period of 26 fortnights preceding the date on which the payment was made."

15. REPEAL AND REPLACEMENT OF SECTION 65CA.

Section 65CA of the Principal Act is repealed and is replaced with the following:-

***65CA. OBJECTS.**

(1) The object of this Division is to enable the payment, by one instalment after completion of each three years of continuous service, of gratuities, taxed at the rate declared by Section 1 of the *Income Tax (Salary or Wages Tax) (Rates) Act* 1979, provided that this subsection shall not apply to gratuities accruing from 1 January 1993.

"(2) Notwithstanding the provisions of Subsection (1) and Section 65CD(1), the rate declared by Section 1 of the *Income Tax (Salary or Wages Tax) (Rates) Act* 1979 shall apply to the payment of a gratuity accrued before 1 January 1993 where the payment is made prior to a three year period.

"(3) Gratuities accruing from 1 January 1993 shall be deemed to be salary or wages paid in respect of a period of 26 fortnights preceding the date on which payment was made."

16. INTERPRETATION (AMENDMENT OF SECTION 65CB).

Section 65CB of the Principal Act is amended by repealing the definition of "transitional payment".

17. REPEAL OF SECTION 65CC.

Section 65CC of the Principal Act is repealed.

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

Section 65E of the Principal Act is repealed and is replaced with the following:-

***65E. INCOME APPLICABLE.**

(1) Subject to Sections 46B, 46C, 145 and 299E, this Division applies to income consisting of -

- (a) salary or wages; and
- (b) all allowances paid or provided to an employee in respect of his employment; and
- (c) the cost to the employer of any services, goods or other benefits provided or given to an employee which, in the opinion of the Commissioner General, are of a domestic or private nature; and
- (d) in relation to accommodation which is not owned by the employer, the gain derived by the taxpayer from the use in Papua New Guinea of accommodation provided free of charge by the employer and the payment in respect of that accommodation exceeds the prescribed amount; and

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- (e) the amount by which a housing allowance exceeds the prescribed amount; and
- (f) the amount by which an entertainment allowance exceeds K5000.00 per annum or K192.00 per fortnight; and
- (g) the amount by which a public utility allowance exceeds K2000.00 per annum or K77.00 per fortnight; and
- (h) the amount by which an allowance for domestic services, including the provision of security, exceeds K3000.00 per annum or K115.00 per fortnight; and
- (i) the amount by which an allowance for telephone expenditure exceeds K2000.00 per annum or K77.00 per fortnight; and
- (j) where money is given to an employee in lieu of a motor vehicle, the amount by which the payment exceeds K15,000.00 per annum or K577.00 per fortnight; and
- (k) the net amount of annuity after the exclusion of any amount of undeducted purchase price by virtue of Section 49.

"(1A) For the purposes of determining the fortnightly salary or wages tax, where a payment which is taxable under Subsection (1) is made as an annual payment, the payment shall be deemed to be paid in respect of a period of 26 fortnights.

"(1B) Subsection (1), in so far as it limits the amount assessable, does not apply to a payment or benefit provided to an employee, where the payment or benefit is in the opinion of the Commissioner General, of a domestic or private nature.

"(1C) Where an employee derives an assessable benefit in the form of a cash allowance which exceeds the exempt amount, such payment shall be deemed to be salary or wages and shall be taxable at the rate declared in Section 1(3) of the *Income Tax (Salary or Wages Tax) (Rates) Act* 1979.

"(1D) Subsection (1) does not apply to an employee who is a member of the disciplined forces in relation to the value of meals or sustenance provided in connection with the employment of that person."

19. LOSSES AND OUTGOINGS (AMENDMENT OF SECTION 68).

Section 68 of the Principal Act is amended -

- (a) by repealing Subsection (7); and
- (b) by repealing Subsection (9) (second occurring).

20. DEDUCTIONS FOR GIFTS TO CHARITABLE BODIES (AMENDMENT OF SECTION 69D).

Section 69D of the Principal Act headed "Deduction for Gifts to Charitable Bodies" and inserted by Section 10 of the *Income Tax (Budget Provisions) Act* 1991 is renumbered as Section 69E.

21. INTERPRETATION (AMENDMENT OF SECTION 196Y).

Section 196Y of the Principal Act is amended in the definition of "qualifying training expenses" -

- (a) in Paragraph (c), by repealing the word "employees" and replacing it with the following:-
"citizen employees"; and

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(b) in Paragraph (f), by inserting after the words "educational activities" the following:-

"for citizen employees"; and

(c) in Paragraph (g), by repealing the word "trainees" and replacing it with the following:-

"citizen trainees"; and

(d) in Paragraph (h), by repealing the word "employees" and replacing it with the following:-

"citizen employees"; and

(e) in Paragraph (i), by repealing the words "training purposes" and replacing them with the following:-

"citizen training purposes".

22. NEW DIVISION III.14E.

The Principal Act is amended in Part III by inserting after Division 14D the following new Division:-

"Division 14E. - Motor Vehicle Excess Benefit Tax.

"196ZB. LIABILITY.

Subject to Section 65E(1), where, on or after 10 November 1992, an employer provides an employee with a motor vehicle, including a lease vehicle, and the purchase price for such vehicle exceeds K40,000.00, the employer is liable to pay motor vehicle excess benefit tax under this Division.

"196ZC. PAYMENT OF TAX.

(1) The amount of tax payable under Section 196ZB is, in respect of any one motor vehicle, K5,000.00.

"(2) An employer who provides a motor vehicle benefit to which Section 196ZB applies shall, within 21 days after the end of the month in which the motor vehicle is provided, pay to the Commissioner General the amount specified in Subsection (1).

"(3) An employer liable to tax under this Division shall remit the amount to the Commissioner General and furnish a signed remittance advice in a form approved by the Commissioner General showing the amount paid.

"(4) The Commissioner General may serve on an employer notice in writing specifying -

- (a) the amount of motor vehicle excess benefits tax payable; and
- (b) the date due for payment of the tax.

"(5) An amount payable as motor vehicle excess benefits tax shall be deemed to be an assessment for the purposes of this Act.

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***196ZD. FAILURE TO COMPLY.**

(1) An employer who fails to comply with Section 196ZC(2) is guilty of an offence.

Penalty: A fine of not less than K400.00 but not exceeding K2,000.00.

"(2) An employer who fails to comply with Section 196ZC(3) is guilty of an offence.

Penalty: A fine of not less than K200.00 but not exceeding K1,000.00.

***196ZE. ADDITIONAL TAX.**

(1) Where an amount of motor vehicle excess benefit tax payable to the Commissioner General by an employer remains unpaid after the end of the period within which it required to be paid -

- (a) the principal amount continues to be payable by the person to the Commissioner General; and
- (b) the person is liable to pay to the Commissioner General by way of additional tax an amount calculated at the rate of 20% per annum from the end of that period on so much of the principal amount as remains unpaid.

"(2) The Commissioner General may, where he believes there is sufficient reason, remit the whole or any part of additional tax payable under Subsection (1).

***196ZF. RECOVERY OF AMOUNTS BY COMMISSIONER GENERAL.**

(1) An amount payable to the Commissioner General under this Division by a person is a debt due 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; or
- (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 this Act apply to proceedings for the recovery of 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.

"(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 those provisions apply in proceedings for the recovery of a pecuniary penalty under this Act."

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23. NON-APPLICATION OF DIVISION (AMENDMENT OF SECTION 213C).

Section 213C(b) of the Principal Act is amended by repealing the amount "K12,150" and replacing it with the following:-

"K16,270.00".

24. ENTITLEMENT TO REBATE FOR DEPENDANTS (AMENDMENT OF SECTION 213D).

Section 213D is amended -

(a) in Subsection (1) -

(i) in Paragraph (a)(ii), by repealing the amount "K375.00" and replacing it with the following:-

"K450.00"; and

(ii) in Paragraph (b)(ii), by repealing the amount "K250.00" and replacing it with the following:-

"K300.00"; and

(b) in Subsection (2)(b) -

(i) in Subparagraph (i), by repealing the amount "K520.00" and replacing it with the following:-

"K1040.00"; and

(ii) in Subparagraph (ii), by repealing the amount "K20.00" and replacing it with the following:-

"K40.00".

25. REPEAL AND REPLACEMENT OF SECTION 213E.

Section 213E of the Principal Act is repealed and is replaced with the following:-

***213E. LIMIT TO REBATE ENTITLEMENT.**

Subject to Section 218 -

(a) the sum of the rebates allowed under this Division shall not exceed -

(i) 45% of the amount of tax payable on the taxable income of the year of income; or

(ii) K135.00,

whichever is the greater; and

(b) the sum of rebates allowable to a taxpayer under this Division shall not exceed K1350.00."

26. REBATE OF SALARY OR WAGES TAX (AMENDMENT OF SECTION 214).

Section 214(3) of the Principal Act is amended by repealing the percentage "30%" and replacing it with the following:-

"20%".

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

Section 219C of the Principal Act is amended -

(a) in Subsection (1), by repealing the words "in the construction of a prescribed infrastructure development" and replacing them with the following:-

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"in relation to a prescribed infrastructure development"; and
(b) in Subsection (2), by repealing the words "in the construction of a prescribed infrastructure development" and replacing them with the following:-

"in relation to a prescribed infrastructure development"; and

(c) in Subsection (3), by repealing the words "in the construction of a prescribed infrastructure development" and replacing them with the following:-

"in relation to a prescribed infrastructure development".

28. REFUND OF TAXES OVERPAID (AMENDMENT OF SECTION 234).

Section 234 of the Principal Act is amended by adding the following new paragraph:-

"(d) in the case of tax paid under Division VI.3B a refund for overpaid tax shall be made out of the Mineral Resources Stabilization Fund."

29. INTERPRETATION (AMENDMENT OF SECTION 258A).

Section 258A is amended by adding the following Paragraphs:-

"(o) advance tax payable under Division VI.3B; and
(p) motor vehicle excess benefits tax payable under Division III.14E."

30. NEW SECTION 275AA.

The Principal Act is amended by inserting in Division VI.1A immediately before Section 275AA the following new section:-

"275AA. APPLICATION.

This Division does not apply, in relation to income derived after 31 December 1992, to a company that derives assessable income to which Division III.10CA, III.10C or III.10A applies or holds a special mining lease under the *Mining (Bougainville Copper Agreement) Act* (Chapter 196) or the *Mining (Ok Tedi Agreement) Act* (Chapter 363)."

31. NEW SECTION 276A.

The Principal Act is amended by inserting in Division VI.2 immediately before Section 276 the following new section:-

"276A. APPLICATION.

Notwithstanding anything in this Division, the provisions of this Division, to the extent that they would apply to a payment that is an eligible payment by virtue of Division IX.2A, shall not apply to such a payment made after 31 December 1992."

32. REPEAL AND REPLACEMENT OF SECTION 299A.

Section 299A of the Principal Act is repealed and is replaced with the following:-

"299A. NON-APPLICATION AND TRANSITIONAL PROVISION.

(1) This Division does not apply in respect of salary of wages derived prior to 1 January 1980.

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"(2) Where, after 1 January 1993, a taxpayer receives or is entitled to received from an employer a lump sum payment being back payment of salary or wages (and not being income or payment to which Section 1(2) of the *Income Tax (Salary or Wages Tax) (Rates) Act 1979* applies) which is calculated by reference to a period in excess of one fortnight in relation to an adjustment of salary or wages for a period which commenced prior to 1 January 1993, the employee is deemed to be entitled to receive such adjusted salary or wages in respect of each fortnight or part thereof in the period to which the payment relates, but not exceeding a period of 26 fortnights preceding the date on which the payment is received.

"(3) The employer shall make a deduction of salary or wages tax from a payment referred to in Subsection (2) and, for the purposes of calculating additional liability to salary or wages tax, shall deduct from the payment the aggregate of the increase in liability for each fortnight or part thereof salary or wages tax at the rate declared by the *Income Tax (Salary or Wages Tax) (Rates) Act 1979* for the period to which the payment relates calculated in accordance with the following formula:-

$$A - B = C$$

where -

A = salary or wages tax in respect of the sum of the previous income per fortnight plus additional salary or wages income so deemed by virtue of Subsection (2); and

B = salary or wages tax in respect of the previous salary or wages income; and

C = increase in liability for salary or wages tax.

"(4) Where, before 1 January 1993, a taxpayer receives or is entitled to receive from an employer a lump sum payment being advance-payment of salary or wages (and not being income or payment to which Section 1(2) of the *Income Tax (Salary or Wages Tax) (Rates) Act 1979* applies) which is calculated by reference to a period in excess of one fortnight commencing on a date prior to 1 January 1993 and continuing beyond 1 January 1993, the employee is deemed to be entitled to receive such salary or wages in respect of each fortnight or part thereof in the period to which the payment relates and the employer shall deduct salary or wages tax at the rate declared by the *Income Tax (Salary or Wages Tax) (Rates) Act 1979* for the period to which the payment relates."

33. DEDUCTION BY EMPLOYER FROM SALARY OR WAGES (AMENDMENT OF SECTION 299D).

Section 299D is amended -

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

"(4) Subject to Section 65E, where an employee receives from his employer, in addition to his salary or wages, meals, sustenance or the use of premises or quarters or the use of a motor vehicle as part consideration for his services, he shall for the purpose of computing the amounts of deductions under this section be deemed to receive as salary or wages in addition to any money actually paid to him -

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- (a) in respect of each fortnight or part of a fortnight during which he receives the meals or sustenance - an amount calculated at a rate determined by the Commissioner General in respect of that employee; and
 - (b) in respect of each fortnight or part of a fortnight during which he receives the use of premises or quarters or the use of a motor vehicle - an amount calculated at a rate determined by the Commissioner General in respect of that employee."; and
- (b) by repealing Subsection (5).

34. VARIATION OF DEDUCTIONS (AMENDMENT OF SECTION 299E).

Section 299E of the Principal Act is amended by inserting after Subsection (3) the following new subsection:-

"(3A) No variation shall be allowed under Subsection (3) for any allowance which exceeds the non-taxable amounts specified in Section 65E(1).".

35. GROUP EMPLOYERS (AMENDMENT OF SECTION 299G).

Section 299G(4) of the Principal Act is amended by adding the following new Paragraph:-

"(g) not later than 14 February in each year, furnish to the Chief Collector a statement in a form approved by the Chief Collector signed by the group employer stating the amount of motor vehicle excess benefit tax paid under Division III.14E.

36. NON APPLICATION (AMENDMENT OF SECTION 299R).

Section 299R of the Principal Act is amended by adding the following new subsection:-

"(2) This Division does not apply, in relation to income derived after 31 December 1992, to a taxpayer who derives assessable income to which Division III.10CA, III.10C or III.10A applies or holds a special mining lease under the *Mining (Bougainville Copper Agreement) Act* (Chapter 196) or the *Mining (Ok Tedi Agreement) Act* (Chapter 363).".

37. NEW DIVISION VI.3B.

Part VI of the Principal Act is amended by inserting after Division 3A the following new Division:-

"Division 3B - Collection of Tax on Income from Mining and Petroleum Operations.

"311AM. OBJECT.

The object of this Division is to enable the collection of tax in the year of income on income derived by a taxpayer from mining and petroleum operations to which Division III.10CA, Division III.10C or Division III.10A applies, or holds a special mining lease under the *Mining (Bougainville Copper Agreement) Act* (Chapter 196) or the *Mining (Ok Tedi Agreement) Act* (Chapter 363).

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"311AN. INTERPRETATION.

In this Division -

"additional tax" means income tax or tax and for the purposes of Sections 261, 262, 263, 264, 268, 272, 355, 356, 359 and 360, but not in any other section, includes additional tax payable in accordance with Section 311AT;

"tax" means income tax and for the purposes of Sections 261, 262, 263, 264, 268, 272, 355, 356, 359, and 360, but not in any other section, includes an instalment of income tax determined by the Commissioner General as being payable under this Division by a taxpayer who derives assessable income from mining or petroleum operations to which Division III.10CA, Division III.10C or Division III.10A applies, or holds a special mining lease under the *Mining (Bougainville Copper Agreement) Act* (Chapter 196) or the *Mining (Ok Tedi Agreement) Act* (Chapter 363);

"year of income" in relation to a taxpayer liable to pay a tax instalment under this Division, means the fiscal year or the accounting period adopted under this Act.

"311AO. TAXPAYER TO ESTIMATE INCOME.

(1) A taxpayer who derives assessable income from mining or petroleum operations to which Division III.10CA, Division III.10C or Division III.10A applies or derives assessable income to which a special mining lease granted under the *Mining (Bougainville Copper Agreement) Act* (Chapter 196) or the *Mining (Ok Tedi Agreement) Act* (Chapter 363) applies shall, by 31 March of the year of income, furnish the Commissioner General with an estimate of the taxable income likely to be derived during the year of income by the taxpayer and the basis on which the estimate is made.

"(2) Where a taxpayer has not by the due date furnished the estimate required under Subsection (1), the Commissioner General, relying on any information that he deems appropriate, shall make an estimate of the taxable income in respect of that taxpayer.

"(3) Where, in relation to the estimate furnished by the taxpayer, the Commissioner General is of the opinion that the estimate does not reflect the taxable income likely to be derived by the taxpayer, the Commissioner General may, on the basis of any information he has in his possession or obtains for the purpose, make an estimate of the taxable income as he deems reasonable.

"311AP. DETERMINATION OF TAX PAYABLE.

Where a taxpayer furnishes an estimate of taxable income, the Commissioner General shall determine the amount of tax payable taking into account -

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- (a) the estimate furnished by the taxpayer and any other information accompanying the estimate; or
- (b) where no estimate is furnished, or where the estimate furnished does not fairly reflect the taxable income of the taxpayer, the estimate determined by him.

***311AQ. PAYMENT OF TAX.**

(1) An amount determined by the Commissioner General to be the estimated taxable income liable to tax under this Division shall be taxed at the rates declared by the *Income Tax and Dividend (Withholding) Tax Rates Act* (Chapter 111) and shall be payable in three instalments, falling due on 30 April, 31 July, and 31 October.

"(2) Where the Commissioner General has determined the amount of tax payable, he shall notify the taxpayer of the determination and the date due for payment.

"(3) For the purposes of this Division, a determination by the Commissioner General of tax payable by a taxpayer is not an assessment within the meaning of any of the provisions of this Act.

"(4) All amounts of instalment tax shall be calculated to the nearest kina.

***311AR. RECOVERY OF AMOUNTS BY COMMISSIONER GENERAL.**

(1) An amount payable to the Commissioner General under this Division by a person is a debt due 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; or
- (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 this Act apply to proceedings for the recovery of amounts 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.

"(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 those provisions apply in proceedings for the recovery of a pecuniary penalty under this Act.

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***311AS. VARIATION OF ESTIMATE.**

(1) Where, as a result of any change as to the basis upon which an estimate of taxable income and a determination of tax payable was made, the Commissioner General is of the opinion that an increase in the amount of tax is warranted, he may vary the amount of tax previously determined as payable and issue a notice of the increase to the taxpayer.

"(2) A taxpayer required to furnish an estimate of taxable income under this Division may apply to the Commissioner General, on payment of the instalment due, for review of the estimate of taxable income previously furnished.

"(3) Where the Commissioner General receives an application under Subsection (2) and he is satisfied that a change in circumstances justifies a review of the estimated taxable income likely to be derived by the taxpayer, he shall revise the amount previously determined as payable and notify the taxpayer of the revised determination.

"(4) Where the amount of tax or instalment of tax is varied under Subsection (1) or (2), the Commissioner General shall issue a further notice in writing specifying the varied amount as the tax or instalment of tax payable, and the amount specified in the notice shall be deemed to have been payable, as the case may be, on the date specified in the first mentioned notice.

***311AT. INCREASED TAX.**

Where by reason of the operation of Section 311AS the amount payable by a taxpayer as tax is greater than the adjusted tax, the notice served on the taxpayer under Section 311AS(1) continues to have effect but the Commissioner General shall cause to be served on the taxpayer a further notice in writing specifying -

- (a) the amount of the increase in the tax that becomes payable by reason of Section 311AS(1); and
- (b) a date as the due date for payment of the amount, being a date not less than 14 days after the date of service of the last mentioned notice,

and the amount of the increase in the tax so specified is, notwithstanding the provisions of Section 311AQ(1), due and payable on the date so specified.

***311AU. REFUNDS.**

(1) Where -

- (a) a company has been served, in accordance with Section 311A0(3), with a notice specifying an amount payable as tax in respect of a year of income; and

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- (b) the company has been served, in accordance with Section 311AS(4), with a further notice specifying a reduced amount as the amount of tax instalment; and
- (c) the company has paid, in respect of the instalment an amount exceeding -
 - (i) in a case to which Subsection (ii) does not apply - the reduced amount; or
 - (ii) where the company has been served in accordance with Section 311AT with a further notice specifying an amount of an increase in tax - the sum of the amount of the increase,

the Commissioner General shall credit the amount of the excess in payment successively of -

- (iii) any income tax due and payable by the company in respect of that year of income; and
- (iv) any amount payable by the company as any other instalment of tax in respect of the year of income whether or not that amount is due for payment; and
- (v) any other income tax or any withholding tax payable by the company whether or not that income tax or withholding tax is due for payment, or any deduction of salary or wages tax payable by the taxpayer in his capacity as an employer,

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

"(2) Where a taxpayer has paid the whole or part of the tax in respect of a year of income and -

- (a) an assessment has been made of the amount of income tax payable by the taxpayer in respect of that year of income; or
- (b) the Commissioner General is satisfied that no income tax will be payable by the taxpayer in respect of that year of income,

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the Commissioner General shall credit the amount (in this subsection referred to as the "residual amount") remaining after deducting from the amount so paid by the taxpayer any part of the amount so paid that has been, or is required to be credited or refunded in accordance with Subsection (1), in payment successively of -

- (c) any income tax payable by the taxpayer in respect of that taxable income whether or not that income tax is due for payment; and
- (d) any other income tax or any withholding tax payable by the taxpayer whether or not that income tax or withholding tax is due for payment, or any deduction of salary or wages tax payable by the taxpayer in his capacity as an employer,

and is liable to refund to the taxpayer so much of the residual amount as is not so credited.

"311AV. UNPAID INSTALMENTS.

(1) Where, on the date on which income tax becomes due and payable by a taxpayer in respect of a year of tax, the whole or part of an amount payable as an instalment in respect of that year of income has not been paid and there is no other instalment of tax in respect of that year of tax, the whole or a part of which has not been paid -

- (a) where no part of the income tax assessed in respect of that year of tax has been paid - so much if any, of the amount of instalment unpaid as exceeds the amount of that income tax assessed, ceases, on that date, to be payable; or
- (b) where part only of the income tax assessed in respect of that year of tax has been paid - so much, if any, of the amount of instalment unpaid as exceeds the amount of that income tax assessed, ceases, on that date, to be payable; or
- (c) where the whole of the income tax assessed in respect of that year of tax has been paid - the amount of instalment unpaid, ceases, on that date, to be payable.

"(2) Where, on the date on which income tax becomes due and payable by a taxpayer in respect of a year of tax, there are two or more instalments of tax in respect of that year of tax the whole or part of each of which has not been paid -

- (a) where no part of the income tax assessed in respect of that year has been paid - the Commissioner General may determine that the whole or any payment of all of any of the amounts unpaid in respect of those instalments shall cease, on that date, to be payable; or

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- (b) where the whole of the income tax in respect of that tax has been paid - each of the amounts unpaid in respect of those instalments ceases, on that date, to be payable.

"311AW. PENALTY FOR LATE PAYMENT.

(1) Where an amount or amounts of tax determined as payable by a taxpayer is not paid on the due date, the taxpayer shall, in addition to the payment of the tax due, to be liable to a penalty tax at the rate of 20% per annum of the amount of unpaid tax.

"(2) The Commissioner General may, where he believes there is sufficient reason, remit the whole or any part of the penalty tax charged under Subsection (1).

"311AX. TRANSITIONAL ARRANGEMENTS.

For the purposes of this Division the amount of tax determined as payable on the estimated taxable income for the years 1993, 1994 and 1995, shall be paid in accordance with the following schedule:-

- (a) in addition to any tax assessed for the year of tax 1993, an amount equal to 60% of the total amount determined as payable for the year of income 1993, and payable in three instalments on the dates specified in Section 311AQ(1);
- (b) in addition to any tax assessed for the year of tax 1994, an amount equal to 80% of the total amount determined as payable for the year of income 1994, and payable in three instalments on the dates specified in Section 311AQ(1);
- (c) in addition to any tax assessed for the year of tax 1995, an amount equal to 100% of the total amount determined as payable for the year of income 1995, and payable in three instalments on the dates specified in Section 311AQ(1)."

38. NEW DIVISION IX.2A.

Part IX of the Principal Act is amended by inserting after Division 2 the following new Division:-

"Division 2A. - Certificates of Compliance.

"354I. OBJECT.

The object of this Division is to enable the Commissioner General to obtain information to ensure compliance by the taxpayer with any of the Acts administered by the Commissioner General.

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***354J. APPLICATION.**

Notwithstanding the provisions of Division VI.2, this Division shall apply to a business income payment made after 31 December 1992 where the payment is an eligible payment as defined in this Division.

***354K. INTERPRETATION.**

In this Division, unless the contrary intention appears -

'certificate of compliance' means a certificate issued by the Commissioner General under this Division and includes an unexpired Nil Deduction Authority issued under Section 298;

'contract' means a contract, whether express or implied, whether or not in writing and whether or not enforceable, or intended to be enforceable, by legal proceedings;

'eligible payment' means a payment of a kind declared by the Regulations to be an eligible payment for the purposes of this Division and that is -

- (a) made, or is liable to be made under which, in whole or in part, involves the performance of work (whether or not by the person to whom the payment is made or is liable to be made) but does not include -
 - (i) a payment of salary or wages; or
 - (ii) a payment under a contract that is a prescribed contract for the purposes of Division III.14A; or
 - (iii) a payment of exempt income; or
 - (iv) a payment made to or by a trustee of the estate of a bankrupt or the liquidator of a company that is being wound up; and
- (b) made for the performance of a contract prescribed for the purpose of this Division;

'income reporting statement' means a statement by the paying authority on a form approved by Commissioner General containing details of payments to a person in respect of an eligible payment;

'payee' means a person who receives or is likely to receive an eligible payment;

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'paying authority' means a person who makes, or is likely to make an eligible payment and -

- (a) is not a natural person; or
- (b) is a natural person and the payment is not wholly or principally of a private or domestic nature;

'paying authority registration' means a document in the form approved by the Commissioner General for the purposes of Section 3540.

'work' includes -

- (a) services; and
- (b) the provision of materials or goods in connection with the services; and
- (c) any services of a professional, technical, or artistic nature.

"354L. POWER TO ISSUE CERTIFICATES.

(1) Subject to the requirements of this Division, the Commissioner General may, upon application by any person required to obtain a compliance certificate, issue a compliance certificate and such number of official copies as is deemed necessary, to such person in relation to a specified period.

"(2) Subject to Subsection (3), the Commissioner General shall not issue a certificate of compliance to a person unless the Commissioner General is satisfied that the person -

- (a) maintains such accounting and taxation records which correctly record and explain the transactions and financial position of his business including a statement of income and expenditure over the relevant period and a statement of assets and liabilities; and
- (b) conducts all financial transactions relating to the business through a bank account or accounts that are separate from any private or domestic account; and
- (c) satisfactorily complies with his obligations relating to liability for taxation.

"(3) Notwithstanding the provisions of Subsection (2), where the Commissioner General is of the opinion that a person applying for a compliance certificate, and having satisfied the requirements of Subsection (2), has assisted or has been involved in aiding another person to avoid the requirements of Subsection (2), he may refuse to issue a compliance certificate to such person.

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"(4) Where the Commissioner General having regard to -

- (a) the purposes of this Division; and
- (b) the special circumstances (if any) that exist or existed in relation to the person; and
- (c) such other matter as the Commissioner General considers relevant,

is of the opinion that it would be unreasonable to refuse to issue a certificate of compliance to any person, he may issue such a person with a certificate of compliance.

"(5) A compliance certificate issued under Subsection (1) shall remain in force until the holder is notified by the Commissioner General that his certificate has been cancelled.

"354M. DUTY TO OBTAIN COMPLIANCE CERTIFICATE.

(1) A person who -

- (a) proposes to enter into a contract for which he would be entitled to receive an eligible payment of K500.00 or more shall apply in writing to the Commissioner General for a certificate of compliance to be issued under this Division; and
- (b) is the holder of an unexpired certificate of compliance shall be deemed to have complied with the requirements of this Subsection.

"(2) A person, who fails to comply with the requirements of Subsection (1)(a), is guilty of an offence.

Penalty: A fine of not less than K200.00 and not exceeding K2000.00.

"(3) Where the Commissioner General receives an application lodged under Subsection (1) and the Commissioner General is satisfied that the applicant has met the requirements of Section 354L(2), he may issue that person with a certificate of compliance.

"(4) A person who has been issued a nil deduction authority under Section 289 shall be deemed to have complied with the requirements of Subsection (1) until the expiration of the nil deduction authority he holds.

"(5) A person who has been issued a certificate, or is the holder of an unexpired nil deduction authority issued under Section 289, shall produce such certificate or nil deduction authority to the paying authority with whom he intends to enter into a contract.

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"(6) A person, who fails to comply with the requirements of Subsection (5), is guilty of an offence.
Penalty: A fine of not less than K200.00 and not exceeding K2000.00.

***354N. DUTIES OF A PAYING AUTHORITY.**

(1) A paying authority shall, prior to entering into a contract on which he will be liable to make an eligible payment of K500.00 or more, require the person with whom the contract is to be made to produce to him a certificate of compliance issued by the Commissioner General.

"(2) A paying authority, who fails to comply with the requirements of Subsection (1), is guilty of an offence.

Penalty: A fine of not less than K200.00 and not exceeding K2000.00.

"(3) A paying authority shall, where he makes in relation to one contract an eligible payment of K500.00 or more, or in relation to one payee eligible payments for several contracts and the total amount paid exceeds K3000.00 in any one year, furnish an annual income reporting statement containing the following:-

- (i) the amount of the payment or payments made during the year; and
- (ii) the name and address of the payee or payees; and
- (iii) the income tax file number of the payee or payees; and
- (iv) the compliance certificate number or numbers of the payee or payees; and
- (v) in relation to an eligible payment that exceeds K500.00, a signed declaration that prior to entering into the contract or contracts the payee had produced to him a certificate of compliance issued by the Commissioner General.

"(4) A paying authority required to lodge an annual income reporting statement shall -

- (a) complete and lodge the income reporting statement required under Subsection (3) by 15 March in the succeeding year; and
- (b) lodge a duplicate of the income reporting statement together with the income tax return for the relevant year of income as required under Part IV.

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"(5) A paying authority, who fails to comply with the requirements of Subsections (3) and (4), is guilty of an offence.

Penalty: A fine of not less than K200.00 but not exceeding K2000.00.

"(6) A paying authority shall keep a register containing particulars of all eligible payments made and shall, when required to do so by the Commissioner General, produce the register for inspection.

"(7) A paying authority, who fails to comply with the requirements of Subsection (6), is guilty of an offence.

Penalty: A fine of not less than K200.00 and not exceeding K2000.00.

"(8) A paying authority who makes a payment or payments not falling within the provisions of Subsection (3) shall by March in the succeeding year furnish an annual income reporting statement containing a signed declaration that no eligible payments were made exceeding K500.00 in relation to any one contract, and that the total amounts paid to any one payee did not exceed K3000.00 in that year.

"(9) A paying authority, who fails to comply with the requirements of Subsection (8) or makes a false declaration in an income reporting statement, is guilty of an offence.

Penalty: A fine of not less than K200.00 but not exceeding K2000.00.

***3540. REGISTRATION PAYING AUTHORITIES.**

(1) Subject to Subsection (2), a person who is a paying authority by virtue of the provision of this Division shall, before 15 January or within 14 days after the person enters into a contract or becomes eligible to make an eligible payment, complete a registration form approved by the Commissioner General.

"(2) A person who is registered as a paying authority under Section 277 shall be deemed to have complied with the requirement of Subsection (1) until the expiration of the registration he holds.

"(3) A paying authority, who fails to comply with the requirements of Subsection (1), is guilty of an offence.

Penalty: A fine of not less than K200.00 and not exceeding K2000.00.

***354P. VARIATION.**

The Commissioner General may vary any of the requirements stated in Sections 354L, 354M and 354N for the purpose of meeting the special circumstances of any case or class of cases.

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"354Q. REVOCATION OF CERTIFICATES.

(1) The Commissioner General, may, at any time, revoke a compliance certificate.

"(2) Where the Commissioner General revokes a compliance certificate, he shall notify the person to whom the certificate was issued of such cancellation and state the reason for cancellation.

"(3) A person who is notified by the Commissioner General of a revocation effected under Subsection (1) shall, within 14 days after receiving notice of revocation, return to the Commissioner General the certificate including all official copies of the certificate in his possession.

"(4) A person, who fails to comply with the requirements of Subsection (3), is guilty of an offence.
Penalty: A fine of not less than K200.00 and not exceeding K2000.00.

"354R. CANCELLATION OF PAYING AUTHORITY REGISTRATION.

(1) The Commissioner General may -

- (a) upon application in writing by a paying authority setting out his reasons for seeking a cancellation of his registration; or
- (b) for any other reason,

cancel the registration of a paying authority and the Commissioner General shall notify the paying authority of such cancellation.

"(2) A cancellation under Subsection (1) shall take effect from the date specified in the notice of cancellation.

"354S. NOTIFICATION AND REVIEW OF DECISIONS.

(1) Where the Commissioner General makes a decision on an application under Section 354M or revocation under Section 354Q, the Commissioner General shall give notice in writing of his decision to the applicant.

"(2) Where a person has been notified of a decision by the Commissioner General made under this section, and is dissatisfied with that decision, the person may, within 60 days after service on the person of the notice of decision by Commissioner General, lodge with the Commissioner General an objection in writing against the decision stating fully and in detail the grounds on which the person relies.

"(3) The provisions of Division V.2 (other than Section 245) apply in relation to an objection made under Subsection (2) in a like manner as those provisions apply in relation to an objection against an assessment.

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***354T. OFFENCES.**

A person who -

- (a) alters a certificate of compliance or produces to a paying authority a certificate of compliance or an official copy thereof which has been altered without the authority of the Commissioner General; or
- (b) without lawful excuse, has in his possession a forgery or colourable imitation of a certificate of compliance; or
- (c) falsely pretends to be the person named in a certificate of compliance; or
- (d) by the production of a document other than a certificate of compliance that is for the time being in force, causes a paying authority to contravene the provisions of Section 354N(1) or (3); or
- (e) makes, for the purposes of this Division or Regulations prescribing matters in relation to this Division, a declaration that is false or misleading in any particular,

is guilty of an offence.

Penalty: A fine of not less than K5000.00 or imprisonment for 12 months or both.

***354U. JOINDER OF CHARGES UNDER THIS DIVISION.**

(1) Charges against the same person for any number of offences against this Division may be joined for any complaint if those charges are founded on the same facts or forms, or are part of, a series of offences of the same or similar character.

"(2) Where more than one charge is included in the same complaint in pursuance of Subsection (1), particulars of each offence charged shall be set out in a separate paragraph.

"(3) All charges so joined shall be tried together unless the court considers it just that any charge should be tried separately and makes an order to that effect.

"(4) If a person is found guilty of more than one offence, the court may, if it thinks fit, impose one penalty in respect of all offences of which the person has been found guilty, but the penalty shall not exceed the sum of the maximum penalties that could have been imposed if penalties were imposed for each offence separately.

***354V. POWER OF THE COMMISSIONER GENERAL TO OBTAIN INFORMATION.**

Section 366 applies, for the purposes of this Division, as if the reference in Subsection (1)(b) of that section to a person's income or assessment were a reference to a matter relevant to the administration of this Division.

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***354W. DECLARATIONS.**

Any form that is approved by the Commissioner General for the purposes of this Division may require a declaration to be made by the person using the form.

***354X. TAXPAYER TO KEEP RECORDS.**

(1) A compliance certificate issued under Section 354M and the income reporting statement required under Section 354N shall be retained for a period of seven years after the completion of the transactions, acts or operations to which they relate.

"(2) A person, who fails to comply with the requirements of Subsection (1), is guilty of an offence.

Penalty: A fine of not less than K200.00 but not exceeding K2000.00.

***354Y. TRUSTEE.**

A payment made by a natural person shall be taken not to be of a private or domestic nature if it is made by the person in his capacity as a trustee of a trust estate or as a member of a religious, charitable, social, cultural, recreational or other organization or body.

***354Z. SPECIAL PROVISIONS RELATING TO PARTNERSHIPS.**

(1) Subject to this section, this Division applies in relation to the making and receipt of payments by a partnership as if that partnership were a person.

"(2) Where, but for this subsection, an obligation would be imposed on a partnership by the operation of Subsection (1), the obligation may be discharged by any of the partners.

"(3) Where, by virtue of the operation of Subsection (1), an amount payable under this Division by a partnership, the partners are jointly and severally liable to pay that amount.

"(4) Where, by virtue of the operation of Subsection (1), an offence against this Division is deemed to have been committed by a partnership, that offence shall be deemed to have been committed by each of the partners.

***354ZA. PROSECUTIONS.**

A prosecution for an offence against any of the provisions of this section may be commenced at any time."

39. CONTRACTS OR ARRANGEMENTS TO EVADE TAX (AMENDMENT OF SECTION 361).

Section 361 of the Principal Act is amended by inserting after Subsection (4) the following new subsection:-

"(4A) Where an arrangement referred to in this section purports to structure an employee's pay package, and the purpose or one of the purposes or effect of such arrangement is to avoid the payment of salary or wages tax -

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- (a) the employer, who is a party to such arrangement, in addition to any other penalty stipulated under this section, is liable to a fine of not less than K5000.00 and not exceeding K50,000.00; and
- (b) the employee for whom the arrangement is made shall be assessable to tax on the full amount of the benefit without regard to the exempt amounts stipulated under Section 65E(1)."

I hereby certify that the above is a fair print of the *Income Tax (Budget Provisions) Act 1992* which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *Income Tax (Budget Provisions) Act 1992* was made by the National Parliament on 25 November 1992.

Speaker of the National Parliament.