

No. 28 of 2022.

Income Tax (New Porgera)(Amendment) Act 2022.

Certified on : 30 MAY 2022



No. 28 of 2022.

Income Tax (New Porgera)(Amendment) Act 2022.

ARRANGEMENT OF SECTIONS.

1. Exemption of certain interest income (Amendment of Section 35).
2. Exemption of certain dividends (Amendment of Section 42).
3. New Subdivision BA.

“Subdivision BA. - New Porgera Agreement.

156GA. MODIFICATION OF THE ACT IN RELATION TO NEW PORGERA COMMENCEMENT.

156GB. APPLICATION OF THE *INCOME TAX, DIVIDEND (WITHHOLDING) TAX AND INTEREST (WITHHOLDING) TAX RATES ACT* (CHAPTER 111).

156GC. APPLICATION OF ALLOWABLE DEDUCTIONS AND OTHER TAX BENEFITS, ETC.”.

4. Liability to interest (Withholding) Tax (Amendment of Section 186).



No. 28 of 2022.

AN ACT

entitled

Income Tax (New Porgera)(Amendment) Act 2022,

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

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

1. EXEMPTION OF CERTAIN INTEREST INCOME (AMENDMENT OF SECTION 35).
Section 35 of the Principal Act is amended -

(a) in Subsection (1) -

(i) by inserting immediately before the term “financial institution” the following new term:

“Affiliate” has the meaning given in Section 156GA(1); and

(ii) by inserting immediately after the term “long term bond” the following new terms:

“New Porgera” has the meaning given in Section 156GA(1); and

“New Porgera Financing” has the meaning given in Section 156GA(1);”.

(b) in Subsection (2) by inserting after Paragraph (h) the following new paragraph:

“(i) interest derived by a non-resident lender from New Porgera Limited, Barrick (Niugini) Limited or Porgera (Jersey) Limited or an Affiliate of Barrick (Niugini) Limited or Porgera (Jersey) Limited under or in connection with any New Porgera Financing, where such interest is related entirely and ultimately to funding for New Porgera Limited or New Porgera (such interest being exempt notwithstanding Section 155R).”.

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

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

“(4) The assessable income of a shareholder does not include the amount of any dividends or other distributions or amounts (including any returns of share capital) that are paid or credited, or deemed to be paid or credited, by New Porgera Limited, Barrick (Niugini) Limited or Porgera (Jersey) Limited.”.

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3. NEW SUBDIVISION BA.

Part III of the Principal Act is amended in Division 10 by inserting immediately after Subdivision B the following new subdivision:

“Subdivision BA. - New Porgera

156GA. MODIFICATION OF THE ACT IN RELATION TO NEW PORGERA COMMENCEMENT.

- (1) In this Subdivision, unless the contrary intention applies -
- “Affiliate” has the meaning given to it in the Porgera Project Commencement Agreement;
 - “Effective Date” has the meaning given to it in the Porgera Project Commencement Agreement;
 - “Excluded Tax Assets” has the meaning given to it in the Porgera Project Commencement Agreement;
 - “Exploration Licences” has the meaning given to it in the Porgera Project Commencement Agreement;
 - “New Porgera” has the meaning given to it in the Porgera Project Commencement Agreement;
 - “New Porgera Financing” has the meaning given to “Financing” in the Porgera Project Commencement Agreement;
 - “New Porgera Operations” has the meaning given to it in the Porgera Project Commencement Agreement;
 - “Old Porgera” has the meaning given to it in the Porgera Project Commencement Agreement;
 - “Porgera Project Commencement Agreement” means the Porgera Project Commencement Agreement dated 3 February 2022 between the Independent State of Papua New Guinea, Barrick (Niugini) Limited, Porgera (Jersey) Limited, Kumul Minerals Holdings Limited and Mineral Resources Enga Limited as amended, novated, replaced or acceded to from time to time;
 - “SML 11” has the meaning given to it in the Porgera Project Commencement Agreement;
 - “SML 11 Transaction” means any of the following -
 - (a) the transfer by Kumul Minerals Holdings Limited of SML 11 and any or all of the ancillary mining tenements held by it and granted in relation to SML 11 under the *Mining Act 1992* (together the “SML 11 Tenements”) to New Porgera Limited; and
 - (b) the surrender of any or all of the SML 11 Tenements by New Porgera Limited.

(2) The provisions of this Act are modified by the provisions of the Porgera Project Commencement Agreement insofar as they govern or affect the imposition of taxation under this Act on New Porgera Limited, Barrick (Niugini) Limited, Porgera (Jersey) Limited, Kumul Minerals Holdings Limited, Mineral Resources Enga Limited or any other person or entity mentioned in the Agreement.

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- (3) Without limit to Subsection (2) -
- (a) no assessable income; and
 - (b) no allowable deductions or taxable income; and
 - (c) no liability to withholding tax; and
 - (d) no taxable capital gain; and
 - (e) no liability to additional profits tax; and
 - (f) no other liability to tax under this Act,

shall arise for -

- (g) New Porgera Limited; or
- (h) Barrick (Niugini) Limited; or
- (i) Porgera (Jersey) Limited; or
- (j) Kumul Minerals Holdings Limited; or
- (k) Mineral Resources Enga Limited; or
- (l) any other person,

in respect of any transaction or series of transactions effected pursuant to or in contemplation of -

- (m) Clauses 8.2(b), 8.3, 10, 11, 13 or 19 of the Porgera Project Commencement Agreement (New Porgera Transactions); or
- (n) any SML 11 Transaction; or
- (o) any instrument that gives effect to any such New Porgera Transactions or any SML 11 Transaction.

- (4) Without limit to Subsection (2), any consideration -

- (a) received or deemed to be received by Barrick (Niugini) Limited and Mineral Resources Enga Limited; or
- (b) given or deemed to be given by New Porgera Limited,

in respect of the New Porgera Transactions or any SML 11 Transaction shall not otherwise be taken into account or included in any calculation or determination of any liability to income tax, additional profits tax or any other tax under this Act.

156GB. APPLICATION OF THE *INCOME TAX, DIVIDEND (WITHHOLDING) TAX AND INTEREST (WITHHOLDING) TAX RATES ACT (CHAPTER 111)*.

Subsection (2) of Schedule 4.4 to the *Income Tax, Dividend (Withholding) Tax and Interest (Withholding) Tax Rates Act* (Chapter 111) shall apply to the taxable income of New Porgera Limited that is the taxable income of mining operations that are New Porgera Operations, such that the total rate of tax on such taxable income shall be 32%.

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156GC. APPLICATION OF ALLOWABLE DEDUCTIONS AND OTHER TAX BENEFITS, ETC.

(1) Without limit to Section 156GA(2), from the effective date, any allowable deductions and other tax benefits that Barrick (Niugini) Limited or Mineral Resources Enga Limited would have been entitled to apply or utilise in calculating their tax liabilities under this Act after the effective date if they had remained owners of Old Porgera (other than any Excluded Tax Assets) or, in the case of Barrick (Niugini) Limited, the Exploration Licences, shall be deemed to be transferred to New Porgera Limited for it to apply and utilise on the same basis as if it had always been the sole owner of both Old Porgera and New Porgera and the Exploration Licences, or on the basis that Old Porgera and New Porgera are treated as the same resource project for the purposes of Section 156A.

- (2) For New Porgera Limited -
- (a) the value of each item of property, being trading stock, acquired by New Porgera Limited pursuant to the New Porgera Transactions, shall be the value it would have had for Barrick (Niugini) Limited and Mineral Resources Enga Limited if the effective date had been the end of the year of income for Barrick (Niugini) Limited and Mineral Resources Enga Limited; and
 - (b) the depreciated value as at the effective date of each unit of property, being plant and equipment, acquired by New Porgera Limited pursuant to the New Porgera Transactions, shall be its depreciated value for Barrick (Niugini) Limited and Mineral Resources Enga Limited immediately prior to the effective date; and
 - (c) the allowable exploration expenditure, residual exploration expenditure, allowable capital expenditure, additional allowable deductions, additional deduction for exploration expenditure incurred outside the resource project, site rehabilitation expenditure deductions, losses and other allowable deductions that New Porgera Limited is deemed to have as at the effective date and may apply or utilise under Division 10 of this Act shall be equal to the undeducted balance of such amounts for Barrick (Niugini) Limited and Mineral Resources Enga in respect of Old Porgera and as Barrick (Niugini) Limited had in respect of the Exploration Licences (as applicable) immediately prior to the effective date; and
 - (d) the residual value as at the effective date of each unit of property, being industrial property, acquired by New Porgera Limited pursuant to the New Porgera Transactions, shall be its residual value for Barrick (Niugini) Limited and Mineral Resources Enga immediately prior to the effective date; and

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- (e) in respect of each unit of plant or article necessary for carrying on resource operations to which Barrick (Niugini) Limited and Mineral Resources Enga have elected Section 155F will apply, the residual value of that plant or article immediately prior to the effective date shall be its residual value acquired by the New Porgera Limited; and
 - (f) for the purposes of the additional profits tax, New Porgera Limited shall be deemed to have as at the effective date the same project receipts and project deductions as Barrick (Niugini) Limited and Mineral Resources Enga Limited had in respect of Old Porgera and as Barrick (Niugini) Limited had in respect of the Exploration Licences (as applicable) immediately prior to the effective date; and
 - (g) shares issued by New Porgera Limited as contemplated in the Porgera Project Commencement Agreement are deemed to have been fully paid and issued for valuable consideration other than cash.
- (3) Without limit to Section 156GA(2), any royalty paid by New Porgera Limited in respect of mine products produced from New Porgera Operations -
- (a) shall be an allowable deduction on revenue account for New Porgera Limited for the purposes of the income tax; and
 - (b) shall be a project deduction for New Porgera Limited for the purposes of the additional profits tax; and
 - (c) shall not be a prescribed royalty payment for the purposes of Division 6C of Part III or otherwise subject to royalty withholding tax or any other form of withholding tax or like tax.
- (4) For the purposes of Subsection (3) -
- (a) “mine products” means any minerals, gold, ores containing minerals or gold or concentrated ores of minerals or gold that have been extracted from or produced by a mine; and
 - (b) “royalty” means any amount, however described, payable in respect of mine products, whether under statute, contract or otherwise, that is a royalty, or an amount in the nature of or similar to a royalty, or an amount calculated in whole or part by reference to the value or quantity of, or revenue derived from, mine products.”.

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

Section 186 of the Principal Act is amended -

- (a) in Subsection (4) -
 - (i) Paragraph (c) by repealing the full stop and replacing it with “; and”; and
 - (ii) inserting immediately after Paragraph (c) the following new paragraph:

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“(d) where interest is received by Barrick (Niugini) Limited, Porgera (Jersey) Limited (each a “Barrick Stakeholder”) or an Affiliate of a Barrick Stakeholder under any loan advanced to New Porgera Limited or from one Barrick Stakeholder to the other, where such interest is related entirely and ultimately to funding for New Porgera Limited or New Porgera.”.

(b) in Subsection (5) -

(i) by inserting immediately before the term “financial institution” the following new term:

“Affiliate” has the meaning given in Section 156GA(1);” and

(ii) in the term “financial institution” by repealing the full stop and replacing it with a semi-colon; and

(iii) by inserting immediately after the term “financial institution” the following new term:

“New Porgera” has the meaning given in Section 156GA(1).”.

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


Clerk of the National Parliament.

30 MAY 2022

I hereby certify that the *Income Tax (New Porgera)(Amendment) Act 2022*, was made by the National Parliament on 21 April 2022, by an absolute majority in accordance with the *Constitution*.


Speaker of the National Parliament.

30 MAY 2022