

No. 18 of 2010

*Income Tax (2011 Budget)(Amendment) Act 2010*

Certified on : 19. 05. 2011.



No: of 2010.

*Income Tax (2011 Budget)(Amendment) Act 2010.*

**ARRANGEMENT OF SECTIONS.**

1. Commissioner General of Internal Revenue (Amendment of Section 6).
2. Officers To Observe Secrecy (Amendment of Section 9).
3. Exemption of pension, etc (Amendment of Section 29).
4. Income applicable (Amendment of Section 65E).
5. New Sections 72D and 72E.

**"72D. DEDUCTION FOR ENVIRONMENTAL PROTECTION EXPENDITURE".**

**"72E. DEDUCTION FOR ENVIRONMENTAL IMPACT STUDY EXPENDITURE".**

5. Depreciation (Amendment of Section 73).
6. Additional Deduction for Exploration Expenditure Incurred Outside the Resource Project (Amendment of Section 155N).
7. Illness, Suspension or Absence of Tribunal (Amendment of Section 241).
8. Interpretation (Amendment of Section 258A).
9. Substituted Service (Amendment of Section 268).
10. New Division VI.2AB.

***"Division 2AB.-Director's liability for the collection of salary or wages tax"***

**"299 AA. OBJECT."**

**"299AB. NON-APPLICATION."**

**"299AC. INTERPRETATION."**

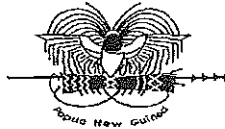
**"299AD. DIRECTOR'S LIABILITY OF COMPANY'S NON-REMITTANCE OF SALARY OR WAGES TAX TO THE COMMISSIONER GENERAL."**

**"299AE. COMMISSIONER GENERAL MUST GIVE 30 DAYS' NOTICE BEFORE RECOVERING PENALTY."**

**"299AF. HOW NOTICE MAY BE GIVEN."**

**"299AG. REMISSION OF PENALTY WHERE SECTION 50AAD IS COMPLIED WITH BEFORE THE NOTICE PERIOD ENDS."**

**"299AH. AGREEMENT TO PAY SALARY OR WAGES TAX."**



No. of 2010.

AN ACT

entitled

***Income Tax (2011 Budget)(Amendment) Act 2010.***

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

MADE by the National Parliament and deemed to come into operation on:-

- (a) in respect of Section 1 -1 January 2001; and
- (b) in respect of the remainder of the Act -1 January 2011.

**1. COMMISSIONER GENERAL OF INTERNAL REVENUE (AMENDMENT OF SECTION 6).**

Section 6 of the Principal Act is amended by inserting a new subsection after Subsection (3) as follows:

“(4) The Commissioner General of Internal Revenue Commission has general administration of this Act.”.

**2. OFFICERS TO OBSERVE SECRECY (AMENDMENT OF SECTION 9).**

Section 9 of the Principal Act is amended -

- (a) by deleting the word “and” as it appears in Subsection (4) Paragraph (g); and
- (b) by inserting after Subsection (4) Paragraph (h), the following new Subparagraphs:
  - “(i) any Police officer of the Royal Papua New Guinea Constabulary exercising powers and functions under Section 14(e) and (f) of the *Proceeds of Crime Act 2005*; and
  - “(j) the Ombudsman Commission or any officer thereof exercising powers and functions under the *Organic Law on the Duties and Responsibilities of Leadership*.”.

**3. EXEMPTION OF PENSION, ETC (AMENDMENT OF SECTION 29).**

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

- (a) repealing the words “low cost housing scheme” in Paragraph (q) and replacing them with “first time home buyer scheme”; and
- (b) repealing the reference to “K75,000” in Paragraph (r) and replacing it with “K400,000”.

**4. INCOME APPLICABLE (AMENDMENT OF SECTION 65E).**

Paragraph (i) of Section 65E(1)(g) of the Principal Act is amended by repealing the words “an approved Low Cost Housing Scheme” and replacing them with the words “a citizen employee first time home buyer scheme”.

*Income Tax (2011 Budget)(Amendment)*

5. **NEW SECTION 72D AND 72E.**

The Principal Act is amended by inserting the following new sections after Section 72C:

**"72D. DEDUCTION FOR ENVIRONMENTAL PROTECTION EXPENDITURE.**

(1) Environmental protection activities" means any of the following activities conducted on a site in Papua New Guinea:

- (a) preventing, combating or remedying -
  - (i) pollution resulting, or likely to result, in relation to the taxpayer's income producing activity that was, is, or is likely to be carried on by the taxpayer; or
  - (ii) pollution of or from a site on which the taxpayer carried on, carries on, or proposes to carry on an activity (such activity including leasing of or granting a right to use that site) to produce assessable income; or
- (b) treating, cleaning up, removing or storing:
  - (i) waste resulting, or likely to result, in relation to an income producing activity that was, is, or proposed to be carried on by the taxpayer; or
  - (ii) waste that is on or from a site on which the taxpayer carried on, carries on, or proposes to carry on an activity (such activity including leasing of or granting a right to use that site) to produce assessable income.

(2) Expenditure incurred by a taxpayer is an allowable deduction for the taxpayer to the extent that it is incurred for the sole or dominant purpose of environmental protection activities.

- (3) Expenditure is not deductible under Subsection (2) to the extent that it is -
- (a) in respect of acquiring land or a right, power or privilege to do with land; or
  - (b) of a capital nature and is in respect of constructing a building, structure or structural improvement; or
  - (c) of a capital nature and is constructing an extension, alteration or improvement to a building, structure or structural improvement; or
  - (d) in respect of a bond or security for the performance of environment protection activities; or
  - (e) in respect of residential accommodation, health, education, recreation or similar facilities, facilities for meals, or works carried out in connection with such accommodation or facilities; or
  - (f) taken into account in calculating an amount of depreciation that is allowable as a deduction; or
  - (g) in respect of environmental impact study; or
  - (h) other expenditure as may be prescribed by regulation.

(4) A provision that expressly prevents or restricts the operation of Section 68(1) applies in the same way to this Section.

(5) Where an amount (or part thereof) is allowed under this section is recouped or is recoupable, an amount shall be included in assessable income to the extent that a deduction has been allowed or is allowable.

*Income Tax (2011 Budget) (Amendment)*

(6) Where a taxpayer disposes of the property in relation to which environmental protection expenditure has been or will be allowed under this Section the consideration received in respect of the disposal of property shall be deemed to be an amount which is recouped or recoupable for the purposes of Subsection (5) to the extent a deduction has been allowed or is allowable under this Section or the amount of the consideration whichever is the lesser amount."

**"72E. DEDUCTION FOR ENVIRONMENTAL IMPACT STUDY EXPENDITURE.**

(1) Environmental impact study" means an activity to study the environmental impact of an assessable income producing activity or business carried on for producing assessable income proposed to be carried on, or carried on, in Papua New Guinea by the taxpayer.

(2) Allowable environmental impact study expenditure of a taxpayer is the expenditure incurred by a taxpayer to the extent that it is incurred for the sole or dominant purpose of environmental impact study.

(3) Residual environmental impact study expenditure as at the end of the year of income reduced by -

- (a) any part of that expenditure that has been allowed, or is allowable, as a deduction under Subsection (4) from the assessable income of the taxpayer in a year of income preceding that year of income; or
- (b) any part of that expenditure that is allowable as a deduction under any provision of this Act other than Subsection (4); or
- (c) any part of that expenditure that is taken into account in calculating the decline in value of a depreciating asset that is allowable as a deduction.

(4) Where, at the end of a year of income, there is in relation to a taxpayer a project (or proposed project) to which an amount of residual environmental impact expenditure relates, the amount ascertained by dividing that amount of residual environmental impact expenditure by -

- (a) if there is an estimated end to the project (or proposed project), as at the end of the year of income -
    - (i) if there is less than one whole year until that end, one; or
    - (ii) otherwise, a number equal to the number of whole years until that end; or
  - (b) ten,
- whichever number is less, is an allowable deduction.

(5) Where a taxpayer's project is a resource project (as defined in Section 155 of this Act), no allowable deduction will be given to a taxpayer under Subsection (4).

(6) Where an amount (or part thereof) is allowed under this section is recouped or is recoupable, an amount is included in assessable income to the extent that a deduction has been allowed or is allowable.

*Income Tax (2011 Budget) (Amendment)*

(7) A provision that expressly prevents or restricts the operation of Section 68(1) applies in the same way to this Section."

**6. DEPRECIATION (AMENDMENT OF SECTION 73).**

Section 73 of the Principal Act is amended by:-

(a) inserting a new subsection after Subsection 1 as follows:

"(1A) Depreciation during any year of income of any property (other than buildings outside Papua New Guinea) being plant or articles owned by a taxpayer and -

- (a) used by him during that year to the extent that the sole or dominant use is in connection with environmental protection activities or environmental impact study; or
  - (b) installed ready for sole or dominant use for that activity or study and during that year held in reserve by him, is, subject to this Act, an allowable deduction.";
- (b) inserting after the definition of "eligible property" in Subsection (2) the following new definition:

"Environmental protection activities" means any of the following activities conducted on a site in Papua New Guinea:

- (a) preventing, combating or remedying -
  - (i) pollution resulting, or likely to result, in relation to the taxpayer's income producing activity that was, is, or is likely to be carried on by the taxpayer; or
  - (ii) pollution of or from a site on which the taxpayer carried on, carries on, or proposes to carry on an activity (such activity including leasing of or granting a right to use that site) to produce assessable income; or
- (b) treating, cleaning up, removing or storing:
  - (i) waste resulting, or likely to result, in relation to an income producing activity that was, is, or proposed to be carried on by the taxpayer; or
  - (ii) waste that is on or from a site on which the taxpayer carried on, carries on, or proposes to carry on an activity (such activity including leasing of or granting a right to use that site) to produce assessable income; and

"Environmental impact study" means an activity to study the environmental impact of an assessable income producing activity or business carried on for producing assessable income proposed to be carried on, or carried on, in Papua New Guinea by the taxpayer.

**7. ADDITIONAL DEDUCTION FOR EXPLORATION EXPENDITURE INCURRED OUTSIDE THE RESOURCE PROJECT (AMENDMENT OF SECTION 155N).**

Section 155N of the Principal Act is amended by inserting after Subsection (2), a new Subsection as follows:

*Income Tax (2011 Budget) (Amendment)*

“(2A) An election under this section shall be made in writing, signed by or on behalf of the taxpayer and shall be delivered to the Commissioner General on or before the last day for the furnishing of the taxpayer's return of income for that year of income, or within such further time as the Commissioner General allows.”

**8. ILLNESS, SUSPENSION OR ABSENCE OF TRIBUNAL (AMENDMENT OF SECTION 241).**

Section 241 of the Principal Act is amended by repealing the words "High Commissioner" in Subsection (1) and replacing them with the word "Minister".

**9. INTERPRETATION (AMENDMENT OF SECTION 258A).**

Section 258A of the Principal Act is amended by inserting after Paragraph (r) the following new paragraph:

“(s) a penalty that is payable by a director of a company under Section 299AD(2).”.

**10. SUBSTITUTED SERVICE (AMENDMENT OF SECTION 268).**

Section 268 of the Principal Act is amended by repealing Subsection (2) and replacing it with the following:

“(2) Notwithstanding anything in any other law, the last known place of business or abode referred to in Subsection (1) is that person's address for service last given to the Commissioner General in the return or in any other form provided by the Commissioner General or by separate written advice.”

“(3) A person who furnishes a return or any other form provided by the Commissioner General, shall give an address for service in Papua New Guinea and this address shall be deemed to be his last known place of business or abode.

“(4) A person who has given an address for service and who subsequently changes his address shall, within one month after the change, give to the Commissioner General, notice in writing of his new address for service in Papua New Guinea.

“(5) Where no address for service has been given to the Commissioner General, or where the Commissioner General's records disclose that that person has subsequently changed his address and has not notified the Commissioner General in the return, or any other form provided by the Commissioner General or by separate written advice, of the change, then the address of that person, as described in any record of the Commissioner General shall be his address for service.

“(6) A person who changes his address and fails to give to the Commissioner General notice of his new address for service in Papua New Guinea shall not be permitted to plead the change of address as a defence in any proceedings instituted against him by the Commissioner General.

“(7) In this section, “address for service” means “postal address.”.

**11. NEW DIVISION VI.2BB.**

Part VI of the Principal Act is amended by inserting after Division 2A the following new Division :

-

*Income Tax (2011 Budget)(Amendment)*

**“Division 2BB. - Director’s liability for the collection of salary and wages tax.**

**“299AA. OBJECT.**

"The object of this division is to ensure that a company meets its obligations under the salary or wages tax provisions of this Act by imposing a penalty against directors who do not make the company comply.

**"299AB. NON-APPLICATION.**

"This division does not apply to the following:

- (a) a director of a company who is a director by virtue of his official position in government service, or
- (b) a director of a company who is appointed by the National Executive Council.

**"299AC. INTERPRETATION.**

"In this Division unless the contrary intention appears -

“company” means a company as defined in Section 2(1) of the *Companies Act 1997* and refers to those companies who are required to pay an amount of salary or wages tax to the Commissioner General under this Act;

“company’s liability” means the amount of salary or wages tax that is due and payable and that remains unpaid after the due date.

“company register” means the register kept by the registrar of Companies pursuant to the *Companies Act 1997*;

“director” means a director as defined in Section 107 of the *Companies Act 1997*;

“due date” means the due date within which the salary or wages tax is required to be paid to the Commissioner General as stipulated by Section 299G of the Act;

"relevant time" means the period from when the salary or wages tax is required to be deducted as stipulated under the Act, to the due date;

“salary or wages tax” includes any interest or additional tax or penalty payable in relation to an amount of salary or wages tax.

**"299AD. DIRECTOR’S LIABILITY FOR COMPANY’S NON-REMITTANCE OF SALARY OR WAGES TAX TO THE COMMISSIONER GENERAL.**

"(1) On or before the due date of any salary or wages tax, the persons who are directors of a company from time to time shall cause the company to do at least one of the following:

- (a) comply with its obligations in relation to deductions required to be made and amounts withheld in relation to salary or wages tax; or
- (b) enter into an agreement in writing with the Commissioner General to pay the amount outstanding within such time and for such sums as specified in the agreement; or
- (c) apply for liquidation pursuant to Section 291(2) (c) of the *Companies Act 1997* to liquidate the company.



*Income Tax (2011 Budget) (Amendment)*

"(2) If subsection (1) is not complied with, each person who is a director of the company during the relevant time, is liable, subject to Section 299AE, to pay to the Commissioner General, as penalty, an amount equal to the company's salary or wages tax liability.

"(3) If before the due date, a person becomes a director of the company when subsection (1) has not been complied with yet and at the end of 30 days after the person becomes a director, subsection (1) has still not been complied with, that person is liable to pay to the Commissioner General, as penalty, an amount equal to the company's salary or wages tax liability.

"(4) Where a director pays the penalty imposed under this section, the liability against the company is discharged.

"(5) Where a company has two or more directors each director is jointly and severally liable for the company's debt.

- "(6) It is a defence against this section if it is proved that -
- (a) because of illness or for some other good reason, the person did not take part in the management of the company at any time when he was a director or during the relevant time; or
  - (b) the person took all reasonable steps available to ensure that the directors complied with Subsection (1).

"(7) In determining what is 'reasonable' in subsection (6)(b), regard shall be had to -

- (a) the period of time the person was a director; and
- (b) the person's involvement in the management of the company; and
- (c) all other relevant circumstances.

"(8) An amount payable to the Commissioner General under this section is a debt to the State and payable by the director and that amount may be sued for and recovered against the director at any time in a court of competent jurisdiction by proceedings in the name of the Commissioner General.

"(9) Nothing in this section prevents a director paying an amount under Subsection (2), from recovering such amounts from the company or other directors of the company.

**"299AE. COMMISSIONER GENERAL MUST GIVE 30 DAYS' NOTICE BEFORE RECOVERING PENALTY.**

"The Commissioner General is not entitled to recover from a director a penalty payable under Section 299AD until after the expiration of 30 days after the Commissioner General gives to the director a notice that -

- (a) establishes the director liability to pay the penalty under Section 299AD; and
- (b) sets out the details of the company's liability; and

*Income Tax (2011 Budget) (Amendment)*

- (c) states that the penalty will be remitted if, at the end of 30 days after the notice is given -
- (i) the liability has been discharged; or
  - (ii) an agreement relating to the liability is in force under Section 299AH; or
  - (iii) the company is being wound up.

**"299AF. HOW NOTICE MAY BE GIVEN.**

"If it appears from the company register that a person is, or has been within the last 14 days, a director of the company, the Commissioner General may give the person the notice under Section 299AE by leaving it at, or sending it by post to, an address that appears from such documents to be the person's place of residence or business.

**"299AG. REMISSION OF PENALTY WHERE SECTION 299AD, IS COMPLIED WITH BEFORE THE NOTICE PERIOD ENDS.**

"Where a penalty is payable by a director under Section 299AD and one or all of the acts referred to in Section 299AD(1)(a), (b) or (c) is complied with -

- (a) at a time when the Commissioner General has not yet given the person a notice under Section 299AE; or
- (b) within 30 days after the Commissioner General gives the person such a notice, the penalty will be remitted by the Commissioner General.

**"299AH. AGREEMENT TO PAY SALARY OR WAGES TAX.**

"(1) The Commissioner General shall not seek to recover a penalty against a company director under Section 299AD(2) if an agreement has been entered with the company for the payment of salary or wages tax and the company has not breached the agreement.

"(2) Where a company makes an agreement with the Commissioner General under Section 299AD(1)(b), the persons who are directors of the company from time to time must cause the company to comply with the agreement.

"(3) Where the company contravenes the agreement by failing to pay a specified amount on or before the specified day, in addition to the directors referred to in Section 299AD(2), each person who was a director of the company at any time during the period beginning on the day when the agreement was made and ending on the day of the contravention is liable to the Commissioner General, by way of penalty, an amount equal to the balance payable under the agreement."

"(4) An amount referred to in Subsection (3) is a debt to the State and payable by the director and that amount may be sued for and recovered against the director at any time in a court of competent jurisdiction by proceedings in the name of the Commissioner General.

*Income Tax (2011 Budget)(Amendment)*

I certify that the above is a fair print of the *Income Tax (2011 Budget)(Amendment) Act 2010* which has been made by the National Parliament.

Clerk of the National Parliament.

I certify that the above is a fair print of the *Income Tax (2011 Budget)(Amendment) Act 2010* which was made by the National Parliament on 23 November 2010.

Speaker of the National Parliament.