

No. 2 of 2011.

Income Tax (2012 Budget)(Amendment) Act 2011.

Certified on : 28 DEC 2011

065



No: of 2011.

Income Tax (2012 Budget)(Amendment) Act 2011.

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No. of 2011.

AN ACT

entitled

Income Tax (2012 Budget)(Amendment) Act 2011.

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

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

- (a) in respect of Sections 3 and 6, 1 April 2011; and
- (b) in respect of the remainder of the Act, 1 January 2012.

1. INTERPRETATION (AMENDMENT OF SECTION 4).

Section 4 of the Principal Act is amended in Subsection (1) in the definition of "property unit trust" by repealing Paragraph (b)(ii) and replacing it with the following:

"(ii) not less than 50% of the fund was invested in Papua New Guinea; and".

2. NEW SECTION 10A.

The Principal Act is amended by inserting after Section 10 the following new section:

"10A. COMPUTER SERVICE.

"(1) The Commissioner General may establish and operate a computer service and make provision for returns or any other document required or authorized by this Act to be made, served or submitted by electronic transmission (referred to in this Act as an electronic notice).

"(2) The Commissioner General may approve from time to time, conditions for -

- (a) the returns or any other document which may be transmitted through the computer service including the form and manner in which they are to be transmitted; or
- (b) the correction of errors in or amendments to electronic notices; or
- (c) the procedure for use of the computer service including the procedure in circumstances where there is a breakdown or interruption in the service; or
- (d) generally for the better provision of the computer service."

3. NEW SECTION 22B.

The principal Act is amended by inserting after Section 22A a new section as follows:

"22B. EXEMPTION FOR 2015 PACIFIC GAMES.

"(1) The income of the 2015 PNG Pacific Games Limited is exempt from income tax.

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“(2) The income derived by any person arising from, or in connection with, the participation by that person as an athlete or competitor in the 2015 Pacific Games is exempt from income tax.

“(3) This exemption shall cease to apply as of 1 January 2016.”.

4. EXEMPTION RELATED TO EXPORT SALES (AMENDMENT OF SECTION 45B).

Section 45B of the Principal Act is amended -

- (a) in Subsections (1) and (2) by repealing the word and figure “Subsection (3)” and replacing them with “Subsections (3) and (4)”; and
- (b) by inserting after Subsection (3), the following new subsection:

“(4) Despite Subsection (3), the exemption provided under this section shall cease to apply as of 1 January 2015 and the provisions of Subsection (1) and (2) shall continue to apply to income derived from export sales where the declared year of income is prior to 1 January 2015.”.

5. NEW SECTION 46CA.

The principal Act is amended by inserting after Section 46C a new section as follows:

“46CA. CONCESSIONAL TREATMENT OF APPROVED REDUNDANCY PAYMENTS.

(1) In this section -

“approved redundancy scheme” means a scheme for which an employer has applied in writing for approval from the Commissioner General, and the Commissioner General has approved the scheme under Subsection (2);

“concessional component” means the lesser of -

- (a) the amount calculated using the formula, $\text{Base Amount} + (\text{Service Amount} \times \text{Years of Service})$ where -
 - (i) “base amount” means K5,000; and
 - (ii) “service amount” means K2,000; and
 - (iii) “years of service” means the number of completed years of continuous service during which the taxpayer was employed by the same employer; or
- (b) K50,000;

“eligible taxpayer” means a resident of PNG -

- (a) with at least five years of continuous service with an employer; and
- (b) who receives a redundancy payment upon termination of their employment with the employer under an approved redundancy scheme; and
- (c) who is dismissed before the earlier of the following:
 - (i) the day he or she turned 65; or

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- (ii) if the taxpayer's employment would have terminated when he or she reached a particular age or completed a particular period of service, the day he or she would reach the age or complete the period of service (as the case may be); and
- (iii) who has not previously received an amount taxed under Subsection 46CA(5) from the employer.

“redundancy payment” means so much of a payment -

- (a) made under an approved redundancy scheme; and
- (b) received by an employee who is dismissed from employment because the employee's position is genuinely redundant and, at the time of the dismissal, there was no arrangement between the employee and the employer, or between the employer and another person, to employ the employee after the dismissal; and
- (c) as exceeds the amount that could reasonably be expected to be received by the employee in consequence of the voluntary termination of his or her employment at the time the employment ceases; and
- (d) if the dismissal was not at arm's length, the amount that does not exceed the amount that could reasonably be expected to have been made if the dismissal were at arm's length,

but does not include so much of a payment -

- (e) received in lieu of superannuation benefits to which the employee may have become entitled at the time the payment was received or at a later time; or
- (f) a superannuation benefit; or
- (g) a payment of a pension or an annuity (whether or not the payment is a superannuation benefit); or
- (h) an unused annual leave payment; or
- (i) an unused long service leave payment; or
- (j) a payment that is an advance or a loan to an employee on terms and conditions that would apply if the employee and the employer were dealing at arm's length; or
- (k) a payment that is deemed to be a dividend under this Act; or
- (l) an amount included in your assessable income in relation to an employee share scheme; or
- (m) a capital payment for, or in respect of, personal injury to an employee; or
- (n) a capital payment for, or in respect of, a legally enforceable contract in restraint of trade.

(2) The Commissioner General shall approve the scheme under the definition of “approved redundancy scheme” in Subsection (1) if he is satisfied that at least 30 employees are to be genuinely made redundant under that scheme, or the employee or employees are genuinely made redundant from the public sector.

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- (3) The application referred to in Subsection (1) must contain information on -
- (a) the positions to be made redundant; and
 - (b) the amounts of the redundancy payments; and
 - (c) the amounts of the concessional components; and
 - (d) the amounts of salary and wages of eligible taxpayers; and
 - (e) any other information prescribed by the Commissioner General.
- (4) Despite anything else in this Act -
- (a) the taxable income of an eligible taxpayer that is the concessional component of a redundancy payment; or
 - (b) a termination payment pursuant to a termination under the *Rationalisation of the Public Service (Budget Provisions) Act 1995* paid on or after 1 January 2012,
- shall be taxed at the rates set out in Subsection 1(4) of the *Income Tax (Salary or Wages Tax) Rates Act 1979*.”.

6. 150% DEDUCTIONS FOR GIFTS IN RESPECT OF THE 2015 PACIFIC GAMES (REPEAL AND REPLACEMENT OF SECTION 69K).

Section 69K of the Principal Act is repealed and replaced with the following:

“69K. 150% DEDUCTIONS FOR GIFTS IN RESPECT OF THE 2015 PACIFIC GAMES.

“(1) The amount (the market value of which is not less than K500,000) of a gift of money, or property purchased by a taxpayer in the 12 months immediately preceding the making of the gift, made by the taxpayer, in respect of the 2015 Pacific Games to -

- (a) the PNG Sports Federation & Olympic Committee Inc. ~~or~~
 - (b) the Pacific Games (2015) Authority; or
 - (c) PNG 2015 Pacific Games Limited,
- shall be an eligible amount.

“(2) The taxpayer shall be allowed under this section either an amount equal to 150% the eligible amount as an allowable deduction under this section.

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

“(4) Where a 150% deduction is allowed under this section, the amount deductible shall be allowable only to the extent that the tax saving resulting from the allowance of the deduction does not exceed 45% of the eligible amount.

“(5) This section applies to gifts made up until 31 December 2015.”.

7. LOSSES OF PREVIOUS YEARS NOT TO BE TAKEN INTO ACCOUNT UNLESS THERE IS SUBSTANTIAL CONTINUITY OF OWNERSHIP (AMENDMENT OF SECTION 101D).

Section 101D of the Principal Act is amended by -

- (a) repealing the word, figure and letter "and 101A" and replacing them with the following:
"101A, and 155U"; and
- (b) repealing the word, figure and letter "or 101A" and replacing them with the following:
"101A, or 155U".

8. SPECIAL PROVISIONS RELATING TO BENEFICIAL OWNERSHIP OF, OR RIGHTS ATTACHED TO, SHARES (AMENDMENT OF SECTION 101E).

Section 101E of the Principal Act is amended by repealing the word, figure and letter "or 101A" and replacing them with the following:

"101A, or 155U".

9. LOSSES OF PREVIOUS YEARS OF SUBSIDIARY NOT TO BE TAKEN INTO ACCOUNT UNLESS THERE IS SUBSTANTIAL CONTINUITY OF BENEFICIAL OWNERSHIP OF SHARES IN HOLDING COMPANY (AMENDMENT OF SECTION 101F).

Section 101F of the Principal Act is amended in Subsection (1) by -

- (a) repealing the word, figure and letter "and 101D" and replacing them with the following -
"101D and 155U"; and
- (b) repealing the word, figure and letter "or 101A" second time occurring and replacing them with the following:
"101A or 155U".

10. LOSSES OF PREVIOUS YEARS MAY BE TAKEN INTO ACCOUNT WHERE A COMPANY CARRIES ON SAME BUSINESS (AMENDMENT OF SECTION 101G).

Section 101G of the Principal Act is amended -

- (a) in Subsection (1), Paragraph (a) by repealing the word, figure and letter "or 101A" and replacing them with the following:
"101A, or 155U"; and
- (b) in Subsection (2), Paragraph (b) by repealing the word, figure and letter "or 101A" and replacing them with the following:
"101A or 155U".

11. INTERPRETATION (AMENDMENT OF SECTION 155).

Section 155 of the Principal Act is amended in Subsection 1 by -

- (a) inserting, after the definition of "resource right", the following new definition:
"site rehabilitation activity" means an activity carried on by or for a taxpayer to restore or rehabilitate (whether partially or fully) a site on which the taxpayer, for the purposes of producing income, carries or carried on a resource project to the condition, or a reasonable approximation of the condition, it was in before operations were first started on the site (whether the activity was first started by the taxpayer or a predecessor of the taxpayer, whether immediate or otherwise), including any activities as prescribed by regulation; and

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- (b) repealing and replacing the definition of "resource project" as follows:
"resource project" means a designated gas project, a mining project or a petroleum project, including any resource environmental protection activity in relation to the designated gas, mining or petroleum project."

12. DEDUCTION FOR ALLOWABLE CAPITAL EXPENDITURE (AMENDMENT OF SECTION 155E).

Section 155E of the Principal Act is amended by inserting a new subsection after Subsection (6) as follows:

- "(7) To the extent that expenditure is incurred solely or predominantly for -
(a) environmental protection activities as defined in Section 72D(1); or
(b) environmental impact study as defined in Section 72E(1); or
(c) site rehabilitation activities,
Section 155E(6) does not apply."

13. NEW SECTIONS 155T, 155U, 155V AND 155W.

The Principal Act is amended by inserting the new sections after Section 155S as follows:

"155T. DEDUCTION FOR SITE REHABILITATION EXPENDITURE.

"(1) Expenditure incurred by a taxpayer is an allowable deduction to the extent that it is incurred for the sole or dominant purpose of one or more site rehabilitation activities, provided that it is not an outgoing of capital, of a capital nature, or incurred for private or domestic purposes, or in producing exempt income.

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

"(3) 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."

"155U. LOSSES OF PREVIOUS YEARS INCURRED IN ENGAGING IN SITE REHABILITATION.

"(1) In this section, "net exempt income" has the same meaning as in Section 101.

"(2) A taxpayer, in relation to a resource project, is taken to have incurred a rehabilitation loss in any income year where -

- (a) the aggregate of deductions attributable to that project that result from the operation of Subsections 72D(2), 155T(1) and 155E(7), exceed the assessable income and net exempt income of that year attributable to that project; and
(b) the excess referred to in Paragraph (a), together with the total of rehabilitation loss or losses incurred in all preceding income years in relation to the resource project, does not exceed the rehabilitation loss cap (if any) for the project.

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“(3) An amount of rehabilitation loss cannot form a part of a loss taken to be incurred under either Subsections 101(2) or 101A(2).

“(4) Subject to Subsection 66A(3), so much of the rehabilitation loss incurred by a taxpayer as has not been allowed as a deduction from his income is allowable as a deduction in accordance with the following provisions:

“(a) where he has not, in the year of income, derived exempt income, the deduction is made from the assessable income remaining after all deductions, apart from those under this Section and those under Subsections 101(3) and 101A(4); and

“(b) where he has in that year derived exempt income, the deduction is made successively from the net exempt income and from the assessable income remaining after all deductions apart from those under this section and those under Subsections 101(3) and 101A(4); and

“(c) where a deduction is allowable under this section in respect of two or more rehabilitation losses, the losses are taken into account in the order in which the losses were incurred; and

“(d) where a deduction is allowable under this section, it is deducted after the allowance of all other deductions except for deductions under Subsections 101(3) and 101A(4).

“(5) Where, before the year of income, a taxpayer has become a bankrupt or been adjudicated insolvent or has been released from any debts by the operation of the law of Papua New Guinea relating to bankruptcy or insolvency, no loss to which this section applies that was incurred by him before the date on which he became a bankrupt or was adjudicated insolvent, or the date on which he was so released, as the case may be, is a rehabilitation loss.

“(6) Where deductions are allowable from the income of a taxpayer of the year of income under this section and either Subsection 101(3) or Subsection 101A(4) or both, any deductions allowable under this section are taken into account before any deductions allowable under Subsection 101(3) or Subsection 101A(4).

“(7) Where, but for this Subsection, the net exempt income of a taxpayer of the year of income would be taken into account for the purpose of this Section, and either Section 101 or Section 101A or both, the amount of that net exempt income to be taken into account for the purpose of Section 101 or Section 101A or both shall not exceed the amount (if any) of that net exempt income that remains after deducting so much of the net exempt income as has been taken into account under this Section.”.

"155V. DEDUCTION OF REHABILITATION LOSSES OUTSIDE OF RESOURCE PROJECT.

"(1) Where -

"(a) a taxpayer could, but for Sections 156A, 157A or 158A, deduct an amount of rehabilitation loss in an income year against an amount of net exempt income or assessable income from another resource project that remains after all deductions; and

"(b) in the income year, but for this section, the amount of the assessable income referred to in Paragraph (a) would be subject to a rate of tax not exceeding that of the resource project to which the rehabilitation loss relates; and

"(c) the taxpayer has made an election in writing signed by or on behalf of the taxpayer, 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, to deduct an amount not exceeding that referred to in Paragraph (a),

then Sections 156A, 157A and 158A do not apply to the taxpayer in relation to the amount the subject of the election.

"(2) Where, at a particular time -

"(a) a taxpayer ceases to have an interest in a resource project consequent upon -

(i) the surrender, cancellation or expiry of a resource development licence; or

(ii) the disposal by the taxpayer of the whole of its interest in the resource project; or

(iii) abandonment of a resource project occurs,

and immediately before such cessation, disposal or abandonment a taxpayer was entitled to the benefit of rehabilitation losses in relation to that resource project, the Commissioner General may at any time allocate that rehabilitation loss -

"(b) if the taxpayer or a related corporation has a beneficial interest in any other resource project from which the taxpayer is deriving assessable income, to that resource project or those resource projects, as the case may be, in such proportions as the Commissioner General considers reasonable; or

"(c) if the taxpayer or a related corporation has no beneficial interest in another resource project but has a beneficial interest in any other resource project from which the taxpayer or the related corporation, as the case may be, is deriving assessable income from resource operations, to that resource project or those resource projects, as the case may be, in such proportions as the Commissioner General considers reasonable; or

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“(d) in any other case, to any resource project or if no resource project becomes available to any resource project carried on by the taxpayer or by a related corporation pursuant to any development licence issued within 20 years from the date of such cessation or abandonment,

and following the allocation, that rehabilitation loss shall become rehabilitation loss of the taxpayer or of the related corporation, as the case may be, in relation to the resource project or projects to which it was allocated (other than for the purposes of Subdivision E), with effect from the date of allocation.”.

“155W. REHABILITATION LOSS CAP.

“(1) In relation to a resource project, a taxpayer may make one irrevocable election, in writing to the Commissioner General signed by or on behalf of the taxpayer, 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) identifying up to five consecutive income years, all of which immediately precede the income year in which the election is made, in relation to the resource project for the purpose of establishing a rehabilitation loss cap.

“(2) The rehabilitation loss cap is the sum of the taxpayer’s share of the adjusted taxable income of the project of the income years identified in the election made in Subsection (1).

“(3) In relation to a resource project, the adjusted taxable income of an income year is -

“(a) if the taxable income for that year is a positive amount and is subject to rates of taxation not less than the normal company tax rate for that income year, the taxable income of that year; or

“(b) otherwise, it is zero.”.

14. PROJECT BASIS OF ASSESSMENT (AMENDMENT OF SECTION 156A).

Section 156A of the Principal Act is amended -

(a) in Subsection (1) by inserting, after the words, “notwithstanding any other provision of this Act”, the words -

“except for Section 155V,”; and

(b) by inserting a new Subsection (3) as follows:

“(3) Notwithstanding any other provision of this Act, for each person to whom this subdivision applies, the Commissioner General may require the lodgement of separate returns for each project undertaken and may issue separate assessments for each project.”.

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15. PROJECT BASIS OF ASSESSMENT (AMENDMENT OF SECTION 157A).

Section 157A of the Principal Act is amended -

“(a) in subsection (5), by repealing the word “Each” first occurring and replacing it with the words -

“Except for Section 155V, each”; and

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

“(8) Notwithstanding any other provision of this Act, for each person to whom this subdivision applies, the Commissioner General may require the lodgement of separate returns for each project undertaken and may issue separate assessments for each project.”.

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

Section 158A of the Principal Act is amended -

“(a) in Subsection (2) by repealing the word “Each” first occurring and replacing it with the words -

“Except for Section 155V, each”; and

“(b) by inserting after Subsection (4), the following new subsection:

“(5) Notwithstanding any other provision of this Act, for each person to whom this subdivision applies, the Commissioner General may require the lodgement of separate returns for each project undertaken and may issue separate assessments for each project.”.

17. RELATED CORPORATIONS (AMENDMENT OF SECTION 158F).

Section 158F of the Principal Act is amended by repealing the word and figure “Section 101” and replacing them with the following:

“Sections 101 or 155U”.

18. INTERPRETATION (AMENDMENT OF SECTION 159A).

Section 159A of the Principal Act is amended in Subsection (1) in the definition of “project deductions” by deleting, in Paragraph (a), the figure “101” and replacing with the following:

“; 101 or 155U”.

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

Section 219C of the Principal Act is amended by -

(a) inserting after the definition of “eligible taxpayer”, the following new definition:

“emergency repair” means, in relation to the Highlands Highway, an activity carried out to restore traffic flow following an event that has resulted in the closure or partial closure of the highway, including bypass or replacement of a section of the highway, replacement of culverts, construction of temporary bridges and removal and repair of major landslips;

(aa) inserting after the definition of “gas project companies”, the following new definition:

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“Highlands Highway” means the main road from -

- (a) Lae to Koroba (Fugwa turn off)(805km); and
- (b) Togoba Junction to Wabag; and
- (b) repealing Subsections (6) and (7); and
- (c) inserting a new subsection as follows:

"(6) In addition to any deemed tax payment under Subsection (2), where an eligible taxpayer incurs, prior to 1 January 2015, expenditure on emergency repair on the Highlands Highway, the amount of such expenditure is, subject to this section and prescribed conditions, deemed to be income tax paid in respect of that taxpayer's liability assessed for the year of tax relating to that year of income, limited to the lesser of -

- (a) 1.25% of the assessable income derived by the taxpayer in the year of income; or
- (b) the amount of tax payable."

20. CREDITS IN RESPECT OF BANK COMMUNITY SERVICE OBLIGATIONS (AMENDMENT OF SECTION 219D).

Section 219D of the Principal Act is amended -

- (a) in Subsection (1), by repealing Paragraph (b) in the definition of “basic banking product” and replacing it with the following new paragraph:

"(b) the customer is charged no more than K1.00 per transaction for a deposit or withdrawal;" and

- (b) in Subsection (2), by repealing the figure "2012" and replacing it with the following:

"2017".

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

Section 234 of the Principal Act is amended in Paragraph (d) by repealing the following: ~~“~~“customs duty, excise duty,”.

22. NEW SECTION 243.

Section 243 of the Principal Act is repealed and replaced with the following new section:-

“243. REMOVAL OR SUSPENSION OF PERSON CONSTITUTING TRIBUNAL.

The Minister may remove or suspend the person constituting the Tribunal from office in accordance with the terms and conditions of his appointment.”.

23. INTERPRETATION (AMENDMENT OF SECTION 258A).

Section 258A of the Principal Act is amended in Paragraph (b) by -

- (a) repealing the figures, letters and marks “136E, 136G,” and “265,”; and
- (b) by inserting after the figure and mark “316,” the following:
“316A,”.

24. PENALTY FOR UNPAID TAX (AMENDMENT OF SECTION 262).

Section 262 of the Principal Act is amended in Subsection (3) by -

- (a) by repealing the word “section” and replacing it with the word “Division”; and
- (b) by inserting after the word “any” the word “additional”.

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25. NEW SECTION 316A.

The Principal Act is amended by inserting the following new section after Section 316:

“316A. ADDITIONAL TAX FOR INCOMPLETE RETURNS AND FORMS.

“(1) Notwithstanding anything contained in the preceding sections, a person who lodges a return or any other form approved by the Commissioner General that is not duly completed in every particular as required under this Act and Regulation, may be liable to pay a penalty, by way of additional tax, of K500.00 for each month or part of the month calculated in respect of the period commencing on the day that return is first lodged and ending on the day on which that return is lodged duly completed.

“(2) The Commissioner General may for reasons considered sufficient, remit additional tax under Subsection (1) or any part of the additional tax, before or after making an assessment of the additional tax.”.

26. NEW SECTION 323.

Section 323 of the Principal Act is repealed and replaced with the following new section:

“323. TAXATION PROSECUTIONS.

“(1) A taxation prosecution for the recovery of a pecuniary penalty under this Act may be instituted in the name of the Commissioner General by way of information or action in a court of competent jurisdiction.

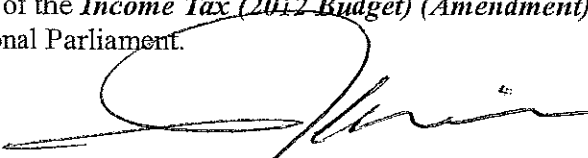
“(2) A taxation prosecution under this Act may be commenced, prosecuted and proceeded with in accordance with any rules of practice and procedure established by the relevant court of competent jurisdiction.

“(3) Despite Subsection (2), a taxation prosecution under this Act may be commenced at any time.”.

27. REPEAL.

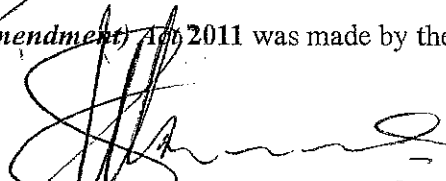
Sections 324, 325, 326 and 327 are repealed.

I hereby certify that the above is a fair print of the *Income Tax (2012 Budget) (Amendment) Act 2011* which has been made by the National Parliament.


Acting Clerk of the National Parliament.

28 DEC 2011

I hereby certify that the *Income Tax (2012 Budget) (Amendment) Act 2011* was made by the National Parliament on 21 December 2011.


Acting Speaker of the National Parliament.

28 DEC 2011