

No. 37 of 2020.

*Income Tax (2021 Budget)(Amendment) Act 2020.*

Certified on : 14 JAN 2021



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**ARRANGEMENT OF SECTIONS.**

1. Interpretation (Amendment of Section 4).
2. Imposition of Income Tax (Amendment of Section 11).
3. New Section 11C.

**“11C. IMPOSITION OF SMALL BUSINESS TAX.”**

4. Interpretation (Amendment of Section 65D).
5. New Section 65K.

**“65K. COUNTERING ARRANGEMENTS TO CONVERT AN EMPLOYEE INTO AN INDEPENDENT CONTRACTOR.”**

6. Losses of previous years (Amendment of Section 101).
7. Liability to prescribed royalty (Withholding) Tax (Repeal and replacement of Section 142C).

**“142C. LIABILITY TO PRESCRIBED ROYALTY (WITHHOLDING) TAX.”**

8. Payment of prescribed royalty (Withholding) Tax (Amendment of Section 142D).
9. New Section 223A.

**“223A. PROCEDURAL RULES FOR SMALL BUSINESS TAX.”**

10. Notice of company provisional tax payable (Amendment of Section 275N).
11. Payment of Tax (Amendment of Section 311AQ).



AN ACT

entitled

***Income Tax (2021 Budget)(Amendment) Act 2020,***

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

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

- (a) in respect of Sections 1, 2, 3, 4, 5 and 9 - 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 for Treasury; and
- (b) in respect of Section 6 - retrospective to 1 January 2019; and
- (c) in respect of Sections 7, 8, 10 and 11 - retrospective to 1 January 2020.

**1. INTERPRETATION (AMENDMENT OF SECTION 4).**

Section 4 of the Principal Act is amended -

- (a) by inserting the following new definitions in the correct alphabetical order -
  - ““quarter” means the period of three months ending on 31 March, 30 June, 30 September and 31 December;
  - “small business tax” means small business tax imposed under Section 11C;
  - “small business taxpayer” means an individual liable for small business tax;”;
- (b) in the definition of “salary or wages” by repealing the comma in Paragraph (f) and replacing it with “; or”; and
- (c) inserting the following new paragraph after Paragraph (f):
  - “(g) by a person to an independent contractor for providing a service or services to that person as envisaged under Section 65K,”.

**2. IMPOSITION OF INCOME TAX (AMENDMENT OF SECTION 11).**

Section 11 of the Principal Act is amended by inserting after Subsection (3), the following new subsection:

- “(4) This section does not apply to business income derived by an individual that is subject to small business tax.”.

**3. NEW SECTION 11C.**

Part III of the Principal Act is amended by inserting after Section 11B, the following new section:

**“11C. IMPOSITION OF SMALL BUSINESS TAX.**

(1) In this section -

- “business” does not include professional services;
- “professional services” means medical, dental, legal, accounting, financial, managerial, engineering, architectural, consulting or other similar services; and
- “turnover”, in relation to an individual conducting a business, means the assessable income received by the individual from the conduct of the business without deduction of expenditures or losses.

- (2) Subject to this Act, small business tax is imposed on an individual conducting business as a sole trader who satisfies the following conditions:
- (a) the individual conducts the business solely in Papua New Guinea; and
  - (b) the individual is not a registered person for the purposes of the *Goods and Services Tax Act 2003*; and
  - (c) the individual was not subject to income tax under Section 11 for the previous fiscal year; and
  - (d) the total turnover of the individual for the previous fiscal year did not exceed the goods and services tax registration threshold specified in Section 43 of the *Goods and Services Tax Act 2003*.
- (3) In determining the total turnover of an individual for a fiscal year for the purposes of Subsection (2)(d), the Commissioner General may have regard to the turnover of an associate or associates of the individual for the year.
- (4) If the annual total turnover of an individual subject to tax under this section is less than K60,000.00 -
- (a) the individual is liable for small business tax annually; and
  - (b) the amount of small business tax payable by the individual for a fiscal year is K250.00.
- (5) If the annual total turnover of an individual subject to tax under this section is K60,000.00 or more -
- (a) the individual is liable for small business tax quarterly; and
  - (b) the amount of small business tax payable by the individual for a quarter is the sum of the following amounts:
  - (c) K62.50; and
  - (d) 2 percent of the turnover of the person for the quarter above K15,000.00.
- (6) An individual who is subject to small business tax may elect for Section 11 to apply to the individual for a fiscal year instead of this section.
- (7) An individual must make an election under Subsection (6) for a fiscal year, in the approved form, by the due date for furnishing the individual's income tax return for that year or such later date as the Commissioner General may allow.
- (8) Where an individual has made an election under Subsection (7) for a fiscal year within the time specified in that subsection -
- (a) the election applies from the commencement of the fiscal year to which the election relates and remains in force indefinitely or until the Commissioner General permits the person to be subject to this section under Subsection (11); and
  - (b) any small business tax paid by the individual during the fiscal year is allowed as a tax credit against the income tax liability of the individual for the year.
- (9) Subject to Subsection (10), an individual subject to income tax under Section 11 for a fiscal year who satisfies Subsection (2) may apply, in the approved form, to the Commissioner General for permission for the individual to be subject to the small business tax.

(10) An individual who has made an election under Subsection (7) for Section 11 to apply to the individual cannot make an application under Subsection (9) within three years of the end of the first tax year in relation to which Section 11 applies.

(11) The Commissioner General may approve an individual under Subsection (9) if satisfied that there is reasonable cause to do so and the approval shall apply from the date specified in the notice of approval.

(12) An approval under Subsection (7) or (11) may be subject to such conditions as the Commissioner General may specify in the notice of approval.

(13) The small business tax payable by an individual is a final tax for the person on the business income on which it has been imposed.

(14) Subsection (2)(c) is ignored in determining whether the small business tax applies to an individual for the first fiscal year after certification of this Act.”.

**4. INTEPRETATION (AMENDMENT OF SECTION 65D).**

Section 65D of the Principal Act is amended by inserting the following definition after the definition of “assessment”:

““independent contractor” means an individual who is engaged as a contractor;”.

**5. NEW SECTION 65K.**

The Principal Act is amended by inserting after Section 65J, the following new section:

**“65K. COUNTERING ARRANGEMENTS TO CONVERT AN EMPLOYEE INTO AN INDEPENDENT CONTRACTOR.**

(1) For the purposes of this division, an independent contractor providing a service or services to a person shall be treated as an employee of that person unless the following conditions are satisfied:

- (a) the independent contractor is in business on their own account, and is responsible for the success or failure of the business and can make a loss or a profit; or
- (b) the independent contractor can decide the work that is done, and when, where, and how the work is done; or
- (c) the independent contractor can hire someone else to do the work; or
- (d) the independent contractor is responsible for fixing any unsatisfactory work in their own time and on their own account; or
- (e) a fixed remuneration is agreed for the work, which does not depend on how long the job takes to finish; or
- (f) the total taxable income of the independent contractor does not consist of more than 80 percent of the total remuneration received for services rendered to one person; or
- (g) the independent contractor finances the acquisition of business assets and the covering of their operating costs, and provides their own tools and equipment necessary for the work to be done; or
- (h) the independent contractor can work for more than one person.

(2) Where an independent contractor is treated as an employee of a person under Subsection (1), the amounts paid by the person to the independent contractor, shall be treated as salary or wages and the person shall withhold salary or wages tax from the payments made and remit to the Commissioner General as required under the Act.”.

**6. LOSSES OF PREVIOUS YEARS (AMENDMENT OF SECTION 101).**

Section 101 of the Principal Act is amended by repealing Subsections (4A) and (4B) and replacing them with the following:

“(4A) Notwithstanding any other provision of this section, losses incurred on or before 31 December 2018 that were not deductible under the provisions in force at that time, shall not be deductible from income derived in 2019 or in a later year.

(4B) For the avoidance of doubt, losses incurred prior to 1 January 2019 that, under the provisions in force at that time, remained deductible as at 1 January 2019, shall be deductible from income derived in 2019 or a later year to the extent remaining under the provisions in force at that time but limited to a maximum of 7 years from 1 January 2019.”.

**7. LIABILITY TO PRESCRIBED ROYALTY (WITHHOLDING) TAX (REPEAL AND REPLACEMENT OF SECTION 142C).**

Section 142C of the Principal Act is repealed and replaced with the following:

**“142C. LIABILITY TO PRESCRIBED ROYALTY (WITHHOLDING) TAX.**

Where a prescribed royalty payment is paid or credited by any person to or on behalf of a customary landowner, the person making the payment or crediting such payment is liable to withhold and pay tax upon that income at the rate of 5 percent.”.

**8. PAYMENT OF PRESCRIBED ROYALTY (WITHHOLDING) TAX (AMENDMENT OF SECTION 142D).**

Section 142D of the Principal Act is amended by repealing Subsection (1) and replacing it with the following:

“(1) Prescribed royalty (withholding) tax is due and payable by the person liable to pay the tax within 21 days after the end of the month in which the prescribed royalty income to which the tax relates was credited or paid to or on behalf of a customary landowner (whichever occurs earlier), or such further time as the Commissioner General, in special circumstances, allows.”.

**9. NEW SECTION 223A.**

Part III of the Principal Act is amended by inserting after Section 223, the following new section:

**“223A. PROCEDURAL RULES FOR SMALL BUSINESS TAX.**

(1) In this section, “tax period”, in relation to the small business tax, means -

- (a) for a small business taxpayer subject to Section 11C(4), the fiscal year; or
- (b) for a small business taxpayer subject to Section 11C(5), the quarter.

(2) A small business taxpayer shall keep the following records:

- (a) a record of sales, including cash and credit sales; and
- (b) where the individual employs employees, a record of the employment income paid to those employees; and
- (c) any other records as required by the Commissioner General.

(3) A small business taxpayer shall maintain a bank account for business purposes unless exempted by the Commissioner General.

(4) A small business taxpayer shall retain evidence that any income derived by the taxpayer is exempt income.

(5) A small business taxpayer shall retain the records referred to in Subsection (2) for three years after the end of the tax period to which they relate.

(6) A small business taxpayer shall furnish a small business tax return -

(a) for a small business taxpayer to whom Section 11C(4) applies, within 28 days after the end of the fiscal year;

(b) for a small business taxpayer to whom Section 11C(5) applies, within 28 days after the end of the quarter.

(7) The small business tax payable by a small business taxpayer for a tax period shall be payable on the date that the small business tax return for the period is due.”.

**10. NOTICE OF COMPANY PROVISIONAL TAX PAYABLE (AMENDMENT OF SECTION 275N).**

Section 275N of the Principal Act is amended by repealing Subsection (1) and replacing it with the following:

“(1) Where the Commissioner General has determined the company provisional tax for a year of tax, or a year of tax approved under Section 12A of this Act, he shall issue a notice setting out the amount of tax payable and this shall be paid in three installments, due and payable as follows:

(a) first installment due 120 days from the end of the preceding year of tax or a year of tax as approved under Section 12A of this Act; and

(b) second installment due 210 days from the end of the preceding year of tax or a year of tax as approved under Section 12A of this Act; and

(c) third installment due 300 days from the end of the preceding year of tax or a year of tax as approved under Section 12A of this Act.”.

**11. PAYMENT OF TAX (AMENDMENT OF SECTION 311AQ).**

Section 311AQ of the Principal Act is amended by repealing Subsection (1) and replacing it with the following:

“(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 as follows:


(a) first installment due 120 days from the end of the preceding year of tax or a year of tax as approved under Section 12A of this Act; and

(b) second installment due 210 days from the end of the preceding year of tax or a year of tax as approved under Section 12A of this Act; and

(c) third installment due 300 days from the end of the preceding year of tax or a year of tax as approved under Section 12A of this Act.”.

*Income Tax (2021 Budget)(Amendment)*

I hereby certify that the above is a fair print of the *Income Tax (2021 Budget)(Amendment) Act 2020* which has been made by the National Parliament.



Clerk of the National Parliament.

14 JAN 2021

I hereby certify that the *Income Tax (2021 Budget)(Amendment) Act 2020* was made by the National Parliament on 16 December 2020.



Acting Speaker of the National Parliament.

14 JAN 2021