No. 67 of 2000

***Income Tax (Mining, Petroleum and Gas Provisions 2001) Act* 2000**

Certified on : 09.04.02
Operation: 01.1.2001

INDEPENDENT STATE OF PAPUA NEW GUINEA

No. of 2000.

Income Tax (Mining, Petroleum and Gas Provisions 2001) Act 2000.

ARRANGEMENT OF SECTIONS.

INDEPENDENT STATE OF PAPUA NEW GUINEA

AN ACT

entitled

***Income Tax (Mining, Petroleum and Gas Provisions 2001) Act* 2000,**

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

MADE by the National Parliament to come into operation on 1 January 2001.

1. INTERPRETATION (AMENDMENT OF SECTION 4).

Section 4(1) of the Principal Act is amended-

(a) by repealing the following definitions:-

"frontier area petroleum development licence";
"frontier area petroleum project"; and

(b) by inserting after the definition of "gas agreement" the following new definition:-

"gas field" means a field producing petroleum under a petroleum development licence which, by reason of the application of a gas to oil ratio in the manner prescribed, constitutes a gas field;"; and

(c) by repealing the definition of "gas operations" and replacing it with the following:-

"gas operations" means petroleum operations relating to the recovery of, processing, transportation or sale of petroleum recovered from a gas field; "; and

(d) by repealing the definition of "mining operations" and replacing it with the following:-

"mining operations" means the extraction of minerals in Papua New Guinea from their natural site and includes the construction and operation of facilities-

(i) to produce the first saleable product from a mine; and

(ii) to transport the first saleable product to a point of delivery;".

2. LOSSES OF PREVIOUS YEARS (AMENDMENT OF SECTION 101).

Section 101 of the Principal Act is amended-

(*a*) in Subsection (3) , by repealing the words "seven years" and replacing them with the following:-

"20 years"; and

(*b*) in Subsection (4), by repealing the words "seven years" and replacing them with the following:-

"20 years"; and

(*c*) in Subsection (6), by repealing the words "seven years" and replacing them with the following:-

"20 years".

3. REPEAL OF DIVISIONS III.10, III.10A AND III.10B.

Part III of the Principal Act is amended by repealing Divisions 10, 10A and 10B.

4. NEW DIVISION III.10.

Part III of the Principal Act is amended by inserting after Division 9A the following new Division :-

"Division 10 – Mining, Petroleum and Designated Gas Projects.

"Subdivision A. – General Provisions Applicable To Mining, Petroleum and Designated Gas Projects.

"155. INTERPRETATION.

(1) In this Division, unless the contrary intention appears –

"additional profits tax" means income tax on taxable profits from resource operations, determined and payable under Subdivision E;

"allowable capital expenditure" has the meaning given in Section 155D;

"allowable exploration expenditure" has the meaning given in Section 155A;

"amount recovered" means, in relation to a recoupment of expenditure of a capital nature-

(*a*) where property upon which such expenditure was made is sold (whether with or without other property) for a specified price and no part of the sale price of that property is consideration for expenditure transferred by the taxpayer to another person and specified in a notice given under Section 155L-the sale price of the property less-

(i) the expenses of the sale of the property; or

(ii) where the property is sold with other property, such part of the expenses of the joint sale as the Commissioner General determines; or

(*b*) where such property is sold with other property and a separate price is not allocated to the property and no part of the sale price of that property is consideration for expenditure transferred by the taxpayer to another person and specified in a notice given under Sections 155L- such part of the total sale price, less the expenses of the joint sale, as the Commissioner General determines; or

(*c*) where such property is disposed of otherwise than by sale and no part of the consideration received for that property is consideration for expenditure transferred by the taxpayer to another person and specified in a notice given under Section 155L-the full value of the property at the date of disposal; or

(*d*) where such property is lost or destroyed- the amount or value received or receivable under a policy of insurance or otherwise in respect of the loss or destruction; or

(*e*) where such property is disposed of and consideration for the disposal is consideration for expenditure transferred by the taxpayer to another person and specified in a notice given under Sections 155L-the amount of the consideration so specified; or

(*f*) where the use of such property in respect of the resource project is otherwise terminated, the full value of the property at the date of termination of use; or

(*g*) where such property is used by any other person-the value of any consideration or benefit derived by the taxpayer in respect of such use; or

(*h*) where a taxpayer otherwise recoups such expenditure-the value of the reimbursement or other form of recoupment of recovery of that expenditure;

"consideration", in relation to the disposal, loss or destruction of property, means-

(*a*) where the property is sold (whether with or without other property) for a specified price-the sale price of the property less –

(i) the expenses of the sale of the property; or

(ii) where the property is sold with other property and a separate price is not allocated to the property – such part of the total price as the Commissioner General determines less the expenses of the joint sale; or

(*b*) where the property is sold with other property and a separate price is not allocated to the property – such part of the total price as the Commissioner General determines less the expenses of the joint sale; or

(*c*) where the property is disposed of otherwise than by sale-the full value of the property at the date of disposal; or

(*d*) where the property is lost or destroyed-the amount or value received or receivable under a policy of insurance or otherwise in respect of the loss or destruction;

"debt" means indebtedness of the taxpayer (excluding bank overdraft balances maintained in the normal course of business), as it would have been shown in a balance sheet drawn up as at the date at which the relevant calculation is being made, including –

(*a*) any indebtedness for borrowed money or arising out of any credit facility or financial accommodation or for the deferred purchase price of property or services (other than trade accounts payable arising in the ordinary course of business and on terms requiring payment in full within no more than 90 days); and

(*b*) all guarantees or other obligations which are the economic equivalent of a guarantee, including any obligation to purchase, to provide funds for payment, to supply funds to or otherwise to invest in any other entity in respect of the indebtedness of any other entity for borrowed money or arising out of any credit facility or financial accommodation of for the deferred purchase price or property or services (other than trade accounts payable arising in the ordinary course of business and on terms requiring payment in full within no more than 90 days); and

(*c*) all indebtedness or other obligations of any other entity for borrowed money or arising out of any credit facility or financial accommodation for the deferred purchase price of property or services (other than trade accounts payable arising in the ordinary course of business and on terms requiring payment in full within no more than 90 days) secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any lien upon property (including, without limitation, accounts receivable and contract rights) owned by the taxpayer or one of its subsidiaries, whether or not the taxpayer or any of its subsidiaries has assumed or become liable for the payment of such indebtedness of obligations; and

(*d*) all obligations of the taxpayer and its subsidiaries in respect of finance leases (being the aggregate of the present value, determined in accordance with generally accepted financial practice, of the rental that will fall due thereunder and the specified residual value (if any)),

but does not include so much of the indebtedness of the taxpayer as exists to fund the State's accumulated liability to the taxpayer or any indebtedness owed by the taxpayer to another co-ordinated development participant pursuant to a co-ordinated development agreement in consequence of a redetermination;

"equity" means shareholders' funds which shall include, without limiting the generality of the term –

(*a*) paid up capital and accumulated income as they would have been shown if a balance sheet, prepared in accordance with the standards published by the International Accounting Standards Committee, had been drawn up at the date at which the relevant calculation is being made; and

(*b*) any amount that is treated as equity or branch capital for the purpose of an agreement between the State and the taxpayer relating to a resource project carried on by the taxpayer,

after deducting therefrom the amount by which the book value of any tangible asset of the company or of any of its subsidiaries has been increased by a writing-up other than a writing–up made with the consent of the State;

"expenditure", in relation to resource operations, means the net expenditure after taking into account any bounty or subsidy received in or in relation to the carrying on of resource operations and any rebates or returns in respect of such expenditure;

"exploration" means exploration activities, and includes development drilling or operations conducted pursuant to a resource development licence;

"exploration activities" means exploration activities for the purpose of discovering petroleum in Papua New Guinea, and includes geophysical and geophysical surveys, exploration drilling and appraisal drilling and appraisal in relation to such petroleum or minerals, whether pursuant to a petroleum prospecting licence or a retention licence or a development licence;

"exploration licence" means –

(a) a petroleum prospecting or petroleum retention licence issued under the ***Oil and Gas Act* 1998;** or

(b) an exploration licence issued under the ***Mining Act* 1992**;

"mining income tax" means income tax on taxable income from mining operations but does not include additional profits tax under Subdivision E;

"mining information" means geological, geophysical or technical information, being information that relates to the presence, absence or extent of deposits of minerals in an area or is likely to be of assistance in determining the presence, absence or extent of such deposits in an area, and has been obtained from exploration, or mining, for minerals;

"mining project" means mining operations conducted pursuant to a mining lease or a special mining lease;

"mining right" means an authority, licence, permit or right to mine or prospect for minerals in a particular area in Papua New Guinea, or a lease of land in Papua New Guinea by virtue of which the lessee is entitled to mine or prospect for minerals on the land, and includes an interest in such an authority, licence, permit, right or lease;

"new resource project" means a resource project which did not, prior to 31 December 2000, derive assessable income from resource operations;

"recoupment" means, in relation to expenditure by a taxpayer of a capital nature –

(*a*) where the expenditure was incurred in respect of property which is disposed of, lost or destroyed, or which is used by any other person, or the use of which in relation to a resources project is otherwise terminated, the derivation of consideration or any other benefit (including compensation or insurance proceeds) as a consequence of such disposal, loss, destruction, use or termination; or

(*b*) the reimbursement or other form of recoupment or recovery of that expenditure,

and "recouped" or "recoups" have the corresponding meaning;

"related corporation" means, in relation to a taxpayer, a corporation which is –

(a) a wholly owned subsidiary of the taxpayer; or

(b) a corporation of which the taxpayer is a wholly owned subsidiary; or

(c) a wholly owned subsidiary of a corporation of which the taxpayer is a wholly owned subsidiary; and

for the purposes of this provision, "wholly owned" includes full ownership through other corporations;

"residual exploration expenditure" has the meaning given in Section 155C;

"resource" or "resources" means recoverable reserves of mineral ores, petroleum or gas;

"resource agreement" means an agreement for the development of a resource made by the State and the developer under the provisions of the ***Oil and Gas Act*** **1998** or the ***Mining Act*** **1992**;

"resource development licence" means –

(*a*) a mining lease or special mining lease issued under the ***Mining Act*** **1992**, or

(b) a petroleum development licence or pipeline licence issued under the ***Oil and Gas Act*** **1998**;

"resource information" means geological, geophysical or technical information that –

(a) relates to the presence, absence or extent of deposits of resources in an area of Papua New Guinea; or

(b) is likely to be of assistance in determining the presence, absence or extent of such deposits in an area of Papua New Guinea,

and that has been obtained from prospecting for or recovery of those resources;

"resource operations" mean operations in Papua New Guinea by a resource project for the purposes of exploring for, or the development of, a resource;

"resource product" means minerals, petroleum or gas recovered by a resource project;

"resource project" means –

(a) a 'gas project' or a 'licensee' as defined in Section 3 of the ***Oil and Gas Act* 1998;** or

(b) a holder of a mining lease, special mining lease or exploration license issued under the provisions of the ***Mining Act* 1992**;

"resource right" means a licence to explore for resources or to carry on resource operations, issued under the provisions of the ***Oil and Gas Act* 1998** or the ***Mining Act* 1992.**

(2) For any purpose of this Act, the Commissioner General may determine the extent to which a deduction allowed or allowable under this Division is to be treated as attributable to particular expenditure that has been taken into account, or is to be taken into account, in the calculations by which the entitlement of the taxpayer to the deduction has been ascertained.

155A. ALLOWABLE EXPLORATION EXPENDITURE.

(1) This section shall be read in addition to the sections dealing with specific items of allowable exploration expenditure in Subdivisions B, C, and D.

(2) For the purposes of this Division, but subject to Section 155M, allowable exploration expenditure of a taxpayer means expenditure incurred by the taxpayer for the purpose of exploration in Papua New Guinea within the preceding 20 years in an exploration licence from which the resource development licence was drawn, including transferred expenditure deemed to have been incurred by the taxpayer under Section 155L.

(3) Subject to Subsection (6), where a taxpayer incurs allowable exploration expenditure in acquiring property in respect of which a deduction has been allowed or is allowable under this Division, the allowable exploration expenditure attributable to that property shall not exceed the cost of the property to the person disposing of the property.

(4) Subsection (3) shall not apply where the Commissioner General is of the opinion that the circumstances are such that the actual consideration given by the taxpayer should be allowed as allowable exploration expenditure.

(5) Interest incurred by a taxpayer shall not be allowable exploration expenditure.

(6) The allowable exploration expenditure of a taxpayer from time to time shall be reduced by –

(*a*) the amount of any allowable exploration expenditure of the taxpayer transferred by the taxpayer to another person and specified in a notice given under Section 155L; and

(*b*) the amount recovered in respect of any recoupment by the taxpayer of allowable exploration expenditure, other than amounts included in the assessable income of the taxpayer, where no part of that amount recovered is consideration for allowable exploration expenditure transferred by the taxpayer to another person and specified in a notice given under Sections 155L; and

(*c*) rent, interest or other income derived by the taxpayer in the course of carrying out the exploration; and

(*d*) any amount of that allowable exploration expenditure allowed as a deduction to the taxpayer or a related corporation under Section 155C.

(7) Expenditure which would otherwise be allowable exploration expenditure shall not be allowable exploration expenditure and shall be allowable capital expenditure if it is incurred after the issue of a resource development licence or is allowable capital expenditure of the taxpayer under Section 155D.

(8) Subject to Subsection (9), expenditure by a taxpayer which would otherwise be allowable exploration expenditure shall not be allowable exploration expenditure if the expenditure is consideration for the acquisition of an interest in all or part of a resource project which has already been the subject matter of allowable exploration expenditure or allowable capital expenditure of another person.

(9) Subsection (2) shall not apply to expenditure which is the subject of a notice given under Section 155L, to the extent specified in the notice.

155B. RESIDUAL EXPLORATION EXPENDITURE.

(1) The allowable residual exploration expenditure of a taxpayer in relation to a resource project on 1 January 2001 shall be the residual exploration expenditure as calculated under the income tax provisions in force until 31 December 2000.

(2) Subject to this section, for the purposes of this Division the residual exploration expenditure as at the end of a year of income in relation to a resource project shall be ascertained by deducting from the amount of the allowable exploration expenditure of the taxpayer in relation to the project before the end of the year of income the sum of –

(*a*) any part of that allowable exploration expenditure that has been allowed, or is allowable, as a deduction under Section 155C from the assessable income of the tax payer in a year of income preceding that year of income; and

(*b*) the amount of any allowable exploration expenditure of the taxpayer transferred by the taxpayer to another person and specified in a notice given under Section 155L; and

(c) the amount recovered, up to the amount of the taxpayer's expenditure thereon, in respect of any recoupment by the taxpayer of allowable exploration expenditure in relation to the resource project, other than amounts included in the assessable income of the taxpayer, where no part of that amount recovered is consideration for allowable exploration expenditure transferred by the taxpayer to another person and specified in a notice given under Section 155L.

(3) If at any time the deductions set out in Subsection (2) exceed the residual exploration expenditure of the taxpayer at that time, the residual exploration expenditure shall be reduced to zero and the amount of that excess shall be included in the assessable income derived by the taxpayer from that resource project.

155C. DEDUCTION FOR RESIDUAL EXPLORATION EXPENDITURE.

(1) Where, at the end of a year of income, there is, in relation to a taxpayer, in relation to a resource project, an amount of residual exploration expenditure, an amount ascertained in accordance with this section is an allowable deduction in relation to that resource project.

(2) The amount of the allowable deduction is the amount ascertained by dividing that amount of residual exploration expenditure by -

(*a*) subject to Subsection (3), a number equal to the number of whole years in the estimated life of production of that resource project as at the end of the year of income; or

(*b*) four,

whichever number is less.

(3) Where, having regard to the information in his possession, the Commissioner General is not satisfied that the estimate made by the taxpayer of the life of production of the resource project is a reasonable estimate, the estimated life shall, for the purposes of Subsection (2), be taken to be such period, not exceeding four years, as the Commissioner General thinks reasonable.

155D. ALLOWABLE CAPITAL EXPENDITURE.

(1) This section shall be read in addition to the sections dealing with specific items of allowable capital expenditure in Subdivisions B, C, and D.

(2) The balance of allowable capital expenditure on 1 January 2001 for a resource project shall be the capital expenditure available for deduction on 31 December 2000, as calculated under the income tax provisions in force until 31 December 2000 and shall be deemed to have been incurred on 1 January 2001.

(3) For the purpose of the calculation required by Section 155E. and generally for the purposes of this Division, but subject to Section 155M, the allowable capital expenditure of a taxpayer in relation to a year of income in relation to a resource project is the expenditure of a capital nature incurred by him before the end of that year in carrying on the resource operations comprising the project including -

(*a*) expenditure of a capital nature incurred by the taxpayer on the provision of buildings and other improvements or plant necessary for carrying on those operations; and

(*b*) expenditure of a capital nature incurred by the taxpayer in providing, or by way of contribution to the cost of providing, water, light or power for use on, or access to or communication with, the site of resource operations carried on by the taxpayer; and

(*c*) expenditure deemed to be incurred under Section 155L; and

(*d*) expenditure of a capital nature incurred by the taxpayer in providing residential accommodation for the use of –

(i) employees of the taxpayer engaged in, or in connection with, resource operations; or

(ii) dependents of such employees,

being accommodation situated on or adjacent to the site of the operations; and

(*e*) expenditure of a capital nature incurred by the taxpayer, in providing health, educational, law and order, recreational or other similar facilities, or facilities for the supply of meals, on or adjacent to the site of resource operations, being facilities that –

(i) are provided principally for the welfare of employees or dependents referred to in Paragraph *(d)*; or

(ii) are not conducted for the purpose of profit-making by the taxpayer or any other person; and

(*f*) expenditure of a capital nature incurred by the taxpayer in relation to works carried out directly in connection with accommodation and facilities referred to in Paragraph (*d*) and (*e*), including works for the provision of water, light, power, access or communications, or contributions towards the cost of any facilities related to any such accommodation or facilities; and

(*g*) expenditure of a capital nature incurred by the taxpayer on plant or articles for which a deduction for depreciation is allowable under Section 73 and which is used by the taxpayer in the resource operations; and

(*h*) expenditure of a capital nature incurred by the taxpayer on works, including dredging, carried out in connection with the establishment, operation or use of a port or other facilities for ships or barges being a port or facility that is for use in connection with the transport of resources obtained from the carrying out of the resource project; and

(*i*) general administration and management expenditure that relates primarily and principally to resource operations carried on by the taxpayer incurred after the issue of the relevant resource lease pursuant to which the resource project is conducted and prior to the date on which the taxpayer first derives assessable income from resource operations from that resource project, but does not include expenditure incurred in relation to –

(i) a ship for use in the transport of resources obtained from resource operations from a port or other terminal facility other than a ship used primarily and principally in connection with the carrying on of resource operations; or

(ii) expenditure on an office building that is not situated at or adjacent to the site of the resource operations carried on by the taxpayer.

(4) Where a taxpayer commences to use property owned by that taxpayer for a purpose for which allowable capital expenditure would be incurred for a resource project, and ceases to use that property for any other purpose –

(*a*) if no deduction has been allowed or is allowable under this Act against any income of the taxpayer in respect of the expenditure of the taxpayer on that property, an amount equal to the full value of that property as at that date shall be deemed to be allowable capital expenditure by the taxpayer on that date in respect of the resource project; and

(*b*) if such a deduction has been allowed or is allowable under this Division, an amount equal to the residual value of that property as at that date, plus any amount included in the assessable income from resource operations of the taxpayer in respect of the resource project as a consequence of the commencement of use, shall be deemed to be allowable capital expenditure incurred by the taxpayer on that date in respect of the resource project; and

(*c*) if such a deduction has been allowed or is allowable under Division 3, including a deduction in relation to expenditure in respect of which an election has been made under Section 155F, no amount shall be included in the allowable capital expenditure of the taxpayer in respect of the resource project but the provisions of Division 3 will continue to apply to such property.

(5) If a taxpayer commences to use property partly as specified in Subsection (3) and commences or continues to use that property partly for another purpose, including for use in another resource project, the use shall be apportioned in accordance with Section 155 between the resource project and the other use, or the two resource projects as the case may be, and Subsection (3) shall apply in respect of the amount of allowable capital expenditure thereby apportioned to the resource project or projects.

(6) Interest income derived by the taxpayer prior to the commencement of commercial production shall be applied in reduction of allowable capital expenditure, and shall, to the extent it reduces capital expenditure, be deemed not to be assessable income.

155E. DEDUCTION FOR ALLOWABLE CAPITAL EXPENDITURE.

(1) Subject to Sections 155F and 155I, the allowable deduction for capital expenditure in respect of a resource project shall be : –

(*a*) for capital assets with a life of ten years or more, $1/10^{th}$ of the value of the capital expenditure incurred during the year, commencing in the year that capital expenditure was incurred and ending in the year when that expenditure has been fully deducted; and

(*b*) for capital assets with a life of less than ten years, there shall be established a pool of expenditure, to which shall be added capital expenditure on such assets each year and from which shall be deducted -

(i) the value of any deductions allowed against the value of the pool for that year; and

(ii) the receipts, if any, from the sale or disposal of any assets forming part of the value of the pool during the year,

the deduction allowable each year shall be 25% of the value of the pool at the end of that year.

(2) Where in a year of income –

(*a*) a taxpayer disposes of property in respect of which allowable capital expenditure has been incurred (including property in respect of which a notice is given under Section 155G) or the property is lost or destroyed or its use by the taxpayer for the purposes of carrying on resource operations is otherwise terminated; or

(*b*) a taxpayer otherwise recoups allowable capital expenditure, the lesser of –

(i) the amount recovered by the taxpayer in respect of the allowable capital expenditure, other than amounts included in the assessable income of the taxpayer; or

(ii) the amount of the allowable capital expenditure to which the recoupment relates; or

(iii) the amount of the residual capital expenditure attributable to that property,

shall be deducted from the amount available for calculation of the allowable deduction under Subsection (1).

(3) Where a taxpayer commences to use property in respect of which an amount of expenditure has been allowed or is allowable as a deduction under this section partly for a purpose other than the resource operations in question, the use shall be apportioned in accordance with Section 155(2) between the resource project and the other use, and -

(*a*) Subsection (2) shall apply in respect of the amount of allowable capital expenditure thereby apportioned to the other use; and

(*b*) Section 155G shall apply in respect of the amount of allowable capital expenditure thereby apportioned to the other use as though it was a termination of use of an item of property of that value.

(4) Subject to Subsection (5) where, at the end of a year of income -

(*a*) the estimated remaining life of production of a resource project is less than ten whole years, the deduction calculated under Subsection (1)(*a*) shall be calculated by using such lesser divider than $^{1}/_{10}$th as represents the remaining life of the resource project in years; and

(*b*) the estimated remaining life of production of a resource project is less than four whole years, the deduction calculated under Subsection (1)(*b*) shall be calculated by using such lesser divider than ¼th as represents the remaining life of the resource project in years; and

(5) Where, having regard to the information in his possession, the Commissioner General is not satisfied that the estimate made by the taxpayer of the life of production from a particular resource project is a reasonable estimate, the estimated life shall, for the purposes of Subsection (4), be taken to be such period as the Commissioner General thinks reasonable, but not exceeding the divisors set out in Subsection (1) above.

155F. ELECTION THAT THIS DIVISION DOES NOT APPLY TO CERTAIN PLANT.

(1) Where any plant or article necessary for carrying on resource operations has an estimated effective life of less than 10 years as determined by the Commissioner General under Section 74, a person may elect that this section shall apply in respect of expenditure on it, or on any part of it referred to in the election, incurred in the year of income specified in the election and any further expenditure on that unit of plant incurred in a subsequent year.

(2) Where an election under Subsection (1) has been made, expenditure to which the election applies shall be deemed not to be allowable capital expenditure or allowable exploration expenditure, as the case may be, and the provisions of Section 73(1) and Sections 74, 75, 76, 77, 78, 79, 81, 82, 83 and 84 shall apply to such plant or article with such modifications as are necessary to give effect to those provisions.

(3) The year of income specified in an election under this section shall be the first year of income in which the taxpayer incurs, in relation to the unit of plant or article specified in the election, expenditure that, but for the election, would be allowable capital expenditure or allowable exploration expenditure.

(4) 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 the year of income specified in the election, or within such further time as the Commissioner General allows.

155G. DEDUCTION IN RESPECT OF DISPOSAL OR LOSS OF PROPERTY.

(1) This section applies where deductions have been allowed or are allowable under Section 155E in respect of allowable capital expenditure of the taxpayer –

(*a*) in respect of property that, in the year of income, has been disposed of, lost or destroyed, or the use of which by the taxpayer for purposes of carrying on resource operations has, in the year of income, been otherwise terminated in relation to that resource project; or

(*b*) which has otherwise been recouped by the taxpayer.

(2) Where the aggregate of –

(*a*) the sum of the deductions referred to in Subsection (1); and

(*b*) the amount recovered by the taxpayer in respect of the allowable capital expenditure, other than amounts otherwise included in the assessable income of the taxpayer,

exceeds the total allowable capital expenditure of the taxpayer to which the recoupment relates, the assessable income from resource operations of the taxpayer in the year of income includes so much of the amount of the excess as does not exceed the sum of those deductions.

(3) Where the total allowable capital expenditure referred to in Subsection (2) exceeds the aggregate referred to in that subsection, the excess is, subject to Subsection (4), an allowable deduction from the assessable income from resource operations of the taxpayer in the year of income in relation to the resource project.

(4) Where a taxpayer derives a benefit or consideration of a capital nature in return for the use by any other person of property, expenditure in respect of which is allowable capital expenditure of a resource project, but does not thereby dispose of an interest in that property, and the value of the benefit or consideration received exceeds the residual capital expenditure attributable to that property, an amount equal to the lesser of –

(*a*) the amount of that excess; and

(*b*) the sum of the amounts for which deductions have been allowed in respect of that property under Section 155E,

shall be assessable income from resource operations of the taxpayer.

155H. RESTRICTION ON INTEREST DEDUCTION.

(1) Where -

(*a*) a taxpayer carrying out a resource project has borrowed money for the purposes of carrying on the resource operations from a person who is in the opinion of the Commissioner General at arm's length; and

(*b*) the taxpayer has notified the Bank of Papua New Guinea in writing of the terms of the borrowing including the interest rate and other fees and charges related to the borrowing; and

(*c*) the Bank of Papua New Guinea has given its authority for the borrowing under the Foreign Exchange Regulations,

the amount of interest and other fees and charges incurred in each year of income on the money borrowed by the taxpayer shall, subject to Subsection (3), be an allowable deduction under Section 68 from the taxpayer's assessable income from resource operations in relation to that project.

(2) Where a taxpayer carrying out a resource project has borrowed money for the purpose of carrying on the resource operations from a person who is, in the opinion of the Commissioner General, not at arm's length—

(*a*) the Commissioner General shall determine, after consultation with the Bank of Papua New Guinea—

(i) the market rate of interest; and

(ii) the fees and charges that in his opinion are reasonable,

on a borrowing at the time of the same amount, for the same period and in the same currency as the borrowing by the taxpayer; and

(*b*) any amount -

(i) of interest incurred on the money borrowed by the taxpayer in excess of the market rate of interest determined under Paragraph (*a*); or

(ii) of expenditure incurred on the borrowing in excess of the fees and charges determined under Paragraph (*a*),

shall not be an allowable deduction under Sections 68 or 89, as the case may be.

(3) Notwithstanding any other provisions of this Act –

(*a*) where at any time during a year of income, debt in relation to a resource project of a taxpayer and all related corporations of that taxpayer having an interest in the resource project exceeds 300% of equity in relation to that resource project of those persons, the deduction allowable to the taxpayer for interest incurred during that period shall be limited to an amount ascertained in accordance with the following formula:–

$$\frac{TI \times 3E}{D}$$

Where –

TI = total interest incurred by the taxpayer during the year of income in relation to the project; and

D = debt of the taxpayer and those related corporations in relation to the project; and

E = equity of the taxpayer and those related corporations in relation to the project; and

(*b*) no deduction shall be allowable for interest incurred prior to –

(i) the date of issue of the first resource development licence included in the resource project; or

(ii) the date upon which the taxpayer first obtained an interest in the resource project or a resource right held by the taxpayer first became part of the resource project, as the case may be,

whichever last occurs; and

(*c*) the amount of the total interest of the taxpayer in the formula set out in Paragraph (a) shall not include any interest payable pursuant to a co-ordinated development agreement as a result of a redetermination, and this subsection shall not operate to prevent any such interest being a deduction from the assessable income from resource operations of the taxpayer who is the payer of such interest.

155I. IMMEDIATE DEDUCTION FOR CERTAIN CAPITAL ITEMS.

(1) Where a resource project purchases capital items with a cost not exceeding K1,000.00 per item, a deduction is allowable in the year of income for the full cost of those items.

(2) If an item for which a deduction has been claimed under subsection (1) is sold, the price received for the item shall be treated as assessable income of the resource project in the year of sale.

155J. DOUBLE DEDUCTIONS.

(1) Subject to Section 155F, where the whole or a part of any expenditure of a capital nature incurred by a taxpayer has been allowed or is allowable as a deduction under this Subdivision, no part of the expenditure is an allowable deduction, or may be taken into account in ascertaining the amount of an allowable deduction, under any provision of this Act other than this Subdivision, from the assessable income of the taxpayer of any year of income.

(2) Subsection (1) does not prevent a deduction being allowed to a taxpayer in relation to assessable income other than assessable income from resource operations under a provision of this Act, other than this Division, in respect of a unit of property the use of which by the taxpayer in carrying on resource operations, or in exploring for resources, has been terminated.

155K. TRANSACTIONS NOT AT ARMS LENGTH.

(1) In this section –

"goodwill" means a company's commercial reputation and good standing in public opinion;

"know-how" means rights in relation to invention, and scientific or technological knowledge or information, in relation to resource operation or exploration;

"management skills" means skills exercisable in the management of a company or a group of companies and includes the services of persons holding management positions within a company or a group of companies.

(2) Subject to Subsection (3), where –

(*a*) a person has purchased from another person property (other than the right to exploit a resource) or services in respect of which deductions are or have been allowed or are allowable under this Division; or

(*b*) a taxpayer who carried on resource operations has incurred expenditure in a year of income in acquiring know-how or management skills from an associated company or the benefit of an associated company's goodwill; and

(*c*) the Commissioner General is satisfied that, having regard to any connection between the vendor and the purchaser, or the taxpayer and the associated company, or to any other relevant circumstances, the persons were not dealing with each other at arm's length; and

(*d*) the purchase price or the expenditure incurred on know-how or management skills or the benefit of goodwill is greater or less than the amount that, in the opinion of the Commissioner General, was reasonable in all the circumstances,

the purchase price or the expenditure incurred shall, for all purposes of this Act, be deemed to be such amount as is determined by the Commissioner General to be equivalent to an arm's length price.

(3) Where –

(*a*) a taxpayer who is carrying out a resource project has incurred expenditure in a year of income in acquiring know-how or management skills from an associated company or the benefit of an associated company's goodwill by virtue of a written agreement between the taxpayer and the associated company; and

(*b*) the written agreement has been approved by the Commissioner General in whole or in part,

the expenditure incurred shall, to the extent approved by the Commissioner General, be deemed for all purposes of this Act, to be an outgoing incurred in gaining or producing the assessable income of the taxpayer in relation to that resource project.

155L. ADJUSTMENT OF DEDUCTIONS ON DISPOSAL OF RIGHT OR INFORMATION.

(1) Subject to this section, where at any time before the end of a year of income –

(*a*) a person (in this section called "the vendor") has incurred allowable exploration expenditure or allowable capital expenditure in relation to a resource project; and

(*b*) the vendor disposes of an interest in all or part of that resource project or a resource right or resource information which relates to that resource project,

the vendor and the person acquiring that interest, right or, information (in this section called "the purchaser") may jointly give to the Commissioner General a notice under this section.

(2) A notice referred to in Subsection (1) shall not have any effect unless the notice is signed by them or on their behalf and forwarded to the Commissioner General not later than two months after the end of the year of income in which the interest in the resource project, resource right or resource information was acquired, or within such further period as the Commissioner General allows, and specifies the matters required by this section.

(3) A notice given under Subsection (1) shall state –

(*a*) to the extent the consideration payable by the purchaser for the acquisition constitutes allowable exploration expenditure of the purchaser –

(i) the amount of such consideration; and

(ii) the resource right or rights of the purchaser to which the allowable exploration expenditure relates, and if more than one the allocation of that allowable exploration expenditure between them; and

(iii) the subject matter of the acquisition; and

(iv) the extent to which expenditure by the vendor on the subject matter of the acquisition was allowable exploration expenditure or allowable capital expenditure of the vendor; and

(*b*) to the extent the consideration payable by the purchaser for the acquisition constitutes allowable exploration expenditure or allowable capital expenditure of the purchaser –

(i) the amount of such consideration, allocated between those categories if applicable; and

(ii) the subject matter of the acquisition, allocated between those categories if applicable; and

(iii) the resource project or projects of the purchaser for which the consideration constitutes allowable exploration expenditure or allowable capital expenditure; and

(iv) subject to Subsection (5), the extent to which, for each of the purchaser and the vendor, the expenditure by them on that subject matter constituted allowable exploration expenditure or allowable capital expenditure; and

(v) if the allocation between allowable exploration expenditure and allowable capital expenditure referred to in Subparagraph (iv) is different for the purchaser and the vendor, the reason for the difference.

(4) In a notice given under Subsection (1) amounts stipulated under Subsection (3)(*a*)(iv) and (*b*)(iv) as –

(a) allowable capital expenditure of the vendor shall not exceed the sum of –

(i) the amount which is or has been included in the assessable income of the vendor as a result of the disposal of the resource right, resource information or interest in the resource project as a consequence of recoupment of allowable capital expenditure; and

(ii) the undeducted amounts of allowable capital expenditure of the vendor attributable to the resource right, resource information or interest disposed of, immediately before the disposal; or

(b) allowable exploration expenditure of the vendor shall not exceed the sum of –

(i) the amount which is or has been included in the assessable income of the vendor as a result of the disposal of the resource right, resource information or interest in the resource project as a consequence of recoupment of allowable exploration expenditure; and

(ii) the residual exploration expenditure of the vendor attributable to the resource right, resource information or interest disposed of, immediately before the disposal.

(5) Subject to Subsection (10), the sum of the amounts stipulated in a notice given under Subsection (1) as constituting allowable exploration expenditure and allowable capital expenditure of the purchaser shall not exceed the sum of the amounts of allowable exploration expenditure and allowable capital expenditure of the vendor to which the subject matter of the purchaser's allowable exploration expenditure or allowable capital expenditure relates.

(6) Subject to any amendment made under Subsection (9), where a notice is given under Subsection (1) the purchaser shall be deemed, for the purposes of this Division, to have incurred –

(a) on the date of the acquisition the amount (if any) of allowable exploration expenditure and allowable capital expenditure specified in the notice; and

(b) on the date on which it was actually incurred or deemed incurred by the vendor and in relation to the area of the resource right or rights nominated in the notice, the allowable exploration expenditure specified in the notice.

(7) This section does not apply to expenditure on plant or articles in respect of which the taxpayer made an election under Section 155F.

(8) The extent to which an amount specified in a notice under Subsection (1) is attributable to –

(*a*) particular expenditure; or

(*b*) expenditure of a particular class; or

(*c*) expenditure incurred at a particular time or during a particular period; or

(*d*) expenditure incurred in relation to a particular resource project, or resource right,

may be determined by the Commissioner General.

(9) Where the Commissioner General determines that an amount specified in a notice under Subsection (1) is attributable, in whole or part, to another class of expenditure or to another resource project or resource right, he shall amend the notice accordingly.

(10) Subsection (5) does not apply where the Commissioner General is of the opinion that the circumstances are such that allowable exploration expenditure or allowable capital expenditure based on the actual consideration should be allowed to the purchaser.

155M. LIMITATION ON DEDUCTION OF MANAGEMENT FEES.

(1) In this section, "management fees" means any payment to a person in consideration for any services of a managerial or administrative nature, however calculated, but does not include a payment of salary or a royalty.

(2) This section applies to a loss or outgoing to the extent to which it is incurred by a resource project in the payment of management fees but does not apply where the Commissioner General is satisfied that –

(*a*) the payment was not made to an associate; or

(*b*) if the payment was made to an associate –

(i) the payment did not have the purpose or effect of avoiding tax or of altering the total tax which would otherwise be payable in Papua New Guinea by the two parties concerned; or

(ii) the payment was made to reimburse the associate for expenditure incurred and paid on behalf of the taxpayer, such expenditure being solely and absolutely for the taxpayer's benefit and account and not by way of cost allocation or apportionment against the taxpayer (regardless of whether such cost allocation or apportionment might have a commercial or accounting basis or otherwise).

(3) Notwithstanding anything in any other provision of this Act, the deduction allowable under Section 68 in respect of management fees incurred after 1 January 2001 shall not exceed 2% of the operating expenses, other than management fees, incurred by a resource project in carrying on resource operations.

(4) Notwithstanding the provisions of Section 155B, to the extent management fees exceed 2% of allowable exploration expenditure, other than management fees, incurred during the year, they shall not be allowable exploration expenses.

(5) Notwithstanding the provisions of Section 155D, to the extent management fees exceed 2% of allowable capital expenditure, other than management fees, incurred during the year, they shall not be allowable capital expenses.

155N. ADDITIONAL DEDUCTION FOR EXPLORATION EXPENDITURE INCURRED OUTSIDE THE RESOURCE PROJECT.

(1) Notwithstanding anything in this Division, an amount determined in accordance with this section is an additional allowable deduction to the taxpayer in respect of a year of income.

(2) A taxpayer involved in resource operations may elect, at the end of each year of income, to add allowable exploration expenses incurred by the taxpayer or by a related corporation during that year of income, to an exploration pool, from which deductions may be claimed in accordance with this section.

(3) The amount allowable as a deduction under this section in respect of resource operations carried on by the taxpayer shall be the lesser of –

(*a*) 25% of the total undeducted balance of expenditure in the exploration pool; or

(*b*) such amount as reduces the income tax (other than additional profits tax) which would, but for this section, be payable by the taxpayer and its related corporations in respect of those resource operations for that year of income, by 10%.

(4) Where a taxpayer elects to add exploration expenditure to the exploration pool for the purpose of claiming a deduction under this section, such expenditure may not be subsequently transferred into a resource development project as allowable exploration expenditure.

155O. JOINT VENTURE FINANCIAL STATEMENT.

(1) Where a resource project operates as a joint venture, the operator of that project shall, within two months of the end of each year of income, furnish a consolidated financial statement in respect of that resource project to the Commissioner General and to each of the parties to that joint venture. That statement shall show full details of operating expenditure, allowable exploration expenditure, allowable capital expenditure and any other expenditure incurred by the operator on behalf of the project during the relevant year of income.

(2) When lodging their tax returns for a year of income, each party in that joint venture shall furnish with that return a reconciliation between their individual tax return and the consolidated financial statement referred to in Subsection (1).

155P. RESOURCE OPERATIONS BY CONTRACTORS PROFIT SHARING ARRANGEMENTS, ETC.

(1) For the purposes of this Division, where a taxpayer or a resource project has, for a consideration provided or to be provided by it, not being –

(*a*) a payment of a share of the assessable income from resource operations derived by the taxpayer or resource project; or

(*b*) a consideration by way of an assignment or sub-lease of a resource right or a resource development licence,

procured the performance of work that, had it been performed by it, would have constituted resource operations –

(*c*) the work shall be deemed to constitute resource operations carried on by the taxpayer or resource project and not by the person by whom the work was performed; and

(*d*) so much of that consideration as in the opinion of the Commissioner General is reasonable shall be deemed to be expenditure incurred by him in the carrying on of resource operations.

(2) Where a person, who derives assessable income from resource operations from an area the subject of a resource development licence, pays to another person a share of the income so derived under an agreement under which –

(*a*) the other person has carried on resource operations in the area, or has engaged in the area in exploration; or

(*b*) the first-mentioned person has acquired, or has agreed or has an option to acquire, from the other person, a resource right or resource information in relation to the area,

the amount so paid to the other person shall, for the purposes of this Division –

(*c*) be deemed to be assessable income from resource operations derived by him from the carrying on of resource operations in the area; and

(*d*) be deemed not to be expenditure of a kind in respect of which deductions are or have been allowable under this Division, incurred by the first-mentioned person.

(3) Notwithstanding Section 15, where a person has assigned or sub-let a mining right in respect of an area to another person under an agreement under which the other person –

(*a*) has carried on, or is carrying on, in the area or in another area in respect of which the first-mentioned person holds or has held a resource right; or

(*b*) has engaged, or is engaging, in the area in exploration,

the first-mentioned person shall, for the purposes of this Division, be deemed not to have incurred, by virtue of the assignment or sub-lease, expenditure of a kind in respect of which deductions are or have been allowable under this Division.

155Q. CHANGE OF INTERESTS IN PROPERTY.

(1) Subject to Subsection (2), where more than one taxpayer has an interest in property in respect of which a deduction has been allowed or is allowable under this Subdivision, the interest of each taxpayer in the property shall be treated as

a separate asset and the disposal by one taxpayer of all or part of its interest in that property shall not of itself cause all or any part of the interest of another taxpayer in that property to be deemed to have been disposed of.

(2) Where upon the formation or dissolution of a partnership or a variation in the constitution of a partnership or in the interests of the partners –

(*a*) a change has occurred in the ownership of, or in the interests of persons in, property in respect of which deductions have been allowed or are allowable under this Subdivision; and

(*b*) the person, or one or more of the persons, who owned the property before the change has or have an interest in the property after the change,

this Division applies as if the person or persons who owned the property before the change had, on the day on which the change occurred, sold the whole of the property to the person, or all the persons, by whom the property is owned after the change.

155R. TAXATION ARRANGEMENTS FOR INTEREST PAID BY RESOURCE PROJECTS.

Notwithstanding the provisions of *the* ***Income Tax and Dividend (Withholding) Tax Rates Act***, where an entity carrying on business in Papua New Guinea derives interest income from another taxpayer carrying on a resource project who, in the opinion of the Commissioner General, is an associate, the rate of tax applicable to that income is the rate of tax that would be applicable if that assessable income had been derived by that resource project.

Subdivision B.–Specific Provisions Applicable to Mining,

156. APPLICATION.

(1) This Subdivision applies to a taxpayer who carries out mining operations or exploration or derives assessable income from mining operations, as the case may be, pursuant to an exploration licence, a mining lease or a special mining lease issued under the provisions of the ***Mining Act*** **1992**.

(2) Insofar as this subdivision does not duplicate items or matters dealt with in Subdivision A, it is to be read in addition to Subdivision A.

156A. PROJECT BASIS OF ASSESSMENT.

(1) Notwithstanding any other provision of this Act, each person shall be assessed in relation to each mining project (whether carried out by that person or another person) as if the assessable income from mining operations attributable to the project was the only assessable income derived by the person and the person carried on no other business, and without limiting, by implication, the generality of the foregoing –

(*a*) all deductions that are allowable under this Act shall be deductible against income from the project only to the extent that the deductions are, or are deemed to be, attributable to the project; and

(*b*) all deductions that are allowable under this Act and which are or are deemed to be attributable to the project shall be allowed only against income that is attributable to the mining operations comprising the project.

(2) For the purposes of Subsection (1), where a person –

(*a*) incurs expenditure for which a deduction is allowable under this Act and the expenditure does not relate exclusively to the carrying out of the project; or

(*b*) derives income that does not relate exclusively to the carrying out of the project,

so much of that deduction or income as the Commissioner General considers is reasonable shall be taken to be attributable to the project.

156B. ADDITIONAL ALLOWABLE CAPITAL EXPENDITURE.

(1) For the purpose of the calculation required by Section 155E and generally for the purposes of this Subdivision, the additional allowable capital expenditure of a taxpayer in relation to a year of income in relation to a mining project is the expenditure of a capital nature incurred by him before the end of that year in carrying on the mining operations comprising the project including -

(*a*) expenditure of a capital nature incurred by the taxpayer on the acquisition of –

(i) the site of mineral deposits; or

(ii) rights over the site or over the deposits; and

(*b*) expenditure of a capital nature incurred by the taxpayer on testing deposits of minerals or in winning access to the deposits; and

(*c*) expenditure on the study of –

(i) the feasibility of the development of smelting and refining and related facilities in and in relation to the mining project or proposed mining project; or

(ii) the environmental impact of the mining operations proposed to be carried on by the taxpayer.

Subdivision C. – Specific Provisions Applicable to Petroleum.

157. APPLICATION.

(1) This Subdivision applies to a taxpayer who carries out petroleum operations or exploration or derives assessable income from those operations, as the case may be, pursuant to a petroleum prospecting, retention, development or processing facility licence, or a pipeline licence, in each case issued under the provisions of the ***Oil and Gas Act*** **1998**.

(2) Insofar as this subdivision does not duplicate items or matters dealt with in Subdivision A, it is to be read in addition to Subdivision A.

157A. PROJECT BASIS OF ASSESSMENT.

(1) Subject to this section, in this Act "petroleum project" means –

(*a*) where a Regulation so prescribes:-

(i) those petroleum operations or facilities or particular use thereof and the allowable exploration expenditure, allowable capital expenditure, losses and outgoings and income which are prescribed; or

(ii) those which are attributable to petroleum operations or facilities which are prescribed to constitute a petroleum project;

but

(iii) excludes any particular operations or facilities or use thereof or allowable exploration expenditure, allowable capital expenditure, losses and outgoings or income, which are prescribed to be excluded from that petroleum project; and

(*b*) in cases to which Paragraph (*a*) does not apply, petroleum operations conducted pursuant to a development licence or a pipeline licence, as the case may be, and shall include the allowable exploration expenditure, allowable capital expenditure, losses and outgoings and income attributable to those petroleum operations.

(2) A petroleum project to which Subsection (1)(*a*) applies may include petroleum operations pursuant to any number of development licences or pipeline licences or both.

(3) A petroleum project to which Subsection (1)(*b*) applies shall only include those operations which are attributable to a single development licence or licences or pipeline licence or licences as the case may be.

(4) A Regulation made under Subsection (1)(*a*) or an amendment thereto shall only be made with the consent of the licensees of the development licence or pipeline licence to which the Regulation pertains.

(5) Each person shall be assessed in relation to each petroleum project (whether carried out by that person or another person) as if the assessable income from petroleum operations derived by the person from the petroleum project was the only income derived by the person and the person carried on no other business and without limiting, by implication, the generality of the foregoing -

(*a*) all deductions that are allowable under this Act shall be deductible against assessable income from the petroleum project only to the extent that the deductions are or are deemed to be attributable to the petroleum project; and

(*b*) all deductions that are allowable under this Act and which are or are deemed to be attributable to the petroleum project shall be allowed only against income that is assessable income from petroleum operations derived from the petroleum project.

(6) The provisions of this Act other than this Division apply to the assessment of a taxpayer in relation to a petroleum project except to the extent inconsistent with this Division.

(7) For the purposes of Subsection (5), where a person –

(*a*) incurs expenditure in relation to a petroleum project for which a deduction is allowable under this Act and the expenditure does not relate exclusively to the carrying out of that petroleum project; or

(*b*) derives income that does not relate exclusively to the carrying out of that petroleum project; and

the manner of apportionment of deductions and income between the petroleum project and one or more designated gas projects is specified in a gas agreement,

(*c*) income and deductions shall be attributed to the petroleum project in accordance with the gas agreement;

and in any other case

(*d*) so much of that deduction or income as the Commissioner General considers is reasonably incurred shall be taken to be derived from the petroleum project.

157B. ADDITIONAL PROVISIONS, ALLOWABLE EXPLORATION EXPENDITURE.

(1) A taxpayer may elect, at any time prior to the date of commencement of commercial operation of a petroleum project, by notice in writing to the Commissioner General, that all or any amount of the allowable exploration expenditure which in accordance with Section 155A may be allowable exploration expenditure of that petroleum project, will not be allowable exploration expenditure of that project.

(2) Where a taxpayer makes an election under Subsection (1), the allowable exploration expenditure in respect of which the election is made shall not be allowable exploration expenditure of that petroleum project but shall remain as allowable exploration expenditure of a subsequent petroleum project or designated gas project for which it qualifies to be allowable exploration expenditure.

(3) Where a taxpayer has made an election under Subsection (1) in respect of allowable exploration expenditure that taxpayer may, at any time prior to that expenditure becoming allowable exploration expenditure of another petroleum project or designated gas project, further elect by notice in writing to the Commissioner General that that allowable exploration expenditure should become allowable exploration expenditure of the original petroleum project, and upon such further election being made that expenditure shall become allowable exploration expenditure of that project with effect from the time of that further election.

(4) Allowable exploration expenditure in respect of which an election is made under Subsection (3) shall not be included in the project deductions of the taxpayer (as defined in Subdivision E) in respect of that petroleum project.

(5) Where, at a particular time –

(*a*) a taxpayer or a related corporation has allowable exploration expenditure in relation to the area of a petroleum prospecting licence or a retention licence; and

(*b*) the petroleum prospecting licence or retention licence is surrendered or cancelled or expires,

the Commissioner General may at any time, in his absolute discretion, allocate so much of that allowable exploration expenditure as was incurred within 20 years before the time of allocation (including, for the avoidance of doubt, expenditure incurred before the commencement of this section) as the Commissioner General considers is reasonable to any petroleum project in which the taxpayer has a beneficial interest at the time of allocation, and upon such allocation that allowable exploration expenditure shall become allowable exploration expenditure of the taxpayer (other than for the purposes of Subdivision E) in relation to that petroleum project.

(6) Where at a particular time a taxpayer ceases to have an interest in a petroleum project consequent upon –

(*a*) the surrender, cancellation or expiry of a development licence or a pipeline licence; or

(*b*) the disposal by the taxpayer of the whole of its interest in the petroleum project,

and immediately before such cessation, disposal or abandonment a taxpayer had residual exploration expenditure in relation to that petroleum project, the Commissioner General may at any time, in his absolute discretion, allocate that residual exploration expenditure (other than any amount transferred by the taxpayer to another person pursuant to Section 155L) –

(*c*) if the taxpayer or a related corporation has a beneficial interest in any other petroleum project or designated gas project from which the taxpayer or the related corporation is deriving assessable income from petroleum operations or assessable income from gas operations, to that petroleum project or designated gas project or those petroleum projects or designated gas projects, as the case may be, in such proportions as the Commissioner General considers reasonable,

and following the allocation that amount of residual exploration expenditure shall become allowable exploration expenditure of the taxpayer or the related corporation, as the case may be, in relation to the petroleum project or projects or designated gas project or projects to which they were allocated (other than for the purposes of Subdivision E), with effect from the date of allocation.

(7) Where in a year of income a taxpayer derives income from the sale of petroleum from operations conducted pursuant to a petroleum prospecting licence, the allowable exploration expenditure of the taxpayer in relation to that petroleum prospecting licence shall be reduced by that income to the following extent and the excess, if any, shall be deemed to be assessable income from petroleum operations of the taxpayer: –

(*a*) the income is first applied to reduce any allowable exploration expenditure incurred by the taxpayer in relation to that petroleum prospecting licence in the year of income in which the income was derived; and

(*b*) any income in excess of any amount applied to reduce allowable exploration expenditure pursuant to Paragraph (a) is applied to reduce allowable exploration expenditure incurred by the taxpayer in relation to that petroleum prospecting licence, or

any other petroleum prospecting licence over the same area in previous years of income, firstly against the earliest incurred allowable exploration expenditure within 20 years prior to the year of income that was derived.

(8) Where income described in Subsection (7) exceeds the total accumulated residual exploration expenditure incurred within the 20 years of exploration prior to the year of income in which that income was derived, the amount of the excess is assessable income from petroleum operations of the taxpayer.

(9) Where a taxpayer incurs allowable exploration expenditure on a well which is subsequently converted to a production well, any conversion costs are allowable capital expenditure and are not allowable exploration expenditure.

157C. ADDITIONAL ALLOWABLE CAPITAL EXPENDITURE.

(1) For the purpose of the calculation required by Section 155E and generally for the purposes of this Subdivision, the additional allowable capital expenditure of a taxpayer in relation to a year of income in relation to a petroleum project is the expenditure of a capital nature incurred by him before the end of that year in carrying on the petroleum operations comprising the project including –

(*a*) expenditure of a capital nature on plant necessary for carrying on those petroleum operations that is used by the taxpayer in such operations for the purpose of purification and stabilisation of petroleum in order to facilitate transport of the petroleum recovered from that project by the taxpayer to a port or other terminal; and

(*b*) expenditure of a capital nature incurred by the taxpayer in providing, or by way of contribution to the cost of providing –

(i) pipe-lines or any other transport facility constructed for the transport of petroleum, that has not been treated at a refinery, obtained from the petroleum operations; or

(ii) plant (including pumping apparatus, storage tanks, port facilities and other terminal facilities) for use primarily, principally and directly in connection with the operations of such pipe-line or other transport facility; and

(*c*) expenditure by the taxpayer for exploration activities, wherever carried out, which are certified (and to the extent to which they are so certified) by the Departmental Head of the Department responsible for petroleum exploration to be for the purpose of delineating a petroleum deposit within a development licence included in the petroleum project, but excluding expenditure incurred in acquiring an interest in a petroleum right; and

(*d*) expenditure which is incurred by the taxpayer for exploration activities in the area of a petroleum prospecting licence or retention licence or development licence adjacent to a development licence included in the petroleum project where the exploration activities are certified (and to the extent to which they are so certified) by the Departmental Head of the Department responsible for petroleum exploration to be for the

purpose of proving or disproving the existence or extent of a commercially exploitable petroleum pool which might be developed in a co-ordinated development with a petroleum pool or pools wholly or partly underlying such development licence, but excluding expenditure incurred in acquiring an interest in a petroleum right; and

(*e*) subject to Subsection (2), expenditure on the study of –

(i) the feasibility of developing facilities for use in relation to the petroleum project; or

(ii) the environmental impact of the petroleum operations proposed to be carried on by the taxpayer; and

but does not include expenditure incurred in relation to –

(*f*) plant for use in the refining of petroleum or the products of petroleum, other than plant used in the refining of petroleum or petroleum products where such refining is solely for the purpose of or incidental to petroleum operations or the construction of facilities used in those operations or where the Commissioner General considers the refining is required in order for the taxpayer to be able to conduct those operations, or in the liquefaction of natural gas.

(2) Where the studies referred to in Subsection (1)(*e*) do not result in the carrying on of the proposed petroleum operations, the expenditure shall be deemed to be exploration expenditure.

(3) Where, at a particular time –

(*a*) a taxpayer ceases to have an interest in a petroleum project consequent upon –

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

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

(*b*) abandonment of a petroleum project occurs,

and immediately before such cessation, disposal or abandonment a taxpayer was entitled to the benefit of allowable capital expenditure in relation to that petroleum project, the Commissioner General may at any time allocate that allowable capital expenditure (other than any amount transferred by the taxpayer to another person pursuant to Section 155L) –

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

(*d*) if the taxpayer or a related corporation has no beneficial interest in another petroleum project but has a beneficial interest in any other designated gas project from which the taxpayer or the related corporation, as the case may be, is deriving assessable

income from gas operations, to that designated gas project or those designated gas projects, as the case may be, in such proportions as the Commissioner General considers reasonable; or

(*e*) in any other case, to any petroleum project or if no petroleum project becomes available to any designated gas 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 allowable capital expenditure shall become allowable capital expenditure of the taxpayer or of the related corporation, as the case may be, in relation to the petroleum project or projects or designated gas project or projects to which it was allocated (other than for the purposes of Subdivision E), with effect from the date of allocation.

157D. PETROLEUM USED IN PETROLEUM OPERATIONS.

(1) This section applies where a taxpayer uses petroleum obtained from a petroleum project carried on by the taxpayer in Papua New Guinea in the course of the petroleum operations comprising the petroleum project.

(2) For the purpose of this section, in a case to which this section applies a value for the petroleum so used shall be ascertained by reference to the norm price for that petroleum as at the time when the petroleum is so used.

(3) The value ascertained in accordance with Subsection (2) –

(*a*) shall be taken into account for the purposes of this Act as if it were the cost to the taxpayer of the petroleum so used; and

(*b*) shall, for the purposes of this Subdivision, be deemed to be assessable income from petroleum operations derived by the taxpayer in relation to the petroleum project during the year of income in which the petroleum was so used.

(4) This section shall not apply to petroleum obtained and used prior to the date of commencement of commercial operation of the petroleum project.

157E. ADJUSTMENTS PURSUANT TO REDETERMINATIONS.

(1) Notwithstanding the provisions of this Division and Division 3, where, pursuant to a redetermination applying to a petroleum project, a coordinated development participant (in this section called the "compensatee") is entitled to receive compensation (whether in cash or kind or by way of change in lifting entitlements or by any other method) from one or more other coordinated development participants (in this section called the "compensator") due to the compensatee having incurred more allowable exploration expenditure or allowable capital expenditure or expenditure which would have been allowable capital expenditure but for an election under Section 155F or operating expenses of that petroleum project or having derived less petroleum or income than the compensatee should have according to the results of the redetermination –

(*a*) where the compensation is made otherwise than by way of adjustment to lifting entitlements, to the extent –

(i) that it is compensation for allowable exploration expenditure – the allowable exploration expenditure and residual exploration expenditure of the compensator shall be increased by the amount of the compensation and the allowable exploration expenditure and residual exploration expenditure of the compensatee shall be reduced by the amount of the compensation, and to the extent that the amount of the compensation exceeds the residual exploration expenditure of the compensatee – the amount of such excess shall be assessable income from petroleum operations of the compensatee; and

(ii) that it is compensation for allowable capital expenditure or expenditure which would have been allowable capital expenditure but for an election under Section 155F and to the extent –

(A) that the compensation relates to plant or articles in respect of expenditure on which the compensator has made a prior election under Section 155F –

(I) the cost and depreciated value of such plant and articles of the compensator shall be increased accordingly; and

(II) the cost and depreciated value of such plant and articles of the compensatee shall be reduced accordingly, and to the extent that the amount of that compensation exceeds the depreciated value of such plant and articles - the amount of such excess shall be assessable income from petroleum operations of the compensatee; and

(B) that it does not so relate –

(I) the allowable capital expenditure and residual capital expenditure of the compensator shall be increased accordingly; and

(II) the allowable capital expenditure and residual capital expenditure of the compensatee shall be reduced by the amount of the compensation, and to the extent that the amount of that compensation exceeds the residual capital expenditure of the compensatee – the amount of such excess shall be assessable income from petroleum operations of the compensatee; and

(iii) that it is compensation for operating expenses – the amount of the compensation shall be assessable income from petroleum operations of the compensatee and shall

be a deduction from the assessable income from petroleum operations of the compensator; and

(iv) that it is compensation for petroleum or income derived by the compensatee – the amount of the compensation shall be assessable income from petroleum operations of the compensatee and shall be a deduction from the assessable income from petroleum operations of the compensator; and

(v) that it represents interest – the amount of the compensation shall be assessable income from petroleum operations of the compensatee and shall be a deduction from the assessable income from petroleum operations of the compensator; and

(*b*) where the compensation is by way of adjustment to lifting entitlements –

(i) then to the extent that it is compensation for allowable exploration expenditure or allowable capital expenditure or expenditure which would have been allowable capital expenditure but for an election under Section 155F—the provisions of Subparagraphs (i) and (ii) of Paragraph (*a*) shall apply as though the value of the compensation is a payment, and in addition that value shall be assessable income from petroleum operations of the compensator and a deduction from assessable income from petroleum operations of the compensatee; and

(ii) to any other extent Paragraph (*a*) shall not apply.

(2) Where compensation referred to in Subsection (1)(*a*) is made by way of delivery of petroleum, the compensator shall be deemed to have sold and the compensatee shall be deemed to have purchased the petroleum so delivered.

(3) A coordinated development participant who gives or receives compensation as described in Subsection (1) shall give notice thereof to the Commissioner General.

(4) Where the compensation is by way of adjustment to lifting entitlements, all parties to the redetermination may by written notice to the Commissioner General signed by each of them elect that Subsection (1)(*b*) shall not apply.

(5) A notice under Subsection (3) or (4) shall be given to the Commissioner General not later than two months after the end of the year of income in which such payment of adjustment first has effect, or within such further period as the Commissioner General may otherwise allow.

(6) Where Subsection (1)(*a*) or (*b*)(i) apply, the compensation shall be deemed to be given and received on the date on which the amount thereof is determined.

(7) A redetermination shall be deemed not to give rise to dispositions of property for the purposes of this Act.

Subdivision D. – Specific Provisions Applicable To Designated Gas Projects.

158. APPLICATION.

(1) This Subdivision applies to a taxpayer who carries out gas operations or derives assessable income from those operations, as the case may be, pursuant to a gas agreement entered into under the provisions of the ***Oil and Gas Act* 1998**.

(2) Insofar as this subdivision does not duplicate items or matters dealt with in Subdivision A, it is to be read in addition to Subdivision A.

158A. PROJECT BASIS OF ASSESSMENT.

(1) In this Act, a "designated gas project" means such one or more gas projects as are defined to be a gas project under a gas agreement made pursuant to the ***Oil and Gas Act* 1998**.

(2) Each person shall be assessed in relation to each designated gas project (whether carried out by that person or another person) as if the assessable income from gas operations derived by the person from the designated gas project was the only income derived by the person and the person carried on no other business and without limiting, by implication, the generality of the foregoing –

(*a*) all deductions that are allowable under this Act shall be deductible against assessable income from the designated gas project only to the extent that the deductions are or are deemed to be attributable to the designated gas project; and

(*b*) all deductions that are allowable under this Act and which are or are deemed to be attributable to the designated gas project shall be allowed only against income that is assessable income from gas operations derived from the designated gas project.

(3) The provisions of this Act other than this Division apply to the assessment of a taxpayer in relation to a designated gas project except to the extent inconsistent with this Division.

(4) For the purposes of Subsection (1), where a person –

(*a*) incurs expenditure in relation to a designated gas project for which a deduction is allowable under this Act and the expenditure does not relate exclusively to the carrying out of the designated gas project; or

(*b*) derives income that does not relate exclusively to the carrying out of the designated gas project,

where the manner of apportionment of deductions and income between the designated gas project and other designated gas projects or petroleum projects is specified in a gas agreement,

(*c*) income and deductions shall be attributed to the designated gas project in accordance with the gas agreement; and

(*d*) in any other case, so much of that deduction or income as the Commissioner General considers is reasonable shall be taken to be incurred by or derived from the designated gas project.

158B. CONVERSION OF PETROLEUM PROJECT TO DESIGNATED GAS PROJECT.

A petroleum project shall, for all purposes of this Act, become and be treated as a designated gas project or part of a designated gas project when its production of gas exceeds the prescribed ratio of gas production to oil production.

158C. ADDITIONAL PROVISIONS, ALLOWABLE EXPLORATION EXPENDITURE.

(1) For the purposes of this Division, where a designated gas project arises out of the conversion of a petroleum project to a gas project, or where a petroleum project converts to become part of a designated gas project, allowable exploration expenditure of a taxpayer in relation to that designated gas project includes –

(*a*) the balance of residual exploration expenditure on the date of its conversion to a designated gas project; and

(*b*) residual exploration expenditure of the taxpayer allocated to the designated gas project under Subsections (2) or (3) respectively; and

(*c*) any other expenditure which is classified as allowable exploration expenditure in relation to the designated gas project in the gas agreement in respect of that designated gas project.

(2) Where, at a particular time –

(*a*) a taxpayer or a related corporation has allowable exploration expenditure incurred on or after 1 January 1980 in relation to the area of a petroleum prospecting licence or a retention licence; and

(*b*) the petroleum prospecting licence or retention licence is surrendered or cancelled or expires; or

(*c*) by application of Section 158B, the petroleum project becomes a designated gas project,

the Commissioner General may at any time allocate so much of that allowable exploration expenditure as was incurred within 20 years before the time of allocation (including, for the avoidance of doubt, expenditure incurred before the commencement of this section) as the Commissioner General considers is reasonable to that designated gas project and upon such allocation that allowable exploration expenditure shall become allowable exploration expenditure of the taxpayer (other than for the purposes of Subdivision E) in relation to that designated gas project.

(3) Where, at a particular time –

(*a*) a taxpayer ceases to have an interest in a designated gas project consequent upon –

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

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

(*b*) abandonment of the designated gas project occurs,

and immediately before such cessation, disposal or abandonment a taxpayer had residual exploration expenditure in relation to that designated gas project, the Commissioner General may at any time allocate that residual exploration expenditure

(other than any amount transferred by the taxpayer to another person pursuant to Section 155L) –

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

(*d*) in any other case, to any designated gas project or petroleum project carried on by the taxpayer or 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 amount of residual exploration expenditure shall become allowable exploration expenditure of the taxpayer or the related corporation, as the case may be, in relation to the designated gas project or projects or petroleum project or projects to which they were allocated (other than for the purposes of Subdivision E), with effect from the date of allocation.

158D. ADDITIONAL ALLOWABLE CAPITAL EXPENDITURE.

(1) For the purposes of this Division additional allowable capital expenditure of a taxpayer in relation to a designated gas project is expenditure of a capital nature incurred by the taxpayer in carrying on or for the purpose of gas operations as part of that designated gas project including preliminary expenditure of that type incurred prior to the commencement of gas operations, together with (to the extent not otherwise included in this definition or in Section 155D) –

(*a*) the undeducted balance of allowable capital expenditure as at the date of conversion of any petroleum project that converts to become a designated gas project, or part of a designated gas project pursuant to Section 158B; and

(*b*) all expenditure, to the extent it is not included under (a) above, classified as allowable capital expenditure for the designated gas project in the gas agreement in respect of that designated gas project; and

(*c*) expenditure which is incurred by the taxpayer for exploration activities, wherever carried out, which are certified (and to the extent to which they are so certified) by the Departmental Head of the Department responsible for petroleum exploration to be for the purpose of delineating a petroleum deposit within a development licence included in the designated gas project, but excluding expenditure incurred in acquiring an interest in a petroleum right; and

(*d*) expenditure which is incurred by the taxpayer for exploration activities in the area of a petroleum prospecting licence or retention licence or development licence adjacent to a development licence included in the designated gas project where the exploration activities are certified (and to the extent to which they are certified) by the Departmental Head of the Department responsible for petroleum exploration to be for the

purpose of proving or disproving the existence or extent of a commercially exploitable petroleum pool which might be developed in a co-ordinated development with a petroleum pool or pools wholly or partly underlying such development licence, but excluding expenditure incurred in acquiring an interest in a petroleum right; and

but does not include expenditure in relation to –

(*e*) ships and aircraft unless –

(i) specifically included as allowable capital expenditure of the designated gas project by the terms of the applicable gas agreement; and

(ii) all income attributable to their operation is not precluded from being assessable income from gas operations by any law; or

(*f*) plant for use in the refining of petroleum or the products of petroleum, unless such plant is for the purposes of an operation included in the definition of gas operations.

(2) Interest income derived by the taxpayer after the issue of the first development licence included in the designated gas project and prior to the year of income in which the date of commencement of commercial operation of the designated gas project occurred, shall be applied in reduction of allowable capital expenditure and shall, to the extent it reduces capital expenditure, be deemed not to be assessable income.

(3) Where, at a particular time –

(*a*) a taxpayer ceases to have an interest in a designated gas project consequent upon –

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

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

(*b*) abandonment of a designated gas project occurs,

and immediately before such cessation, disposal or abandonment a taxpayer was entitled to the benefit of undeducted amounts of allowable capital expenditure in relation to that designated gas project, the Commissioner General may at any time allocate those undeducted amounts of allowable capital expenditure (other than any amount transferred by the taxpayer to another person pursuant to Section 155I) –

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

(*d*) if the taxpayer or a related corporation has no beneficial interest in another designated gas project but has a beneficial interest in any other petroleum project from which the taxpayer or the related corporation, as the case may be, is deriving assessable income from petroleum operations, to that petroleum project or

those petroleum projects, as the case may be, in such proportions as the Commissioner General considers reasonable; or

(*e*) in any other case, to any designated gas project or if no designated gas project becomes available to any petroleum 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 those undeducted amounts of allowable capital expenditure shall become allowable capital expenditure of the taxpayer or of the related corporation, as the case may be, in relation to the designated gas project or projects or petroleum project or projects to which they were allocated (other than for the purposes of Subdivision E), with effect from the date of allocation.

158E. OPERATING EXPENDITURE.

(1) Notwithstanding any other provision of this Act, the provisions of a gas agreement applying to a designated gas project which govern the treatment for the purposes of this Act of losses and outgoings or losses of previous years shall apply.

(2) Subject to Subsection (1), the provisions of the Act governing the treatment of losses or outgoings or losses of previous years shall apply to a designated gas project.

158F. RELATED CORPORATIONS.

(1) Where related corporations hold interests in the same designated gas project, each shall lodge under this Act a separate return of its income derived from the designated gas project in a year of income.

(2) Where related corporations hold interests in the same designated gas project, all of those related corporations jointly may elect to have their taxable income from gas operations determined in accordance with this section.

(3) An election under this section shall be made by a notice signed by or on behalf of each such taxpayer and given to the Commissioner General on or before the last day for the furnishing of the taxpayer's return of income for the year of income to which the election relates, or within such further time as the Commissioner General allows.

(4) Where an election is made under this section, each related corporation shall provide to the Commissioner General with its return of income for the year of income in question a consolidated statement of taxable income from gas operations derived from the designated gas project, calculated as though all interests of the related corporations in the designated gas project were held by a single taxpayer.

(5) Where a year of income in respect of which an election under this section is made follows a year of income in respect of which an election was not made, the calculation shall bring to account all amounts which each of the related corporations might return or claim, including amounts deductible as losses of previous years deductible pursuant to Section 101.

(6) The consolidated statement shall show -

(*a*) a reallocation to each individual taxpayer of all items making up the consolidated calculation of taxable income from gas operations; and

(*b*) based on all amounts reallocated, a calculation of the taxable income from gas operations of each individual taxpayer.

(7) The amounts allowable under Sections 155C, 155E, 155F and 155H as calculated in the consolidated statement under Subsection (4) shall be allocated back to individual taxpayers amongst the related corporations under Subsection (6)(a) on a reasonable basis, and the residual exploration expenditure and undeducted balance of allowable capital expenditure of the individual taxpayers shall be reduced accordingly.

(8) Where the Commissioner General considers that the allocation referred to in Subsection (7) is not reasonable he may adjust the allocation accordingly.

(9) Where the statement of taxable income from gas operations of an individual taxpayer ("the transferor") prepared in accordance with Subsections (6) and (7) shows a loss in respect of the year of income, that loss shall be allocated to any other related corporation ("the transferee") or corporations, to the extent that such related corporations have taxable income from gas operations, and the amount or amounts so allocated shall be treated as assessable income from gas operations of the transferor and an allowable deduction from the assessable income from gas operations of the transferee.

(10) Any payment made by one related corporation to another in consideration of the allocation of a loss from one to the other under Subsection (9) shall not be a deduction from the assessable income of the payer nor assessable income of the payee.

(11) Where an election has been made under this section, the taxable income from gas operations of each individual taxpayer shall be calculated in accordance with this section, and the taxpayer shall be assessed accordingly.

158G. PETROLEUM USED IN GAS OPERATIONS.

This section applies equally to petroleum used in gas operations, as Section 157D applies to petroleum used in petroleum operations and that section shall be read and construed for this purpose as if it referred to gas operations.

158H. ADJUSTMENTS PURSUANT TO REDETERMINATIONS.

This section applies equally to redeterminations in gas operations, as Section 157E applies to redeterminations in petroleum operations and that section shall be read and construed for this purpose as if it referred to gas operations.

158I. PARTNERSHIPS.

Where all or part of a designated gas project is a partnership under this Act, for the purposes of this Act that partnership may elect to be deemed to be an unincorporated joint venture. Where it makes that election, it will not be required to

prepare and lodge partnership returns, but will be required to prepare and lodge the joint venture financial statements required by Section 155O.

Subdivision E. – Additional Profits Tax.

159. APPLICATION.

This Subdivision provides for a tax by the name of additional profits tax which applies to participants in a resource project.

159A. INTERPRETATION.

(1) In this Subdivision, unless the contrary intention appears -

"accumulation rate X" means the rate of 15% per annum;

"accumulation rate Y" means the rate of 20% per annum;

"calculation X" means the calculation required pursuant to Subsection 159B(1)(b) using the accumulation rate X;

"calculation Y" means the calculation required pursuant to Subsection 159B(1)(b) using the accumulation rate Y;

"net project receipts" in relation to a taxpayer and a year of income, means the project receipts of the taxpayer for the resource project in the year of income less the project deductions of the taxpayer for the resource project in the year of income (which may be a negative amount);

"old APT provisions" means the provisions for an additional profits tax in force until 31 December 2000, under the previous "Division 10 – Subdivision D", "Division 10A – Subdivision F" and "Division 10B – Subdivision F";

"project deductions" of a taxpayer in relation to a resource project and to a year of income, means the sum of all expenditure or liabilities actually incurred by the taxpayer in respect of the resource project in the year of income, including –

(*a*) expenditure incurred by the taxpayer in carrying on resource operations as part of the resource project which is an allowable deduction under this Act (other than deductions allowable under Section 73 or 101, or for interest payable on moneys borrowed other than interest paid or payable in respect of so much of the indebtedness of the taxpayer as exists to fund the State's accumulated liability, if any, to the taxpayer); and

(*b*) expenditure which is allowable capital expenditure in relation to the project, other than expenditure allocated to the resource project under Sections 157C(3) or 158D(3); and

(*c*) expenditure which becomes allowable exploration expenditure in relation to the project, other than expenditure allocated to the resource project under Sections 157B(6) or 158C(2) or (3); and

(*d*) expenditure incurred by the taxpayer on plant or articles in respect of which the taxpayer made an election under Section 155F, other than any such amount that is otherwise included in the project deductions of the taxpayer; and

(*e*) expenditure of the type referred to in Paragraphs (a), (*b*), (*c*) and (*d*), incurred by the taxpayer on behalf of the State, under an agreement between the State and the taxpayer relating to resource operations carried on by the taxpayer as part of the resource project, other than any such amount that is otherwise included as in the project deductions of the taxpayer; and

(*f*) royalties payable by the taxpayer on production of resources which the State has agreed to forego in favour of the taxpayer to meet the State's accumulated liability (including related interest) to the taxpayer under an agreement between the State and the taxpayer relating to the resource project; and

(*g*) interest incurred by the taxpayer in respect of so much of the indebtedness of the taxpayer, if any, as exists to fund the State's accumulated liability to the taxpayer; and

(*h*) expenditure incurred by the taxpayer on –

(i) plant or articles or works or facilities or items in respect of which a deduction has been allowed or is allowable to the taxpayer under this Act in respect of the resource project; or

(ii) a resource right which forms part of the resource project or from which any development licence which forms part of the resource project was drawn; or

(iii) any resource information that related to the resource project or to any resource right or petroleum retention licence from which any resource development licence which forms part of the resource project was drawn; or

(iv) any other interest in a resource project including goodwill relating to the resource project or any part thereof,

other than any such amount that is otherwise included in the project deductions of the taxpayer; and

(*i*) income tax (other than income tax deemed to have been paid under Section 219C) paid during the year of income by the taxpayer in respect of the taxpayer's taxable income from resource operations derived from the resource project; and

(*j*) any amount referred to in Sections 157E or 158G which is payable by the taxpayer, other than any such amount that is otherwise included in the project deductions of the taxpayer; and

(*k*) expenditure incurred on prescribed infrastructure projects approved under the provisions of Section 219C; and

(*l*) such other amounts that any resource agreement applying to the resource project provides shall be included in the taxpayer's project deductions; and

(*m*) For the purposes of calculation Y only, any additional profits tax paid pursuant to calculation X;

"project receipts" of a taxpayer in relation to a resource project and to a year of income, means the sum of all amounts or benefits receivable by the taxpayer in respect of the resource project which accrue in the year of income, including –

(*a*) the assessable income from resource operations derived by the taxpayer in the year of income from the resource project; and

(*b*) the proceeds or benefits (calculated by reference to the applicable price) derived by the taxpayer in the year of income from the sale or disposal of resource products which the State has agreed to forego in favour of the taxpayer to meet the State's accumulated liability (including related interest) to the taxpayer under an agreement between the State and the taxpayer relating to the resource project; and

(*c*) amounts derived by the taxpayer from the sale or disposal of –

(i) plant or articles or works or facilities or items in respect of which a deduction has been allowed or is allowable to the taxpayer under this Act in respect of the resource project; or

(ii) a resource right which forms part of the resource project or from which any resource development licence which forms part of the resource project was drawn; or

(iii) any resource information that related to the resource project or to any resource development licence from which any resource development licence which forms part of the resource project was drawn; or

(iv) any other interest in a resource project including goodwill relating to the resource project or any part thereof,

other than any such amount that is otherwise included in the project receipts of the taxpayer; and

(*d*) any amount recovered by the taxpayer through the recoupment by the taxpayer of expenditure of a capital nature in respect of which a deduction has been allowed or is allowable to the taxpayer under this Act in respect of the resource project, other than any such amount that is otherwise included in the project receipts of the taxpayer; and

(*e*) any other amounts derived by the taxpayer in relation to the resource project, other than any such amount that is otherwise included in the project receipts of the taxpayer; and

(*f*) any amount referred to in Sections 157E or 158G receivable by the taxpayer and which is not otherwise included in the project receipts of the taxpayer; and

(*g*) such other amounts that any resource agreement applying to the resource project provides shall be included in the taxpayer's project receipts;

"uplift commencement date" means, in respect of a taxpayer, the later of –

(*a*) the date of the grant or last extension, whichever is later, of the resource right from which the resource project was drawn; or

(*b*) the date upon which the taxpayer first obtained an interest in the resource project or a petroleum right held by the taxpayer first became part of the resource project, as the case may be.

(2) Where a taxpayer carries on resource operations under the resource project in conjunction with any other resource project or other activity, this Subdivision applies, except to the extent to which a contrary intention appears, in relation to the operations of the taxpayer on and in connection with each of the resource projects as if it were the only resource project under which the taxpayer carried on resource operations.

(3) For the purposes of the application, by virtue of Subsection (2), of this Subdivision in relation to a taxpayer in relation to a resource project –

(*a*) any thing relating exclusively to any other resource project shall be disregarded; and

(*b*) amounts of expenditure (including expenditure on plant for use in operations on the resource project and also on one or more other resource projects or other activity) or other amounts to which Paragraph (*a*) does not apply shall, where the manner of apportionment of such expenditure is specified in a resource agreement, be apportioned in accordance with that agreement, and in any other case shall be apportioned in such manner as the Commissioner General agrees is reasonable.

(4) Where the accumulated value of net project receipts of a taxpayer as determined under Section 159B in respect of a resource project in respect of a year of income is a positive amount, that amount is the amount of the taxable additional profits from gas operations of the taxpayer derived from the resource project in the year of income.

159B. ACCUMULATED VALUE OF NET PROJECT RECEIPTS.

(1) Subject to Section 159F, for the purposes of this section the accumulated value of net project receipts of a taxpayer in respect of a resource project is -

(*a*) on 31 December 2000, the accumulated value of net project receipts calculated under the old APT provisions, which shall, for those resource projects which on that date were not subject to additional profits tax, be the accumulated value of net project receipts as they would have been had those resource projects been subject to the provisions of the previous Division 10 – Subdivision D, as in force until 31 December 2000;

(*b*) in respect of each year of income following, there shall be two calculations, herein referred to as calculation X, using accumulation rate X and calculation Y, using accumulation rate Y, yielding two amounts calculated separately in accordance with the formula –

$$(A\ (100\% + R) + B) \times F/E$$

where –

A = the accumulated value of net project receipts at the end of the preceding year of income; and

B = the net project receipts of the year of income in respect of which the assessment is to be made; and

R = the accumulation rate X; or the accumulation rate Y; as the case may be; and

E = the mean of the average of the daily published buying and selling rates of Papua New Guinea currency against the currency of the United States of America during the year of income immediately preceding the year for which the calculation is being made (expressed in terms of kina per United States dollar); and

F = the mean of the average of the daily published buying and selling rates of Papua New Guinea currency against the currency of the United States of America during the year of income for which the calculation is being made (expressed in terms of kina per United States dollar),

provided that where the taxpayer prepares its tax return in United States dollars F/E shall be equal to 1.

(2) For the purposes of Subsection (1) –

(*a*) "daily published buying and selling rates" means the buying and selling rates from time to time published by the Bank of Papua New Guinea, or such other buying and selling rates as may from time to time be published and recognised by the State as the official buying and selling rate; and

(*b*) in calculating the mean of the average of the daily published buying and selling rates, the average of the buying and selling rates applying on each day on which the Bank of Papua New Guinea is open to the public for business transactions shall be aggregated and the results divided by that same number of days.

(3) Where –

(*a*) pursuant to calculation X an amount of additional profits tax is paid or payable by a taxpayer in respect of a year of income in relation to a resource project, for the purposes of calculation X the amount of the accumulated value of net project receipts of the taxpayer in respect of the resource project at the end of the year of income shall be deemed to be zero for the purpose of calculating the accumulated value of net project receipts in respect of the subsequent year of income; and

(*b*) pursuant to calculation Y an amount of additional profits tax is paid or payable by a taxpayer in respect of a year of income in relation to a resource project, for the purposes of calculation Y the amount of the accumulated value of net project receipts of the taxpayer in respect of the resource project at the end of the year of income shall be deemed to be zero for the purpose of calculating the accumulated value of net project receipts in respect of the subsequent year of income.

159C. LIABILITY FOR ADDITIONAL PROFITS TAX.

(1) A taxpayer who derives an amount of taxable additional profits from a resource project in a year of income is liable to pay additional profits tax on that amount at the rate of-

(*a*) where such taxable additional profits arise as a result of calculation X, 20%; and

(*b*) where such taxable additional profits arise as a result of calculation Y, 25%

(2) Tax payable by a taxpayer in accordance with this section is payable separately in respect of calculation X and calculation Y and is in addition to any other tax payable by the taxpayer under this Act.

159D. RELATED CORPORATIONS.

(1) Subject to Subsection (2), where related corporations hold interests in the same resource project, their liability to additional profits tax under calculation X and calculation Y shall be determined in accordance with this section.

(2) All of the related corporations having interests in the same resource project may elect, by written notice to the Commissioner General signed by or on behalf of all of them, that their liability to additional profits tax shall not be determined in accordance with this section, in which case the accumulated value of net project receipts in the year of income in respect of which the election was made and all subsequent years of income shall be calculated separately for each taxpayer and liability to additional profits tax shall be assessed for each taxpayer in accordance with Section 159C.

(3) If this section applies, for each year of income the accumulated value of net project receipts of each related corporation shall be added together.

(4) If the sum of the accumulated value of net project receipts calculated under Subsection (3) is a negative number, then notwithstanding Section 159C none of the related corporations shall have a liability to additional profits tax in respect of that year of income.

(5) If the sum of the accumulated value of net project receipts calculated under Subsection (3) is a positive amount, then -

(*a*) that amount is the amount of the taxable additional profits from gas operations of the related corporations for the purposes of this Act derived from the resource project in the year of income; and

(*b*) the related corporations are jointly and severally liable to pay additional profits tax on that amount at the rate declared by the Act; and

(*c*) the liability in Paragraph (*b*) shall be allocated to the individual taxpayers comprising the related corporations on such reasonable basis as may be jointly notified to the Commissioner General by the related corporations; and

(*d*) if the Commissioner General considers that the allocation referred to in Paragraph (c) is not reasonable he may adjust the allocation accordingly, and if no such notice is given the Commissioner General may allocate the liability on such basis as he sees fit; and

(*e*) the amount of the accumulated value of net project receipts of each taxpayer comprising the related corporations in respect of the resource project at the end of the year of income shall be deemed to be zero for the purpose of calculating the accumulated value of net project receipts in respect of all subsequent years of income.

159E. TRANSFER BETWEEN RELATED CORPORATIONS.

Where the whole of a taxpayer's interest in a resource project is transferred by the taxpayer to a related corporation, the transferee shall be deemed, for the purposes of this Subdivision, to have the same project receipts and project deductions in respect of the interest transferred as the transferor had immediately prior to the transfer.

159F. CONSEQUENCES OF A PETROLEUM PROJECT CONVERTING TO A GAS PROJECT.

Where, pursuant to the provisions of Section 158B a petroleum project becomes a designated gas project, the following consequences shall ensue:-

(*a*) on the date of the conversion, the accumulated value of net project receipts of that petroleum project shall be set at zero; and

(*b*) subject to subsection (*c*), the accumulated value of net project receipts for the designated gas project shall be the cost of project deductions, as defined in Section 159A, insofar as the Departmental Head of the Department responsible for petroleum certifies that they are costs

which were incurred for the purpose of converting the petroleum project from petroleum production to gas production; and

(*c*) on the date Petroleum Development Licence No. 1 ("**PDL1**") becomes part of a designated gas project, the accumulated value of net project receipts of a taxpayer in that designated gas project who had an interest in PDL1 shall include that taxpayers accumulated value of net project receipts of PDL1 on that date.

Subdivision F.–Mining Levy.

160. MINING LEVY.

Subject to this Act, a tax by the name of mining levy is imposed on every person engaged in mining operations carried on in Papua New Guinea and the amount payable shall be calculated in accordance with the following formula: -

$$(C - Y) + A \frac{(E - G)}{F}$$

Where -

C = Amount of customs and excise duties payable at the rates in force as on 30 June 1999 on the value of goods of any kind imported by the taxpayer during the month under consideration; and

Y = Amount of customs and excise duties payable at the rates effective on the date of importation of the goods on the value of goods imported by the taxpayer during the month under consideration; and

A = Total value of all purchases made by the taxpayer during the month under consideration as reduced by the value of goods imported during the month under consideration; and

E = Amount of customs and excise duties and Provincial sales tax payable on total value of all purchases made as reduced by the value of goods imported by the taxpayer in the calendar year 1998 at the rates in force in 1998; and

F = Total value of all purchases made by the taxpayer in the calendar year 1998 as reduced by the value of the goods imported during that year; and

G = Amount of customs and excise duties and Provincial sales tax payable on total value of all purchases made as reduced by the value of goods imported by the taxpayer in the calendar year 1998 at the rates in force during the month under consideration.

160A. PAYMENT OF MINING LEVY.

Every person liable to pay mining levy shall compute the amount of mining levy due for the month and –

(*a*) pay that levy within 21 days after the end of the month to which it relates; and

(*b*) furnish to the Commissioner General a remittance advice in the form authorised by the Commissioner General, signed by or on behalf of the taxpayer.

160B. NOTICE OF ASSESSMENT.

Where a taxpayer is liable to pay mining levy under this Subdivision and the mining levy due has either not been paid or the amount paid is less than the amount payable, the Commissioner General shall give notice of the assessment and it shall forthwith pay the amount of mining levy outstanding.

160C. AMENDMENT OF ASSESSMENT.

The Commissioner General may, at any time amend an assessment by making such alterations in, or additions to, the assessment as he thinks necessary, notwithstanding that tax may have been paid in respect of the assessment.

160D. DEDUCTION OF LEVY.

The amount of mining levy payable shall be an allowable deduction from assessable income under Section 68 of this Act."

I hereby certify that the above is a fair print of the ***Income Tax (Mining, Petroleum and Gas Provisions 2001) Act*** **2000** which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the ***Income Tax (Mining, Petroleum and Gas Provisions 2001) Act*** **2000** was made by the National Parliament on 7 December 2000.

Speaker of the National Parliament.