

No. 24 of 1959.

Income Tax Act 1959.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



No. 24 of 1959.

Income Tax Act 1959.

ARRANGEMENT OF SECTIONS.

PART I – PRELIMINARY.

1. Short title.
- [2 - 3. *Repealed*]
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 - “agent”
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 - “assessable income”
 - “assessable income from gas operations”
 - “assessable income from mining operations”
 - “assessable income from petroleum operations”
 - “assessment”
 - “Assistant Commissioner”
 - “associate”
 - “Authorized Superannuation Fund”
 - “business”
 - “child”
 - “Commissioner General”
 - “Commissioner of Taxation”
 - “Commonwealth country”
 - “company”
 - “concessional rebates”
 - “court of summary jurisdiction”
 - “date of commencement of commercial operation”
 - “daughter”
 - “debenture”
 - “designated gas project”

“dividend”
“dividend (withholding) tax”
“employee”
“entertainment allowance”
“exempt income”
“fiscal year”
“fishing operations”
“fortnight”
“fully taxed salary or wages”
“gas agreement”
“gas field”
“gas income tax”
“gas operations”
“housing allowance”
“housing expenditure”
“income tax”
“joint venture”
“landowner resources trust”
“liquidator”
“livestock”
“Management fee”
“mine products”
“mineral”
“mining income tax”
“mining operations”
“mortgage”
“motor vehicle allowance”
“motor vehicle excess benefit tax”
“motor vehicle expenditure”
“non-profit company”
“non-resident”
“paid”
“partnership”
“pearling operations”
“permanent establishment”
“person”
“petroleum”
“petroleum income tax”
“petroleum operations”
“petroleum project”
“Prescribed Product (Withholding) Tax”
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“provincial law”
“public utility allowance”
“redetermination”

“relative”
“resident”
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“royalty”
“salary or wages”
“salary or wages tax”
“shareholder”
“share premium account”
“specific gains tax”
“superannuation fund”
“tax”
“taxable additional profits from resource operations”
“taxable income from mining operations”
“taxable gain”
“taxable income”
“taxable income from gas operations”
“taxable income from petroleum operations”
“taxpayer”
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“training levy”
“trustee”
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“year of tax”

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 - “A”
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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Income Tax Act 1959,

Being an Act to impose a tax upon incomes and to provide for its assessment and collection.

PART I. – PRELIMINARY.

1. SHORT TITLE.

This Act may be cited as the *Income Tax Act 1959*.

2 - 3. [REPEALED.]

4. INTERPRETATION.

(1)¹ In this Act, unless the contrary intention appears—

¹ Section 4 (definition of “Assistant Collector”) repealed by No 34 of 1992; Section 4 (definition of “associated company”) repealed by No 48 of 1983; Section 4 (definition of “chargeable income”) repealed by No 117 of 1975; Section 4 (definition of “concessional deductions”) repealed by No 117 of 1975; Section 4 Subsection (1) amended by No. 22 of 2004, s. 1; Section 4 Subsection (1) amended by No. 22 of 2004, s. 1; Section 4 Subsection (1) amended by No. 22 of 2004, s. 1; Section 4 Subsection (1) amended by No. 22 of 2004, s. 1; Section 4 (definition of “frontier area petroleum development licence”) repealed by No 68 of 2000; Section 4 (definition of “frontier area petroleum project”) amended by No 19 of 1998, s1; Section 4 (definition of “frontier area petroleum project”) repealed by No 68 of 2000; Section 4 (definition of “friendly society”) repealed by No 36 of 1976; Section 4 Subsection (1) amended by No. 22 of 2004, s. 1; Section 4 (definition of “native body”) repealed by No 22 of 1980; Section 4 Subsection (1) amended by No. 22 of 2004, s. 1; Section 4 Subsection (1) amended by No. 22 of 2004, s. 1; Section 4 Subsection (1) amended by No. 22 of 2004, s. 1; Section 4 Subsection (1) amended by No. 22 of 2004, s. 1; Section 4 Subsection (1) amended by No. 22 of 2004, s. 1; Section 1 (definition of “resident of Australia”) repealed by No 36 of 1976; Section 4 Subsection (1) amended by No. 22 of 2004, s. 1; Section 4 Subsection (1) amended by No. 22 of 2004, s. 1; Section 4 Subsection (1) amended by No. 22 of 2004, s. 1; Section 4 (definition of “taxable additional profits from petroleum mining”) repealed by No 56 of 1978, s2(e); Section 4 (definition of “the Chief Collector”) repealed by No 34 of 1992, s1(a)(vi); Section 4 (definition of “the Commonwealth Income Tax Act”) repealed by No 36 of 1976, s2(e).

“accumulated liability” means the State’s liability to the taxpayer arising from the carried interest of the State or the State’s nominee under an agreement between the State and the taxpayer relating to gas operations or petroleum operations carried on by the taxpayer as part of a gas project or a petroleum project, as the case may be;

“adopted child”, in relation to a person means a person adopted by the first-mentioned person—

- (a) under the laws of Papua New Guinea relating to the adoption of children; or
- (b) under the laws of any other place relating to the adoption of children, if the validity of the adoption would be recognised under the laws of Papua New Guinea;

“agent” includes—

- (a) a person who in Papua New Guinea, for or on behalf of any person out of Papua New Guinea, holds or has the control, receipt or disposal of any money belonging to that person; and
- (b) a person declared by the Commissioner General to be an agent or the sole agent of a person for any of the purposes of this Act;

“allowable deduction” means a deduction allowable under this Act;

“assessable income” means all the amounts that, under the provisions of this Act, are included in the assessable income;

“assessable income from gas operations”, in relation to a taxpayer means—

- (a)² assessable income from the sale of petroleum at a price ascertained by reference to the provisions of Section 158 of the *Oil and Gas Act 1998*;
- (b) assessable income derived from the carrying out of gas operations including rents or interest (other than interest exempted under Section 35) derived by the taxpayer in the course of those operations; and
- (c) assessable income from royalties, other forms of profit-sharing income and any other income derived by the taxpayer from or in connection with the carrying on of those gas operations by the taxpayer or another person; and
- (d)³ assessable income from the sale of petroleum or gas, at a price ascertained by reference to the provisions of Section 158 of the *Oil and Gas Act 1998*, deemed to be assessable income from those operations pursuant to Section 157B(7);

² Section 4 Subsection (1) amended by No. 22 of 2004, s. 1.

³ Section 4 Subsection (1) amended by No. 22 of 2004, s. 1.

but does not include the proceeds of the sale of petroleum which the State has agreed to forego in favour of a taxpayer to meet the State's accumulated liability (other than for interest) under an agreement between the State and the taxpayer relating to gas operations carried on by the taxpayer;

“assessable income from mining operations”, in relation to a taxpayer, means—

- (a) assessable income derived by the taxpayer from the sale or other disposition of minerals obtained from mining operations carried on by him; and
- (b) assessable income from rents and interest (other than interest exempted under Section 35) derived by the taxpayer in the course of carrying on those operations; and
- (c) assessable income from royalties, other forms of profit-sharing income and any other income derived by the taxpayer from or in connection with the carrying on of those operations by him or by another person;

“assessable income from petroleum operations”, in relation to a taxpayer, means—

- (a)⁴ assessable income from the sale of petroleum or gas, at a price ascertained by reference to the provisions of Section 158 of the *Oil and Gas Act 1998*, or in the case of petroleum operations by reference to the fair market value of those products obtained from petroleum operations carried on by him;
- (b) assessable income derived from the carrying out of petroleum operations including rents or interest (other than interest exempted under Section 35) derived by the taxpayer in the course of carrying out those operations;
- (c) assessable income from royalties, other forms of profit-sharing income and any other income derived by the taxpayer from or in connection with the carrying on of those operations by him or by another person; and
- (d)⁵ assessable income from the sale of petroleum or gas, at a price ascertained by reference to the provisions of Section 158 of the *Oil and Gas Act 1998*, deemed to be assessable income from those operations pursuant to Section 157B(7) or 158I;

but does not include the proceeds of sale of petroleum which the State has agreed to forego in favour of a taxpayer to meet the State's accumulated liability (other than for interest) under an agreement

⁴ Section 4 Subsection (1) amended by No. 22 of 2004, s. 1.

⁵ Section 4 Subsection (1) amended by No. 22 of 2004, s. 1.

between the State and the taxpayer relating to petroleum operations carried on by the taxpayer;

“**assessment**” means the ascertainment of the amount of taxable income and of the tax payable on that income;

⁶“**Assistant Commissioner**” means an Assistant Commissioner of Taxes appointed under Section 6;

“**associate**”, in relation to a person (in this definition referred to as the “**taxpayer**”) means—

- (a) where the taxpayer is a natural person, other than a taxpayer in the capacity of a trustee—
 - (i) a relative of the taxpayer; or
 - (ii) a partner of the taxpayer or a partnership in which the taxpayer is a partner; or
 - (iii) if a person who is an associate of the taxpayer by virtue of Subparagraph (ii) is a natural person—the spouse or a child of that person; or
 - (iv) a trustee of a trust estate where the taxpayer or another person who is an associate of the taxpayer by virtue of another subparagraph of this paragraph benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust, either directly or through any interposed companies, partnerships or trusts; or
- (v) a company where—
 - (A) the company is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or

⁶ Section 4 (definition of “Assistant Collector”) repealed by No 34 of 1992; Section 4 (definition of “associated company”) repealed by No 48 of 1983; Section 4 (definition of “chargeable income”) repealed by No 117 of 1975; Section 4 (definition of “concessional deductions”) repealed by No 117 of 1975; Section 4 Subsection (1) amended by No. 22 of 2004, s. 1; Section 4 Subsection (1) amended by No. 22 of 2004, s. 1; Section 4 Subsection (1) amended by No. 22 of 2004, s. 1; Section 4 Subsection (1) amended by No. 22 of 2004, s. 1; Section 4 (definition of “frontier area petroleum development licence”) repealed by No 68 of 2000; Section 4 (definition of “frontier area petroleum project”) amended by No 19 of 1998, s1; Section 4 (definition of “frontier area petroleum project”) repealed by No 68 of 2000; Section 4 (definition of “friendly society”) repealed by No 36 of 1976; Section 4 Subsection (1) amended by No. 22 of 2004, s. 1; Section 4 (definition of “native body”) repealed by No 22 of 1980; Section 4 Subsection (1) amended by No. 22 of 2004, s. 1; Section 4 Subsection (1) amended by No. 22 of 2004, s. 1; Section 4 Subsection (1) amended by No. 22 of 2004, s. 1; Section 4 Subsection (1) amended by No. 22 of 2004, s. 1; Section 4 Subsection (1) amended by No. 22 of 2004, s. 1; Section 4 Subsection (1) amended by No. 22 of 2004, s. 1; Section 1 (definition of “resident of Australia”) repealed by No 36 of 1976; Section 4 Subsection (1) amended by No. 22 of 2004, s. 1; Section 4 Subsection (1) amended by No. 22 of 2004, s. 1; Section 4 Subsection (1) amended by No. 22 of 2004, s. 1; Section 4 (definition of “taxable additional profits from petroleum mining”) repealed by No 56 of 1978, s2(e); Section 4 (definition of “the Chief Collector”) repealed by No 34 of 1992, s1(a)(vi); Section 4 (definition of “the Commonwealth Income Tax Act”) repealed by No 36 of 1976, s2(e).

wishes of the taxpayer, of another person who is an associate of the taxpayer by virtue of another subparagraph of this paragraph, of a company that is an associate of the taxpayer by virtue of another application of this subparagraph or of any two or more such persons; or

- (B) the taxpayer is, the persons who are associates of the taxpayer by virtue of Clause (A) and the preceding subparagraphs are, or the taxpayer and the persons who are associates of the taxpayer by virtue of that Clause and those subparagraphs are, in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the company; and

(b) where the taxpayer is a company, other than a taxpayer in the capacity of a trustee—

- (i) a partner of the taxpayer or a partnership in which the taxpayer is a partner; or

- (ii) if a person who is an associate of the taxpayer by virtue of Subparagraph (i) is a natural person—the spouse or a child of that person; or

- (iii) a trustee of a trust estate where the taxpayer or another person who is an associate of the taxpayer by virtue of another subparagraph benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust, either directly or through any interposed companies, partnerships or trusts; or

- (iv) another person where—

- (A) the taxpayer company is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that person, or of that person and another person or other persons, whether those directions, instructions or wishes are communicated directly to the taxpayer company or its directors, or through any interposed companies, partnerships or trusts; or

- (B) that person is, or that person and the persons who, if that person were the taxpayer would be associates of that person by virtue of Paragraph (a), by virtue of Clause (A), by virtue of another subparagraph of this paragraph or by virtue of Paragraph (c) are in a

position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the taxpayer company; or

- (v) another company where—
 - (A) the other company is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the taxpayer company, of a person who is an associate of the taxpayer company by virtue of another subparagraph, of a company that is an associate of the taxpayer company by virtue of another application of this subparagraph or of any two or more such persons; or
 - (B) the taxpayer company is, the persons who are associates of the taxpayer company by virtue of Clause (A) and the other subparagraphs are, or the taxpayer company and the persons who are associates of the taxpayer company by virtue of that Clause and those subparagraphs are, in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the other company; or
- (vi) any other persons who, if a third person who is an associate of the taxpayer company by virtue of Subparagraph (iv) were the taxpayer, would be an associate of that third person by virtue of Paragraph (a), by virtue of another subparagraph of this paragraph or by virtue of Paragraph (c); and
- (c) where the taxpayer is a trustee of a trust estate—
 - (i) any person who benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under that trust estate, either directly or through any interposed companies, partnerships or trusts; or
 - (ii) where a person who is an associate of the taxpayer by virtue of Subparagraph (i) is a natural person—any person who, if that natural person were a taxpayer, would be an associate of that natural person by virtue of Paragraph (a) or this paragraph; or
 - (iii) where a person who is an associate of the taxpayer by virtue of Subparagraph (i) or (ii) is a company—any person who, if that company were the taxpayer, would be an

associate of that company by virtue of Paragraph (b) or this paragraph; or

- (d) where the taxpayer is a partnership—
 - (i) a partner in the partnership; or
 - (ii) where any partner in the partnership is a natural person—any person who, if that natural person were the taxpayer, would be an associate of that natural person by virtue of Paragraph (a) or (c); or
 - (iii) where any partner in the partnership is a company—any person who, if the company were the taxpayer, would be an associate of the company by virtue of Paragraph (b) or (c);

“Authorized Superannuation Fund” means: –

- (a) a superannuation fund authorized by the Bank of Papua New Guinea pursuant to Section 8 of the *Superannuation (General Provision) Act 2000*; and
- (b) until the end of the fifth year after the coming into operation of the *Superannuation (General Provision) Act 2000*, an Existing Small Superannuation Fund as defined in that Act, providing the Commissioner General, in consultation with the Central Bank, is satisfied that the rights of the employees or dependents to receive the benefits, pensions or allowance payable by that fund are fully secured.

“business” includes any profession, trade, employment, vocation or calling, but does not include occupation as an employee;

“child”, in relation to a person, includes an adopted child, a step-child or an ex-nuptial child of that person;

“Commissioner General” means the Commissioner General of Internal Revenue appointed under Section 6;

“Commissioner of Taxation” means the Commissioner of Taxation appointed under Section 6;

“Commonwealth country” means—

- (a) any of the following countries (other than a country declared by the regulations not to be a Commonwealth country) namely, Australia, Barbados, Republic of Botswana, Canada, Sri Lanka, Republic of Cyprus, Fiji, Republic of the Gambia, Republic of Ghana, Guyana, Republic of India, Jamaica, Republic of Kenya, Kingdom of Lesotho, Republic of Malawi, Malaysia, Malta, Mauritius, Republic of Nauru, New Zealand, Federal Republic of Nigeria, Sierra Leone, Republic of Singapore, Kingdom of

⁷ Section 4 Subsection (1) amended by No. 22 of 2004, s. 1.

Swaziland, United Republic of Tanzania, Independent State of Western Samoa, Kingdom of Tonga, Trinidad and Tobago, Republic of Uganda, United Kingdom of Great Britain and Northern Ireland, Republic of Zambia; and

- (b) any other country declared by the regulations to be a Commonwealth country,

and includes—

- (c) a colony, overseas territory or protectorate of a country specified in paragraph (a) of this definition or of a country declared to be a Commonwealth country under Paragraph (b) of this definition; and

- (d) a territory for the international relations of which a country so specified or declared is responsible;

“company” includes all bodies or associations corporate or unincorporate and superannuation funds and the Motor Vehicles Insurance Fund, but does not include partnerships;

“concessional rebates” means the rebates allowable under Division III.18A;

⁸**“court of summary jurisdiction”** means a Court of Petty Sessions or a District Court;

“date of commencement of commercial operation” in relation to a gas project or a petroleum project means the date on which, in the opinion of the Departmental Head of the Department responsible for petroleum matters, the commercial operation of the gas project or petroleum project (being more than merely incidental to the development of the project) commenced;

“daughter”, in relation to a person, includes an adopted child, a step-child or an ex-nuptial child, being a female, of that person;

“debenture”, in relation to a company, includes debenture stock, bonds, notes and any other securities of the company, whether constituting a charge on the assets of the company or not;

⁹**“designated gas project”** has the meaning given in Section 158A(1);

“dividend” includes—

- (a) any distribution made by a company to any of its shareholders, whether in money or other property; and
- (b) any amount credited by a company to any of its shareholders as shareholders; and

⁸ Section 4 (definition of “court of summary jurisdiction”) This should read “Local Court or District Court”.

⁹ Section 4 Subsection (1) amended by No. 22 of 2004, s. 1.

- (c) the paid-up value of shares issued by a company to any of its shareholders to the extent to which the paid-up value represents a capitalization of profits,

but does not include—

- (d) moneys paid or credited by a company to a shareholder or any other property distributed by a company to shareholders (not being moneys or other property to which this paragraph, by reason of Subsection (6), does not apply), where the amount of the moneys paid or credited, or the amount of the value of the property, is debited against an amount standing to the credit of a share premium account of the company; or
- (e) moneys paid or credited, or property distributed, by the company by way of repayment by the company of moneys paid up on a share, except to the extent that—
- (i) if the share is cancelled or redeemed—the amount of those moneys or the value of that property, as the case may be, is greater than the amount to which the share was paid up immediately before the cancellation or redemption; or
- (ii) in any other case—the amount of those moneys or the value of that property, as the case may be, is greater than the amount by which the repayment exceeds the amount to which the share is paid up immediately after the payment; or
- (f) a reversionary bonus on a policy of life-assurance; or
- (g) any distribution by a unit trust or property unit trust;

“dividend (withholding) tax” means tax payable under Section 189B;

“employee” means a person who receives, or is entitled to receive, salary or wages, and includes a member of the National Parliament a person employed in the Public Service and a person employed by an authority constituted by or under a law of Papua New Guinea;

“entertainment allowance” is an allowance provided to an employee for expenditure incurred by the employee for entertainment which is wholly and exclusively for the purpose of the business of the employer;

“exempt income” means income that is exempt from income tax or salary or wages tax and includes income that is not assessable income;

“fiscal year” means the fiscal year as provided for by the *Fiscal Year (Change) Act 1977*;

“fishing operations” means—

- (a) operations relating directly to the taking or catching of fish, turtles, dugong, crustacea or oysters or other shellfish; or

(b) pearling operations,

and includes oyster farming, but does not include whaling and also does not include operations conducted otherwise than for the purposes of a business;

“fortnight” means a period of two weeks consisting of 14 consecutive calendar days and includes the first and last days of such a period;

“fully taxed salary or wages” means salaries or wages taxed at the rates prescribed by Schedule 1 of the *Income Tax (Salary or Wages Tax) (Rates) Act 1979* or Schedule 1 of the *Income Tax (Rates) Act* as in force from time to time prior to 1 January 1980;

“gas agreement” means a gas agreement as defined in the *Oil and Gas Act 1998*, as such gas agreement may be amended from time to time;

¹⁰**“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;

¹¹**“gas income tax”** means income tax on taxable income from gas operations, but does not include additional profits tax payable under Section 159C;

¹²**“gas operations”** means petroleum operations relating to the recovery of, processing, transportation or sale of petroleum recovered from a gas field;

“housing allowance” is any allowance paid or provided to an employee, whether directly or indirectly, for the purpose of subsidising residential accommodation to be occupied by the employee;

“housing expenditure” means expenditure (including rental (at arms length) in the case of rented premises) and amounts deductible by way of depreciation on the house (not being a boat) and its fittings, incurred by an employee deriving a housing allowance (which shall include, where the housing occupied by that employee is jointly owned with his or her spouse, net expenditure incurred by the spouse in respect of that housing) for the provision of housing (not being a boat) occupied by the employee as his or her sole or principal residence in Papua New Guinea and shall be an amount equal to the amount which would be deductible pursuant to the provisions of this Act, if at all times that property had been income-producing in his or her hands, provided that—

(a) the amount deductible cannot exceed the amount of the allowance; and

(b) prescribed expenditure of a personal nature is not deductible;

¹⁰ Section 4 (definition of “gas field”) inserted by No 68 of 2000.

¹¹ Section 4 Subsection (1) amended by No. 22 of 2004, s. 1.

¹² Section 4 (definition of “gas operations”) repealed and replaced by No 68 of 2000.

“**income tax**” means income tax imposed as such by this Act as assessed under this Act, but does not include dividend (withholding) tax or salary or wages tax and includes specific gains tax;

¹³“**joint venture**” means an enterprise carried on by two or more persons in common otherwise than as a partnership;

“**landowner resources trust**” means a trust which is declared to be a landowner resources trust in accordance with Section 137;

“**liquidator**” means the person who, whether or not appointed as liquidator, is the person required by law to carry out the winding-up of a company;

“**livestock**” does not include animals used as beasts of burden or working beasts in a business other than a business of primary production;

¹⁴“**Management fee**” means a payment of any kind to any person, other than to an employee of the person making the payment and other than in the way of royalty, in consideration for any services of a technical or managerial nature and includes payments for consultancy services, to the extent the Commissioner is satisfied those consultancy services are of a managerial nature;

¹⁵“**mine products**” has the same meaning as it has in Part X of the *Mining Act (Amalgamated)* 1977;

“**mineral**” has the same meaning as it has in the *Mining Act (Amalgamated)* 1977, and includes gold as defined in that Act;

¹⁶“**mining income tax**” means income tax on taxable income from mining but does not include additional profits tax payable under subdivision III.10.E;

¹⁷“**mining operations**” means the extraction of minerals in Papua New Guinea from their natural site and includes the construction and operation of facilities—

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

(b) to transport the first saleable product to a point of delivery;

“**mortgage**” includes any charge lien or encumbrance to secure the repayments of money;

“**motor vehicle allowance**” is an allowance provided to an employee, whether directly or indirectly, for the acquisition or use of a motor vehicle in Papua New Guinea;

¹³ Section 4 (definition of “joint venture”) inserted by No 28 of 2000.

¹⁴ Section 4 Subsection (1) amended by No. 22 of 2004, s. 1.

¹⁵ Section 4 (definition of “mine products”) The current *Mining Act* 1992 does not define “mine products”.

¹⁶ Section 4 Subsection (1) amended by No. 22 of 2004, s. 1.

¹⁷ Section 4 (definition of “mining operations”) repealed and replaced by No 68 of 2000.

“motor vehicle excess benefit tax” is deemed to be an income tax for the purposes of any provision in this Act dealing with the assessment or collection of income tax;

“motor vehicle expenditure” means expenditure and amounts deductible by way of depreciation, incurred in connection with the use of a motor vehicle in Papua New Guinea where such use is substantially in relation to the employment of the user and the expenditure incurred is of a type that would have been deductible under Division III.3;

“non-profit company” means a company that is not carried on for the purposes of profit or gain to its individual members and is, by the terms of the memorandum or articles of association, rules or other document constituting the company or governing its activities, prohibited from making any distribution, whether in money, property or otherwise, to its members;

“non-resident” means a person who is not a resident of Papua New Guinea;

“paid”, in relation to dividends or unit trust dividends, includes credited or distributed;

“partnership” means an association of persons carrying on business as partners or in receipt of income jointly, but does not include a company;

“pearling operations” means operations, relating directly to the taking of pearl shell or the culture of pearls or pearl shell, and includes operations relating directly to the taking or catching of trochus, beche-de-mer or green snails, but does not include operations conducted otherwise than for the purposes of a business;

“permanent establishment”, in relation to a person (including the State or an authority of the State), means a place at or through which the person carries on any business and, without limiting the generality of the foregoing, includes—

- (a) a place where the person is carrying on business through an agent; and
- (b) a place where the person has, is using or is installing, substantial machinery or substantial equipment; and
- (c) a place where the person is engaged in a construction project; and
- (d) where the person is engaged in selling goods manufactured, assembled, processed, packed or distributed by another person for, or at or to the order of, the first-mentioned person and either of those persons participates in the management, control or capital of the other person or another person participates in the management, control or capital of both of those persons—the place where the goods are manufactured, assembled, processed, packed or distributed,

but does not include—

- (e) a place where the person is engaged in business dealings through a *bona fide* commission agent or broker who, in relation to those dealings, acts in the ordinary course of his business as a commission agent or broker and does not receive remuneration otherwise than at a rate customary in relation to dealings of that kind, not being a place where the person otherwise carries on business; or
- (f) a place where the person is carrying on business through an agent who does not have or does not habitually exercise, a general authority to negotiate and conclude contracts on behalf of the person;

“person” includes a company, an authority of the State or public authority constituted by or under an Act, a Provincial Government or a Local-level Government or a local level government body, by whatever name known, established by or under a Provincial law;

“petroleum” has the same meaning as it has in the *Oil and Gas Act 1998*;

¹⁸**“petroleum income tax”** means income tax on taxable income from petroleum operations, but does not include additional profits tax payable under Section 159C;

“petroleum operations” means all or any of the following:—

- (a) operations in Papua New Guinea for the purposes of recovering petroleum, including the construction or acquisition of facilities for that purpose;
- (b) operations for or related to the processing or transporting of petroleum prior to—
 - (i) entry of the petroleum into a facility which is located in Papua New Guinea for the refining of petroleum or liquefaction of natural gas; or
 - (ii) export of the petroleum,
 whichever occurs first;
- (c) the refining of petroleum or petroleum products where such refining is solely for the purpose of or incidental to the operations in Papua New Guinea for recovering petroleum 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;
- (d) exploration activities within the area of and pursuant to a development licence,

¹⁸ Section 4 (definition of “petroleum income tax”) amended in consequence of No 68 of 2000.

but does not include exploration or gas operations;

¹⁹“**petroleum project**” has the meaning given in Section 157A;

“**Prescribed Product (Withholding) Tax**” is an instalment of income tax payable under Part III.12A;

“**primary production**” means production resulting directly from—

- (a) the cultivation of land;
- (b) the maintenance of animals or poultry for the purpose of selling them or their bodily produce, including natural increase; or
- (c) fishing operations,

and includes the manufacture of dairy produce by the person who produced the raw material used in that manufacture;

“**property unit trust**” means an inter vivos trust the interest of each beneficiary under which is prescribed by reference to units of the trust, and—

- (a) issued units of the trust include—
 - (i) units having conditions attached thereto that include conditions requiring the trust to accept, at the demand of the holder thereof and at prices determined and payable in accordance with the conditions, the surrender of the units, or fractions or parts thereof, that are fully paid; or
 - (ii) units qualified in accordance with the prescribed conditions relating to the redemption of units by the trust,

and the fair market value of such units as have conditions attached thereto that include such conditions or are so qualified, as the case may be, is not less than 95% of the fair market value of all assessed units for the trust (determined without any regards to any voting rights attaching to units of the trust); and

- (b) throughout the relevant year the trust complied with the following conditions:—
 - (i) it was resident in Papua New Guinea;
 - (ii) its only undertaking was investing the funds of the trust in Papua New Guinea;
 - (iii) funds invested by the trust were not less than K10 million at any time;
 - (iv) not less than 80% of funds were invested in real property;
 - (v) where there were prescribed for the purposes of this definition conditions relating to the number of its unit

¹⁹ Section 4 Subsection (1) amended by No. 22 of 2004, s. 1.

holders, dispersal of ownership of its units or public trading of its units, all holdings of and transactions in its units accorded with these conditions; and

- (c) where by virtue of the preceding provisions, a trust would be deemed not to be a property unit trust, and the Commissioner General is of the opinion that having regard to—
- (i) the length of period, or the aggregate of the lengths of periods the trust failed to comply with the preceding conditions; or
 - (ii) any other matters the Commissioner General considers relevant,

it is reasonable that the trust should be treated as a property unit trust, the trust shall notwithstanding any default be deemed to be a property unit trust for that year of income;

“provincial law” means a law made or adopted by a provincial legislature, and includes a subordinate legislative enactment made under any such law;

“public utility allowance” means an allowance provided to an employee in connection with his electricity, gas, water or garbage expenses;

“redetermination” means a determination or redetermination pursuant to a co-ordinated development agreement of the rights and obligations of a Co-ordinated Development Participant as to the costs of gas operations or petroleum operations in respect of the petroleum pools to which that co-ordinated development agreement relates or production of petroleum therefrom or both;

“relative” in relation to a person, means any of the following, namely:—

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of that person or of his or her spouse; and
- (b) the spouse of that person or of any other person specified in Paragraph (a) of this definition;

“resident” or “resident of Papua New Guinea”—

- (a) in relation to a person, other than a company, means a person who resides in Papua New Guinea, and includes a person—
 - (i) whose domicile is in Papua New Guinea, unless the Commissioner General is satisfied that his permanent place of abode is outside Papua New Guinea; and
 - (ii) who has actually been in Papua New Guinea, continuously or intermittently, during more than one-half of the year of income, unless the Commissioner General is satisfied that his usual place of abode is outside Papua New Guinea, and

that he does not intend to take up residence in Papua New Guinea; or

(iii) who is a contributor to a prescribed superannuation fund or who is the spouse, or a child under 16 years of age, of such a contributor; and

(b) in relation to a company other than a superannuation fund, means a company which is incorporated in Papua New Guinea, or which, not being incorporated in Papua New Guinea, carries on business in Papua New Guinea, and has either its central management and control in Papua New Guinea, or its voting power controlled by shareholders who are residents of Papua New Guinea; and

(c) in relation to a superannuation fund, means a superannuation fund which is established or managed in Papua New Guinea;

²⁰**“retirement savings account”** means moneys allocated by the trustee of an Authorised Superannuation Fund to a member for the purpose of paying that member’s entitlement to a distribution by the fund in the form of periodic payments.

²¹**“royalty”** or **“royalties”** includes any payment whether periodical or not, and however described or computed, to the extent to which it is paid or credited as consideration for—

(a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark or other like property or right; or

(b) [*Repealed.*]

(c) the supply of scientific, technical, industrial or commercial knowledge or information; or

(d) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in Paragraph (a), or any such knowledge or information as is mentioned in Paragraph (c); or

(e) the use of, the right to use—

(i) motion picture films; or

(ii) films or video tapes for use in connection with television; or

(iii) tapes for use in connection with radio broadcasting; or

(f) total or partial forbearance in respect of the use of a property or right referred to in this definition,

²⁰ Section 4 Subsection (1) amended by No. 22 of 2004, s. 1.

²¹ Section 4 Subsection (1) amended by No. 22 of 2004, s. 1.

but does not include so much of any payment as Section 155L authorizes the vendor and purchaser referred to in those sections respectively to agree to designate as expenditure of a particular class or classes;

“salary or wages” in relation to any person means—

- (a) salary, wages, commission, bonus, remuneration of any kind or allowances (whether paid in cash or otherwise) paid (whether at piece-work rates or otherwise) in respect of or in relation to the employment of that person as an employee; or
- (b) any remuneration by way of fees or otherwise for professional services or services as an adviser, consultant or manager (whether at piece-work rates or otherwise) where such remuneration is paid wholly or substantially for personal services rendered by that person in Papua New Guinea,

and without limiting the generality of the foregoing, includes any payments made—

- (c) under a contract that is wholly or substantially for the labour of the person to whom the payments are made; or
- (d) by a company by way of remuneration to a director of that company; or
- (e) by way of superannuation, pension or retiring allowances; or
- (f) by way of commission to an insurance or time-payment canvasser or collector,

but does not include payments of exempt income;

“salary or wages tax” means the fortnightly deduction of tax from the salary or wages of an employee representing a final tax on that income;

“shareholder” includes member or stockholder;

“share premium account”, in relation to a company, means an account, whether called a share premium account or not, to which the company has, in respect of premiums received by the company on shares issued by it, credited amounts, being amounts not exceeding the respective amounts of the premiums, but does not include—

- (a) where any other amount is included in the amount standing to the credit of such an account—that account; or
- (b) where an amount that has been credited to such an account in respect of a premium received by the company on a share issued by it (not being an amount that has been so credited immediately after the receipt by the company of the premium) could not, at any time before it was so credited, be identified in the books of the company as such a premium—that account;

“specific gains tax” means tax payable under Division 14B; or

²²“**superannuation fund**” has the same meaning as in the *Superannuation (General Provision) Act 2000*;

“**tax**” means income tax;

²³“**taxable additional profits from resource operations**” has the meaning given in Section 159A;

²⁴“**taxable income from mining operations**” means the taxable income that comprises the amount remaining after deducting from the assessable income from mining operations all the deductions allowable under this Act relating to such income;

“**taxable gain**” means that amount of the consideration from sale of shares received or receivable in accordance with the provisions of Division 14B;

“**taxable income**” means the amount remaining after deducting from assessable income all allowable deductions and includes taxable additional profits from mining operations and taxable additional profits from petroleum operations;

“**taxable income from gas operations**” means the taxable income that comprises the amount remaining after deducting from the assessable income from gas operations all the deductions allowable under this Act relating to such income;

“**taxable income from petroleum operations**” means the taxable income that comprises the amount remaining after deducting from the assessable income from petroleum operations all the deductions allowable under this Act relating to such income;

“**taxpayer**” means a person deriving income;

“**trading stock**” includes anything produced, manufactured, acquired or purchased for purposes of manufacture, sale or exchange, and also includes livestock;

“**training levy**” is deemed to be an income tax for the purposes of any provision in this Act dealing with the assessment or collection of income tax;

“**trustee**” means a person appointed or constituted trustee by act of parties, by order or declaration of a court or by operation of law, and includes—

- (a) an executor, administrator, guardian, committee, receiver or liquidator; and
- (b) a person having or taking upon himself the administration or control of income affected by an express or implied trust, or acting in a fiduciary capacity, or having the possession, control or

²² Section 4 Subsection (1) amended by No. 22 of 2004, s. 1.

²³ Section 4 Subsection (1) amended by No. 22 of 2004, s. 1.

²⁴ Section 4 Subsection (1) amended by No. 22 of 2004, s. 1.

management of the income of a person under a legal or other disability;

“**unit trust**” means an inter vivos trust the interest of each beneficiary under which is described by reference to units of the trust, and—

- (a) issued units of the trust include—
 - (i) units having conditions attached thereto that include conditions requiring the trust to accept, at the demand of the holder thereof and at prices determined and payable in accordance with the conditions, the surrender of the units, or fractions or parts thereof, that are fully paid; or
 - (ii) units qualified in accordance with the prescribed conditions relating to the redemption of units by the trust,

and the fair market value of such of the units as have conditions attached thereto that include such conditions or are so qualified, as the case may be, is not less than 95% of the fair market value of all the issued units for the trust (determined without any regard to any voting rights attaching to units of the trust); and

- (b) throughout the relevant year the trust complied with the following conditions:—
 - (i) it was resident in Papua New Guinea;
 - (ii) its only undertaking was the investing of funds of the trust;
 - (iii) at no time in the year did more than 10% of its property consist of shares, bonds or securities of any one company or debtor other than the Government of Papua New Guinea;
 - (iv) where there were prescribed for the purposes of this definition conditions relating to the number of its unit holders, dispersal of ownership of its units or public trading of its units all holdings of and transactions in its units accorded with those conditions; and
- (c) where, by virtue of the preceding conditions, a trust would be deemed not to be a unit trust and the Commissioner General is of the opinion that, having regard to—
 - (i) the length of period, or the aggregate of the lengths of periods the trust failed to comply with the preceding conditions; or
 - (ii) any other matters the Commissioner General considers relevant,

it is reasonable that the trust should be treated as a unit trust, the trust shall notwithstanding any default be deemed to be a unit trust for that year of income;

“year of income” means—

- (a) in the case of a company (other than a company in the capacity of a trustee:
 - (i) in relation to a year of tax ending prior to 31 December 1986—the fiscal year next preceding that year of tax or the accounting period (if any) adopted under this Act in lieu of any such fiscal year, as the case requires; and
 - (ii) in relation to any subsequent year of tax—the fiscal year (being a year ended 31 December) immediately preceding that year of tax; and
- (b) in the case of any other person—
 - (i) in relation to a fiscal year ending prior to 31 December 1985, the fiscal year for which tax is levied, or the accounting period (if any) adopted under this Act in lieu of that fiscal year, as the case requires; and
 - (ii) in relation to any subsequent fiscal year, the fiscal year (being a year ended 31 December) for which income tax is levied;

“year of tax” means the financial year for which income tax is levied.

(2) Unless the contrary intention appears, a reference in this Act to any year of income shall be deemed to include, in relation to a taxpayer who has adopted, or who is deemed to have adopted, under this Act, an accounting period in lieu of that year of income, a reference to that accounting period.

(3) A reference in this Act to the Commissioner General shall, in respect of a matter as to which a person has exercised a power or performed a function delegated to him by the Commissioner General, be deemed to include a reference to the delegate.

(4) Where, in this Act, reference is made to an Act, and that Act is subsequently amended, the reference shall, from the date of the amendment, be deemed to be to the amended Act.

(5) For the purposes of this Act, the average rate of tax payable by a company for a year of tax shall be deemed to be an amount per kina being the amount ascertained by dividing the amount of income tax that would be assessed in respect of the taxable income derived by the company in the year of income if the company was not entitled to any rebate of tax or credit against its liability to tax, by a number equal to the whole number of kina in that taxable income.

(6) Subject to Subsection (7), where, in pursuance of or as part of an agreement or an arrangement, whether oral or in writing, being an agreement or arrangement which, in the opinion of the Commissioner General, has the purpose or effect of tax avoidance as defined in Section 361 and which was made after the commencement of this subsection—

- (a) a company issues shares at a premium, being a premium in respect of which the company credits an amount to a share premium account of the company; and
- (b) the company pays or credits any moneys, or distributes any other property, to shareholders in the company and the amount of the moneys so paid or credited or the amount of the value of the property so distributed is debited against an amount standing to the credit of that share premium account,

paragraph (d) of the definition of “**dividend**” in Subsection (1) does not apply to the moneys so paid or credited or to the property so distributed.

(7) Where moneys so credited are, in pursuance of or as part of the agreement or arrangement, applied or to be applied in paying up an amount on a share issued or to be issued by the company, the credit shall be disregarded for the purposes of Subsection (6) unless, in pursuance of or as part of the agreement or arrangement, the company, by means of the redemption or cancellation, or of a reduction in the paid-up value, of that share or any other share in the company, is to pay or transfer to, or pay, transfer or apply on behalf of or at the direction of, the holder of the share, any money or other property other than shares in the company.

(8) The Regulations may prescribe activities to be ancillary activities for the purposes of the definition of “**mining operation**” in Subsection (1) and may make different provision in relation to the mining of different classes of minerals.

(9) The express references in this Act to companies do not imply that references to persons do not include references to companies.

(10) In a provision in this Act providing an exemption from income tax, a reference to income shall include, unless the contrary intention appears, a reference to an amount that is a taxable gain for the purposes of Division 14B.

(11) A reference in this Act to the Chief Collector shall be read as a reference to the Commissioner General.

4A. APPLICATION TO OFF-SHORE AREA.

(1) In this section, “**the off-shore area**” has the same meaning as it has in the *Petroleum (Submerged Lands) Act 1975*.

(2) For all purposes of this Act related directly or indirectly to—

- (a) the exploration of the off-shore area for minerals and petroleum, or the exploitation of the natural resources, being minerals and petroleum, of the off-shore area, whether by the taxpayer concerned or by another person; or
- (b) anything concerning, arising out of or connected with any such exploration or exploitation,

including purposes—

(c) in relation to the application of this Act in respect of income or profits derived from any such exploration, exploitation or thing; or

(d) in respect of dividends paid wholly or partly out of any such profits,

the provisions of this Act have effect, subject to this section, as if the whole of the offshore area were and had at all times been a part of Papua New Guinea.

(3) Where a company carries on business in the off-shore area that—

(a) consists of exploration or exploitation of a kind referred to in Subsection (2); or

(b) arises out of or is connected with any such exploration or exploitation (whether by the company or by another person),

the company shall, for the purpose of the definition “resident” or “resident of Papua New Guinea” in Section 4(1), be deemed to be carrying on business in Papua New Guinea.

4B. COST OF CERTAIN SHARES.

(1) Where—

(a) an amount (in this section referred to as the “**relevant amount**”) is payable to a taxpayer by a company in respect of shares (in this section referred to as the “**original shares**”) in the company; and

(b) the company issues other shares (in this section referred to as the “**bonus shares**”) to the taxpayer; and

(c) the relevant amount is applied by the company, in whole or in part, in payment or part payment of the moneys payable by the taxpayer in respect of the bonus shares or the liability of the company to pay the relevant amount to the taxpayer is otherwise satisfied, in whole or in part, by the issue of the bonus shares,

then the following provisions have effect for the purposes of this Act.

(2) For the purpose of this section, an amount credited to a taxpayer by a company shall be taken to be an amount payable to the taxpayer by the company whether or not the taxpayer has a right to demand payment of the amount.

(3) Subject to Subsections (5), (6) and (7) no part of the relevant amount that is applied by the company in payment or part payment of the moneys payable by the taxpayer in respect of the bonus shares or the liability of the company to pay which is otherwise satisfied by the issue of the bonus shares shall be treated as being an amount paid or payable by the taxpayer in respect of the bonus shares or as in any other way constituting any part of the cost to the taxpayer of the bonus shares.

(4) In determining—

(a) where any of the original shares or any of the bonus shares are articles of trading stock of the taxpayer and the taxpayer opts, under Section 53, in respect of all or any of the shares that are articles of trading stock, to

adopt the cost price of those shares as being the value of those articles of trading stock—the value of those articles of trading stock; and

- (b) where any of the original shares or any of the bonus shares are not articles of trading stock of the taxpayer—the amount of any profit or loss arising on the sale or disposal of any of those shares,

any amounts paid or payable by the taxpayer in respect of the original shares (whether on purchase of the shares, on application for or allotment of the shares, to meet calls or otherwise) shall be deemed to have been paid or to be payable by the taxpayer in respect of the original shares and the bonus shares in such proportions as the Commissioner General considers appropriate in the circumstances.

(5) Subject to Subsection (7), where the taxpayer is—

- (a) a partnership that is being treated as a taxpayer in the capacity of a trustee of a trust estate; or
- (b) a partnership that is being treated as a taxpayer for the purposes of Section 123; or
- (c) a taxpayer (other than a taxpayer referred to in paragraph (a) or (b)) not being a company that is a resident,

Subsection (3) does not apply in relation to any part of the relevant amount that has been or will be included in the assessable income of the taxpayer of any year of income.

(6) Where the taxpayer, not being a trustee of a trust estate, is a company that is a resident, Subsection (3) does not apply in relation to any part of the relevant amount that has been or will be included in the assessable income of the taxpayer of any year of income to the extent that that part is not constituted by a dividend.

(7) Where—

- (a) the taxpayer is a taxpayer in the capacity of a trustee of a trust estate or a partnership that is being treated as a taxpayer for the purposes of Section 123; and
- (b) by the application of Subsection (5), Subsection (3) would not, apart from this subsection, apply in relation to an amount that has been or will be included in the assessable income of the taxpayer of a year of income; and
- (c) the amount referred to in Paragraph (b) is constituted, in whole or in part, by a dividend; and
- (d) an amount attributable to the dividend is included, through the taxpayer or through the taxpayer and any interposed partnerships or trusts, in the assessable income of any year of income (in this subsection referred to as the “**relevant year of income**”) of a company being a resident but not being a trustee of a trust estate,

then, for the purpose of making an assessment of that company of the relevant year of income—

- (e) Subsection (3) shall be taken to have applied in relation to the amount referred to in Paragraph (b) to the extent that that amount is a dividend; and
- (f) the net income of the taxpayer of the relevant year of income shall be taken to be such amount as would have been the net income of the taxpayer of the relevant year of income if Subsection (3) had applied in relation to the amount referred to in Paragraph (b) to the extent that that amount is a dividend; and
- (g) the amount of the net income of the relevant year of income of any interposed partnership or trust shall be taken to be such amount as might reasonably be expected to have been the net income of the relevant year of income of that partnership or trust if Subsection (3) had applied in relation to the amount referred to in Paragraph (b) to the extent that that amount is a dividend.

(8) For the purposes of Subsections (5), (6) and (7), where an amount that is payable to a taxpayer in respect of shares in a company has been or will be taken into account in determining the amount of any profit arising or loss incurred on the disposal by the taxpayer of those shares or other shares in the company, that amount shall be taken to be an amount that has been or will be included in the assessable income of the taxpayer of a year of income.

(9) For the purposes of determining whether a deduction is allowable to a taxpayer under Section 101(3) in respect of the year of income that commenced on 1 January 1979 or in respect of a subsequent year of income and for the purpose of ascertaining the amount of any such deduction, there shall be disregarded so much of the amount of any loss as would not have been deemed, for the purpose of Section 101, to have been incurred by the taxpayer by virtue of the operation of this section.

4C. SOURCE OF ROYALTY INCOME DERIVED BY NON-RESIDENT.

(1) This section applies to income that is derived on or after 1 January 1980 by a non-resident and consists of royalty that—

- (a) is paid or credited to the non-resident by the State, by an authority of the State or a public authority constituted by or under an Act, a Provincial Government, Local-level Government or a local level government body by whatever name known established by a provincial law, or by a person who is, or by persons at least one of whom is, a resident and is not an outgoing wholly incurred by the State, the authority of the State or public authority, Provincial Government, Local-level Government or local level government body or those persons in carrying on business in a country outside Papua New Guinea at or through a permanent establishment of the State, the authority or public authority, Provincial Government, Local-level Government or local level government body or that person or those persons in that country; or

- (b) is paid or credited to the non-resident by a person who is, or by persons each of whom is, a non-resident and is, or is in part, an outgoing incurred by that person or those persons in carrying on business in Papua New Guinea at or through a permanent establishment of that person or those persons in Papua New Guinea.

(2) For the purposes of Part III.5 and 6 but subject to Subsections (4) and (5), income to which this section applies shall be deemed to be attributable to sources in Papua New Guinea.

(3) For the purposes of Sections 36, 46 and 356 but subject to Subsections (4) and (5), income to which this section applies shall be deemed to have been derived from a source in Papua New Guinea.

(4) Where—

- (a) income to which this section applies is paid or credited to the non-resident by whom it is derived by the State, by an authority of the State, or a public authority constituted by or under an Act, a Provincial Government, Local-level Government or local government body by whatever name known established by a provincial law, or by a person who is, or by persons at least one of whom is, a resident; and
- (b) the royalty of which the income consists is, in part, an outgoing incurred by the State, the authority of the State or public authority, a Provincial Government, Local-level Government or local government body or that person or those persons in carrying on business in a country outside Papua New Guinea at or through a permanent establishment of the State, the authority of the State or public authority, Provincial Government, Local-level Government or local government body or those persons in that country,

Subsection (3) has effect in relation to so much only of the income as is attributed to so much of the royalty as is not an outgoing so incurred.

(5) Where—

- (a) income to which this section applies is paid or credited to the non-resident by whom it is derived by a person who, or by persons each of whom, is a non-resident; and
- (b) the royalty of which the income consists is, in part only, an outgoing incurred by the person or persons by whom it is paid in carrying on business in Papua New Guinea at or through a permanent establishment of that person or those persons in Papua New Guinea,

Subsection (3) has effect in relation to so much only of the income as is attributable to so much of the royalty as is an outgoing so incurred.

(6) In Subsection (7), a reference to a relevant person is a reference to the State, an authority of the State, a public authority constituted by or under an Act, a Provincial Government, Local-level Government or local government body, a local

level government body, by whatever name known established by a provincial law, or a person who is, or persons at least one of whom is, a resident.

- (7) For the purposes of Subsections (1)(a) and (4)(b), where—
- (a) royalty is paid or credited, after the commencement of this subsection, to a non-resident by a relevant person carrying on business in a country outside Papua New Guinea; and
 - (b) the royalty or a part of the royalty—
 - (i) is incurred by the relevant person in gaining or producing income that is derived by the relevant person otherwise than in carrying on business in a country outside Papua New Guinea at or through a permanent establishment of the relevant person in that country or is incurred by the relevant person for the purpose of gaining or producing income to be so derived; or
 - (ii) is incurred by the relevant person in carrying on business for the purpose of gaining or producing income and is reasonably attributable to income that is derived, or may be derived, by the relevant person otherwise than in so carrying on business at or through a permanent establishment of the relevant person in a country outside Papua New Guinea,

the royalty or the part of the royalty, as the case may be, is not an outgoing incurred by the relevant person in carrying on business in a country outside Papua New Guinea at or through a permanent establishment of the relevant person in that country.

- (8) For the purposes of Subsections (1)(b) and (5)(b), where—
- (a) royalty is paid or credited, after the commencement of this subsection, to a non-resident by another person or other persons (in this subsection referred to as “**the payer**”) being—
 - (i) another person who is carrying on business in Papua New Guinea and is a non-resident; or
 - (ii) other persons who are carrying on business in Papua New Guinea and each of whom is a non-resident; and
 - (b) the royalty or a part of the royalty—
 - (i) is incurred by the payer in gaining or producing income that is derived by the payer in carrying on business in Papua New Guinea through a permanent establishment of the payer in Papua New Guinea or is incurred by the payer for the purpose of gaining or producing income to be so derived; or
 - (ii) is incurred by the payer in carrying on a business for the purpose of gaining or producing income and is reasonably attributable to income that is derived, or may be derived, by the payer in so

carrying on business at or through a permanent establishment of the payer in Papua New Guinea,

the royalty, or the part of the royalty, as the case may be is an outgoing incurred by the payer in carrying on business in Papua New Guinea at or through a permanent establishment of the payer in Papua New Guinea.

5. [REPEALED.]

PART II. – ADMINISTRATION.**6. COMMISSIONER GENERAL OF INTERNAL REVENUE.**

²⁵(1) There shall be a Commissioner General of Internal Revenue who shall–

- (a) be appointed by the Head of State, acting on advice, by notice in the National Gazette; and
- (b) be appointed for such period, of not less than five years or more than seven years, as the Head of State, acting on advice, determines; and
- (c) be eligible for re-appointment; and
- (d) subject to this Act, not otherwise be subject to the direction and control of any person.

(2) The office of Commissioner General of Internal Revenue is hereby declared to be an office to and in relation to which Division III.2 (*leadership code*) of the *Constitution* applies.

(3) The salary, allowances and benefits (financial and otherwise) of the Commissioner General shall be fixed by the National Parliament following consideration of a recommendation by the Salaries and Remuneration Commission in accordance with Section 216A (*The Salaries and Remuneration Commission*) of the *Constitution*.

6A. REMOVAL OF COMMISSIONER GENERAL FROM OFFICE.

²⁶(1) The Commissioner General may be removed from office only by–

- (a) the Head of State, acting with or in accordance with the recommendation of an independent tribunal established under the *Organic Law on the Duties and Responsibilities of Leadership*; or
- (b) the Head of State, acting on advice, in accordance with the provisions of this section.

(2) The Head of State, acting on advice, shall remove the Commissioner General from office 21 days after a determination of the National Executive Council that the Commissioner General should be removed from office where the determination is reached after the process and procedure specified in Subsections (4), (5) and (6).

(3) In this section, “**Committee**” means the Committee formed for the purpose of this section comprising–

- (a) the Chief Secretary to Government, who shall be chairman; and
- (b) the Departmental Head of the Department responsible for personnel management matters; and

²⁵ Section 6 repealed and replaced by No 46 of 2000.

²⁶ Section 6A inserted by No 46 of 2000.

- (c) the Departmental Head of the Department responsible for planning matters; and
- (d) the Attorney-General.

(4) Where, in the reasonable opinion of the Committee, the Commissioner General is guilty of conduct prejudicial to the performance of his duties under this Act, the Committee may make a recommendation (which recommendation shall contain full reasons for the recommendation), to the Minister that the Commissioner General be removed from office.

(5) The Minister upon receiving the recommendation and reasons of the Committee pursuant to Subsection (4) shall—

- (a) place the recommendation of the Committee and reasons before the National Executive Council; and
- (b) advise the Commissioner General that the Commissioner General may by a particular date (such date being not less than 21 days from the date the Commissioner General is advised of the recommendation of the Committee and reasons) submit reasons to the National Executive Council why the Commissioner General should not be removed from office; and
- (c) provide the Commissioner General with full copies of the recommendation of the Committee and the reasons for the recommendation.

(6) The National Executive Council shall on the earlier of the date it receives the submission of the Commissioner General or the date stipulated for such submission—

- (a) consider the reasons for the recommendation of the Committee and the submission of the Commissioner General, if any; and
- (b) where, in the reasonable opinion of the National Executive Council—
 - (i) the Commissioner General is not guilty of conduct prejudicial to the performance of his duties under this Act; or
 - (ii) the Commissioner General should not be removed from office,

the National Executive Council shall notify the Commissioner General in writing and the Commissioner General shall continue in office; and
- (c) where in the reasonable opinion of the National Executive Council—
 - (i) the Commissioner General is guilty of conduct prejudicial to the performance of his duties under this Act; and
 - (ii) the Commissioner General should be removed from office,

the National Executive Council shall—

- (iii) give the Commissioner General written notice of its decision as soon as possible; and
- (iv) not earlier than 21 days thereafter, or where, within such 21 days, a decision of the National Executive Council is reviewed or appealed under Subsection (7), until a decision is handed down, advise the Head of State to remove the Commissioner General from office.

(7) A decision by the Committee or the National Executive Council is a decision that may be fully reviewed (including on its merits) by any competent court.

6B. COMMISSIONER OF TAXATION.

²⁷(1) There shall be a Commissioner of Taxation who shall—

- (a) be appointed by notice in the National Gazette by the National Executive Council after considering a recommendation from the Commissioner General; and
- (b) be appointed for such period, being not less than five years or more than seven years, as the National Executive Council determines; and
- (c) be eligible for re-appointment.

(2) The office of Commissioner of Taxation is hereby declared to be an office to and in relation to which Division III.2 (*leadership code*) of the *Constitution* applies.

7. DELEGATION.

(1) The Commissioner General may, either generally or in relation to a matter or class of matters and either in relation to the whole or part of Papua New Guinea, by writing under his hand, delegate all or any of his powers and functions (except this power of delegation) under this Act or any other Act that is an Act with respect to taxation.

(2) A power or function delegated under Subsection (1) may be exercised or performed by the delegate in accordance with the instrument of delegation.

(3) Where under this Act or any other Act that is an Act relating to taxation, the exercise of a power or the performance of a function by the Commissioner General is dependent upon the opinion, belief or state of mind of the Commissioner General in relation to a matter and that power or function has been delegated under this section, that power or function may be exercised or performed by the delegate upon the opinion, belief or state of mind of the delegate in relation to the matter.

(4) A delegation under this section is revocable at will and does not prevent the exercise of a power or performance of a function by the Commissioner General.

(5) A delegation under this section may be made subject to a power of review and alteration by the Commissioner General, within a period specified in the

²⁷ Section 6B inserted by No 46 of 2000.

instrument of delegation, of acts done under the delegation and a decision given upon such a review or alteration shall be deemed to be a decision of the Commissioner General.

8. REPORT BY COMMISSIONER GENERAL.

(1) The Commissioner General shall furnish to the Minister annually, for presentation to the Parliament, a report on the working of this Act.

(2) In the report referred to in Subsection (1), the Commissioner General shall draw attention to any breaches or evasions of this Act that have come to his notice.

9. OFFICERS TO OBSERVE SECRECY.

(1) In this section, “**officer**” means a person who is or has been appointed to or employed in the Public Service, and who, by reason of that appointment or employment, or in the course of that employment, may acquire or has acquired information respecting the affairs of any other person disclosed or obtained under the provisions of this Act.

(2) Subject to this section, an officer shall not, either directly or indirectly except in the performance of a duty as an officer, and either while he is or after he ceases to be an officer, make a record of, or divulge or communicate to any person, any such information so acquired by him.

(3) An officer shall not be required to produce in any court a return, assessment or notice of assessment, or to divulge or communicate to any court any matter or thing coming under his notice in the performance of his duties as an officer, except when it is necessary to do so for the purpose of carrying into effect the provisions of this Act.

(4) Nothing in this section prevents the Commissioner General or an Assistant Commissioner, or a person authorized by the Commissioner General or an Assistant Commissioner, from communicating any information to—

- (a) a person performing, in pursuance of any appointment or employment in the Public Service, any duty arising under any Act administered by the Commissioner General, for the purpose of enabling that person to carry out that duty; or
- (b) the Review Tribunal constituted under Section 240; or
- (c) the Board referred to in Section 367; or
- (d) the Commissioner of Taxation for Australia, a Second Commissioner of Taxation for Australia and any Deputy Commissioner of Taxation for Australia if the Commissioner, Second Commissioner and any Deputy Commissioner is authorized by a law of Australia to afford similar information to the Commissioner General; or

- (e) the person, known as the Controller of Foreign Exchange, acting under and in accordance with Section 61 or 61A of the *Central Banking Act 2000*; or
- (f) a Review Tribunal appointed under Section 12(1) of the *Industrial Development (Wage Subsidy) Act 1984*; or
- (g) the Tribunal established under Section 69.
- (h)²⁸ the Bank of Papua New Guinea, or any officer thereof, exercising powers and functions of the Bank of Papua New Guinea pursuant to Section 7 of the *Superannuation (General Provision) Act 2000*.

(5) A person to whom information is communicated under Subsection (4), and any person or employee under his control, is, in respect of that information, subject to the same rights, privileges obligations and liabilities under Subsection (2) and (3), as if he were an officer.

(6) For the purposes of Subsections (2) and (5), an officer or other person shall be deemed to have communicated the information referred to in those subsections to another person in contravention of those subsections if he communicates that information to any Minister.

(7) An officer shall, if and when required by the Commissioner General or an Assistant Commissioner to do so, make an oath or declaration, in the manner and form prescribed, to maintain secrecy in conformity with the provisions of this section.

Penalty: ²⁹For the breach of any of the provisions of this section, a fine of K10,000.00 or imprisonment for a term of 12 months.

9A. COMMUNICATION OF INFORMATION WHERE TAXPAYER HAS ENGAGED IN TRANSFER PRICING MANIPULATION.

(1) In this section, “**transfer pricing manipulation**” includes the practice of directly or indirectly obscuring the actual value of any transaction whether it relates to goods, services or otherwise.

(2) Notwithstanding any other provision in this Act, where the Commissioner General has reasonable grounds to believe that a taxpayer has deliberately engaged in transfer pricing manipulation, which has or is likely to have the effect of evading liability for taxation under this Act, he may, at his absolute discretion, make a record of, or divulge or communicate only such information acquired or obtained under the provisions of this Act as the Commissioner General is satisfied is necessary to enable any officer, who has responsibility for the administration of any other Act that has application to the taxpayer, to take any action that is required to be taken against the taxpayer under such other Act.

²⁸ Section 9 Subsection (4) amended by No. 22 of 2004, s. 2.

²⁹ Section 9 Subsection (7) amended by No. 22 of 2004, s. 2.

(3) Whenever it is practical to do so, the communication of such information under Subsection (2) shall be made only to the Departmental Head of the relevant Department.

(4) The provision of Section 9 shall have no application to any recipient of information under Subsection (2).

(5) If no action is taken under any other Act, the recipient of information under Subsection (2) shall take all reasonable precautions to ensure such information received from the Commissioner General remains confidential.

10. OFFICERS NOT TO ASSIST IN PREPARATION OF TAX RETURNS, ETC.

(1) In this section, “**officer**” means a person who is an officer for the purposes of Section 9, other than a person whose appointment to, or employment in, the Public Service, has ceased.

(2) An officer shall not, except in the performance of a duty as an officer—

(a) prepare a return or objection under this Act for any other person; or

(b) advise or assist any person in relation to the preparation of such a return or objection.

Penalty: ³⁰A fine of not less than K200.00 and not exceeding K2,000.00.

³⁰ Section 10 Subsection (2) amended by No. 22 of 2004, s. 3.

PART III. – LIABILITY TO TAXATION.***Division 1.******General.*****11. IMPOSITION OF INCOME TAX.**

(1) Subject to this Act, a tax by the name of income tax is imposed and shall be levied and paid, at such rates as are declared by Act, for the fiscal year that commenced on 1 July 1975, and for each subsequent fiscal year, on the taxable income derived during the year of income by any person, whether a resident or a non-resident.

(2) Notwithstanding anything in this Act, income tax is not imposed on a taxable income that does not exceed K4,000.00 derived by–

- (a) a resident person other than a company; or
- (b) a non-profit company.

12. ACCOUNTING PERIOD.

Where, prior to 4 March 1986, a person had–

- (a) with the leave of the Commissioner General adopted an accounting period ending on a date other than 31 December; and
- (b) the taxable income of any year of income was decreased or increased by the Commissioner General for a reason connected with the adoption of that accounting period; and
- (c) the Commissioner General is of the opinion that, by reason of the repeal of the provisions which allowed the adoption of an accounting period other than the year ended 31 December, the taxable incomes of that person as assessed total a greater or lesser amount than they would have totalled had that person used an accounting period ended 31 December at all times,

the Commissioner General may make such adjustments to the taxable incomes or assessments of any of the years of income ending not later than 31 December 1986 as, in his opinion, are required to ensure that neither a greater nor a lesser amount of income is assessed to that person than would have been assessed had that person used an accounting period ended 31 December at all times.

12A. ACCOUNTING PERIODS.

(1) With the leave of the Commissioner General and subject to such conditions as he determines, a person may adopt for the purposes of this Act, in place of a fiscal year, an accounting period that is a period of 12 months ending on some date other than 31 December.

(2) Where a person adopts an accounting period under Subsection (1), his accounting period in each succeeding year shall end on the corresponding date of that year, unless with the leave of the Commissioner General some other date is adopted.

(3) Where the Commissioner General is of the opinion that, by reason of the adoption of an accounting period by a person, his taxable income of a year of income is liable to be greater or less than the amount that it otherwise would have been, the conditions on which the Commissioner General grants leave to him to adopt the accounting period may include a condition that his taxable income of the year of income shall be decreased or increased by an amount to be determined in accordance with the terms of the condition.

13. MONEY CREDITED, REINVESTED, ETC., TO BE INCOME.

Income shall be deemed to have been derived by a person although it is not actually paid over to him but is reinvested, accumulated, capitalised, carried to any reserve, sinking fund or insurance fund, however designated, or otherwise dealt with on his behalf or as he directs.

14. INCOME TO BE EXPRESSED IN PAPUA NEW GUINEA CURRENCY.

(1) Subject to Subsections (2), (3) and (4), for the purposes of this Act, income wherever derived and any expenses wherever incurred shall be expressed in terms of Papua New Guinea currency.

(2) The Commissioner General may by notice in writing consent to a person reporting income and expenses in a currency other than Papua New Guinea currency subject to any conditions that the Commissioner General considers appropriate.

(3) A notice issued under Subsection (2) shall specify the currency or currencies in which the income and expenses are to be reported, and may apply to all or to any specified activities of that person.

(4) The Commissioner General may at any time cancel a notice under Subsection (2), but such cancellation is effective only from the year next following that in which the cancellation is made.

(5) A notice issued under Subsection (2) does not affect the liability of the person granted consent to pay income tax in Papua New Guinea currency or in any other currency as prescribed by law.

15. WHERE CONSIDERATION NOT IN CASH.

³¹Subject to Section 155P, where, upon any transaction, any consideration is paid or given otherwise than in cash, the money value of that consideration shall, for the purposes of this Act, be deemed to have been paid or given.

³¹ Section 15 amended in consequence of No 6 of 2000.

16. NON-PROFIT COMPANIES.

Where the taxable income of a non-profit company does not exceed K6,000.00, the maximum amount of tax payable is 50% of the amount by which taxable income exceeds K4,000.00.

17. MINIMUM TAX.

Where, but for this section, the amount of income tax that a person would be liable to pay under this Act, after deducting all rebates to which that person is entitled in his assessment, is less than K1.00 the income tax payable by that person is K1.00.

18³². [REPEALED.]**19. EXEMPTION OF CERTAIN OFFICIAL SALARIES.**

The official salary of, and the income derived from sources out of the country by, any of the following persons are exempt from income tax or salary or wages tax:—

- (a) the representative in Papua New Guinea of the government of any country (not being a person in relation to whom any of the provisions of the Vienna Conventions on Diplomatic and Consular Relations, as having the force of law by virtue of the *Diplomatic and Consular Privileges and Immunities Act 1975*, apply) or a member of the official staff of such a representative if the representative or member, as the case may be, is domiciled in the country represented by the representative, is temporarily resident in Papua New Guinea by direction of the government of the country so represented for the purposes of performing his official duties and that country grants exemptions from taxes upon income, corresponding to the exemptions granted to that country's representative by virtue of this paragraph, to officials of the State temporarily resident in that country for similar purposes;
- (b) any officer of the government of a Commonwealth country, who is temporarily in Papua New Guinea to render service on behalf of that country or the State in accordance with an arrangement between the government of that country and the State, if the salaries of officers of the State in that country for similar purposes in accordance with a similar arrangement are exempted from income tax by that country.

19A. EXEMPTION OF PRESCRIBED PERSONNEL.

The—

- (a) official emoluments; and

³² Section 18 repealed by No 31 of 1966, s7.

(b) income derived from a source or sources outside Papua New Guinea, of a person who is in Papua New Guinea, are, to the prescribed extent and subject to the prescribed conditions, exempt from income tax or salary or wages tax where—

- (c) that person is an employee or an officer of a government of a country, which is a prescribed donor of agreed international aid; and
- (d) the official emoluments and income of that person are not exempt from income tax or salary or wages tax in the country where that person is ordinarily resident.

19B. EXEMPTION OF PEACE CORPS PERSONNEL.

The official salary of, and any other income derived from a source or sources outside Papua New Guinea by an officer of, or citizen of the United States of America employed by, Peace Corps and who is temporarily in Papua New Guinea to render services under the Peace Corps Understanding is exempt from income tax or salary or wages tax.

19C. EXEMPTION OF NON PAPUA NEW GUINEA INCOME.

The income derived from a source or sources outside Papua New Guinea by a person who—

- (a) is in Papua New Guinea solely to render assistance to a prescribed aid organisation; and
- (b) derives no remuneration for rendering that service; and
- (c) derives no income from a source in Papua New Guinea,

is exempt from income tax.

20. EXEMPTION OF REMUNERATION PAID TO NON-RESIDENT MEMBER OF COMMISSION OF INQUIRY.

The remuneration paid by the State to a non-resident as a Commissioner under the *Commissions of Inquiry Act 1951* is exempt from income tax or salary and wages tax.

21. EXEMPTION OF INCOME OF REPRESENTATIVES OF CLUBS, ETC.

Income derived—

- (a) in the capacity of representative of an association or club established in any country for the control of any out-door athletic sport or game in that country by any person visiting Papua New Guinea in that capacity for the purpose of engaging in contests in Papua New Guinea in that sport or game; or
- (b) by any association or club in any Commonwealth country as its share of the proceeds of cricket, football or similar matches played in Papua New

Guinea by a team controlled by that association or club visiting Papua New Guinea from that Commonwealth country and recognised by the authority controlling that class of match in Papua New Guinea as being representative of that Commonwealth country; or

- (c) by the representative of any government, visiting Papua New Guinea on behalf of that government, or by any member of the entourage of that representative, in his official capacity as such a representative or member; or
- (d) in the capacity of representative of any society or association established for educational, scientific, religious or philanthropic purposes, by any person visiting Papua New Guinea in that capacity for the purpose of attending international conferences or for the purpose of carrying on investigation or research for that society or association; or
- (e) in the capacity of representative of the press outside Papua New Guinea, by any person visiting Papua New Guinea in that capacity for the purpose of reporting the proceedings relating to any matters referred to in the preceding paragraphs of this section,

is exempt from income tax or salary or wages tax.

22. EXEMPTION OF INCOME OF PERSONS UNDER TECHNICAL CO-OPERATION AGREEMENT.

(1) Income derived by a person from an occupation carried on by him, or by a company from business carried on by it, in Papua New Guinea is exempt from income tax or salary or wages tax, as the case may be, where—

- (a) the income is derived from work carried out under a prescribed technical assistance agreement and paid wholly under that agreement from a source outside Papua New Guinea from funds which do not require repayment from within Papua New Guinea; and
- (b) that person is carrying on that occupation or that company is carrying on business in Papua New Guinea in accordance with the terms of a prescribed technical assistance agreement.

(2) For the purposes of this section, where the Commissioner General is satisfied in accordance with Subsection (1), the provisions of Part III.14A relating to Overseas Construction Contractors shall not apply.

22A. EXEMPTION OF INSTITUTIONS.

With effect on and from 1 January 1997, the income of—

- (a) Kula Fund Limited, a company incorporated in Vanuatu; and
- (b) Pacific Capital Partners (PNG) Pty Ltd, a company incorporated under the *Companies Act 1997*,

shall be exempt from income tax.

23. EXEMPTION OF THE DISCIPLINED FORCES INSTITUTIONAL HOUSING PROJECT.

The income derived by Syarikat Pembinaan Yeoh Tiong Lay Sdn Bhd and its non-citizen staff in the course of and arising out of, the construction of the Disciplined Forces Institutional Housing Project shall be exempt from any taxes imposed under this Act, to the extent the Commissioner General is satisfied that the State has agreed that such income shall be exempted in the Articles of Agreement signed by the representatives of Syarikat Pembinaan Yeoh Tiong Lay Sdn Bhd and the Independent State of Papua New Guinea on 15 December 1993.

24. EXEMPTION OF PUBLIC AUTHORITIES, ETC.

(1) The revenue of a public authority constituted by or under an Act (other than a public authority referred to in Subsection (2) or prescribed in the Regulations as being taxable) is exempt from income tax.

(2)³³ ³⁴All income of a Provincial Government or of a Local-level Government received pursuant to the *Organic Law on Provincial Governments and Local-level Governments* is exempt from income tax, except income received from a commercial enterprise conducted by a Provincial Government or a Local-level Government.

(3) In respect of—

- (a) Papua New Guinea Electricity Commission; and
- (b) Papua New Guinea Harbours Board; and
- (c) Papua New Guinea Banking Corporation; and
- (d) Niugini Insurance Corporation,

prescribed in the Regulations as being taxable, income tax is payable on income derived from 1 January 1979 and—

- (e) Papua New Guinea Defence Force Retirement Fund; and
- (f) Papua New Guinea Retirement Benefits Fund; and
- (g) Public Officers Superannuation Fund; and
- (h) National Provident Fund,

prescribed in the Regulations as being taxable, income tax is payable on income derived from 1 January 1981 and—

- (i) Post and Telecommunication Corporation,

prescribed in the Regulations as being taxable, income tax is payable on income derived from 1 January 1984; and

- (j) Investment Corporation of Papua New Guinea,

³³ Section 24(2) repealed and replaced by No 28 of 2000.

³⁴ Section 24(2) repealed and replaced by No 28 of 2000.

prescribed in the Regulations as being taxable, income tax is payable on income derived from 1 January 1985; and

(k) State Services and Statutory Authorities Superannuation Fund,

prescribed in the Regulations as being taxable, income tax is payable on income derived from 1 January 1991; and

(l) Motor Vehicles Insurance Fund,

prescribed in the Regulations as being taxable, income tax is payable on income derived from 1 January 1997.

25. EXEMPTION OF RELIGIOUS INSTITUTIONS, HOSPITALS, ETC.

The income of—

- (a) a religious, scientific or public educational institution; or
- (b) a public hospital or a hospital that is carried on by a society or association otherwise than for the purposes of profit or gain to the individual members of that society or association,
- (c) [*Repealed.*]

is exempt from income tax.

25A. EXEMPTION OF CHARITABLE BODIES.

³⁵(1) In this section, “**charitable purpose**” means relief of the poor, education and medical relief or any other object of general public utility not involving an activity for profit.

(2) The income of an approved body or institution established for charitable purposes is exempt from income tax.

(3) An institution or body may be approved by the Commissioner General by a notice in the National Gazette where—

- (a) it is evidenced by an irrevocable trust deed duly executed; and
- (b) no benefit accrues to the settlor of the trust or the trustee; and
- (c) not less than 80% of its income is utilized for the purpose for which the trust was established; and
- (d) regular books of account are maintained.

(4) The Commissioner General may allow accumulation of income for a specified period where he is satisfied that the accumulation is necessary for achieving the main object for which the trust was established.

(5) An institution or body shall be allowed exemption under Subsection (2) for a period of five years.

³⁵ Section 25A repealed and replaced by *Income Tax (Budget Provisions 2000) Act 1999* (No 19 of 1999), s1.

(6) The Commissioner General may extend exemption to an institution or body from time to time for further periods of not more than five years at a time.

(7) The exemption granted to an already prescribed institution or body shall cease to have effect on expiry of five years from the date of exemption or on 31 December 2000 whichever is later, except where the institution has applied for the extension of exemption before the expiry of five years or before the specified date.

26. EXEMPTION OF TRADE UNIONS, ETC.

The income of a trade union, or of an association of employers or employees registered under any Act relating to the settlement of industrial disputes is exempt from income tax.

27. EXEMPTION OF CERTAIN NON-PROFIT BODIES.

The income of a society, association or club that is not carried on for the purposes of profit or gain to its individual members and is—

- (a) a society, association or club established for musical purposes, or for the encouragement of music, art, science or literature; or
- (b) a society, association or club established for the encouragement or promotion of an athletic game or athletic sport in which human beings are the sole participants; or
- (c) a society, association or club established for the purpose of promoting the development of aviation or of the agricultural, pastoral, horticultural, viticultural, manufacturing, human or industrial resources of Papua New Guinea,

is exempt from income tax.

28. EXEMPTION OF CERTAIN FUNDS.

The income of a fund established for the purpose of enabling scientific research to be conducted by or in conjunction with a public university or public hospital is exempted from income tax if the fund is being applied for the purpose for which it was established.

29. EXEMPTION OF PENSION, ETC.

(1) The following pensions, allowances and other payments are exempt from income tax or salary or wages tax:—

- (a) pensions and attendants' allowances paid, and payments of a like nature made by the Government of Australia, under the *Repatriation Act 1920-1958*, the *Repatriation (Far East Strategic Reserve) Act 1956* or the *Seamen's War Pensions and Allowances Act 1940-1958*;
- (b) pensions and allowances paid, and payments made, by the Government of Australia or by the Government of the United Kingdom, being

- pensions, allowances or payments that, in the opinion of the Commissioner General, are of a similar nature to pensions, allowances or payments specified in Paragraph (a);
- (c) wounds and disability pensions of the kinds specified in Section 380(2) of the United Kingdom *Income Tax Act 1952*;
 - (d) pensions, allowances, endowments or benefits paid by the Government of Australia under the *Social Services Act 1947-1958*;
 - (e) allowances paid by the Government of Australia under the *Tuberculosis Act 1948*;
 - (f) allowances under Part III of the *Public Service (Overseas Officers' Allowances) Determination 1968* and child allowances paid by the State, a public authority or the Government of Australia which, in the opinion of the Commissioner General, are substantially analogous to such allowances;
 - (g) allowances and expenses to disabled persons paid by the Government of Australia under Part IV of the *Re-establishment and Employment Act 1945-1958*;
 - (h) re-employment allowances under Division VI.2 of the *Re-establishment and Employment Act 1945-1958*;
 - (i) any allowance or other amount provided by the State, a public authority or the Government of Australia in connection with the education of a person referred to in Section 213A(1), whether provided voluntarily, by agreement or by compulsion of law;
 - (j) pensions paid from 1 July 1974 to a person resident in Australia and who is not a resident of Papua New Guinea;
 - (k)³⁶ [*Repealed.*]
 - (l) allowances or expenses paid to meet the annual fees imposed by a school or college for the purpose of educating a student child of an employee but not including expenses of tertiary studies;
 - (m) pensions, benefits and lump sum payments paid under the *Parliamentary Members' Retirement Benefits Act 1997*;
 - (n)³⁷ [*Repealed.*]
 - (o) distributions by a unit trust or property unit trust;
 - (p) benefits paid in cash as a substitute for benefits otherwise provided in kind (being benefits that, had they been provided in kind would not have been convertible into cash) pursuant to a determination of the Parliamentary Salaries and Remuneration Commission but not including, where there is a value prescribed for such benefit provided in

³⁶ Section 29(1)(k) repealed by No 34 of 1992, s7(a).

³⁷ Section 29(1)(n) repealed by No 34 of 1992, s7(a).

kind or as an allowance for the purposes of Section 65E, the value so prescribed;

- (q) benefits by way of a subsidy provided by an employer to an employee (being a citizen) towards the capital cost of purchasing a residential dwelling under a low cost housing scheme approved by the Commissioner General;
- (r)³⁸ repayable amounts advanced to a first home owner for the purpose of purchasing property used for housing the cost of which was K75,000.00 or less where these advances have been debited against amounts owed in respect of recreation leave, furlough, superannuation or gratuity entitlements; and
- (s)³⁹ distribution of an employee's own contributions from an authorized superannuation fund from 1 January 1993.
- (t)⁴⁰ income derived from investments held by a retirement savings account, to the extent prescribed;
- (u)⁴¹ amounts not exceeding the prescribed sum, drawn from a retirement savings account.

(2) The exemptions provided for in Subsection (1)(a) to (i), inclusive, apply only if such income is exempt from income tax, under the income tax laws of the country making the payment, when paid to a resident of that country.

30. ALIMONY EXEMPT IN CERTAIN CASES.

Income received by way of periodical payments in the nature of alimony or maintenance by a woman from her husband or former husband is exempt from income tax or salary or wages tax if, for the purpose of making the payments, the husband or former husband, as the case may be, has not divested himself of any income-producing assets or diverted from himself income upon which he would otherwise have been liable to tax.

31. EXEMPTION OF INTERNATIONAL TRADE FINANCIAL INSTITUTIONS.

The income of the following international trade financial institutions are exempt:-

- (a) Multilateral Investment Guarantee Agency;
- (b) Export Finance Insurance Corporation of Australia;
- (c) European Investment Bank.

³⁸ Section 29(1)(r) amended by No 46 of 2000.

³⁹ Section 29 Subsection (1) amended by No. 22 of 2004, s. 4.

⁴⁰ Section 29 Subsection (1) amended by No. 22 of 2004, s. 4.

⁴¹ Section 29 Subsection (1) amended by No. 22 of 2004, s. 4.

32 - 34⁴². [REPEALED.]**35. EXEMPTION OF CERTAIN INTEREST INCOME.**

(1)⁴³ In this section—

⁴⁴⁴⁵“**financial institution**” means the *Bank of Papua New Guinea* and a bank or financial institution licensed under the *Banks and Financial Institutions Act 2000*;

⁴⁶“**long term bond**” means a fixed interest security approved by the Central Bank issued by the State or a resident corporation or society with a maturity date not less than five years from the date of issue.

(2) Interest income credited to a person shall be exempt from income tax to the following extent:—

(a)⁴⁷ interest income derived by any person from a long term bond issued on or before 16 November 2004;

(b)⁴⁸ [*Repealed.*]

(c) interest income derived by any person from a foreign currency deposit where—

(i) the Bank of Papua New Guinea has given its authority under the *Central Banking (Foreign Exchange and Gold) Regulation 1973* for the placing of that deposit in a foreign currency with a financial institution appointed as an authorized dealer under Section 2(1) of that Regulation; and

(ii)⁴⁹ [*Repealed.*]

(d) interest derived by the New Ireland Trust Fund from Mineral Resources Development Corporation Pty Limited pursuant to a European Investment Bank Loan Agreement dated 28 December 1995;

(e)⁵⁰ interest derived by a non-resident lender from a company engaged in mining, petroleum or gas operations in Papua New Guinea, to the

⁴² Section 25A repealed and replaced by *Income Tax (Budget Provisions 2000) Act 1999* (No 19 of 1999), s1.

⁴³ Section 35 (definition of “eligible housing”) repealed by No 34 of 1992, s8(a); Section 35 (definition of “eligible taxpayer”) repealed by No 34 of 1992, s8(a); Section 35 (definition of “first home buyer”) repealed by No 34 of 1992, s8(a).

⁴⁴ Section 35 (definition of “eligible housing”) repealed by No 34 of 1992, s8(a); Section 35 (definition of “eligible taxpayer”) repealed by No 34 of 1992, s8(a); Section 35 (definition of “first home buyer”) repealed by No 34 of 1992, s8(a).

⁴⁵ Section 35 (definition of “financial institution”) repealed and replaced by No 28 of 2000.

⁴⁶ Section 35 (definition of “long term bond”) Consider whether “Central Bank” should be changed to “Bank of Papua New Guinea”.

⁴⁷ Section 35 Subsection (2) amended by No. 22 of 2004, s. 5.

⁴⁸ Section 35(2)(b) repealed by No 35 of 1998, s2.

⁴⁹ Section 35(2)(c)(ii) repealed by No 34 of 1992, s8(b)(ii).

⁵⁰ Section 35(2)(e) inserted by *Income Tax (Amendment) Act 1999* (No 5 of 1999), s1; repealed and replaced by *Income Tax (Budget Provisions 2000) Act 1999* (No 19 of 1999), s2; repealed and replaced by No 28 of 2000.

extent such interest is payable under a financial arrangement approved by the Bank of Papua New Guinea.

(3) Interest paid on an amount deposited on behalf of a person subject to a legal disability where the amount deposited was paid pursuant to an order of a court and the interest is not paid over to the person by reason of the person remaining under a legal disability is exempt from income tax.

35A. EXEMPTION OF CERTAIN INCOME FROM FISHING OPERATIONS.

(1) Subject to Subsection (2), income derived by a non-resident company or its employees from fishing operations in territorial waters or from other activities in relation to such fishing operations is exempt from income tax or salary or wages tax.

(2) Subsection (1) applies only to fishing operations or other activities in relation to such fishing operations carried out by a non-resident company under an Agreement with the State where the Agreement was signed on or before 25 May 1992 and the State receives or is entitled to receive fees in relation to the company's operations in accordance with the Treaty on Fisheries between the State and the United States of America.

(3) The exemption under this section shall extend to income by way of fees from the charter of vessels to another person where the charterer is a person exempt under Subsections (1) and (2) and the Agreement referred to in Subsection (2) makes provision for such charter.

36. EXEMPTION OF INCOME DERIVED BY NON-RESIDENT OUT OF PAPUA NEW GUINEA.

Income derived by a non-resident from sources wholly out of Papua New Guinea is exempt from income tax or salary or wages tax.

36A⁵¹. [REPEALED.]

36B. EXEMPTION OF INCOME FROM SALE OF SHARES ON PORT MORESBY STOCK EXCHANGE.

⁵²Income derived from the sale of shares on the Port Moresby Stock Exchange by a non-resident beneficial shareholder is exempt from income tax.

37. EXEMPTION OF CERTAIN PAY AND ALLOWANCES OF MEMBERS OF DEFENCE FORCE, ETC.

The pay and allowances earned in Papua New Guinea by a person enlisted in or appointed to the naval, military or air forces of the government of a country outside Papua New Guinea as a member of those forces are exempt from income tax

⁵¹ Section 36A Repealed by No. 22 of 2004, s. 6.

⁵² Section 36B repealed and replaced by *Income Tax (Budget Provisions 2000) Act 1999* (No 19 of 1999), s3.

or salary or wages tax if the pay and allowances are not paid, given or granted by Papua New Guinea or by Australia.

(2) . . . [Omitted]

(3) . . . [Omitted]

38. EXEMPTION OF INCOME OF PERSONS ASSISTING IN DEFENCE OF AUSTRALIA OR PAPUA NEW GUINEA.

Income derived by a person visiting Papua New Guinea from an occupation carried on by him while in Papua New Guinea is exempt from income tax or salary or wages tax if, in the opinion of the Minister, the visit and occupation are primarily and principally directed to assisting the government in the defence of Papua New Guinea and the Commissioner General is satisfied that the income is not exempt from income tax in the country where the person is ordinarily resident.

39. EXEMPTION OF INTERNATIONAL ORGANIZATIONS, ETC.

(1) The income of a prescribed organization of which Papua New Guinea and one or more other countries are members is exempt from income tax or salary or wages tax.

(2) The official salary and emoluments of an official of a prescribed organisation of which Papua New Guinea and one or more other countries are members are, to the prescribed extent and subject to the prescribed conditions, exempt from income tax or salary or wages tax.

40. EXEMPTION OF SCHOLARSHIPS, ETC.

(1) Income derived by way of a scholarship, bursary or other educational allowance by a student receiving full-time education at a school, college or university, other than an amount received by the student from a person or authority upon condition that the student will (or will, if required) render, or continue to render, services to that person or authority, is exempt from income tax or salary or wages tax.

(2) Income derived by way of an educational allowance in respect of a student, being an allowance paid by the State (other than an allowance paid upon condition that the student will, or will, if required, render or continue to render, services to the State), is exempt from income tax or salary or wages tax.

(3) Income derived by way of an education allowance (other than an allowance paid upon condition that the student shall, or shall if required, render or continue to render service to the person paying or incurring the allowance), being the cost of annual fees imposed by a school or college, other than for tertiary studies, to the extent that the allowance does not exceed the cost incurred, is exempt from income tax or salary or wages tax.

(4) Income derived by way of a scholarship, bursary or educational or living or other allowance (being a scholarship, bursary or allowance provided by the

government of a country outside Papua New Guinea) by a person who is pursuing in a country outside Papua New Guinea a course of study or training, and who is in that country substantially for the purpose of pursuing that course, is exempt from income tax or salary or wages tax.

40AA. EXEMPTION OF CERTAIN TRAVEL BENEFITS.

⁵³Income or any benefit assessable under this Act, derived by an employee by way of—

- (a)
 - (i) one annual leave fare for himself and his family paid from his place of employment to the employee's place of origin or recruitment; and
 - (ii) additional leave fares for travel within Papua New Guinea to a person employed solely in, or in connection with a mining lease, special mining lease or mining project or prospecting authority granted under the *Mining Act 1992*, or a pipeline licence or a petroleum development licence granted under the *Oil and Gas Act 1998*; and
 - (iii) additional leave fares, where due to remoteness, or hardship as a result of being located in a remote area away from urban centres, and the Commissioner General is satisfied that the conditions warrant additional leave fares due to remoteness or hardship; or
- (b) recreational fares and accommodation within Papua New Guinea, to a value not exceeding the total value of the benefit allowable under Paragraph (a),

is exempt from income tax or salary and wages tax provided that the income or benefit is applied exclusively for the purposes referred to in Paragraph (a) or (b).

40A. EXEMPTION OF SAVINGS AND LOAN SOCIETIES.

The income of Savings and Loan Societies is exempt from income tax.

40B - 41⁵⁴. [REPEALED.]

42. EXEMPTION OF CERTAIN DIVIDENDS.

(1) The assessable income of a shareholder does not include dividends paid wholly and exclusively out of profits arising from the sale or revaluation of assets not acquired for the purpose of resale at a profit, if the dividends paid from those profits are satisfied by the issue of shares (other than redeemable shares) of the company declaring the dividends.

⁵³ Section 40AA This has been amended again in 1998.

⁵⁴ Section 40AA This has been amended again in 1998.

(2) For the purposes of Subsection (1), a share issued by a company shall be deemed to be a redeemable share if—

- (a) the share is, or at the option of the company is to be, liable to be redeemed; or
- (b) the share was issued in pursuance of, or as part of, an agreement or arrangement, whether oral or in writing and whether entered into before or after the commencement of this subsection, that had the purpose, or purposes that included the purpose, of enabling the company, by means of the redemption, purchase or cancellation, or of a reduction in the paid-up value, of that share or of any other share in the company, to pay, transfer or apply to, on behalf of or at the direction of the person to whom the share was issued or any other person, whether upon the exercise of an option by the company or by any other person or not, any money or other property other than shares in the company.

(3) The assessable income of a shareholder does not include the amount of any dividends paid directly or indirectly out of income that was assessable income from petroleum operations or assessable income from gas operations, but only to the extent that the Commissioner General is satisfied that they were so paid.

(4)⁵⁵ [*Repealed.*]

43⁵⁶. [**REPEALED.**]

43A. REDEMPTION OF PREMIUM SECURITIES REDEEMABLE AT A PREMIUM.

(1) Subject to Subsection (2), no part of the amount received by a person upon the redemption of a Territory Premium Security, other than a part of that amount paid as accrued interest, shall, for any purpose of this Act, be taken to be income derived by that person.

(2) Subsection (1) does not affect the operation of this Act in relation to the redemption of a Territory Premium Security owned by a person where, if the bond had been sold by that person at the time of the redemption—

- (a) the proceeds of the sale; or
- (b) any profit arising from the sale,

would have been included in the assessable income of that person.

(3) In this section, “**Territory Premium Security**” means a security of Papua New Guinea issued under the *Loan Securities Act 1960* and bearing on its face the words “Territory Premium Bond” or any other such security redeemable at a premium and declared by the Treasurer, by notice in the Gazette, to be a Territory Premium Security for the purposes of this section.

⁵⁵ Section 42(4) repealed by No 68 of 1996, s6.

⁵⁶ Section 43 repealed by No 22 of 1980.

44. LIMITATION OF EXEMPTION.

Where any income is exempt from income tax or salary or wages tax, the exemption is limited to the specified or original recipient of the income and does not extend to persons receiving payments from that recipient, although the payments may be made wholly or in part out of that income.

45. LIABILITY TO FURNISH RETURNS NOT AFFECTED BY EXEMPTION.

The exemption of any income from income tax or salary or wages tax does not exempt a person from furnishing a return or information that is required by the Commissioner General or from including in his return such information as is prescribed or as is required by the Commissioner General.

Division 1A.***Export Incentives.*****45A. INTERPRETATION.**

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

“allowable deductions” means all deductions that would be allowable under this Act if no part of the income of the taxpayer was exempted from tax by the operation of this Division;

“average export sales” means an amount equal to the export sales of the base period divided by three;

“base period” means the three years of income immediately preceding the year of income in respect of which an exemption under this Division is claimed;

“consideration receivable”, in relation to a sale or other disposal of export goods, means—

- (a) in the case of a sale or disposal other than one to which Paragraph (b) applies—the amount or value of the consideration for the sale or disposal; or
- (b) where the sale or disposal is part of or is connected with a transaction in which any other assets are sold or disposed of—such part of the amount or value of the consideration as the Commissioner General is satisfied is attributable to the sale or disposal of the export goods,

reduced by any amounts paid or payable (otherwise than as an agent) by the person selling or disposing of the goods, by way of freight for carriage of the goods outside Papua New Guinea or by way of insurance or other outgoings in relation to the goods attributable to events or contingencies occurring or arising, or services performed, after the

placing of the goods upon a ship or aircraft for export from Papua New Guinea;

“declared year of income” means the year in respect of which the taxpayer became entitled to the exemption offered under Section 45B;

“export goods” means goods exported from Papua New Guinea by the taxpayer, being goods—

- (a) which were manufactured by the taxpayer in Papua New Guinea; and
- (b) which were sold or disposed of by the taxpayer; and
- (c) of which the taxpayer was the owner at the time of the sale or disposal; and
- (d) which are not non-qualifying goods; and
- (e) which are qualifying goods;

“export sales” means the consideration received by the taxpayer in relation to the sale or other disposal of export goods;

“new manufactured product” has the meaning ascribed to it in Section 1 of the *Industrial Development (Wage Subsidy) Act 1984*;

“non-qualifying goods”, in relation to export goods means—

- (a) goods exported by way of gift; and
- (b) goods taken or sent out of Papua New Guinea with the intention that they will at some later time be returned to Papua New Guinea otherwise than for repair or replacement;
- (c) goods which are sold by retail to persons departing from Papua New Guinea; and
- (d) such other goods as are prescribed as non-qualifying goods for the purposes of this Division; and
- (e) goods (except new manufactured products) not prescribed as qualifying goods;

“qualifying goods”, in relation to export goods, means such goods, or goods included in such classes of goods, as are prescribed for the purposes of this Division, or new manufactured products.

(2) For the purposes of calculating the average export sales of a taxpayer, where during a year of income the taxpayer acquired, by purchase or otherwise, an existing business, the export sales of the taxpayer for the base period shall be deemed to be an amount equal to the sum of the export sales derived by the taxpayer during the base period and the export sales derived by each other person who owned that business during that period.

45B. EXEMPTION RELATED TO EXPORT SALES.

(1) Subject to Subsection (3) and Section 45C, where a taxpayer first derives income from export sales after 1 September 1984—

- (a) 100% of the amount of the export sales made prior to the last day of the third year of income following the year in which export sales commenced; and
- (b) 100% of the amount by which the export sales for each subsequent year exceeds the average export sales,

shall be exempt income.

(2) Subject to Subsection (3) and Section 45C, where a taxpayer derives income from export sales before 1 September 1984—

- (a) in any year of income which commenced prior to 1 January 1982 or any approved substituted accounting period in lieu thereof, 50% of the amount by which the export sales for the year of income exceeds the average export sales; or
- (b) in any year of income which commenced on or after 1 January 1982, but prior to 1 January 1984, or any approved substituted accounting period in lieu thereof, 100% of the amount by which the export sales for the year of income exceeds the average export sales; or
- (c) in any year of income which commenced on or after 1 January 1984, or any approved substituted accounting period in lieu thereof—
 - (i) 100% of the amount by which the export sales made prior to 1 September 1984 exceed 75% of the average export sales; and
 - (ii) 100% of the amount derived from export sales made after 1 September 1984 but prior to the end of the third year of income following the date of the commencement of export sales; and
 - (iii) 100% of the amount by which the export sales for each subsequent year exceeds the average export sales,

shall be exempt income.

(3) The provisions of Subsections (1) and (2) shall apply to income derived from export sales during each of the seven years commencing with the declared year of income.

45C. EXEMPTION IN RESPECT OF RESTRICTED PERIOD.

Where, during a year of income, a taxpayer acquired, by purchase or otherwise, or disposed of, an existing business, the exempt income of the taxpayer under Section 45B in relation to that business shall be no greater than that which would have accrued to the previous owner had the business not been disposed of.

45D. CALCULATION WHERE GOODS QUALIFY FOR PART PERIOD ONLY.

(1) Where, during a year of income, goods in respect of which this Division would otherwise apply became non-qualifying goods, the calculation of the export sales for the base period shall be adjusted by excluding those goods, for the purposes of calculating any increase in export sales in accordance with this Division.

(2) Where, during a year of income, goods that were not qualifying goods became qualifying goods, calculation of export sales for the base period shall be adjusted by including those goods, for the purpose of calculating any increase in export sales in accordance with this Division.

45E. ARRANGEMENTS TO INCREASE EXEMPTIONS.

Notwithstanding anything in this Division, where the Commissioner General is of the opinion that arrangements have been made between a taxpayer and any other person with a view to the affairs of the taxpayer being so conducted to have the effect of obtaining for the taxpayer an improper advantage under this Division that he would not, but for that arrangement, have otherwise obtained, the amount of exempt income calculated under this Division in respect of that taxpayer shall not exceed the amount that, in the opinion of the Commissioner General, would have been calculated if that arrangement had not been made.

45F. MODIFICATION OF TAX INFORMATION.

(1) Subject to Subsection (2), where, after considering the information furnished or otherwise available to him as to the amount of export sales of a taxpayer for a year of income or for the base period, the Commissioner General is not satisfied as to the accuracy of that information, he is not required to determine the appropriate amount or the amount of income of the taxpayer that, but for this section, would have been exempt income under this Division.

(2) Where, in a case where Subsection (1) would otherwise apply, the Commissioner General is satisfied that the amount of export sales of the taxpayer for the year of income or the base period does not exceed a particular amount, but he is not satisfied that it is less than that particular amount, that particular amount shall be deemed to be the amount of the relevant export sales for the purpose of determining the exempt income of the taxpayer under this Division.

(3) Where, within the time within which he is required to furnish a return of his income for a year of income, or within such further time as the Commissioner General permits, a taxpayer makes application in writing to the Commissioner General for a reduction of the amount that would otherwise be the amount of his export sales for the base period for the purpose of determining exempt income under this Division, on the grounds that, by reasons of abnormal trading conditions or other extraordinary circumstances during the base period the amount of export sales for the base period is greater than it would otherwise have been and that he is, by reason of that fact, under an unfair disadvantage, the Commissioner General may,

for the purposes of this Division, make such adjustments in respect of the amount of those export sales as he thinks fit.

45G. DEDUCTIONS IN CALCULATING EXEMPTION.

(1) Subject to Subsection (2), where, in a year of income a taxpayer derives any income which is exempt under this Division, the amount to be excluded from his allowable deductions for the year of income shall be the amount of the allowable deductions (excluding any amount allowable under Section 72C) relating to that exempt income or, where the Commissioner General is satisfied that the amount cannot accurately be determined, an amount which bears to that total allowable deduction relating to the business from which the exempt income arose the same ratio as the exempt income under this Division bears to the total income arising from carrying on that business during the year of income.

(2) The amount to be excluded under Subsection (1) from a taxpayer's allowable deductions shall not exceed the amount of exempt income referred to in that subsection.

45H. GAINING IMPROPER ADVANTAGES, ETC.

(1) A taxpayer, or where the taxpayer is a company, the company, or a public officer or a director, servant or agent of the company, who or which, by any act, default or neglect, or by any fraud or contrivance whatever, gains or attempts to gain an improper advantage or an exemption to which he or it or his company would not lawfully be entitled under this Division, is guilty of an offence.

Penalty: ⁵⁷A fine of not less than K1,000.00 and not exceeding K50,000.00.

(2) In addition to any fine imposed under Subsection (1), the Court before which the action is brought may order the person or company, as the case may be, to pay to the Commissioner General a sum not exceeding double the amount of tax that, in the opinion of the court, was avoided or attempted to be avoided.

(3) Without derogating the provisions of any other law, where the court is satisfied that the commission of an offence against this section was counselled or assisted in any way by any other person (whether in a professional or other capacity) the court may order that person to be liable, or jointly and severally liable with any other person, for the payment of the additional tax under Subsection (2).

Division 1B.

Rural Development Incentive.

45I. INTERPRETATION.

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

“existing business” means a business or enterprise which, in the opinion of the Commissioner General, was carried on by the taxpayer or any other

⁵⁷ Section 45H Subsection (1) amended by No. 22 of 2004, s. 7.

person at any time prior to 1 January 1988 and includes a business or enterprise which formed part of an existing business;

“rural development area” means a prescribed rural area but not including any such area in which is situated a Petroleum Development Licence issued under the *Oil and Gas Act 1998* or a Special Mining Lease issued under the *Mining Act 1992*;

“rural development income” means the income, as defined in Section 45J, derived from carrying on a rural development industry in a rural development area;

“rural development industry” means a prescribed industry, which may include a service, primary or other industry but shall not include—

- (a) an industry engaged in the exploitation, extraction, processing or transportation of the non-renewable natural resources of Papua New Guinea; or
- (b) an industry that does not, through a fixed base located in the rural development area, carry on business on an ongoing basis in that rural development area.

(2) Notwithstanding Subsection (1), where the Commissioner General is satisfied that a business was established in a prescribed rural area prior to the later of—

- (a) 7 November 1989; or
- (b) the date of issue of a Special Mining Lease or a Petroleum Development Licence in the prescribed rural area,

this Division shall apply to the taxpayer as if the Special Mining Lease or Petroleum Development Licence had not been issued.

45J. RURAL DEVELOPMENT INCOME.

(1) The rural development income derived by a taxpayer is, subject to Subsection (2), the amount remaining after deducting from the assessable income derived from the assessable income derived from carrying on a rural development industry in a rural development area all allowable deductions relating to that income.

(2) Where the Commissioner General—

- (a) having regard to any connection between a taxpayer carrying on a rural development industry and to a taxpayer carrying on any other industry or business, is satisfied that the parties were not dealing at arm's length; or
- (b) is satisfied that the rural development income derived by a taxpayer carrying on a rural development industry and any other industry or business is greater or less than would have been the case had that other industry or business not been carried on; or

- (c) is of the opinion that arrangements have been made between the taxpayer and any other person with a view to the affairs of the taxpayer being so conducted as to have the effect of obtaining for the taxpayer an improper advantage under this Division, that he would not, but for those arrangements, have otherwise obtained,

then the amount of rural development income calculated under this Division in respect of that taxpayer shall not exceed the amount that, in the opinion of the Commissioner General, would have been calculated had—

- (d) those dealings been at arm's length; or
- (e) the rural development industry been carried on as a separate and distinct enterprise; or
- (f) those arrangements not been made,

and the Commissioner General may, for the purposes of this Act, make such adjustments to any rural development income or taxable income declared, or which should have been declared, by any taxpayer as, in his view, are necessary to give effect to that correction.

45K. GAINING IMPROPER ADVANTAGE, ETC.

(1) A taxpayer, or where the taxpayer is a company, the company, or a public officer or a director, servant or agent of the company, who or which, by any act, default or neglect, or by any fraud or contrivance whatever, gains or attempts to gain an improper advantage or an exemption to which he or it or his company would not lawfully be entitled under this Division, is guilty of an offence.

Penalty: ⁵⁸A fine of not less than K1,000.00 and not exceeding K50,000.00.

(2) In addition to any fine imposed under Subsection (1), the Court may order the person or company, as the case may be, to pay to the Commissioner General a sum not exceeding double the amount of tax that, in the opinion of the Court, was avoided or attempted to be avoided.

(3) Without derogating the provisions of any other law, where the Court is satisfied that the commission of an offence against this section was counselled or assisted in any way by another person (whether in a professional or other capacity) the Court may order that person to be liable, or jointly and severally liable with any other person, for payment of the additional tax under Subsection (2).

45L. TAX EXEMPTION PERIOD.

(1) The rural development income of the rural development industry other than the income of an existing business is exempt from income tax from the period commencing on the date on which the operations of that rural development industry commenced and ending on the last day of the tenth full year of income next following that date.

⁵⁸ Section 45K Subsection (1) amended by No. 22 of 2004, s. 8.

(2) Where a business qualifying for exemption under this Division is sold, the period of exemption available to the purchaser of that business shall be limited to the unexpired period of exemption available to the previous owner.

45M. LOSSES INCURRED DURING THE TAX EXEMPTION PERIOD.

If, in any year, the deductions which would have been allowable deductions but for rural development income being exempt income, exceed the amount of assessable income referred to in Section 45J(1), resulting in a loss, the loss shall be deemed to be a loss incurred in deriving assessable income and shall be deductible in accordance with the provisions of Section 101 or Section 101A, as appropriate.

Division 1C.

Bougainville Incentive.

45N. INTERPRETATION.

In this Division, unless the contrary intention appears—

“**business enterprise**” means any sole trader, company or other economic entity which, in the opinion of the Commissioner General, is based in and carries on all or the majority of its business in Bougainville Province;

“**income**” means the assessable income derived from a business enterprise less the allowable deductions relating to that income, but does not include salary or wages income;

“**tax**” means tax on income imposed under this Act and includes tax imposed under Part III.14D, but does not include taxes imposed under Parts III.2B, III.13A, III.14, III.14A, III.14B, III.14C, III.14E, III.17 and VI.2.

45O. TAX EXEMPTION PERIOD.

The income derived during the period 21 April 1993 to 31 December 2003 from any business enterprise, or where the business enterprise is a partnership the share of the money from that partnership, is exempt from tax.

45P. LOSSES INCURRED DURING THE TAX EXEMPTION PERIOD.

Where, in any year, the allowable deductions exceed assessable income so that the income referred to in Section 45O is a loss, the loss shall be deemed to be a loss incurred in deriving assessable income and shall be deductible in accordance with the provisions of Section 101 or 101A as appropriate.

45Q. GAINING IMPROPER ADVANTAGE.

Where the Commissioner General is of the opinion that arrangements have been made by a taxpayer individually or in conjunction with any other person, with a view to gaining an improper advantage under this Division, the amount of the

exempt income calculated under this Division in respect of that taxpayer shall not exceed the amount that, in the opinion of the Commissioner General, would have been calculated if that arrangement had not been made.

45R. OFFENCE.

(1) A taxpayer, or where the taxpayer is a company, the company, or a public officer or a director, servant or agent of the company, who or which, by any act, default or neglect, or by any fraud or contrivance whatever, gains or attempts to gain an improper advantage or an exemption to which he or it or his company is not or would not lawfully be entitled under this Division, is guilty of an offence.

Penalty: ⁵⁹A fine of not less than K1,000.00 and not exceeding K50,000.00.

(2) In addition to any fine imposed under Subsection (1), the Court before which the action is brought may order the person or company, as the case may be, to pay to the Commissioner General a sum not exceeding double the amount of tax that, in the opinion of the Court, was avoided or attempted to be avoided.

(3) Without derogating the provisions of any other law, where the Court is satisfied that the commission of an offence against this section was counselled or assisted in any way by any other person (whether in a professional or other capacity) the Court may order that person to be liable, or jointly and severally liable with any other person, for the payment of the additional tax under Subsection (2).

Division 1D.

Volcano Affected Area Incentive.

46AA.INTERPRETATION.

In this Division, unless the contrary intention appears—

“forestry operations” means any operations, other than subsistence activities, of or pertaining to forestry;

“tax” means tax on income imposed under this Act and includes tax imposed under Part III.14D, but does not include taxes imposed under Parts III.2B, III.13A, III.14, III.14A, III.14C, III.14E, III.17 and VI.2;

“Volcano Affected Area” means—

- (a) all that area of the Gazelle Peninsula north of a line 4 degrees 30 minutes south of the equator and east of the line 152 degrees east of Greenwich; and
- (b) the area known as and forming the town of the Palmalmal;

“Volcano Affected Area Business Enterprise” means that part of a person’s business, trading or manufacturing operation or activity, (other than forestry operations or mining operations) whether comprising the entire or part only of that person’s operations or activities in Papua New

⁵⁹ Section 45R Subsection (1) amended by No. 22 of 2004, s. 9.

Guinea, which the Commissioner General is satisfied, is based in and carried on in a Volcano Affected Area;

“Volcano Affected Area net assessable income” or **“Volcano Affected Area net loss”** (as the context requires) means the net assessable income or the net loss (assessable income less allowable deductions) incurred or suffered by a Volcano Affected Area Business Enterprise as if it were a separate taxpayer entity, but in this computation income shall exclude salary or wages income and income that is not substantially sourced in a Volcano Affected Area.

46AB. TAX EXEMPTION AND LOSSES.

Volcano Affected Area net assessable income for the period 16 September 1994 to 31 December 2000 is exempt from tax, or in the case of a Rabaul net loss, the loss shall be deemed to be a loss incurred in deriving assessable income and shall be deductible in accordance with the provisions of Section 101 or 101A as is appropriate.

46AC. SUITABLE BUSINESS AND ACCOUNTING RECORDS.

(1) For the purposes of this Division, the onus is on the person claiming exemption to keep suitable business and accounting records to enable the computation of the person's Rabaul net assessable income or Rabaul net loss and to establish that the relevant income is substantially sourced in Rabaul.

(2) The Commissioner General shall have full and absolute discretion in determining whether the relevant income of a Rabaul Business Enterprise is substantially sourced in Rabaul.

46AD. GAINING IMPROPER ADVANTAGE.

Where the Commissioner General is of the opinion that arrangements have been made by a person individually or in conjunction with any other person, with a view to gaining an improper advantage under this Division, the amount of the exempt income calculated under this Division in respect of that person shall not exceed the amount that, in the opinion of the Commissioner General, would have been calculated if that arrangement had not been made.

46AE. OFFENCE.

(1) A person, or where the person is a company, or a public officer or a director, servant or agent of the company, who or which, by any act, default or neglect, or by any fraud or contrivance whatsoever, gains or attempts to gain an improper advantage or an exemption to which he or it or his company is not or would not lawfully be entitled under this Division, is guilty of an offence.

Penalty: ⁶⁰A fine of not less than K1,000.00 and not exceeding K50,000.00.

(2) In addition to any fine imposed under Subsection (1), the Court before which the action is brought may order the person or company, as the case may be, to pay to the Commissioner General a sum not exceeding double the amount of tax that, in the opinion of the Court, was avoided or attempted to be avoided.

(3) Without derogating the provisions of any other law, where the Court is satisfied that the commission of an offence against this section was counselled or assisted in any way by any other person (whether in a professional or other capacity) the Court may order that person to be liable, or jointly and severally liable with any other person, for the payment of the additional tax under Subsection (2).

Division 1E.

Lihir Incentive.

46BA.INTERPRETATION.

In this Division, unless the contrary intention appears—

“**business enterprise**” means a business carried on by a Lihirian corporation, which in the opinion of the Commissioner General is—

- (a) based on and operates in the Lihir District; and
- (b) derives its primary income from doing business related to the mining operation on Lihir; and
- (c) commenced after 17 March 1995;

“**Lihir District**” means the administrative district defined by the New Ireland Provincial Authority;

“**Lihirian**” means a citizen who belongs to the Lihir District and has matrilineal rights;

“**Lihirian Corporation**” means—

- (a) a business group registered under the *Business Groups Incorporation Act 1974*; or
- (b) an incorporated land group recognised under the *Land Groups Incorporation Act 1974*; or
- (c) a corporation incorporated under the *Companies Act 1997*, and which was registered or incorporated after 17 March 1995 and is 100% Lihirian.

46BB.TAX EXEMPTION PERIOD.

The income derived during the period 26 April 1995 to 26 April 2000 by a business enterprise is exempt from tax.

⁶⁰ Section 46AE Subsection (1) amended by No. 22 of 2004, s. 10.

46BC. LOSSES INCURRED DURING THE EXEMPTION PERIOD.

Where in any year, the allowable deductions exceeded assessable income so that the income referred to in Section 46BB is a loss shall be deemed to be a loss incurred in deriving assessable income and shall be deductible in accordance with the provisions of Section 101 or 101A as appropriate.

46BD. GAINING IMPROPER ADVANTAGE, ETC.

(1) A taxpayer, or where the taxpayer is a company, the company or a public officer or a director, servant or agent of the company, who or which, by an act, default or neglect, or by any fraud or contrivance whatever, gains or attempts to gain an improper advantage or an exemption to which he or it or his company would not lawfully be entitled under this Division, is guilty of an offence.

Penalty: ⁶¹A fine of not less than K1,000.00 and not exceeding K50,000.00.

(2) In addition to any fine imposed under Subsection (1), the Court before which the action is brought may order the person or company, as the case may be, to pay to the Commissioner General a sum not exceeding double the amount of tax that, in the opinion of the Court, was avoided or attempted to be avoided.

(3) Without derogating the provisions of any other law, where the court is satisfied that the commission of an offence against this section was counselled or assisted in any way by another person (where in a professional or other capacity) the court may order that person to be liable, or jointly and severally liable with any other person, for payment of the additional tax under Subsection (2).

Division 2.***Income.******Subdivision A. – Assessable income generally.*****46A. NON-APPLICATION OF SUBDIVISION.**

This subdivision does not apply to or in relation to assessable income that is–

- (a)⁶² *[Repealed.]*
- (b) a gratuity, as defined in Section 65A and Section 65CB; or
- (c) subject to Sections 46B and 46C salary or wages in respect of which salary or wages tax has been deducted.

46B. CAPITAL AMOUNT OF ALLOWANCE, ETC, DEEMED SALARY OR WAGES.

(1) Subject to Sections 47(1)(d), 47(1)(e), 65E(1)(b) and 65F for the purpose of Section 46A, the capital amount of any allowances, gratuity, compensation or

⁶¹ Section 46BD Subsection (1) amended by No. 22 of 2004, s. 11.

⁶² Section 46A(a) repealed by No 34 of 1992, s9.

distribution from a superannuation fund being a prescribed sum (other than, subject to Section 145(3), any amount paid or credited by a private company that, under the provisions of this Act, is deemed to be a dividend paid to the recipient), where the first mentioned amount is paid in a lump sum in consequence of retirement from, or the termination of, an office or employment and whether so paid voluntarily, by agreement, or by compulsion of law, shall be deemed to be income assessable in accordance with Subsections (2), (3) and (4).

(2) Income referred to in Subsection (1) to the extent that it relates to a payment accrued before 1 January 1993 and does not exceed the total value of—

- (a) payments in respect of annual accrued leave (provided that the annual leave entitlement does not exceed six weeks and the payment, being part of a termination payment, is made before 1 January 1994); and
- (b) payments in respect of long service leave accrued before 1 January 1993 at a rate not exceeding six months per 15 years of service with an employer or an associated person of that employer where the employee had completed a minimum of six years' continuous service; and
- (c)⁶³ distribution from an authorized superannuation fund being a prescribed sum, and the amount accrued before 1 January 1993; and
- (d)⁶⁴ [Repealed.]

shall be deemed to be salary or wages income taxable at the rate declared by Section 1 of the *Income Tax (Salary or Wages Tax) (Rates) Act 1979*.

(2A)⁶⁵ ⁶⁶Income referred to in Subsection (1), except where it relates to income covered by Subsection (2), to the extent it is a distribution from an authorised superannuation fund being a prescribed sum and —

- (a) is made in respect of contributions made on behalf of that employee, where —
 - (i) the contributions have been made for not less than 15 years; or
 - (ii) the contributions have been made for not less than 7 years and the employee is either not less than 50 years of age or is subject to enforced early retirement; or
 - (iii) the distribution is made as the result of the death or permanent disablement of the employer,

shall be deemed to be salary or wages income taxable at the rate declared by Section 1(2) of the *Income Tax (Salary or Wages Tax) (Rates) Act 1979*; or

⁶³ Section 46B Subsection (2) amended by No. 22 of 2004, s. 12.

⁶⁴ Section 46B(2)(d) repealed by No 45 of 1993, s1(a).

⁶⁵ Section 46B Subsection (2A) substituted by No. 22 of 2004, s. 12.

⁶⁶ Section 46B Subsection (2A) substituted by No. 22 of 2004, s. 12.

- (b) in any other case, shall be deemed to be salary or wages income taxable at the rate declared by Section 1(3) of the Income Tax (Salary or Wages Tax) (Rates) Act 1979.

(3) Income referred to in Subsection (1) to the extent it exceeds income referred to in Subsections (2) and (2A) shall be deemed to be salary or wages paid in respect of a period of 26 fortnights preceding the date on which the payment was made.

(4) Income referred to in Subsections (1), (2) and (3) to the extent that it relates to a payment accrued from 1 January 1993 shall be deemed to be salary or wages paid in respect of a period of 26 fortnights preceding the date on which the payment was made.

46C. INCOME OTHER THAN SALARY OR WAGES TAXABLE.

Subject to Sections 65F and 145, where the assessable income of a taxpayer includes, in addition to salary or wages, any income other than salary or wages, or includes income other than salary or wages so deemed or otherwise includes income other than salary or wages, tax shall be payable at the rate declared by the *Income Tax, Dividend (Withholding) Tax and Interest (Withholding) Tax Rates Act 1984*.

46. ASSESSABLE INCOME.

(1) The assessable income of a taxpayer shall include—

- (a) where the taxpayer is a resident—the gross income derived directly or indirectly from all sources whether in or out of Papua New Guinea; and
- (b) where the taxpayer is a non-resident—the gross income derived directly or indirectly from all sources in Papua New Guinea,

but shall not include exempt income.

(2) Interest (except interest paid outside Papua New Guinea to a non-resident on debentures issued outside Papua New Guinea by a company) upon money secured by mortgage of any property in Papua New Guinea shall be deemed to be derived from a source in Papua New Guinea.

(3 - 4)⁶⁷ [*Repealed.*]

47. CERTAIN ITEMS OF ASSESSABLE INCOME.

(1) The assessable income of a taxpayer shall include—

- (a) profit arising from the sale by the taxpayer of any property acquired by him for the purpose of profit-making by sale, or from the carrying on or carrying out of any profit-making undertaking or scheme; and
- (b) beneficial interests in income derived under a will, settlement, deed of gift or instrument of trust; and

⁶⁷ Section 46B Subsection (2A) substituted by No. 22 of 2004, s. 12.

- (c)⁶⁸ [Repealed.]
- (d) allowances, gratuities, compensations, benefits, bonuses and premiums allowed, given or granted to him in respect of or for or in relation directly or indirectly to, any employment or services rendered by him where such benefit so allowed, given or granted would be a taxable benefit under Division III.2B; and
- (e) any distribution made to a taxpayer from a superannuation fund being an amount in excess of the prescribed sum, except to the extent that the excess constitutes the return of the employee's own contribution; and
- (f) any amount received as or by way of royalty or royalties other than an amount that—
- (i) but for the definition of “royalty” or “royalties” in Section 4(1) would not be such an amount; and
 - (ii) is not “**income**” within the ordinary meaning of that expression; and
- (g) any bounty or subsidy received in or in relation to the carrying on of a business (which bounty or subsidy shall be deemed to be part of the proceeds of that business); and
- (h) the amount of any fee or commission received for procuring a loan of money; and
- (i) any amount received as or by way of bonus other than a reversionary bonus on a policy of life assurance; and
- (j) any amount received by way of insurance or indemnity for or in respect of any loss—
- (i) of trading stock that would have been taken into account in computing taxable income; or
 - (ii) of profit or income that would have been assessable income,
- if the loss had not occurred, and any amount so received for or in respect of any loss or outgoing that is an allowable deduction; and
- (k) realised foreign exchange gains, derived from debts incurred or borrowings made in a currency other than Papua New Guinea currency which debts were incurred or borrowings made on or after 11 November 1986 or, in the case of debts incurred or borrowings entered into for the purpose of reforestation in Papua New Guinea, at any time.

(2)^{69 70}The assessable income of a taxpayer shall not include so much of the income referred to in Sections 155A(6)(c), 155B(3), 155G(4) or 157B(8) as is applied to reduce the relevant expenditure.

⁶⁸ Section 47(1)(c) repealed by No 50 of 1979.

⁶⁹ Section 47(2) amended in consequence of No 46 of 2000.

⁷⁰ Section 47(2) amended in consequence of No 46 of 2000.

47A. ASSESSABLE INCOME—PREMIUM FOR LEASE.

(1) In this section, “**mining lease**” means a lease of land granted under a law of Papua New Guinea related to mining and “**premium**” means a consideration payable in one amount, or each amount of a consideration payable on more than one amount, where the consideration is—

(a) in the nature of a premium, fine or foregift payable for or in connection with the grant or assignment of a lease; or

(b) for or in connection with an assent to the grant or assignment of a lease,

but does not include an amount in respect of goodwill or a licence.

(2) Where, in the year of income, a taxpayer receives a premium that relates to the grant or assignment of a lease of property that was not, at the date on which the agreement to grant or assign the lease was made or the assent to the grant or assignment of the lease was given, as the case may be, intended by the grantee or assignee to be used by the grantee or assignee or some other person wholly or partly for the purpose of gaining or producing assessable income, the assessable income of the taxpayer includes the premium.

(3) Where, in the year of income, a taxpayer receives a premium that relates to the grant or assignment of a lease of property that was, at the date on which the agreement to grant or assign the lease was made, or the assent to the grant or assignment of the lease was given, as the case may be, intended by the grantee or assignee to be used by the grantee or assignee or some other person partly for the purpose of gaining or producing assessable income and partly for other purposes, the assessable income of the taxpayer includes such part of the premium as the Commissioner General considers may reasonably be attributed to the intended use of the property for purposes other than gaining or producing assessable income.

(4) Where, in a case referred to in Subsection (2) or (3) the taxpayer satisfies the Commissioner General that, at the date on which the agreement to grant or assign the lease was made, or the assent to the grant or assignment of the lease was given, as the case may be, he believed on reasonable grounds that the grantee or assignee intended a particular use of the property by the grantee or assignee or some other person for the purpose of gaining or producing assessable income, the Commissioner General may apply this section on the basis that that intention existed.

(5) This section does not apply to—

(a) a premium received in consequence of the assignment of a mining lease; or

(b) a premium received in connection with the grant or assignment of a lease that is a grant or assignment for mining purposes; or

(c) a premium received in connection with the assignment of—

(i) a lease from the State of land used for primary production; or

- (ii) a lease from the State, being a lease granted in perpetuity or for a term of not less than 99 years, a lease with a right of purchase or a lease granted for the purpose of effecting improvements to be used for residential purposes only; or
- (iii) a development licence, a retention licence or a petroleum prospecting licence; or
- (d) A premium received, to the extent that it is deemed to be expenditure incurred in the purchase of property by virtue of Section 78A.

(6) For the purpose of Subsection (5), a lease shall be deemed not to have been granted or assigned for mining purposes unless there appears, in a document signed by the parties before or at the time the grant or assignment was made, or before such later time as the Commissioner General determines, a statement to the effect that the purpose of the grant or assignment is to enable the person to whom the grant or assignment is made to carry on mining operations upon the land.

47B. ASSESSABLE INCOMES—SUPERANNUATION FUND CONTRIBUTIONS.

(1)⁷¹ In this section—

⁷²⁷³“**contribution**” means any amount paid to a superannuation fund;

“**dependants**” in relation to an employee, includes the spouse and any child of the employee;

“**employee**” in relation to a company includes a director of the company;

“**person**” includes a partnership.

(2) Where a superannuation fund receives contributions from an employer in respect of employees or, where contributions were not received but were due and payable within the year of income by the employer, such contributions shall be deemed to be assessable income of the superannuation fund to the extent that those contributions exceed the amount for which a deduction under Part III.3A is allowable to the employer.

47C. ASSESSABLE INCOME—DEDUCTION OF PAYMENTS UNDER LEASE.

(1) Where—

- (a) a taxpayer leased, rented, or hired any asset, being any plant or machinery (including a motor vehicle) or other equipment or temporary building and the Commissioner General has allowed a deduction in calculating the assessable income of the taxpayer in any income year for the consideration paid or given in respect of that lease, rental or hire; and

⁷¹ Section 47B Subsection (1) amended by No. 22 of 2004, s. 13.

⁷² Section 47B Subsection (1) amended by No. 22 of 2004, s. 13.

⁷³ Section 47B Subsection (1) amended by No. 22 of 2004, s. 13.

- (b) either—
- (i) that taxpayer at any time purchased or otherwise acquired that asset and sold or otherwise disposed of it for a consideration in excess of the consideration for which that person purchased or otherwise acquired it; or
 - (ii) any other person, where the taxpayer and that other person are associated persons, at any time purchased or otherwise acquired that asset, whether or not from the taxpayer, and that other person sold or otherwise disposed of it for a consideration in excess of the consideration for which that other person purchased or otherwise acquired it,

the Commissioner General may include in the assessable income of the taxpayer derived in the year of income in which the asset was sold or otherwise disposed of an amount equal to the excess or the total amount of the deductions so allowed, whichever is the lesser.

(2) Subsection (1) shall apply whether or not there was any clause or condition in the lease, contract, agreement, or arrangement under which the asset was leased, rented, or hired, whereby that taxpayer or that other person was required to purchase or otherwise acquire that asset.

(3) For the purpose of this section—

- (a) where any asset to which this section relates has been purchased or otherwise acquired, or sold or otherwise disposed of, together with other assets, the consideration attributable to that asset shall be determined by the Commissioner General, and the part of the consideration so determined shall be deemed to be the consideration for which that asset was purchased or otherwise acquired or, as the case may be, was sold or otherwise disposed of; and
- (b) where any asset to which this section relates has been sold or otherwise disposed of without consideration or for a consideration which, in the opinion of the Commissioner General, is less than the market price of that asset at the date of the sale or other disposition, that asset shall be deemed to have been sold at or to have realised that market price or, if there is no market price, shall be deemed to have been sold and have realised such price as the Commissioner General determined.

47D. ASSESSABLE INCOME—ACCOUNTING FOR VALUE ADDED TAX.

⁷⁴(1) The income of a person registered under the *Value Added Tax Act 1998* shall not include—

- (a) any amount of value added tax, including additional tax and further additional tax charged, levied or calculated under the *Value Added Tax*

⁷⁴ Section 47D inserted by *Income Tax (Budget Provisions 2000) Act 1999* (No 19 of 1999), s4.

Act 1998 in respect of a supply of goods and services made by that person; and

- (b) any amount of value added tax refundable by the Commissioner General to that person.

(2) Subject to Subsection (3), no deduction shall be allowed to any person registered under the *Value Added Tax Act 1998* for—

- (a) any amount of value added tax, including additional tax and further additional tax charged, levied or calculated under the *Value Added Tax Act 1998* in respect of a supply of goods and services made to that person; and
- (b) any amount of value added tax payable by that person to the Commissioner General.

(3) Where a person registered under the *Value Added Tax Act 1998* supplies exempt goods or services, he shall be entitled to a deduction of the value added tax paid by him on the purchase of goods or services, other than capital goods, to the extent he is not entitled to claim input credit for those purchases under the *Value Added Tax Act 1998*.

(4) For the purposes of this Act, where any deduction, including deductions for depreciation for any property, is calculated by reference to the cost price of that property, the cost price shall be reduced by the amount of input credit allowed to that person under the *Value Added Tax Act 1998*.

48. DIVIDENDS.

(1) Subject to Sections 42 and 189D, the assessable income of a taxpayer includes—

- (a) if he is a resident—dividends received by him directly or indirectly from a company (whether the company is a resident or non-resident) out of profits derived by it from any source; and
- (b) if he is a non-resident—
 - (i) dividends received by him directly or indirectly from a company which is a resident out of profits derived by it from any source; and
 - (ii) dividends which have been received by him directly or indirectly from a company which is a non-resident out of profits derived by it from a Papua New Guinea source that are not profits upon which Papua New Guinea dividend (withholding) tax has been directly or indirectly paid.

(1A) Where—

- (a) the amount of the moneys or of the value of other property of which a dividend paid by a company consists is debited against an amount standing to the credit of a share premium account of the company; or

- (b) a dividend paid by a company is a repayment by the company of moneys paid upon a share,

the dividend shall, for the purposes of this section, be deemed to have been paid by the company out of profits derived by it.

(2) Distributions to shareholders of a company by the company, or by a liquidator in the course of winding up the company, to the extent to which they represent—

- (a) income derived by the company; or
- (b) amounts that have been included in the assessable income of the company,

whether before or during liquidation, other than income that has been properly applied to replace a loss of paid-up capital, shall, for the purposes of this Act, be deemed to be dividends paid to the shareholders by the company out of profits derived by it.

(3) Those distributions shall, to the extent to which they are made out of any profits or income, be deemed to have been paid wholly and exclusively out of those profits or that income.

(3A) Where—

- (a) the business of the company has been or is in the course of being discontinued otherwise than in the course of a winding-up of the company under any law relating to companies; and
- (b) in connection with the discontinuance any moneys of the company have been, or other property of the company has been, distributed, otherwise than by the company, to shareholders of the company; and
- (c) the moneys or other property so distributed are or is not, for the purposes of this Act, dividends,

the distribution shall, subject to Subsection (3B), be deemed to be, for the purpose of this section, a distribution to the shareholders by a liquidator in the course of winding-up the company.

(3B) Where—

- (a) Subsection (3A) would, but for this subsection, apply in relation to any moneys or other property of a company distributed to shareholders of the company; and
- (b) the company is not dissolved within a period of three years after the distribution, or within such further period as the Commissioner General allows,

Subsection (3A) does not apply, and shall be deemed never to have applied, in relation to those moneys or that other property, and those moneys or that other property so distributed shall, for the purposes of this Act, be deemed to be dividends paid by the company to the shareholders out of profits derived by it.

(3C) Where a resident company—

- (a) has not lodged a return of income for three consecutive years; and
- (b) has more than 75% of the assets which were listed in the accounts forming part of the last return of income lodged by the company located or invested outside the country; and
- (c) is not carrying on business in the country,

the company shall,

- (d) on the expiry of three years after the date of lodgement of the last return of income; or
- (e) on commencement of this subsection,

whichever is the later, be deemed to have been dissolved, and the shareholders of the company as at that date shall, for the purposes of this section, be deemed to have received a distribution from a liquidator in the course of the winding up of the company.

(3D) For the purposes of Subsection (3C), the company is not carrying on business where—

- (a) the only income it derives in the country is income from investments or property; or
- (b) the Commissioner General is not satisfied that the business purported to be carried on by the company is a *bona fide* business carried on by the company for the purpose of earning a profit.

(3E) Where there has been a deemed distribution by a liquidator under this section to more than one shareholder, the distribution shall be deemed to be apportioned rateably among those shareholders in proportion to the paid-up value of the interest of each in the share capital of the company.

(4) For the purposes of Subsection (2), “**paid up capital**” does not include the paid-up value of shares that have been issued by the company in satisfaction of dividends that have been paid out of profits arising from the revaluation of assets not acquired for the purposes of re-sale at a profit, but includes capital that has been paid up in money or by other valuable consideration and that has been cancelled and has not been repaid by the company to the shareholders.

(5) Where—

- (a) a dividend or a part of a dividend is or has been included in the assessable income of a taxpayer of the year of income or of any previous year; and
- (b) under the law of any country outside Papua New Guinea, the company paying the dividend deducted or was authorized to deduct from the dividend income tax that the taxpayer was not personally liable to pay; and

- (c) the taxpayer, in the year of income, receives a payment or is allowed a credit of an amount in respect of the income tax that the company deducted or was authorized to deduct,

his assessable income of the year of income shall include that amount, and that amount shall, for all purposes of this Act, be deemed to be a dividend.

49. ASSESSABLE INCOME—ANNUITIES.

(1) The assessable income of a taxpayer shall include the amount of any annuity, excluding, in the case of an annuity that has been purchased, that part of the amount of the annuity that represents the undeducted purchase price.

(2) Subject to Subsection (3), the amount to be excluded under Subsection (1) from the amount of an annuity derived by a taxpayer during a year of income is—

- (a) in the case of an annuity payable until the death of the taxpayer or for a term that will not end before his death—an amount ascertained by dividing the undeducted purchase price of the annuity by the number of years in the complete expectation of life of the taxpayer, as ascertained by reference to the prescribed Life Tables, at the time when the annuity first commenced to be derived; and
- (b) in the case of an annuity payable for a term of years certain—an amount ascertained by dividing the undeducted purchase price of the annuity by the number of years in the term.

(3) Where the amount of an annuity derived by the taxpayer during a year of income is more than, or less than, the amount payable for a whole year, the amount to be excluded from the amount so derived is the amount that bears to the amount that, but for this subsection, would be the amount to be so excluded the same proportion as the amount so derived bears to the amount payable for a whole year.

(4) For the purposes of this section, “**the undeducted purchase price**”, in relation to an annuity, means so much of the purchase price of the annuity paid by the taxpayer as has not been allowed and is not allowable as a deduction under this Act and has not been allowed as a deduction, and in respect of which a rebate of income tax has not been allowed, in assessments for income tax under an Act relating to income tax.

50. INSURANCE RECOVERIES ON LOSSES OF LIVESTOCK AND TREES.

(1) This section applies to an amount (in this section referred to as an insurance recovery) received, by a taxpayer or a partnership carrying on in Papua New Guinea a business of primary production, by way of insurance for or in respect of a loss of livestock or a loss of trees.

(2) Where a taxpayer receives an insurance recovery that is included in his assessable income of a year of income, he may elect that that assessable income shall be reduced by an amount equal to four-fifths of the insurance recovery.

(3) Where an insurance recovery is received by a partnership, each partner in the partnership may make an election under Subsection (2) in relation to that part of the insurance recovery that is included in his individual interest in the net income of the partnership.

(4) Where an insurance recovery is received by the trustee of a trust estate—

- (a) the trustee may make an election under Subsection (2) in relation only to that part of the insurance recovery that is included in the net income of the trust estate in respect of which he is liable to be assessed and to pay tax under the provisions of Section 130; and
- (b) each resident beneficiary in the trust estate who is not under a legal disability and is presently entitled to a share of the net income of the trust estate, being a share that includes a part of the insurance recovery, may make an election under Subsection (2) in relation to that part.

(5) The election that a taxpayer may make under Subsection (2) shall be made in writing and lodged with the Commissioner General on or before the date of lodgment of the return of income of the year of income in which the insurance recovery is received, or within such further time as the Commissioner General allows.

(6) Where a taxpayer has made an election under Subsection (2), his assessable income of the year in which the insurance recovery is received shall be reduced by an amount equal to four-fifths of the insurance recovery, or the part of the insurance recovery to which his election relates, and there shall be included in his assessable income of each of the next four succeeding years an amount equal to one-fifth of the insurance recovery, or of that part of the insurance recovery, as the case may be.

(7) Where, in a year of income, a taxpayer who has made an election under Subsection (2)—

- (a) appears to the Commissioner General to be about to leave Papua New Guinea; or
- (b) dies; or
- (c) is adjudicated insolvent, applies to take the benefit of a law for the relief of insolvent debtors, compounds with, or makes an assignment of any of his property for the benefit of, his creditors or has his affairs liquidated by arrangement; or
- (d) being a company, commences to be wound up,

there shall, if the Commissioner General so determines, be included in the assessable income of the taxpayer of that year of income any amount that would otherwise be included, in pursuance of this section, in the assessable income of any subsequent year of income.

(8) An amount that, in accordance with either Subsection (6) or (7), is included in the assessable income of a taxpayer of any year shall, for all purposes of this Act, be deemed to be assessable income derived by him during that year from the carrying on by him in Papua New Guinea, during that year, of a business of primary production.

Subdivision B. – Trading Stock.

51. TRADING STOCK TO BE TAKEN INTO ACCOUNT.

(1) Where a taxpayer carries on any business, the value, ascertained under this Subdivision, of all trading stock on hand at the beginning of the year of income, and of all trading stock on hand at the end of that year, shall be taken into account in ascertaining whether the taxpayer has a taxable income.

(2) Where the value of all trading stock on hand at the end of the year of income exceeds the value of all trading stock on hand at the beginning of that year, the assessable income of the taxpayer shall include the amount of the excess.

(3) Where the value of all trading stock on hand at the beginning of the year of income exceeds the value of all trading stock on hand at the end of that year, the amount of the excess is an allowable deduction.

52. VALUE AT BEGINNING OF YEAR OF INCOME.

(1) Subject to Subsection (2), the value of livestock and of each article of other trading stock to be taken into account at the beginning of the year of income shall be its value as ascertained under this Act at the end of the year immediately preceding the year of income.

(2) The value of trading stock to be taken into account at the beginning of the first year of income to which this Act applies shall be—

- (a) in the case of livestock—the market selling value of that livestock; and
- (b) in the case of any other article of trading stock—the cost price of that article or such other value as is approved by the Commissioner General in a particular case.

(3) The regulations may prescribe the manner in which the cost price of an article shall be determined for the purposes of this section.

53. VALUE OF TRADING STOCK AT END OF YEAR OF INCOME.

(1) The value of each article of trading stock (not being livestock) to be taken into account at the end of the year of income shall be, subject to Subsection (4), at the option of the taxpayer, its cost price, its market selling price or the price at which it can be replaced.

(2) The option referred to in Subsection (1) shall be exercisable by the taxpayer—

- (a) in respect of the year of income commencing 1 January 1981; or
- (b) in respect of the first year of income for which a return is lodged,

whichever is the later, and shall not be varied at any time thereafter unless with the leave of the Commissioner General.

(3) Where no election is made by the taxpayer, the value of each article of trading stock to be adopted in the first return of income lodged after 31 December 1981 shall be the cost price of the stock.

(4) In respect of any return lodged disclosing income which is either fully or partially free from tax under the provisions of this Act, no variation of the method of valuation of trading stock shall be allowed in the last three years of income to which those provisions apply.

(5) Where the Commissioner General is satisfied in relation to any trading stock of a taxpayer, that by reason of obsolescence of or any other special circumstances relating to the trading stock, the value of the trading stock to be taken into account at the end of the year of income should be an amount, being less than the amount which is the lowest value that could be applicable under Subsection (1) determined by the Commissioner General to be the fair and reasonable value of the trading stock having regard to—

- (a) the quantity of the trading stock on hand at the end of the year of income; and
- (b) the quantity of the trading stock, exchanged or used in manufacture by the taxpayer after the end of the year of income and the prospects of sale, exchange or use in manufacture of further quantities of that trading stock; and
- (c) the quantity of trading stock of the same kind sold, exchanged or used in manufacture by the taxpayer during the year of income and preceding years of income; and
- (d) such other matters as the Commissioner General considers relevant,

the value of the trading stock to be so taken into account shall, notwithstanding any exercise of the option of the taxpayer under Subsection (1), be the value so determined by the Commissioner General.

(6) Subsection (5) does not apply in relation to a taxpayer unless, by a written notice designed by or on behalf of the taxpayer and lodged with the Commissioner General on or before the last day for the furnishing of the return of income of the taxpayer for the year of income, or within such further time as the Commissioner General allows, the taxpayer notifies the Commissioner General that he wishes that subsection to apply.

53A. PURCHASE OF TRADING STOCK NOT AT ARM'S LENGTH.

- (1) Where—

- (a) a person (in this section referred to as the “**purchaser**”) has, on or after the date of coming into operation of the *Income Tax (Amendment No 3) Act 1979*, purchased from another person (in this section referred to as the “**vendor**”) an article (in this subsection referred to as the “**relevant article**”) that, for the purposes of the application of this Act, in relation to the purchaser, was an article of trading stock; and
- (b) the Commissioner General is satisfied that, having regard to any connection between the vendor and the purchaser or to any other relevant circumstances, those persons were not dealing with each other at arm’s length in relation to the transaction; and
- (c) the Commissioner General is satisfied—
 - (i) that the purchase price is greater than the amount (in this section referred to as the “**arm’s length price**”) that, in the opinion of the Commissioner General, would have been the purchase price if the vendor and the purchaser had been dealing with each other at arm’s length in relation to the transaction; or
 - (ii) that—
 - (A) the purchaser could have purchased an identical article from another person and obtained delivery of the identical article at or about the time when the purchaser obtained delivery of the relevant article; and
 - (B) the cost to the purchaser of purchasing the relevant article from the vendor was greater than the amount that, in the opinion of the Commissioner General, would have been the cost to the purchaser of purchasing the identical article; and
 - (C) the purchase price of the relevant article is greater than the amount (in this section referred to as the “**alternative price**”) that, in the opinion of the Commissioner General, would have been the purchase price of the identical article,

the amount paid by the purchaser to the vendor in respect of the relevant article shall, for all purposes of the application of this Act in relation to the purchaser and the vendor, be deemed to be an amount ascertained in accordance with Subsection (2).

(2) The amount ascertained in relation to an article for the purpose of Subsection (1) is where the Commissioner General is satisfied as to the matter mentioned in—

- (a) Subsection (1)(c)(i) but not as to the matters mentioned in Subsection (1)(c)(ii) an amount equal to the arm’s length price of the article; and
- (b) Subsection (1)(c)(ii) but not as to the matter mentioned in Subsection (1)(c)(i)-an amount equal to the alternative price of the article increased, if the purchaser would have incurred expenditure (apart from payment

of the purchase price) in obtaining delivery of an identical article from another person as mentioned in Subsection (1)(c)(ii) in excess of the expenditure (apart from payment of the purchase price) that the purchaser incurred in obtaining delivery of the relevant article, by such amount as the Commissioner General considers fair and reasonable; and

- (c) Subsection (1)(c)(i) and also as to the matters mentioned in Subsection (1)(c)(ii) whichever of the following amounts is the lesser amount:—
- (i) the arm's length price of the article;
 - (ii) the amount that would be determined in relation to the article in accordance with Paragraph (b) if that paragraph were applicable.

(3) A reference in this section to the purchase by a person of an article of trading stock from another person shall be construed as including a reference to an acquisition of that article by the first-mentioned person from that other person that is deemed to have occurred for the purposes of Section 57 by reason of the operating of Section 58 or that would be so deemed to have occurred if Sections 57 and 58 applied in relation to a disposal of trading stock in the ordinary course of carrying on a business.

(4) In this section, a reference to the cost to a person of purchasing an article shall be construed as a reference to expenditure incurred by the person that is directly attributable to purchasing or obtaining delivery of the article.

(5) This section applies in relation to the purchase of an article of trading stock notwithstanding that the purchase was in the course of ordinary family or commercial dealing.

54. VALUE OF LIVESTOCK AT END OF YEAR OF INCOME.

(1) Subject to this section, the value of livestock to be taken into account at the end of the year of income shall be, at the option of the taxpayer, its cost price or its market selling value, or, where a taxpayer does not exercise his option within the time and in the manner prescribed, the value so to be taken into account shall be the cost price.

(2) Where, by virtue of—

- (a) the exercise by a taxpayer of his option under Subsection (1); or
- (b) the failure of a taxpayer to exercise that option,

the value of any livestock that was taken into account at the commencement of the first year of income to which this Act applies and is to be taken into account at the end of any year of income is the cost price of that livestock, the cost price of that livestock shall, for the purposes of this Subdivision, be deemed to be the value at which that livestock was taken into account at the commencement of that first year of income.

(3) Where a taxpayer satisfies the Commissioner General that there are circumstances that justify the adoption by him of a value other than cost price or market selling value for the whole or part of his livestock, he may, with the leave of the Commissioner General, adopt that other value.

55. CHANGES IN BASIS OF VALUATION OF LIVESTOCK.

A taxpayer shall not, except with the leave of the Commissioner General, adopt a basis of valuation of his livestock taken into account at the end of the year of income different from the basis on which the valuation of his livestock was made when it was last taken into account at the end of a previous year.

56. COST PRICE OF NATURAL INCREASE.

(1) The cost price per head of natural increase of any class of livestock of a taxpayer shall be—

- (a) where the cost price of natural increase of that class has been previously taken into account under this Act by the taxpayer—the cost price per head at which natural increase of that class was last taken into account unless, with the leave of the Commissioner General, the taxpayer selects another cost price; and
- (b) where the cost price of natural increase of that class has not been previously taken into account under this Act by the taxpayer—the cost price selected by him, not being less than the minimum cost price prescribed in respect of livestock of that class.

(2) Where a taxpayer does not so select within the time and in the manner prescribed, he shall be deemed to have selected, as the cost price, the prescribed minimum cost price.

57. DISPOSAL OF TRADING STOCK.

(1) Subject to this section, where—

- (a) a taxpayer disposes, by sale, gift, or otherwise, of property being trading stock, standing or growing crops, crop-stools, or trees that have been planted and tended for the purpose of sale; and
- (b) that property constitutes or constituted the whole or part of the assets of a business that is or was carried on by the taxpayer; and
- (c) the disposal was not in the ordinary course of carrying on that business,

the value of that property shall be included in the assessable income of the taxpayer and the person acquiring that property shall be deemed to have purchased it at a price equal to that value.

(2) Where, in consequence of—

- (a) the acquisition or resumption of land under the provisions of an Ordinance or Act that contains provisions for the compulsory acquisition or resumption of land; or
- (b) the loss or destruction of pastures or fodder by reason of fire, drought or flood; or
- (c) the taking of a lease of land by the State for the purposes of a campaign for the eradication of cattle tick,

a taxpayer, in a year of income, disposes, by sale or otherwise, of livestock being assets of a business of primary production carried on by him in Papua New Guinea, the taxpayer may elect that his assessable income of that year shall be reduced by an amount equal to four-fifths of the profit on the disposal of that livestock.

(3) Subject to Subsection (4), where a taxpayer has made an election under Subsection (2)–

- (a) his assessable income of the year to which the election relates shall be reduced by an amount equal to four-fifths of the profit on the disposal of the livestock; and
- (b) there shall be included in his assessable income of each of the next four succeeding years an amount equal to one-fifth of that profit, and the amount so included in the assessable income of any year shall, for the purposes of this Act, be deemed to be assessable income derived by the taxpayer during that year from the carrying on by him in Papua New Guinea, during that year, of a business of primary production.

(4) Where the disposal is in consequence of the loss or destruction of pastures or fodder by reason of fire, drought or flood, Subsection (3) applies only if the taxpayer establishes to the satisfaction of the Commissioner General that the proceeds (if any) of the disposal have been or will be applied by the taxpayer wholly or principally to the purchase of livestock in replacement of the livestock disposed of.

(5) Where livestock to which Subsection (2) applies is disposed of by a partnership, each partner in the partnership is entitled to make an election under that subsection in relation to that part of the profit on the disposal of the livestock that is included in his individual interest in the net income of the partnership.

(6) Where livestock to which Subsection (2) applies is disposed of by the trustee of a trust estate–

- (a) the trustee is entitled to make an election under that subsection in relation only to that part of the profit on the disposal of the livestock included in the net income of the trust estate in respect of which the trustee is liable to be assessed and to pay tax under the provisions of Section 130; and
- (b) each resident beneficiary in the trust estate who is not under a legal disability and who is presently entitled to a share of the net income of the trust estate, being a share that includes a part of the profit on the

disposal of the livestock, is entitled to make an election under that subsection in relation to that part.

(7) Where, in any year of income, a taxpayer who has made an election under Subsection (2)–

- (a) appears to the Commissioner General to be about to leave Papua New Guinea; or
- (b) dies; or
- (c) is adjudicated insolvent, applies to take the benefit of a law for the relief of insolvent debtors, compounds with, or makes an assignment of any of his property for the benefit of, his creditors or has his affairs liquidated by arrangement; or
- (d) being a company, commences to be wound up,

there shall, if the Commissioner General so determines, be included in the assessable income of the taxpayer of that year of income any amount that would otherwise be included, in pursuance of this section, in the assessable income of any subsequent year of income.

(8) The election that a taxpayer may make under Subsection (2) shall be made in writing on or before the date of lodgment of the return of income of the year in which the disposal occurred or within such further time as the Commissioner General may allow.

(9) For the purposes of this section, the value of any property or livestock shall be–

- (a) the market value of the property or livestock on the day of the disposal; or
- (b) if, in the opinion of the Commissioner General, there is insufficient evidence of the market value on that day–the value that in his opinion is fair and reasonable.

(10) For the purposes of this section, the profit on the disposal of livestock shall be the amount remaining after deducting from the proceeds of the sale of the livestock or, where the livestock was disposed of together with any other assets or the disposal was otherwise than by sale, from the value of the livestock, the total of the following amounts:–

- (a) In respect of such of the livestock as was on hand at the beginning of the year of income–the value at which that livestock was, for the purposes of this Act, taken into account at the beginning of that year;
- (b) In respect of such of the livestock as was not on hand at the beginning of that year–
 - (i) in the case of livestock acquired by purchase–the purchase price of that livestock; and

- (ii) in the case of livestock acquired otherwise than by purchase, but not including natural increase bred by the taxpayer during that year—the amount that, under this Act, is deemed to be the purchase price of that livestock.

(11) Notwithstanding Subsections (9) and (10), the value for the purposes of this section of any property disposed of by the taxpayer after the date of coming into operation of the *Income Tax (Amendment No 3) Act 1979*, shall, if the Commissioner General so determines, be such value as the Commissioner General considers reasonable, having regard to—

- (a) the cost to the taxpayer of the property; and
- (b) where, in any agreement entered into in connection with the disposal of the property, an amount was specified as the value of the property or as the consideration received or receivable in respect of the disposal—the amount so specified; and
- (c) where, before the property was disposed of, an agreement or arrangement (whether or not enforceable by legal proceedings and whether or not intended to be so enforceable) was entered into, or an understanding was reached, as a result of which, at any time after the disposal took place, there has been, or there could reasonably be expected to be, a substantial reduction in the value of the property—that agreement, arrangement or understanding; and
- (d) where, before the property was disposed of by the taxpayer, an agreement or arrangement (whether or not enforceable by legal proceedings and whether or not intended to be so enforceable) was entered into, or an understanding was reached, under which, or by reason of which, the person or persons who acquired the property from the taxpayer was or were under an obligation, or could reasonably be expected, to dispose of the property to another person or other persons (whether or not that other person was, or those other persons included, the taxpayer) for a consideration less than the market value of the property at the time when it was disposed of by the taxpayer—that agreement, arrangement or understanding; and
- (e) where the disposal of the property by the taxpayer or the acquisition of the property by the person or persons who acquired the property arose out of, or was made in the course of, a transaction, operation, undertaking, scheme or arrangement that was entered into or carried out for the purpose, or for purposes that included the purpose, of securing that a person who, if the transaction, operation, undertaking, scheme or arrangement had not been entered into or carried out would have been liable to pay income tax in respect of a year of income would not be liable to pay income tax in respect of that year of income, or would be liable to pay less income tax in respect of that year of income than that person would have been liable to pay if the transaction, operation, undertaking, scheme or arrangement had not been entered

into or carried out—that transaction, operation, undertaking, scheme or arrangement; and

- (f) where the disposal of the property by the taxpayer or the acquisition of the property by the person or persons who acquired the property arose out of, or was made in course of, a transaction, operation, undertaking, scheme or arrangement that the Commissioner General is satisfied was by way of dividend stripping or was similar to a transaction, operation, undertaking, scheme or arrangement by way of dividend stripping—that transaction, operation, undertaking, scheme or arrangement; and
- (g) any other matters that the Commissioner General considers relevant.

(12) A reference in Subsection (11) to property shall be read as a reference to property being trading stock, standing or growing crops, crop-stools or trees which have been planted and tended for the purposes of sale.

57A. COMPENSATION FOR DEATH OR COMPULSORY DESTRUCTION OF LIVESTOCK.

(1) Where—

- (a) livestock being assets of a business of primary production carried on by a taxpayer in Papua New Guinea—
 - (i) dies by reason of a disease for the purpose of controlling or eradicating which provision is made by a law of Papua New Guinea for or in relation to the compulsory destruction of livestock; or
 - (ii) is destroyed in pursuance of a law of Papua New Guinea that makes provision for or in relation to the compulsory destruction of livestock for the purpose of controlling or eradicating a disease; and
- (b) the proceeds of the death of the livestock would, apart from this section, be included in the assessable income of the taxpayer of a year or years of income; and
- (c) there is a profit arising in respect of the death of the livestock,

the taxpayer may elect that this section shall apply in relation to the profit arising in respect of the death of the livestock.

(2) Where a taxpayer makes an election under Subsection (1)—

- (a) the whole of the proceeds of the death of the livestock to which the election relates (whenever received) shall be included in the assessable income of the taxpayer of the year of income in which the livestock died or was destroyed, and no part of those proceeds shall be included in the assessable income of the taxpayer of any other year of income; and

- (b) the assessable income of the taxpayer of the year of income in which the livestock died or was destroyed shall be reduced by an amount equal to four-fifths of the profit in relation to which the election is made; and
- (c) there shall be included in the assessable income of the taxpayer of each of the next four succeeding years of income an amount equal to one-fifth of the profit in relation to which the election is made, and the amount so included in the assessable income of the taxpayer of any year of income shall, for the purposes of this Act, be deemed to be derived by the taxpayer during that year of income from the carrying on by him in Papua New Guinea, during that year of income, of a business of primary production.

(3) Where livestock is an asset of a partnership and, if that livestock were owned by a person other than as a partner or a trustee of a trust estate, that person would be entitled to make an election under Subsection (1) in relation to the livestock—

- (a) any partner in the partnership may make an election under that subsection in relation to the part of the profit arising in respect of the death of the livestock that is included in his individual interest in the net income of the partnership; and
- (b) where a partner makes such an election, Subsection (2)(a) does not apply, but for the purpose of assessments in respect of that partner the net income of the partnership shall be ascertained as if the proceeds of the death of the livestock to which the election relates (whenever received) had been received by the partnership in the year of income in which the livestock died or was destroyed.

(4) Where livestock referred to in Subsection (1) is owned by the trustee of a trust estate—

- (a) the trustee may make an election under that subsection in relation only to that part of the profit arising in respect of the death of the livestock that is included in the net income of the trust estate in respect of which the trustee is liable to be assessed and to pay tax under the provisions of Section 130; and
- (b) each resident beneficiary in the trust estate who is not under a legal disability and is presently entitled to a share of the net income of the trust estate, being a share that includes a part of the profit arising in respect of the death of the livestock, may make an election under that subsection in relation to that part and, where a beneficiary makes such an election, Subsection (2)(a) does not apply, but for the purpose of assessments in respect of that beneficiary the net income of the trust estate shall be ascertained as if the proceeds of the death of the livestock to which the election relates (whenever received) had been received by the trustee in the year of income in which the livestock died or was destroyed.

(5) Where, in a year of income, a taxpayer who has made an election under Subsection (1)—

- (a) appears to the Commissioner General to be about to leave Papua New Guinea; or
- (b) dies; or
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of any of his property for their benefit; or
- (d) being a company, commences to be wound up,

there shall, if the Commissioner General so determines, be included in the assessable income of the taxpayer of that year of income any amount that would otherwise be included, in pursuance of this section, in the assessable income of any subsequent year of income, and the amount so included shall be deemed, for the purposes of this Act, to be derived by the taxpayer during that first-mentioned year of income from the carrying on by him in Papua New Guinea, during that year of income, of a business of primary production.

(6) An election by a taxpayer under Subsection (1) shall be made in writing and lodged with the Commissioner General on or before—

- (a) the date of lodgment of the return of income of the taxpayer of the year of income in which the proceeds of the death of the livestock to which the election relates were received; or
- (b) if the whole of those proceeds was not received in one year of income—the date of lodgment of the return of income of the taxpayer of the latest year of income in which any part of those proceeds was received,

or on or before such later date as the Commissioner General allows.

(7) In this section, a reference to the proceeds of the death of any livestock shall be read as a reference to the sum of—

- (a) any amount received by the person who owned the livestock from the State, or from an authority constituted by or under a law of Papua New Guinea, by way of compensation for the death or destruction of the livestock; and
- (b) any amount received by the person who owned the livestock as payment for the carcasses, or any part of the carcasses, of the livestock.

(8) In this section, a reference to profit arising in respect of the death of any livestock shall be read as a reference to the amount remaining after deducting from the proceeds of the death of the livestock the sum of—

- (a) in respect of any of the livestock that was on hand at the beginning of the year of income in which the livestock died or was destroyed—the value at which that livestock is, for the purposes of this Act, to be taken into account at the beginning of that year of income; and

- (b) in respect of any of the livestock that was not on hand at the beginning of that year of income—
 - (i) in the case of livestock acquired by purchase—the purchase price of that livestock; and
 - (ii) in the case of livestock acquired otherwise than by purchase, but not including natural increase bred during that year of income by the person who owned the livestock at the time of its death or destruction—the amount that, under this Act, is deemed to be the purchase price of that livestock

58. DISPOSAL OF CHANGE OF OWNERSHIP OR INTERESTS.

- (1) Where, for any reasons, including—
 - (a) the formation or dissolution of a partnership; or
 - (b) a variation in the constitution of a partnership, or in the interests of the partners,

a change has occurred in the ownership of, or in the interests of persons, in, property constituting the whole or part of the assets of a business and being trading stock, standing or growing crops, crop-stools, or trees which have been planted and tended for the purposes of sale, and 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, Section 57 applies as if the person or persons who owned the property before the change had, on the day on which the change occurred, disposed of the whole of the property to the person, or all the persons, by whom the property is owned after the change.

- (2) Where—
 - (a) property in relation to which Subsection (1) applies has become, upon the change in ownership or interests, an asset of a business carried on by the person or persons by whom the property is owned after the change; and
 - (b) the person or persons by whom the property was owned before the change holds or hold, after the change, an interest or interests in the property of a value equal to not less than one-quarter of the value of the property; and
 - (c) the value of the property as ascertained in accordance with Section 57(9)(a) is greater than the value (if any) that would have been taken into account at the end of the year of income if no disposal had taken place and the year of income had ended on the date of the change; and
 - (d) the person or persons by whom the property was owned before the change together with the person or persons by whom the property is owned after the change give notice to the Commissioner General, in accordance with this section, that they have agreed that this subsection shall apply in respect of the property,

the value of the property, for the purposes of Section 57, shall be, instead of the value specified in Section 57(9)(a), the value (if any) that would have been taken into account at the end of the year of income if no disposal had taken place and the year of income had ended on the date of the change.

(3) A notice in pursuance of Subsection (2) shall be in writing, signed by all the persons giving it, and lodged with the Commissioner General on or before the 28 February next succeeding the end of the fiscal year in which the change in ownership or interests occurred or on or before such later date as the Commissioner General determines.

(4) Where Subsection (1) applies in relation to property in consequence of the death of a member of a partnership the persons by whom a notice in pursuance of Subsection (2) may be given shall include, in lieu of the deceased person, the trustee of his estate and the beneficiaries (if any) who are liable to be assessed in respect of the whole or a share in the income of the business of which the property becomes an asset.

(5) A notice for the purposes of Subsection (2) given after the date of coming into operation of the *Income Tax (Amendment No 3) Act 1979* in respect of a change in the ownership of, or in the interests of persons in, property, being a chose in action, does not have any effect unless the persons giving the notice establish to the satisfaction of the Commissioner General that the change in ownership or interests occurred on or before that date.

(6) Notwithstanding Subsection (2), a notice for the purposes of that subsection given after the date of coming into operation of the *Income Tax (Amendment No 3) Act 1979* in respect of a change in the ownership of, or in the interests of persons in, property, not being a chose in action, does not have any effect if the value of the property for the purposes of Section 57 is determined by the Commissioner General under Section 57(11) unless—

- (a) the value of the property applicable in accordance with Subsection (2) is less than the value determined by the Commissioner General in accordance with Section 57(11); or
- (b) the persons giving the notice establish to the satisfaction of the Commissioner General that the change in ownership or interests occurred on or before that date.

59. DEVOLUTION ON DEATH.

(1) Where the assets of a business carried on by a taxpayer devolve by reason of his death and those assets include any property, being trading stock, standing or growing crops, crop-stools or trees that have been planted and tended for the purpose of sale, the value of that property shall, subject to this Act, be included in the assessable income derived by the deceased up to the date of his death and the person upon whom the property devolves shall be deemed to have purchased it at that value.

(2) For the purpose of Subsection (1), the value of the property is, subject to Subsection (3), the amount that, under Section 57, would have been included in

respect of that property in the assessable income of the deceased taxpayer if he had not died but had disposed of the property, otherwise than in the ordinary course of his business, on the day of his death.

(3) Where—

- (a) the property referred to in Subsection (1) has, immediately after its devolution by reason of the death of the taxpayer, become an asset of a business carried on by the trustee of the estate of the deceased taxpayer or by the persons who are beneficially entitled to that estate; and
- (b) the trustee and the beneficiaries (if any) who are liable to be assessed in respect of the income of the business, or of a share in that income, unanimously so agree and give notice of their agreement to the Commissioner General at the time and in the manner prescribed,

the value of the property shall be, for the purpose of Subsection (1), the value, if any, at which that property would have been taken into account at the date of the death of the deceased taxpayer if he had not died and an assessment had been made in respect of the income derived by him up to that date.

Subdivision C. – Business Carried on Partly in and Partly out of Papua New Guinea.

60. SALES BY MANUFACTURERS.

Where goods manufactured out of Papua New Guinea are imported into Papua New Guinea and the goods are, either before or after importation, sold in Papua New Guinea by the manufacturer of the goods, the profit deemed to be derived in Papua New Guinea from the sale shall be ascertained by deducting from the sale price of the goods the amount for which, at the date the goods were shipped to Papua New Guinea, goods of the same nature and quality could be purchased by a wholesale buyer in the country of manufacture and the expenses incurred in transporting them to and selling them in Papua New Guinea.

61. SALES BY MERCHANTS.

Where goods that are imported into Papua New Guinea are, either before or after importation, sold in Papua New Guinea by a person, not being the manufacturer of the goods, the profit deemed to be derived in Papua New Guinea from the sale shall be ascertained by deducting from the sale price of the goods their purchase price and the expenses incurred in transporting them to and selling them in Papua New Guinea.

62. DETERMINATION OF PROFIT BY COMMISSIONER GENERAL.

Where the profit cannot be ascertained under either Section 60 or 61 to the satisfaction of the Commissioner General, it shall be deemed to be such amount as the Commissioner General determines.

63. GOODS DEEMED TO BE SOLD IN PAPUA NEW GUINEA.

(1) Where—

- (a) a person sells goods by means of anything done by himself when in Papua New Guinea or by means of an agent or representative in Papua New Guinea; and
- (b) those goods are in Papua New Guinea or are to be brought into Papua New Guinea for the purpose, or in pursuance or in consequence, of the sale,

he shall be deemed to have sold them in Papua New Guinea.

(2) For the purpose of Subsection (1), a sale is deemed to be made by means of a person or of something done when that person or thing done is instrumental in bringing about the sale.

64. SOURCE OF PROFITS.

In any case, not specified in the preceding sections of this Subdivision, where—

- (a) by reason of the manufacture, production or purchase of goods in one country and their sale in another; or
- (b) by reason of successive steps of production or manufacture in different countries; or
- (c) by reason of the making of contracts in one country and their performance in another,

or for any other reason, a question arises whether the whole or any part (and, if a part, what part) of any profit is derived by a person from sources in Papua New Guinea, the question shall be determined in accordance with the regulations, or, if there is no regulation applying to the case, shall be determined by the Commissioner General.

65. ASSESSABLE INCOME TO INCLUDE CERTAIN PROFITS.

(1) The assessable income of a taxpayer shall include any profit derived by him in the year of income that, under the provisions of this Subdivision, is derived or deemed to be derived in Papua New Guinea, but does not otherwise include the proceeds of any sale to which this Subdivision applies.

(2) An amount taken into account in ascertaining such a profit, or the amount of any expenditure incurred directly or indirectly in or in relation to such a sale, is not an allowable deduction.

Division 2A.**Gratuities and Transitional Payments to Non-Citizen Public Servants.****65A. INTERPRETATION.**

In this Division, unless the contrary intention appears—

“**gratuity**” means a payment of a kind referred to as such in Part III of the document entitled ‘Summary of Terms and Conditions of Employment and Transitional Arrangements for Contract Employment of Non-citizens by the Independent State of Papua New Guinea’ published by the Public Services Commission in September 1977, or in any document from time to time amending or in substitution of that document, whether the payment is paid as a lump sum payment or by instalments;

“**public servant**” means an officer or employee of the Public Service who is entitled to receive a salary, wages or allowances under a contract of employment entered into in accordance with Section 8 of the *Public Employment (Non-Citizens) Act 1978* and a person who, immediately before the commencement of Section 3 of the *Income Tax (Amendment No 3) Act 1978*, was a non-citizen to whom Part II of the *Public Employment (Non-Citizens) Act 1978* applies by virtue of Section 3 of that Act;

“**Public Service**” means—

- (a) the Public Service of Papua New Guinea; and
- (b) the Parliamentary Service continued in establishment under Section 2 of the *Parliamentary Service Act 1997*; and
- (c) the Teaching Service in so far as it relates to auxiliary members employed in educational institutions, as defined in the *Teaching Service (Auxiliary Members) Act 1973*, run by the State; and
- (d) any body declared to be a public authority for the purposes of the *Public Employment (Non-citizens) Act 1978*; and
- (e) any body prescribed as a public authority in the Regulations made under this Act;

⁷⁵*Division 2AB.**Gratuities and Transitional Payments to Contracted Employees.***65B⁷⁶. [REPEALED.]****65C. GRATUITY UNDER NEW CONTRACT.**

(1) Subject to Subsection (2), where a public servant who is a non-citizen enters into a contract of employment in accordance with Section 8 of the *Public Employment (Non-Citizens) Act 1978* and that contract includes a condition for the payment of a gratuity, the value of that gratuity shall be deemed to be income derived by way of salary or wages for the year of income in which it is derived and shall be taxable at the rate declared in the *Income Tax (Salary or Wages Tax) (Rates) Act 1979*.

(2) Subsection (1) applies only to a payment accrued before 1 January 1993 and any payment accruing after that date shall be deemed to be salary or wages paid in respect of a period of 26 fortnights preceding the date on which the payment was made.

*Division 2AB.**Gratuities and Transitional Payments to Contracted Employees.***65CA.OBJECTS.**

(1) The object of this Division is to enable the payment, by one instalment after completion of each three years of continuous service, of gratuities, taxed at the rate declared by Section 1 of the *Income Tax (Salary or Wages Tax) (Rates) Act 1979*, provided that this subsection shall not apply to gratuities accruing from 1 January 1993.

(2) Notwithstanding the provisions of Subsection (1) and Section 65CD(1), the rate declared by Section 1 of the *Income Tax (Salary or Wages Tax) (Rates) Act 1979* shall apply to the payment of a gratuity accrued before 1 January 1993 where the payment is made prior to a three year period.

(3) Gratuities accruing from 1 January 1993 shall be deemed to be salary or wages paid in respect of a period of 26 fortnights preceding the date on which payment was made.

65CB.INTERPRETATION.

In this Division unless the contrary intention appears—

“**continuous service**” means service with the current employer or an associate as defined in Section 4(1);

⁷⁵ Section 65A (definition of “transitional payment”) repealed by No 34 of 1992, s12.

⁷⁶ Section 65B repealed by No 34 of 1992, s13.

“**contract**” or “**contract of employment**” means a written agreement, duly stamped, for employment within Papua New Guinea;

“**eligible employee**” means a person, other than a public servant as defined in Section 65A, who is employed under a contract of employment and has completed at least three years continuous service with his current employer;

“**gratuity**” means an amount set aside under a contract or agreement for employment which would, but for the provisions of this Division, have been payable on termination of that employment, to the extent that it does not exceed 25% of the fully taxed salary or wages paid or payable;

⁷⁷65CC⁷⁸. [REPEALED.]

65CD. GRATUITY UNDER NEW OR EXISTING CONTRACTS.

(1) Where an eligible employee is employed under a contract of employment, which includes provision for the payment of a gratuity and such gratuity is paid on or after the completion of a three year period commencing from—

- (a) 1 January 1984, if the employee was entitled to receive a transitional payment; or
- (b) the date of entering into the initial contract, if the employee was not entitled to receive a transitional payment; or
- (c) the date of payment of last gratuity, not being a transitional payment,

the amount of gratuity paid shall be taxable at the rate declared by Section 1 of the *Income Tax (Salary or Wages Tax) (Rates) Act 1979*.

(2) To the extent a payment is made purporting to be in the nature of a gratuity which exceeds 25% of the fully taxed salary or wages derived during the three year employment period, the excess shall be deemed to be salary or wages paid in respect of a period of 26 fortnights preceding the date on which the payment was made.

Division 2B.

Salary or Wages.

65D. INTERPRETATION.

For the purposes of this Division and subject to the provisions of Section 214 and the allowance of a rebate—

“**assessable income**” means the gross amount of salary or wages income derived or earned;

⁷⁷ Section 65CB (definition of “transitional payment”) repealed by No 34 of 1992, s16.

⁷⁸ Section 65CC repealed by No 34 of 1992, s17.

“**assessment**” means the ascertainment of salary or wages tax payable in respect of assessable income;

“**taxable income**” means the gross amount of salary or wages income earned or derived without reference to allowable deductions.

65E. INCOME APPLICABLE.

(1) Subject to Sections 46B, 46C, 65F, 145 and 299E, this Division applies to income consisting of—

- (a) salary or wages; and
- (b) the value to a taxpayer of all benefits or allowances given or granted in respect of or in relation to his employment whether so given or granted in money, goods, sustenance, the use of premises, or otherwise; and
- (c) the net amount of an annuity after the exclusion of any amount of undeducted purchase price by virtue of Section 49; and
- (d) the capital amount of any allowance, gratuity or compensation paid in a lump sum, by virtue of Section 46B,

provided that the benefit to an employee—

- (e) subject to Section 40AA, of any air fares paid to or on his behalf by his employer or an associated person is the actual cost price of the air fares; and
- (f) of a motor vehicle or housing provided to him free of charge or at a subsidised cost shall be the prescribed value thereof; and
- (g) of a housing allowance shall be—
 - (i) when given to him under an approved Low Cost Housing Scheme—the prescribed value thereof; or
 - (ii) when given to him in respect of housing occupied by him—the amount of housing allowance in so far as it exceeds housing expenditure *and* the prescribed value of that housing as if the housing was provided directly to him by the employer; and
- (h) of any benefit granted outside Papua New Guinea to the employee shall be an amount equal to the cost to the employer of the benefit; and
- (i) of any meals provided by his employer or an associate of the employer shall be the prescribed value thereof; and
- (j)⁷⁹ [*Repealed.*]
- (k) of any discount on airline travel provided to an employee of an airline or related tourist business, by any airline company, shall be the prescribed value thereof.

⁷⁹ Section 65E(j) repealed by No 35 of 1998, s6.

(2) Subsection (1) does not apply to an employee who is a member of the disciplined forces in relation to the value of meals or sustenance provided in connection with the employment of that person.

(3) Salary or wages paid or payable by a foreign contractor in respect of an employment exercised in Papua New Guinea shall be deemed to be derived from a source in Papua New Guinea and for the purpose of a “foreign contractor” has the same meaning as in Division 14A.III.

(4) In determining, for the purposes of the application of Section 65E, the value to a taxpayer of a benefit granted in respect of or in relation to his employment, being a benefit by way of the grant of lease or licence in respect of residential accommodation, or the use of a motor vehicle, the Commissioner General shall have regard to all relevant matters, and in particular whether—

- (a) in the case of residential accommodation—
 - (i) the residential accommodation is situated in a place that is remote from a major centre of population; or
 - (ii) it is customary for employers in the industry in which the taxpayer is employed to provide residential accommodation for their employees without charge or for a rent or for other consideration that is less than the market value of the right to occupy the accommodation concerned; or
 - (iii) the taxpayer has no reasonable alternative other than to occupy the residential accommodation by reason of the unavailability on reasonable terms and conditions of suitable alternative residential accommodation (other than accommodation provided by or on behalf of his employer) within a reasonable distance from his place of employment; or
 - (iv) the residential accommodation is of a higher standard than could reasonably be expected to be provided for the taxpayer or is of a larger size than is necessary to accommodate the taxpayer or the taxpayer and his family; or
 - (v) any onerous conditions are attached to the lease or licence; and
- (b) in the case of motor vehicles—
 - (i) restrictions are imposed upon the private use of the vehicle; or
 - (ii) fuel is provided.

65F. NON-APPLICATION IN SPECIAL CIRCUMSTANCES.

(1) Where in the opinion of the Commissioner General income derived by way of salary or wages has not borne, or is not likely to bear, deductions of salary or wages tax by reason of special circumstances, that income to the extent it has not borne, or is unlikely to bear, deductions of salary or wages tax may be deemed to be income other than salary or wages and accordingly Section 46C shall apply.

- (2) For the purpose of this section, “**special circumstances**” means—
- (a) those special circumstances under which the Commissioner General may vary the amount of salary or wages tax to be deducted in respect of income by way of salary or wages or certain allowances by virtue of Section 299E; or
 - (b) the deeming of salary or wages to be a dividend for the purpose of Section 145 or under any other provisions of this Act; or
 - (c) the determination of liability to any tax on income derived by way of salary or wages which is non-Papua New Guinea income as defined in Section 219.

65G. LIABILITY TO PAY TAX.

A person who derives income to which this Division applies is liable to pay salary or wages tax upon that class of income at the rates declared by Act.

65H. PAYMENT OF SALARY OR WAGES TAX.

(1) Salary or wages tax payable by a person in accordance with this Division is in addition to any other tax payable by him on income to which this Division does not apply.

(2) Salary or wages tax when it becomes due and payable is a debt due to the State and payable to the Commissioner General.

(3) Subject to Subsection (4), if any salary or wages tax remains unpaid after the time when it became due and payable, additional tax is due and payable at the rate of 20% per annum on the amount unpaid.

(4) The Commissioner General may in cases, for reasons that he thinks sufficient, remit the additional tax or any part of the additional tax.

(5) Any unpaid salary or wages tax and any unpaid additional tax payable under this section may be sued for and recovered in a court of competent jurisdiction by the Commissioner General using his official name.

(6) For the purpose of protection of the Revenue, the provisions of Part VI, except those provisions contained in Sections 259, 261, 262, 263 and 264, shall have application.

65I. ASSESSMENT OF SALARY OR WAGES TAX.

(1) The ascertainment of the amount of any salary or wages tax shall be deemed to be an assessment within the meanings of all the provisions of this Act.

(2) For the purposes of this Division, the assessment of any liability to salary or wages tax shall be made at the end of each fortnight on the gross salary or wages earned or derived during that fortnight.

(3) The Commissioner General may serve on an employer or employee by post or otherwise a notice in writing in which is specified—

- (a) the amount of the salary or wages tax that the Commissioner General has ascertained is payable by the employee; and
- (b) the date on which that tax became due and payable.

(4) The production of a notice served under Subsection (3) or a document under the hand of the Commissioner General purporting to be a copy of such a notice is evidence that the amount of salary or wages tax specified in the notice or document became due and payable by the person on whom the notice was served on the date so specified.

65J. INCOME UPON WHICH SALARY OR WAGES TAX PAID NOT OTHERWISE ASSESSABLE.

Subject to Sections 46B, 46C and 65F income upon which salary or wages tax is payable or has been paid is not included in the assessable income of a person for the purposes of any other Division of this Act.

Division 3.

Deductions.

Subdivision A. – General.

66. ALLOWABLE DEDUCTIONS.

In calculating the taxable income of a taxpayer, the total assessable income derived by him during the year of income shall be taken as a basis and from it there shall be deducted all allowable deductions.

66A. NON-APPLICATION OF THIS DIVISION.

(1) Subject to Subsection (2) and (3), this Division does not apply to any deduction in relation to the assessable income of a taxpayer which consists solely of salary or wages in respect of which salary or wages tax has been paid or is payable except to the extent that deductions allowable under this Division shall be considered for the purpose of calculating a rebate in terms of Sections 214 and 214B.

(2) Where in a fiscal year a taxpayer's assessable income includes, in addition to salary or wages, any income other than salary or wages, hereinafter called non-salary or wages income, and any deductions allowable by virtue of this Division from that non-salary or wages income exceed the sum of that income or if the taxpayer is entitled to a deduction under the provision of Section 68AA, 69, 69A, 69B, 69C, 69D, 69E, 96 or 97A, the amount of the excess in that year or the amount deductible under Section 68AA, 69, 69A, 69B, 69C, 69D, 69E, 96 or 97A, as the case may be, shall be deemed a non-salary or wages loss incurred by the taxpayer for the purposes of calculating a rebate in terms of Section 214(4).

(3) Notwithstanding anything in any other provisions of this Act, losses or outgoings, to the extent to which they—

- (a) are incurred in gaining or producing assessable income from a source outside Papua New Guinea, or in the carrying on of a business outside Papua New Guinea other than export market development; and
- (b) exceed the assessable income derived from a source outside Papua New Guinea,

shall not be an allowable deduction from the assessable income derived from sources within Papua New Guinea.

67. SUCCESSIVE DEDUCTIONS.

Where, by this Act, it is provided that any deduction shall be made successively from two or more classes of income, the deduction shall be set off against the income of the first of those classes and, if it exceeds the income of that class, the excess shall be set off against the income of the second class, and so on until either the deduction or the income of the last of those classes is exhausted.

68. LOSSES AND OUTGOINGS.

(1)⁸⁰ ⁸¹Subject to Section 68A and Division III.10, all losses and outgoings, to the extent to which they are incurred in gaining or producing the assessable income or are necessarily incurred in carrying on a business for the purpose of gaining or producing that income, are allowable deductions except to the extent to which they are losses or outgoings of capital, or of a capital, private or domestic nature, or are incurred in relation to the gaining or production of exempt income.

(2) Expenditure incurred or deemed to have been incurred in the purchase of stock used by the taxpayer as trading stock shall be deemed not to be an outgoing of capital or of a capital nature.

(3) A deduction is not allowable under Subsection (1) in respect of long service leave, annual leave, sick leave or other leave except in respect of an amount paid to the person to whom the leave relates or, where that person is deceased, to the dependant or personal representative of that person and, for the purposes of that subsection, the amount paid shall be deemed to be a loss or outgoing incurred at the time when the payment is made.

(4) Foreign exchange losses incurred and realised in the repayment of a debt incurred or borrowings made in a currency other than Papua New Guinea currency shall be deemed not to be an outgoing of capital or of a capital nature to the extent they relate to debts incurred or borrowings entered into on or after 11 November 1986 or, in the case of debts incurred or borrowings entered into for the purpose of reforestation in Papua New Guinea, at any time.

⁸⁰ Section 68(1) amended in consequence of No 68 of 2000.

⁸¹ Section 68(1) amended in consequence of No 68 of 2000.

(5) Expenditure, including interest, incurred in connection with the construction or acquisition of an item of plant or capital asset, which would otherwise be an allowable deduction under this section, shall not be an allowable deduction to the extent it is incurred prior to the date on which the taxpayer—

- (a) first derives assessable income; or
- (b) first uses the plant or capital asset for the purpose of producing assessable income,

whichever is the later.

(6) Expenditure incurred in connection with the construction or acquisition of an item of plant or capital asset and not allowed as a deduction by virtue of Subsection (5) shall be deemed to form part of the cost of the unit of property for all the purposes of this Act.

(7 - 8)⁸² [*Repealed.*]

(9) Expenditure incurred by the taxpayer in the year of income for the preparation by a registered tax agent of a return or information required by or under this Act to be furnished to the Commissioner General shall be an allowable deduction.

(10) Subject to Subsections (11) and (12), a deduction is not allowable for a loss or outgoing otherwise allowable under this section to the extent that it is a loss or outgoing incurred after 31 December 1994 in respect (directly or indirectly) of club subscription or fees, payment for domestic services, or expenditure on electricity, gas or security relating to an employee, or provision of entertainment.

(11) A reference in Subsection (10) to the provision of entertainment is a reference to the provision (whether to the taxpayer or to another person and whether gratuitously, pursuant to an arrangement or agreement or otherwise) of—

- (a) entertainment by way of food, drink or recreation; or
- (b) accommodation or travel in connection with, or for the purpose of facilitating, entertainment to which Paragraph (a) applies (whether or not the accommodation or travel is also in connection with something else or for another purpose),

whether or not—

- (c) business discussions or business transactions occur; or
- (d) in connection with the working of overtime or otherwise in connection with the performance of the duties of any office or employment; or
- (e) for the purposes of promotion or advertising; or
- (f) at or in connection with a work seminar.

(12) Subsection (10) does not apply to a loss or outgoing incurred by the taxpayer in a year of income to the extent to which—

⁸² Section 68(1) amended in consequence of No 68 of 2000.

- (a) in a case where the taxpayer carried on a business that consists of, or includes the provision for payment of entertainment to clients or customers of that business—the loss or outgoing is in respect of the provision of that entertainment by the taxpayer for payment in the ordinary course of that business; or
- (b) the loss or outgoing is incurred by the taxpayer for the purpose of specifically promoting or advertising to the public goods or services provided by a business carried on by the taxpayer, being a loss or outgoing incurred in providing or exhibiting those goods or services; or
- (c) the loss or outgoing is in respect of entertainment provided by the taxpayer—
 - (i) for the purpose of generally promoting or advertising to the public—
 - (A) a business carried on by the taxpayer or another person; or
 - (B) goods or services provided by a business carried on by the taxpayer or another person; and
 - (ii) on the basis that the opportunities available to any of the following:—
 - (A) clients, customers or suppliers of the taxpayer or the other person;
 - (B) employees of the taxpayer or the other person;
 - (C) any other associates of the taxpayer or the other person;
 - (D) journalists;
 - (E) dignitaries;
 - (F) any other special class of persons,
 to obtain the benefit of the entertainment are not greater than those of ordinary members of the public; or
- (d) the loss or outgoing is incurred by the taxpayer in respect of—
 - (i) the provision of food and drink (not being food or drink provided at a party, reception or other social function) on working days in an in-house dining facility of the taxpayer—
 - (A) in any case—to employees of the taxpayer; or
 - (B) if the taxpayer is a company—to employees of the taxpayer or of a company that is related to the taxpayer,
 and for the purpose of this provision an **“in-house dining facility”** shall include any external dining facility determined by the Commissioner General to be an **“in-house dining facility”** having regard to the special circumstances of each case; or

- (ii) the provision of entertainment to a person (including the taxpayer) that—
 - (A) is reasonably incidental to the person’s attendance at a work seminar (held between 8am to 5pm on working days); and
 - (B) is not by way of, or in connection with, the recreation of the person; or
- (iii) the provision of food or drink to an employee of the taxpayer pursuant to the provisions of an industrial instrument or award relating to overtime; or
- (e) the loss or outgoing is incurred by the taxpayer in providing gratuitous entertainment to members of the public who are sick, disabled, poor or otherwise disadvantaged; or
- (f) the loss or outgoing is incurred by the taxpayer in providing entertainment in ordinary course of his or her business for a purpose or activity prescribed by the Commissioner General from time to time.

68A. SPECIAL DEDUCTIONS—SOLAR HEATING.

Where expenditure is incurred for the cost, including installation, of plant or equipment for the use in heating by solar power and would, but for the capital nature of such expenditure, be an allowable deduction under Section 68, that expenditure shall be an allowable deduction.

68AA⁸³. [REPEALED.]

68AB. CLUB FEES AND EXPENDITURE RELATING TO LEISURE FACILITIES.

(1) In this section—

“**boat**” includes any vessel;

“**building**” includes a part of a building;

“**club**” means a company or association that was established, or is carried on, solely or principally for the purpose of providing facilities for the use or benefit of its members in relation to any one or more of the following, namely—drinking, dining, recreation, entertainment, amusement or sport;

“**excepted facility**”, in relation to a year of income, means—

- (a) a boat that, at all times during the year of income, is held for sale by the taxpayer as trading stock in the ordinary course of a business carried on by the taxpayer; or

⁸³ Section 68AA repealed by No 38 of 1991, s9.

- (b) a boat that, at all times during the year of income, is used, or held for use, by the taxpayer principally for any one or more of the following purposes:—
- (i) for the purpose of being let on hire in the ordinary course of a business of letting boats on hire carried on by the taxpayer;
 - (ii) for the purpose of transporting for reward members of the public, goods (including livestock) or substances in the ordinary course of a business carried on by the taxpayer;
 - (iii) for any other purpose in the ordinary course of a business carried on by the taxpayer if the taxpayer satisfies the Commissioner General that the use of such a boat for that purpose is essential to the efficient conduct of that business; or
- (c) land that, at all times during the year of income, is held for sale by the taxpayer in the ordinary course of a business of selling land carried on by the taxpayer; or
- (d) a building or other structure that, at all times during the year of income, is held for sale by the taxpayer in the ordinary course of a business of selling such buildings or other structures carried on by the taxpayer; or
- (e) land or a building or other structure that, at all times during the year of income, is used or held for use by the taxpayer principally for any one or more of the following purposes:—
- (i) the derivation by the taxpayer of income in the nature of rents, lease premiums, licence fees or similar charges;
 - (ii) the provision for reward of facilities for holidays, or for sport, recreation or similar leisure-time pursuits, in the ordinary course of a business of providing such facilities;

“land” includes land to which improvements have been made or upon which improvements have been erected;

“leisure facility” means—

- (a) a boat, other than a boat that is an excepted facility in relation to the year of income; or
- (b) land, other than land that is an excepted facility in relation to the year of income, used, or held for use, for or in connection with holidays or sport, recreation or similar leisure-time pursuits; or
- (c) a building or other structure, other than a building or other structure that is an excepted facility in relation to the year of income, used, or held for use, for or in connection with holidays or sport, recreation or similar leisure-time pursuits.

(2) This section applies to a loss or outgoing to the extent to which it is incurred by a taxpayer—

- (a) to secure or maintain, for the taxpayer or any other person, membership of a club or rights to enjoy, otherwise than as a member, facilities provided by a club for the use or benefit of its members; or
- (b) for or in connection with—
 - (i) the acquisition of ownership of, or of rights to use, a leisure facility; or
 - (ii) the retention of ownership of, or of rights to use, a leisure facility; or
 - (iii) any obligations associated with ownership of, or with rights to use, a leisure facility; or
 - (iv) the use, operation, maintenance or repair of a leisure facility.

(3) Subject to Subsection (4), notwithstanding anything in any other provision of this Act, a loss or outgoing to which this section applies is not an allowable deduction.

(4) Where—

- (a) a boat, land or a building or other structure is held for sale, or used or held for use, as mentioned in the definition of “**excepted facility**” in Subsection (1) at all times during part only of the year of income; and
- (b) this section would, but for this subsection, prevent a loss or outgoing, or a part of a loss or outgoing, incurred by the taxpayer in relation to the boat, land or building or other structure from being an allowable deduction from the assessable income of the taxpayer of the year of income but would not prevent that loss or outgoing or that part of that loss or outgoing from so being an allowable deduction if the boat, land or building or other structure were held for sale, or used or held for use, as referred to in Paragraph (a) at all times during the whole of the year of income,

the Commissioner General may determine that this section shall not prevent so much of that loss or outgoing or of that part of that loss or outgoing, as the case may be, as he considers reasonable having regard to the circumstances of the case from so being an allowable deduction.

(5) Where the taxpayer owned, or had rights to use, a boat, land or a building or other structure during part of the year of income and neither owned, nor had rights to use, the boat, land or building or other structure during the remainder of the year of income, this section applies in relation to the boat, land or building or other structure as if that part of the year of income were the whole of the year of income.

68AC. PREPAID EXPENSES.

(1) In this section—

“**benefit derived**” includes—

- (a) the taking possession of actual goods; or
- (b) in the case of insurance the annual premium for the year in which the last day of the year of income falls; or
- (c) in the case of rent, fees, charges, lease payment, royalty or any other similar service payment the *pro rata* value of the use or service provided during the year of income;

“**expenditure**” includes the payment or an obligation to pay for any goods or services the use of articles or property or the right to use such articles or property for which a deduction may be allowed under the provisions of this Act.

(2) Except where specifically provided to the contrary, where expenditure is incurred in respect of a benefit which is to be derived, either totally or in part, in a subsequent year of income, the deduction allowable in respect of that expenditure shall not exceed the value of the benefit derived during that year of income.

(3) Where, pursuant to Subsection (2), a deduction for an amount of expenditure was not allowed or only partially allowed the amount of expenditure disallowed shall be an allowable deduction in each subsequent year of income to the extent that the benefit of the expenditure is derived in that year.

68AD. MANAGEMENT FEES.

(1)⁸⁴ [*Repealed.*]

(2) This section applies to a loss or outgoing to the extent to which it is incurred by a taxpayer 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).

⁸⁴ Section 68AD Subsection (1) omitted by No. 22 of 2004, s. 15.

(3)⁸⁵ ⁸⁶Notwithstanding anything in any other provision of this Act, the deduction allowable under Section 68 in respect of management fees paid after 1 January 2005 shall not exceed the greater of –

- (a) 2% of the assessable income derived from Papua New Guinea sources by the taxpayer; or
- (b) 2% of the total allowable deductions, excluding management fees, incurred by the taxpayer in Papua New Guinea.

(4)⁸⁷ ⁸⁸To the extent management fees are deductible under this Section, the source country in which those management fees are derived shall be deemed to be Papua New Guinea.

68AE. LEASE PAYMENTS.

(1)⁸⁹ In this section–

“first prescribed lease”, in relation to a unit of property means the prescribed lease under which the taxpayer or an associate of the taxpayer first became entitled to the use or possession of the unit of property;

“lease fee” means an amount (other than a lease premium) paid or liable to be paid as consideration for the grant of any right in relation to a unit of property under a prescribed lease, but does not include a royalty;

⁹⁰**“notional depreciation”**, in relation to a unit of property in relation to a year of income, means the depreciation (if any) on a diminishing value or, at the option of the taxpayer, prime cost basis that would be allowable under Section 73(1) (excluding such further depreciation as may be allowable under Section 73(3), (4), (5), (6), (7) or (9)) if–

- (a) the taxpayer owned the unit of property that is the subject of the prescribed lease; and
- (b) the unit of property was installed ready for use at the time the person first used or installed the property ready for use by him in producing assessable income; and
- (c) the cost of the unit of property was an amount equal to the market value of the property as at the date the taxpayer first obtained the right to the use or possession of the unit of property under the first prescribed lease;

“notional interest expense”, in relation to a unit of property in relation to a year of income, means the amount of interest that would have been

⁸⁵ Section 68AD Subsection (3) substituted by No. 22 of 2004, s. 15.

⁸⁶ Section 68AD Subsection (3) substituted by No. 22 of 2004, s. 15.

⁸⁷ Section 68AD Subsection (4) inserted by No. 22 of 2004, s. 15.

⁸⁸ Section 68AD Subsection (4) inserted by No. 22 of 2004, s. 15.

⁸⁹ Section 68AE (definition of “long term bond rate”) repealed by No 26 of 1989.

⁹⁰ Section 68AE (definition of “long term bond rate”) repealed by No 26 of 1989.

incurred by the taxpayer during that year of income if the taxpayer entered into a notional loan;

“notional loan” in relation to a unit of property means a loan—

- (a) taken out or drawn down at the date of commencement of the first prescribed lease; and
- (b) of an amount equal to the value of the unit of property at that date as reduced by the sum of—
 - (i) any premium; or
 - (ii) the present value of any residual amount in relation to the prescribed lease; and
- (c) with in interest rate equal to the notional rate; and
- (d) for a term equal to the effective life of the unit of property (or units of property of that kind) determined under Section 74; and
- (e) with repayment being payable by way of equal monthly instalments in arrears over the term of the loan;

“notional rate” means the rate prescribed by the regulations for the purposes of this section;

“prescribed lease” means an agreement under which a non-resident associate grants to a taxpayer a right to the use or possession of any unit of property whether situated in Papua New Guinea or elsewhere and whether entered into before or after the commencement of this section;

“present value of any residual amount” means the value as at the date of the first prescribed lease of any residual amount under that lease discounted by reference to the notional rate.

(2) This section applies to any lease fee incurred after 1 January 1989, and to any unit of property that is the subject of a prescribed lease.

(3) Notwithstanding anything in any other provision of this Act, the deduction allowable under Section 68 in respect of lease fees in relation to a year of income commencing on or after 1 January 1989 shall not exceed the lesser of A or B, where—

- (a) A is the sum of any lease fees incurred under the prescribed lease during the year of income; and
- (b) B is the sum of the notional depreciation and notional interest expense in relation to the property for the year of income.

(4) The total amount that is allowable as a deduction in relation to a taxpayer in relation to a year of income commencing on or after 1 January 1989 in relation to a unit of property to which this section applies shall not exceed the sum of—

- (a) the value of the unit of property as at the date it is first used or installed ready for use for the purpose of gaining or producing assessable income; and
- (b) the amount of notional interest expense under the notional loan in relation to the unit of property in relation to that year or a prior year,

as reduced by the sum of—

- (c) any amount that has been allowed or is allowable as a deduction of the taxpayer by way of a lease fee in relation to the unit of property for a year of income commencing on or before 1 January 1988; and
- (d) any amount allowed as a deduction in accordance with Subsection (3) in relation to the unit of property.

69. DEDUCTIONS FOR GIFTS TO POLITICAL PARTIES.

(1) In this section—

“national company” means a company incorporated in Papua New Guinea whose membership comprises no person other than—

- (i) citizens; or
- (ii) companies regarded as national companies by virtue of this definition; or
- (iii) citizens holding shares in trust for national companies or organisations whose membership is comprised of none other than citizens;

“political party” means any national organisation recognised by the Tribunal as a political party;

“Tribunal” means the Tribunal established under Subsection (3).

(2) Gifts of the value of K2.00 and upwards of money, or of property other than money purchased by the taxpayer in the 12 months immediately preceding the making of the gift, made by a national company or a citizen to a political party, shall be an allowable deduction.

(3) For the purpose of deciding whether a national organisation be recognised as a political party, there is established a Tribunal consisting of—

- (a) an Ombudsman, who shall be Chairman; and
- (b) the Speaker; and
- (c) a Judge of the National Court who is a citizen,

which, in reaching its decision, shall consider—

- (d) the degree of popular support enjoyed by the national organisation; and
- (e) the acceptance of the national organisation as a political party by the Parliament; and

- (f) the number of candidates sponsored by the national organisation in national elections; and
- (g) such other factors as it considers relevant,

and whose decision is final.

(4) A national organisation desiring to be recognised as a political party for the purposes of this section shall make application to the Commissioner General who shall refer the application to the Tribunal.

69A. DEDUCTION FOR GIFTS TO SPORTING BODIES.

(1) Subject to Subsection (2), a gift of money or property other than money, made by the taxpayer to a sporting body established in Papua New Guinea for the encouragement or promotion of an athletic game or athletic sport in which human beings are the sole participants, shall be an allowable deduction.

(2) Subsection (1) applies—

- (a) to a gift whose value exceeds K50.00; and
- (b) in the case of a gift of property other than money, where the property was acquired by the taxpayer in the 12 months immediately preceding the making of the gift.

69B. DOUBLE DEDUCTION FOR GIFTS TO SOUTH PACIFIC GAMES (1991) FOUNDATION.

(1) In this section, “**tax saving**” means the reduction of tax payable resulting from the allowance of a deduction under this section.

(2) An amount by way of a gift (the value which is equal to, or exceeds, K1,500.00) of money or of property (other than money) purchased by a taxpayer in the 12 months immediately preceding the making of the gift, made by the taxpayer on or after 29 March 1989 to the South Pacific Games (1991) Foundation established by the *South Pacific Games (1991) Foundation Act 1989* shall be an eligible amount.

(3) An amount equal to twice the eligible amount shall be an allowable deduction under this section.

(4) Where a double deduction is allowable under this section the amount deductible shall be allowable only to the extent that the tax saving resulting from the allowance of the deduction does not exceed 75% of the eligible amount.

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

69C. DEDUCTIONS FOR GIFTS TO THE FOUNDATION FOR LAW, ORDER AND JUSTICE.

Gifts of money or property (other than money) purchased by the taxpayer in the 12 months immediately preceding the making of the gift to the Foundation for Law, Order and Justice shall be an allowable deduction.

69D. DOUBLE DEDUCTION FOR GIFTS TO CERTAIN WORLD EXPOSITIONS.

(1) In this section, “**tax saving**” means the reduction of tax payable resulting from the allowance of a deduction under this section.

(2) An amount by way of a gift (the value of which is equal to, or exceeds, K2.00) of money or of property (other than money) purchased by a taxpayer in the 12 months immediately preceding the making of the gift, made by the taxpayer on or after 1 January 1991 and before 31 December 1993 towards the cost of the participation by Papua New Guinea in the 1992 World Exposition in Seville, Spain shall be an eligible amount.

(3) An amount equal to twice the eligible amount shall be an allowable deduction under this section.

(4) Where a double deduction is allowable under this section the amount deductible shall be allowable only to the extent that the tax saving resulting from the allowance of the deduction does not exceed 75% of the eligible amount.

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

69E. DEDUCTION FOR GIFTS TO CHARITABLE BODIES.

(1) Subject to Subsection (2), a gift of money or property other than money to a charitable body approved by the Commissioner General shall be an allowable deduction.

(2) Section (1) applies—

- (a) to a gift whose value exceeds K50.00; and
- (b) in the case of a gift of property other than money, where the property was acquired by the taxpayer in the 12 months immediately preceding the making of the gift.

69F. DONATIONS BY COMPANIES FOR THE 3RD GLOBAL CONFERENCE ON NATIONAL YOUTH SERVICE.

(1) An amount by way of a gift (the value of which is equal to or exceeds K1,500.00) of money or property (other than money) purchased by the company in the 12 months immediately preceding the making of the gift, made by the company

after 1 January 1996 for the 3rd Global Conference on National Youth Service in Papua New Guinea shall be an eligible amount.

(2) An amount equal to twice the eligible amount shall be an allowable deduction under this section.

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

69G. DONATIONS TO THE SEVENTH SOUTH PACIFIC FESTIVAL OF ARTS.

(1) An amount by way of a gift, which is equal to or exceeding K1,500.00, made after 1 January 1996 to the National Cultural Commission for the Papua New Guinea Contingent to the Seventh South Pacific Festival of Arts shall be an eligible amount.

(2) An amount equal to twice the eligible amount shall be an allowable deduction under this section.

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

69H. DOUBLE DEDUCTIONS FOR DONATIONS TO LAW AND ORDER.

(1) An amount by way of a gift (the value of which is equal to or exceeds K1,500.00) of money or property (other than money) made by a company after 1 November 1996 to a trust for special law and order projects in Papua New Guinea defined by the Police Commissioner shall be an eligible amount.

(2) An amount equal to twice the eligible amount shall be an allowable deduction under this section.

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

69I. DOUBLE DEDUCTION FOR GIFTS TO NATIONAL DAY CELEBRATIONS.

(1) An amount by way of gift (the value which is equal to or exceeds K5,000.00) of money or property (other than money) purchased by the company in the 12 months immediately preceding the making of the gift, made by the company to the National Events Council in respect of promotion of National Day celebrations shall be an eligible amount.

(2) An amount equal to twice the eligible amount shall be an allowable deduction under this section.

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

(4) This section shall apply to gifts made in the period 1 January 1997 to 31 December 2000.

69J. DONATIONS TO PNG SPORTS COMMISSION OLYMPIC 2000 PROJECT.

(1) An amount by way of gift (the value which is equal to or exceeds K5,000.00) of money, or property (other than money) purchased by a company in the 12 months immediately preceding the making of the gift, made by the company to the Papua New Guinea Sports Commission in respect of the PNG Sports Foundation 2000, shall be an eligible amount.

(2) An amount equal to twice the eligible amount shall be an allowable deduction under this section.

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

(4) This section shall apply to gifts made in the period 1 January 1997 to 31 December 2000.

69K. DOUBLE DEDUCTION FOR GIFTS TO PNG SPORTS FEDERATION INC.

⁹¹(1) An amount by way of gift (the value of which is equal to or exceeds K5000.00) of money, or property (other than money) purchased by a taxpayer in the 12 months immediately preceding the making of the gift, made by the taxpayer to the Papua New Guinea Sports Federation Inc in respect of the 2003 South Pacific Games or the 204 Inaugural PNG National Games shall be an eligible amount.

(2) An amount equal to twice the eligible amount shall be an allowable deducted under this section.

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

(4) Where a double deduction is allowable under this section, th amount deductible shall be allowable only to the extent that the tax saving resulting from the allowance of the deduction does not exceed 75% of the eligible amount.

(5) This section applies to gifts made in the period 1 January 2003 to 31 December 2004.

⁹¹ Section 69K Inserted by No. 22 of 2004, s. 16.

70⁹². [REPEALED.]**70A. DEDUCTION FOR EDUCATION EXPENSES.**

(1) In this section—

“**dependant child**” means a child or student wholly maintained by the taxpayer;

“**net education expenses**” means amounts of educational fees paid by the taxpayer to a non-governmental primary or high school, whether within or outside Papua New Guinea, less any subsidy, allowance or assistance received.

(2) The amount of net education expenses incurred by a resident taxpayer in connection with the education of a dependant child is an allowable deduction.

(3) The amount allowable under this section is the net education expenses incurred by the taxpayer.

71. LOSS ON PROPERTY ACQUIRED FOR PROFIT-MAKING.

(1) Subject to Subsection (2), a loss incurred by the taxpayer in the year of income upon the sale of any property or from the carrying on or carrying out of any undertaking or scheme, being a sale, undertaking or scheme any profit from which would have been included in his assessable income, is an allowable deduction.

(2) A deduction is not allowable under Subsection (1) (except where the Commissioner General, being satisfied that the property was acquired by the taxpayer for the purpose of profit-making by sale or for the carrying on or carrying out of a profit-making undertaking or scheme, otherwise directs) unless the taxpayer, not later than the date upon which he lodges his first return under this Act after having acquired the property, notifies the Commissioner General that the property has been acquired by him for the purpose of profit-making by sale or for the carrying on or carrying out of a profit-making undertaking or scheme.

71A. CERTAIN AMOUNTS DISREGARDED IN ASCERTAINING TAXABLE INCOME.

(1) Notwithstanding Section 68, losses or outgoings consisting of expenditure incurred by a taxpayer in the purchase or acquisition, after the date of coming into operation of the *Income Tax (Amendment No 3) Act 1979*, of any prescribed property as trading stock of the taxpayer shall, if the Commissioner General considers that it would be unreasonable that a deduction be allowable to the taxpayer in respect of the whole of those losses or outgoings, be allowable as a deduction to the taxpayer to the extent only that the Commissioner General considers that it is reasonable in the circumstances that a deduction be allowable to the taxpayer in respect of those losses or outgoings.

⁹² Section 70 repealed by No 64 of 1986.

(2) Where—

- (a) expenditure incurred by a taxpayer in the purchase or acquisition, after the date of coming into operation of the *Income Tax (Amendment No 3) Act 1979*, of any prescribed property that was purchased or acquired in the carrying on or carrying out of any profit-making undertaking or scheme would, but for this subsection, be taken into account for the purpose of ascertaining whether any profit arose, or any loss was incurred, from the carrying on or carrying out of the undertaking or scheme and for the purpose of ascertaining the amount of any such profit or loss; and
- (b) the Commissioner General considers that it would be unreasonable that the whole of that expenditure be taken into account for those purposes,

that expenditure shall be taken into account for those purposes to the extent only that the Commissioner General considers that it is reasonable in the circumstances that the expenditure be taken into account for those purposes.

(3) Where—

- (a) prescribed property that was acquired by a taxpayer after the date of coming into operation of the *Income Tax (Amendment No 3) Act 1979* was or is treated or used by the taxpayer as an asset of a business carried on by the taxpayer; and
- (b) but for this subsection, a deduction would be allowable to the taxpayer in respect of the value of that property; and
- (c) the Commissioner General considers that it would be unreasonable that a deduction be allowable to the taxpayer in respect of the value of the property to the extent to which, but for this subsection, a deduction would be allowable to the taxpayer in respect of the value of the property,

a deduction shall be allowable to the taxpayer in respect of the value of the property to the extent only that the Commissioner General considers that it is reasonable in the circumstances that a deduction be allowable to the taxpayer in respect of that value.

(4) Where—

- (a) the value of any prescribed property that—
 - (i) was acquired by a taxpayer after the date of coming into operation of the *Income Tax (Amendment No 3) Act 1979*; and
 - (ii) was or is used by the taxpayer in the carrying on or carrying out of any profit-making undertaking or scheme—

would, but for this subsection, be taken into account for the purpose of ascertaining whether or not any profit arose, or any loss was incurred, from the carrying on or the carrying out of the undertaking or scheme and for the

purpose of ascertaining the amount of any such profit or loss; and

- (b) the Commissioner General considers that it would be unreasonable that the value of the property be taken into account for those purposes to the extent to which the value would, but for this subsection, be taken into account for those purposes,

the value of the property shall be taken into account for those purposes to the extent only that the Commissioner General considers that it is reasonable in the circumstances that that value be taken into account for those purposes.

(5) In forming an opinion for the purposes of Subsection (1) or (3) as to the extent to which it is reasonable that a deduction be allowable to a taxpayer in respect of expenditure incurred in the purchase or acquisition of prescribed property or in respect of the value of prescribed property, as the case may be, or in forming an opinion for the purposes of Subsection (2) or (4) as to the extent to which it is reasonable that expenditure incurred by a taxpayer in the purchase or acquisition of prescribed property should be taken into account for the purposes referred to in Subsection (2) or that the value of prescribed property should be taken into account for the purposes referred to in Subsection (4), as the case may be—

- (a) where the taxpayer expended moneys in purchasing or acquiring the prescribed property the Commissioner General shall have regard to the circumstances in which, and the person or persons from whom, the taxpayer obtained moneys—
- (i) that were expended by the taxpayer in purchasing or acquiring the prescribed property; or
 - (ii) that, in the opinion of the Commissioner General, were obtained by, or paid to, the taxpayer to enable the prescribed property to be purchased or acquired; and
- (b) where the taxpayer borrowed from another person (in this paragraph referred to as the “**lender**”) moneys that were expended by the taxpayer in purchasing or acquiring the prescribed property or moneys that, in the opinion of the Commissioner General, were obtained by, or paid to, the taxpayer to expend moneys in purchasing or acquiring the prescribed property—the Commissioner General shall have regard to—
- (i) the circumstances in which, and the terms and conditions on which, the taxpayer borrowed those moneys from the lender; and
 - (ii) whether, in the opinion of the Commissioner General, the taxpayer and the lender were dealing with each other at arm’s length in connection with the borrowing of those moneys by the taxpayer; and
- (c) where, either before or after the purchase or acquisition of the prescribed property by the taxpayer, an agreement or arrangement (whether or not enforceable by legal proceedings and whether or not

intended to be so enforceable) was entered into, or an understanding was reached, as a result of which there has been, or there could reasonably be expected to be, a substantial reduction in the value of the prescribed property—the Commissioner General shall have regard to that agreement, arrangement or understanding; and

- (d) where the purchase or acquisition of the prescribed property by the taxpayer arose out of, or was made in the course of, a transaction, operation, undertaking, scheme or arrangement that was entered into or carried out for the purpose, or for purposes that included the purpose, of securing that a person who, if the transaction, operation, undertaking, scheme or arrangement, had not been entered into or carried out, would have been liable to pay income tax in respect of a year of income would not be liable to pay income tax in respect of that year of income or would be liable to pay less income tax in respect of that year of income than that person would have been liable to pay if the transaction, operation, undertaking, scheme or arrangement had not been entered into or carried out—the Commissioner General shall have regard to that transaction, operation, undertaking, scheme or arrangement; and
- (e) where the purchase or acquisition of the prescribed property by the taxpayer arose out of, or was made in the course of, a transaction, operation, undertaking, scheme or arrangement that the Commissioner General is satisfied was by way of dividend stripping or was similar to a transaction, operation, undertaking, scheme or arrangement by way of dividend stripping—the Commissioner General shall have regard to the transaction, operation, undertaking, scheme or arrangement; and
- (f) where—
 - (i) the purchase or acquisition of the prescribed property by the taxpayer arose out of, or was made in the course of, a transaction, operation, undertaking, scheme or arrangement under which, or in the course of which, money was to be paid, or other property was to be transferred or made available by a person other than the taxpayer, whether before or after the purchase or acquisition of the prescribed property, to the taxpayer, to the taxpayer and a person or persons other than the taxpayer or to a person or persons other than the taxpayer; and
 - (ii) the Commissioner General is satisfied that the amount of money so to be paid, or the value of the property so to be transferred or made available, as the case may be, was to be not less than, or not substantially less than, the amount expended by the taxpayer in the purchase or acquisition of the prescribed property, the Commissioner General shall have regard to the fact that the purchase or acquisition of the prescribed property by the taxpayer

arose out of, or was made in the course of such a transaction, operation, undertaking, scheme or arrangement; and

- (g) where the purchase or acquisition of the prescribed property by the taxpayer arose out of, or was made in the course of, a transaction, operation, undertaking, scheme or arrangement under which, or in the course of which, other prescribed property was to be issued or allotted by a company (whether to the taxpayer or any other person or persons) and it could reasonably be expected that, as a result of the issue or allotment of that other prescribed property, the value of the prescribed property purchased or acquired by the taxpayer would be substantially reduced—the Commissioner General shall have regard to that transaction, operation, undertaking, scheme or arrangement; and
- (h) where the purchase or acquisition of the prescribed property by the taxpayer arose out of, or was made in the course of, a transaction, operation, undertaking, scheme or arrangement under which, or in the course of which, rights in respect of the prescribed property or in respect of other prescribed property (whether that other prescribed property had been issued or allotted before the time of the purchase or acquisition by the taxpayer of the first-mentioned prescribed property or was to be issued or allotted at a later time) were to be withdrawn or varied and it would reasonably be expected, that as a result of a withdrawal or variation of those rights, the value of the prescribed property purchased or acquired by the taxpayer would be substantially reduced—the Commissioner General shall have regard to that transaction, operation, undertaking, scheme or arrangement; and
- (i) the Commissioner General shall have regard to any other matters that he considers relevant.

(6) In this section, “**prescribed property**” means any chose in action.

(7) In the preceding provisions of this section, references to the value of any prescribed property shall, unless the contrary intention appears, be read as including references to part of the value of that prescribed property.

(8) For the purposes of this section—

- (a) a person to whom prescribed property is issued or allotted by a company shall be taken to have acquired that prescribed property; and
- (b) a person upon whom prescribed property devolves by reason of a death of a person shall be taken to have acquired that prescribed property; and
- (c) a person in whom prescribed property vests by the operation of any trust or the exercise of any power under a trust shall be taken to have acquired that prescribed property.

(9) The reference in Subsection (5)(b) to terms and conditions shall be read as including a reference to implied terms and conditions and to terms and conditions

that are not enforceable by legal proceedings whether or not they were intended to be so enforceable.

(10) Where, by virtue of the application of the preceding provisions of this section, the amount (in this subsection referred to as the “**relevant amount**”) of the deduction that is allowable to a taxpayer in respect of losses or outgoings incurred by the taxpayer in the purchase or acquisition of prescribed property is less than the amount of those losses and outgoings, the cost or cost price of that prescribed property shall, for the purposes of the application of Part III.2B in relation to that property in relation to the taxpayer, be taken to be an amount that is the same as the relevant amount.

(11) References in this section to expenditure incurred by a taxpayer in the purchase or acquisition of any prescribed property shall, in the case of prescribed property being a share or stock in the capital of a company, be read as including references to any payment made or other consideration given by the taxpayer to the company in respect of the prescribed property, whether as payment of a premium in respect of the prescribed property, as a payment of unpaid capital in respect of the prescribed property or otherwise and whether on application for an allotment of the prescribed property, to meet calls or otherwise.

72. REPAIRS.

(1) Expenditure incurred by the taxpayer in the year of income for repairs, not being expenditure of a capital nature, to any premises, or part of premises, plant, machinery, implements, utensils, rolling stock or articles held, occupied or used by him for the purpose of producing assessable income, or in carrying on a business for that purpose, is an allowable deduction.

(2) Expenditure incurred upon repairs to any premises or part of premises not so held, occupied or used is not an allowable deduction.

(3) Where the premises, part of premises, plant, machinery, implements, utensils, rolling stock or articles referred to in Subsection (1) were held, occupied or used by the taxpayer only partly for the purpose of producing assessable income, or only partly in carrying on a business for that purpose, so much only of the expenditure that, but for this Subsection, would be an allowable deduction under Subsection (1) as, in the opinion of the Commissioner General, is reasonable in the circumstances, shall be an allowable deduction.

72A. DOUBLE DEDUCTION FOR STAFF TRAINING.

(1) In this section, “**tax saving**” means the reduction of tax payable resulting from the allowance of a deduction under this section.

(2) Subject to this section, a deduction is allowable for expenditure incurred—

- (a) from 1 January 1980 for the payment of salary and wages to a *bona fide* apprentice registered with the National Apprenticeship and Trade Testing Board under the *Apprenticeship and Trade Testing Act 1986*; and

- (b) from 1 January 1983 for the payment of salary and wages to an employee, being an automatic citizen attending a full-time professional training course at—
 - (i) a Government Training Institute; or
 - (ii) a prescribed tertiary place of education; and
- (c) from 1 January 1984 for the payment of salary and wages to training officers where they are engaged wholly and exclusively in training or educational activities and are not engaged directly in the derivation of the assessable income of the taxpayer.

(3) The amount allowable under this section shall be twice the amount that but for this section would be or would have been an allowable deduction.

(4) Where a double deduction is allowable under this section, the amount deductible shall be allowable only to the extent that the tax saving resulting from the allowance of the deduction does not exceed 75% of the expenditure actually incurred.

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

72B⁹³. [REPEALED.]

72C. DOUBLE DEDUCTION FOR EXPORT MARKET DEVELOPMENT COSTS.

(1) In this section, unless the contrary intention appears—

“export” does not include the export of goods by way of gift or the taking or sending of goods out of Papua New Guinea with the intention that the goods will at some later time be brought or sent back to Papua New Guinea otherwise than for repair or replacement;

“export market development expenditure” means specified outgoings incurred primarily and principally for the purpose of seeking opportunities, or creating and increasing demand, for the export from Papua New Guinea of goods that have been manufactured in Papua New Guinea but does not include—

- (a) specified outgoings incurred in promoting the sale of goods manufactured or produced outside Papua New Guinea, if the labour costs incurred in processing the goods in Papua New Guinea are less than 10% of the sale price; or
- (b) so much of any outgoings incurred by a person as—
 - (i) has been, or is to be, paid or reimbursed to the taxpayer by another person; or

⁹³ Section 72B repealed by No 64 of 1986.

- (ii) is incurred in or in connection with services or doing anything for which the taxpayer has been, or is to be, paid by another person;

“specified agent” in relation to a taxpayer means—

- (a) in the case of a taxpayer not being a company, the taxpayer himself; or
- (b) in the case of a taxpayer being a company, a director, or a member of the governing body, of the company; or
- (c) in the case of a taxpayer being a partnership, one of the partners; or
- (d) in any case an employee of the taxpayer;

“specified outgoings” means outgoings incurred by a taxpayer by way of—

- (a) expenses incurred in respect of publicity and advertisements in any media outside Papua New Guinea; or
- (b) expenses directly attributable to the provision of samples without charge to prospective customers outside Papua New Guinea including the cost of delivery of the samples; or
- (c) expenses directly attributable to carrying out export market research or the obtaining of export marketing information; or
- (d) expenses directly attributable to the preparation of tenders for the supply of goods to prospective customers outside Papua New Guinea; or
- (e) expenses by way of fares in respect of travel to a country outside Papua New Guinea by a specified agent of the taxpayer, being travel necessarily undertaken for the purpose of negotiating or concluding contracts for sale of goods on behalf of the company or for the purposes of participating in trade fairs or trade or industrial exhibitions and actual expenses, subject to a maximum of K100 per day, for accommodation and sustenance for the whole of the period commencing with the specified agent’s departure from Papua New Guinea and ending with his return to Papua New Guinea; or
- (f) expenses for giving technical information to persons outside Papua New Guinea relating generally to manufactured goods from Papua New Guinea offered for sale, excluding expenses for giving technical information to purchasers after purchase; or
- (g) expenses directly attributable to the provision of exhibits for trade fairs or trade or industrial exhibits; or
- (h) expenses for services rendered for public relations work connected with export; or

- (i) expenses directly incurred for participation in trade fairs or trade or industrial exhibitions other than expenses specified in Paragraphs (e) and (g); or
- (j) expenses for the cost of maintaining sales offices overseas for the promotion of exports from Papua New Guinea; or
- (k) expenses incurred by a local manufacturer directly attributable to the costs of travel of *bona fide* buyers or potential buyers from a foreign country, where the purpose of the travel is to purchase, or investigate the possibilities of purchase, of locally manufactured goods in commercial quantities for export from Papua New Guinea;

“the tax saving” means the reduction in tax payable resulting from the allowance of a deduction under this section.

(2) No deduction shall be allowed under this section in respect of fares, accommodation expenses and other incidental expenses incurred in relation to travel outside Papua New Guinea to the extent that they relate to travel by a person other than the taxpayer, who was not at the time travel was undertaken, a specified agent.

(3) Where the amount of any outgoing constituting or forming part of any export market development expenditure exceeds the amount that, in the opinion of the Commissioner General, would reasonably be expected to be payable, in the ordinary course of business, for the services or goods upon which the outgoing was incurred, the Commissioner General may, for the purposes of this section, treat the outgoing as being reduced by the amount of the excess.

(4) Subject to this section, a deduction is allowable for expenditure incurred after 1 September 1984 for export market development.

(5) The amount allowable under this section shall be twice the amount that but for this section would be or would have been an allowable deduction.

(6) Where a double deduction is allowable under this section, the amount deductible shall be allowable only to the extent that the tax saving resulting from the allowance of the deduction does not exceed 75% of the expenditure actually incurred.

73. DEPRECIATION.

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

- (a) used by him during that year for the purpose of producing assessable income; or
- (b) installed ready for use for that purpose and during that year held in reserve by him,

is, subject to this Act, an allowable deduction.

(2) In this section—

“acquired” means, in reference to the acquisition by a person of property being plant or articles, a reference to—

- (a) the person becoming the owner of the property; or
- (b) the commencement of construction of the property for the person;

“agricultural production” means production resulting directly from—

- (a) the cultivation of land; or
- (b) the maintenance of animals or poultry for the purpose of selling them or their bodily produce, including natural increase and includes the processing of vegetable and animal raw material produced by the cultivation of land or the maintenance of animals or poultry by the person who produced the raw material used in that manufacture;

“eligible property” means new capital plant or articles with an effective life determined in accordance with Section 74 exceeding five years acquired—

- (a) on or after 1 January 1980 for the purposes of commercial activities within Papua New Guinea and falling within Tabulation Categories D (Manufacturing), F (Construction), I (Transport, Storage and Communication) and O (Other Community, Social and Personal Service Activities) of the International Standard Industrial Classification of all Economic Activities published in 1990 under Revision 3; or
- (b) on or after 1 January 1981 for the purposes of commercial activities within Papua New Guinea and falling within Tabulation Categories J (Financial intermediation) and K (Real estate, renting and, business activities) of the International Standard Industrial Classification of all Economic Activities published in 1990 under Revision 3; or
- (c) on or after 1 January 1982 for the purposes of agricultural production within Papua New Guinea,

but does not include—

- (d) capital plant or articles leased to any one person for use in carrying on commercial activities not included above; or
- (e) plant or articles (other than shipping vessels and aircraft) which rely upon imported petroleum products (including LPG) as its source of power; or
- (f) plant or articles acquired after 9 November 1982 for commercial activities falling within Tabulation Categories J (Financial intermediation), K (Real estate, renting and business activities) and O (Other community, social and personal service activities) of

the International Standard Industrial Classification of all Economic Activities published in 1990 under Revision 3,

but does not include residential dwellings acquired after 6 November 1984 with a cost price in excess of K100,000;

“industrial plant” means any plant or equipment with an effective life determined in accordance with Section 74 exceeding five years which is used by the taxpayer or any other person in a manufacturing process and includes buildings and other structural improvements used for the housing of such plant or equipment, the component parts of the product being manufactured or the product itself;

“initial year” means the year of income in which the taxpayer first becomes entitled to a deduction for depreciation by virtue of Section 73(1);

“new” means not having previously been either used by any person or acquired or held by any person for use by that person but does not include reconditioned or wholly or mainly reconstructed, or plant or articles in respect of which a deduction under this subdivision has either wholly or in part been previously allowed;

“non oil-fired plant” means energy conversion equipment principally powered by fuels other than imported petroleum products (including LPG) and includes internal combustion engines, heat raising equipment, turbines and Mini hydro schemes generating not more than 1 megawatt;

“oil-fired plant” means energy conversion equipment principally powered by imported petroleum products (including LPG);

“plant” includes—

- (a) animals used as beasts of burden or working beasts in a business other than a business of primary production, and machinery, implements, utensils and rolling stock; and
- (b) fences, dams and other structural improvements on land that is used for the purposes of agricultural or pastoral pursuits and structural improvements that are used wholly and exclusively for the purposes of pearling operations and are situated at or in the vicinity of a port or harbour from which those operations are conducted, other than—
 - (i) structural improvements used for domestic or residential purposes except where the improvements are provided for the accommodation of employees, tenants or share farmers engaged in or in connection with those pursuits of operations, as the case may be; or
 - (ii) structural improvements, bores or wells, expenditure on which has been allowed, or is or has been allowable, as a deduction under Section 97 from the assessable income of

any year of income of the taxpayer or of any other person;
and

- (c) structural improvements used for the accommodation of employees and their families which the taxpayer is or was bound, by or under an Act in force or previously in force in Papua New Guinea or a part of Papua New Guinea, to provide for such employees or their families; and
- (d) buildings and other structural improvements the construction of which was commenced after 31 December 1960, other than any such improvements used primarily and principally for the domestic or residential purposes of the taxpayer;

“residential dwelling” includes premises providing either single or family accommodation or such part of premises which the Commissioner General is satisfied constitutes a separate residence.

(3) Subject to Subsection (7), where new capital plant or articles, being eligible property, is acquired during the year of income, the amount of depreciation allowable in the initial year shall be increased by an amount totalling 20% of the cost price.

(4) Where existing plant is improved or extended for the purpose of conserving fuel input, (specifically insulation and waste heat recovery), and such capital expenditure is incurred within the year of income, the amount of depreciation allowable in respect of such extensions or improvements allowable in the year shall be increased by an amount totalling 20% of the capital cost.

(5) Where existing oil-fired plant is converted to a non oil-fired plant during the year of income, the amount of depreciation allowable in the year for the capital cost of the conversion shall be increased by an amount totalling 30% of the capital cost of conversion.

(6) Where new capital plant or articles, being non oil-fired plant is acquired during the year of income, the amount of depreciation allowable in the initial year shall be increased by an amount totalling 30% of the cost price.

(7) Where industrial plant not previously used in Papua New Guinea is installed ready for use after 1 September 1984, the taxpayer may in any year elect to increase the amount of depreciation otherwise allowable in respect of the industrial plant by an amount not exceeding the lesser of—

- (a) the amount remaining after deducting from the taxpayer’s income all other allowable deductions (including deductions allowable under the subdivision otherwise than under this section) from that income; or
- (b) the sum ascertained at the end of the year of income of depreciated value of that industrial plant.

(8) The election referred to in Subsection (7) shall—

- (a) be made in writing, signed by the taxpayer and delivered to the Commissioner General with the taxpayer’s return of income for that

year or within such further time as the Commissioner General allows;
and

(b) specify the assets or classes of assets to which the election shall apply.

(9) The depreciation allowable as a deduction shall be increased to an amount totalling 100% for new plant or articles acquired after 4 March 1986 and falling within the following categories:—

(a) property, being plant or articles used directly for the purposes of agricultural production;

(b)

(i) property, being plant or articles used solely for the purpose of fishing by residents engaged in fishing on a commercial basis and ancillary equipment fitted to those boats or ships;

(ii) notwithstanding anything in the Act, for the purposes of Subparagraph (i), property includes used property when first imported for use in PNG.

(b)⁹⁴ [*Repealed.*]

(c) plants or articles, being boats or ships and ancillary equipment fitted to those boats or ships where—

(i) those boats or ships are used solely as dive boats or ships by a person carrying on business as scuba diving and/or snorkelling tour operators and accredited as such by the Papua New Guinea Tourism Promotion Authority; and

(ii) a copy of the relevant accreditation certificate has been supplied to the Commissioner General.

(10) Plant or articles in respect of which a company has relinquished its right to a deduction for depreciation pursuant to Section 97A shall be deemed for all purposes of this Act to be plant or articles in respect of which depreciation has been allowed or is allowable.

(11) Depreciation of any property that is a leisure facility for the purposes of Section 68AB is not an allowable deduction.

(12) Subsection (11) does not prevent depreciation of any property from being an allowable deduction to the extent, if any, to which the depreciation took place during a part of the year of income referred to in Section 68AB(4)(a).

74. BASIS OF DEPRECIATION.

(1) In the first calculation of the depreciation to be allowed in respect of a unit of property, an estimate shall be made by the Commissioner General of the effective life of the unit assuming that it is maintained in reasonably good order and condition, and the annual depreciation per centum shall be fixed accordingly.

⁹⁴ Section 9(b) repealed by No 10 of 1998.

(2)⁹⁵ [*Repealed.*]

75. CALCULATION OF DEPRECIATION.

(1)⁹⁶ ⁹⁷Subject to this section and to Section 155J, the depreciation allowable under this Act in respect of a unit of property in relation to a year of income is—

- (a) one and one-half times the percentage fixed by or under Section 74 of the depreciated value of that unit at the beginning of the year of income; or
- (b) at the option of the taxpayer, to be exercised in accordance with Section 76, the percentage fixed by or under Section 74 of the cost of that unit.

(1A) Where the unit of property is dealt with by the taxpayer in the prescribed manner during part only of the year of income, the depreciation allowable to the taxpayer in accordance with Subsection (1) in respect of the property in relation to the year of income shall be reduced by so much of the amount of the depreciation applicable in accordance with Subsection (1) as bears to that amount the same proportion as the number of days during the year of income during which the property was not dealt with by the taxpayer in the prescribed manner bears to the number of days of income.

(1B) For the purposes of the application of Subsections (1) and (1A) in a case where the unit of property is not dealt with by the taxpayer in the prescribed manner on the first day of the year of income, the reference in Subsection (1)(a) to the depreciation value of the unit shall be read as a reference to the depreciated value of the unit of property at the time during the year of income when it is first dealt with by the taxpayer in the prescribed manner—

- (a) the property is used by the taxpayer at that time for the purposes of producing assessable income; or
- (b) the property is, at that time, installed ready for use for the purpose of producing assessable income and held in reserve by the taxpayer.

(2) The deduction allowable in respect of a unit of property shall not exceed the depreciated value of that unit.

(3) Where, in respect of a unit of property, an amount that would, but for this subsection, be part of the cost of the unit has been allowed or is allowable under this Act as a deduction (otherwise than on account of depreciation) from the assessable income of the taxpayer of any year of income, the cost of the unit shall be deemed to be the amount remaining after deducting from the cost of the unit to that taxpayer, as ascertained apart from this subsection, the sum of any amounts so allowed or allowable.

(4) For the purposes of any calculation made pursuant to this section, the cost of any unit of property shall be deemed to be reduced by that amount of the cost of

⁹⁵ Section 74(2) repealed by No 22 of 1981.

⁹⁶ Section 75(1) amended in consequence of No 68 of 2000.

⁹⁷ Section 75(1) amended in consequence of No 68 of 2000.

that unit which has been relinquished by the taxpayer pursuant to an election under Section 97A.

76. EXERCISE OF OPTION.

(1) The option referred to in Section 75(1) is exercisable by a taxpayer in relation to either—

- (a) all units of property in respect of which depreciation is or will be allowable to him in accordance with that section; or
- (b) such of those units of property as have been, or will be—
 - (i) first used by him for the purpose of producing assessable income; or
 - (ii) installed ready for use by him for that purpose,
during the year of income in relation to which the option first applies or during a subsequent year.

(2) An option referred to in Subsection (1)—

- (a) shall be exercised by notice in writing to the Commissioner General; and
- (b) shall be expressed to apply in the first instance in relation to a year of income specified in the notice and has effect accordingly; and
- (c) shall be lodged with the Commissioner General on or before the date of lodgment of the return of income of the taxpayer for the year of income referred to in the last preceding paragraph or within such further time as the Commissioner General allows.

77. ALTERATION OF METHOD OF CALCULATION.

Where depreciation has been allowed to a taxpayer in respect of a year before the year of income, the method of calculating the depreciation to be allowed to him in respect of the year of income is, unless altered with the leave of the Commissioner General or in the exercise of the option referred to in Section 75, the same as that applied in the last preceding calculation.

78. DISPOSAL, LOSS OR DESTRUCTION OF DEPRECIATED PROPERTY.

(1) Where any property of a taxpayer in respect of which depreciation has been allowed or is allowable under this Act is disposed of, lost or destroyed at any time in the year of income, the depreciated value of the property at that time, less the amount of any consideration receivable in respect of the disposal, loss or destruction, is an allowable deduction.

(2) If that consideration exceeds that depreciated value, the excess, to the extent of the sum of the amounts allowed and allowable in respect of depreciation in

assessments of income tax under this Act, shall, subject to the succeeding provisions of this section, be included in his assessable income of that year.

(3) Where an amount, being the whole or a part of the consideration receivable in respect of the disposal, loss or destruction of a unit of property in the year of income (in this subsection referred to as “**the balancing charge**”) would, but for this subsection, be included in the assessable income of the taxpayer under Subsection (2), the Commissioner General shall, if the taxpayer so requests in writing when lodging the return of income of the year of income or within such further time as the Commissioner General allows, in lieu of including the balancing charge in the assessable income, successively reduce—

- (a) the cost, for the purpose of calculating depreciation allowable under this Act, of any unit of property acquired by the taxpayer during the year of income to replace the unit of property so disposed of, lost or destroyed; and
- (b) the cost, for the purpose of calculating depreciation allowable under this Act, of any other unit of property acquired by the taxpayer during the year of income; and
- (c) the depreciated values, at the beginning of the year of income, of other units of property,

by such amounts as do not exceed, in the aggregate, the balancing charge.

(4) The cost or depreciated value of a unit of property shall not be reduced under Subsection (3) unless—

- (a) at the end of the year of income the unit is used wholly for the purpose of producing assessable income or has been installed ready for use wholly for that purpose and is held in reserve; and
- (b) depreciation under this Act is allowable to the taxpayer in respect of the unit.

(5) Where an amount that would, but for Subsection (3), be included in the assessable income of the taxpayer of the year of income under Subsection (2) exceeds the sum of reductions made under Subsection (3), the amount of that excess shall be included in his assessable income of the year of income.

(6) Where—

- (a) during a year of income not later than the second year of income after the year of income in which a unit of property is disposed of, lost or destroyed, a taxpayer acquires, to replace that unit, a unit of property that, at the end of the year of income, is used wholly for the purpose of producing assessable income, or has been installed ready for use wholly for that purpose and is held in reserve; and
- (b) the taxpayer has not made a request under Subsection (3) in relation to that disposal, loss or destruction,

the Commissioner General shall, if the taxpayer so requests in writing not later than the date of lodgment of the return of income of the first-mentioned year, or within such further time as the Commissioner General allows—

- (c) exclude from the assessable income of the year of income in which the property was disposed of, lost or destroyed so much of the amount that would otherwise be included in that assessable income under Subsection (2) by reason of the disposal, loss or destruction as does not exceed the cost of the unit of property so acquired; and
- (d) reduce by an amount equal to the amount so excluded the cost, for the purpose of calculating depreciation allowable under this Act, of the unit of property so acquired.

(7) An amount by which the cost or depreciated value of a unit of property has been reduced in pursuance of Subsection (3) or (6) shall, for the purposes of this Act, be deemed to be depreciation that has been allowed in respect of that unit in the assessment in which the reduction was made.

(8) The consideration receivable in respect of the disposal, loss or destruction means—

- (a) in the case of a sale of the property—
 - (i) where the Commissioner General is satisfied that the sale price is fair and reasonable—the sale price less the expenses of the sale of the property; or
 - (ii) where the Commissioner General is not so satisfied—such amount as, in his opinion, is fair and reasonable; and
- (b) in the case of loss or destruction of the property—the amount or value received or receivable under a policy of insurance or otherwise in respect of the loss or destruction; and
- (c) in the case where the property is sold with other assets and a separate value is not allocated to the property—such amount as is determined by the Commissioner General; and
- (d) in the case where property is disposed of otherwise than by sale—the value, if any, of the property at the date of disposal.

(9)⁹⁸ ⁹⁹If Section 155D(4) applies to property in respect of which a deduction has previously been allowed to a taxpayer under this section, that property shall for the purposes of this section be deemed to have been disposed of on the date upon which the taxpayer commences to use that property for the purpose referred to in those sections.

⁹⁸ Section 78A(9) amended in consequence of No 68 of 2000.

⁹⁹ Section 78A(9) amended in consequence of No 68 of 2000.

78A. ADJUSTMENT OF DEDUCTIONS ON THE SALE OF A RIGHT TO OCCUPY REAL PROPERTY.

(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 an indefinitely continuing right to occupy or use Papua New Guinea real property; and
- (b) a person (in this section called “**the purchaser**”) has incurred capital expenditure to acquire that right or a right to occupy or use part of that property; and
- (c) the capital expenditure by the purchaser does not (except through an application of this section) confer ownership rights to him in respect of that property,

the vendor and the purchaser may agree that part or all of the expenditure incurred by the purchaser shall be deemed to be expenditure incurred in the purchase of that real property.

(2) Subject to Subsection (3), in an agreement referred to in Subsection (1), the deemed expenditure shall not exceed the lesser of—

- (a) the amount of the capital payment referred to in Subsection (1)(b); or
- (b) the total of—
 - (i) the depreciated value of that property or, where the right to occupy or use only part of that property has been purchased, the proportionate part of the depreciated value of that property; and
 - (ii) any amounts included in the assessable income of the vendor as a result of that sale.

(3) Subsection (2) does not apply where the Commissioner General is of the opinion that the circumstances are such that the deemed expenditure should be based on the actual consideration given for the purchase of those rights.

(4) An agreement referred to in Subsection (1) shall not have any effect unless the parties forward to the Commissioner General not later than the date on which the first return under this Act after the date of the transfer of the rights is lodged, or within such further time as the Commissioner General allows, a duly stamped notice signed by them or on their behalf which specifies the amount of deemed expenditure in accordance with Subsections (1) and (2).

(5) Where a notice is given under Subsection (4)—

- (a) the purchaser shall be deemed, subject to Subsection (2), to have purchased that real property for the amount of expenditure specified in the notice; and
- (b) the vendor shall be deemed to have sold that real property for that same amount.

(6) Where the transfer of rights occurred in a calendar year prior to 1986—

- (a) the notice referred to in Subsection (4) shall be forwarded to the Commissioner General not later than the date on which the first return after the date on which the section came into force is lodged, or within such further time as the Commissioner General allows; and
- (b) the date of transfer of the relevant rights referred to in Subsection (5)(b) shall be deemed to be the later of—
 - (i) 1 January 1986; or
 - (ii) the date on which the relevant rights were transferred.

(7)¹⁰⁰ [*Repealed.*]

79. DISPOSAL OF DEPRECIATED PROPERTY ON CHANGE OF OWNERSHIP OR INTEREST.

Where—

- (a) for any reason (including the formation or dissolution of a partnership or a variation in the constitution of a partnership or in the interests of the partners) a change has occurred in the ownership of, or in the interests of persons in, property in respect of which depreciation has been allowed or is allowable under this Act; 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,

the provisions of this Act relating to depreciation apply as if the person or persons who owned the property before the change had, on the day on which the change occurred, disposed of the whole of the property to the person, or all the persons, by whom the property is owned after the change for a consideration equal to the amount specified in the agreement in consequence of which the change occurred as the value of the property for the purposes of that agreement, or, if there is not such an agreement or an amount is not so specified or the Commissioner General is not satisfied that the amount so specified is a fair and reasonable value of the property, an amount determined by the Commissioner General.

80. NOTIONAL INCOME WHERE ASSESSABLE INCOME INCLUDES CONSIDERATION RECEIVABLE ON DISPOSAL, LOSS OR DESTRUCTION OF DEPRECIATED PROPERTY.

(1) This section applies to a taxpayer where—

- (a) assets of a business carried on by—
 - (i) the taxpayer; or
 - (ii) a partnership in which a taxpayer is a partner; or

¹⁰⁰ Section 78A(7) repealed by No 21 of 1988, s18(b).

(iii) the trustee of a trust estate to a share of the net income of which a resident taxpayer (not being a person under a legal disability) is presently entitled,

are disposed of, lost or destroyed and, in consequence of their disposal, loss or destruction, that business ceases to be so carried on; and

(b) those assets include units of property in respect of which depreciation has been allowed or is allowable under this Act; and

(c) an amount (in this section referred to as “**the balancing charge**”) is included in the assessable income of the year of income of the taxpayer, partnership or trust estate, as the case may be, under Section 78(2) in consequence of the disposal, loss or destruction of those assets,

but does not apply where—

(d) the taxpayer is a company, except where, in respect of the whole or a part of the balancing charge, it is assessable as a trustee; or

(e) the taxpayer has, in relation to that disposal, loss or destruction, made a request in pursuance of Section 78(3) or (6).

(2) For the purposes of this section, a part of the assessable income of a taxpayer to whom this section applies shall be deemed to be abnormal income, and that part shall be ascertained as follows:—

(a) where the assets disposed of, lost or destroyed were assets of a business carried on by a taxpayer otherwise than in partnership or as the trustee of a trust estate, the abnormal income is the amount of the balancing charge;

(b) where the assets disposed of, lost or destroyed were assets of a business carried on by a partnership of which the taxpayer is a partner, the abnormal income is so much of the balancing charge as is included in the individual interest of the taxpayer in the net income of the partnership;

(c) where the assets disposed of, lost or destroyed were assets of a business carried on by the trustee of a trust estate, the abnormal income is—

(i) for the purposes of an assessment of the trustee under Section 130—so much of the balancing charge as is included in the amount of the net income of the trust estate to which the assessment relates; and

(ii) for the purposes of the assessment of a resident taxpayer who is a beneficiary in the trust estate—so much of the balancing charge as is included in the share of the net income of the trust estate to which he is presently entitled.

(3) A taxpayer to whom this section applies may, on or before the date of lodgment of his return of income in respect of the year of income or within such

further time as the Commissioner General allows, apply in writing to the Commissioner General for the determination under this section of a notional income in respect of the year of income.

(4) Where a taxpayer makes an application to the Commissioner General in accordance with Subsection (3), the succeeding provisions of this section apply for the determination of a notional income for the purpose of any Act by which a rate of tax upon the taxable income of a taxpayer is fixed by reference to a notional income.

(5) Subject to Subsection (7), where the taxable income of the taxpayer exceeds his abnormal income, the notional income is the amount ascertained by deducting from the taxable income an amount equal to two-thirds of the abnormal income.

(6) Subject to Subsection (7), where the taxable income of the taxpayer does not exceed his abnormal income, the notional income is an amount equal to one-third of the taxable income.

(7) Where Section 117(2) or Section 212 applies, or both of those provisions apply, in respect of the taxpayer, the notional income is, in lieu of the notional income determined in accordance with either or both of those provisions—

- (a) where the notional income determined in accordance with either or both of those provisions exceeds the abnormal income of the taxpayer—the amount ascertained by deducting from the notional income so determined an amount equal to two-thirds of the abnormal income; or
- (b) where the notional income determined in accordance with either or both of those provisions does not exceed the abnormal income of the taxpayer—an amount equal to one-third of the notional income so determined.

81. ACQUISITION OF DEPRECIATED PROPERTY.

(1) Where a person acquires any property in respect of which depreciation has been allowed or is allowable under this Act, he is not, except as provided by Subsection (2), entitled to any greater deduction for depreciation than that which would have been allowed to the person from whom the property was acquired if that person had retained it.

(2) Where under Section 78 an amount is included in the assessable income of the person disposing of the property, the person acquiring the property shall be allowed depreciation calculated on the sum of that amount and the depreciated value of the property under this Act immediately before the time of the sale.

(3) For the purposes of Subsection (2), an amount that would, but for Section 78(3) or (6), be included in the assessable income of the person disposing of the property shall be deemed to have been so included.

(4) This section does not apply where the Commissioner General is of the opinion that the circumstances are such that depreciation based on the actual consideration given should be allowed.

82. PROPERTY USED PARTLY FOR PRODUCING ASSESSABLE INCOME.

Where the use of any property by a taxpayer has been only partly for the purpose of producing assessable income—

- (a) only such part of a deduction otherwise allowable under Section 73 or Section 78 in respect of that property as in the opinion of the Commissioner General is proper is an allowable deduction; and
- (b) only such part of any excess otherwise to be included in the assessable income of the taxpayer under Section 78 in respect of that property as in the opinion of the Commissioner General is proper shall be included in the assessable income.

83. DEFINITION OF DEPRECIATED VALUE.

(1)¹⁰¹ ¹⁰²In this Division “**depreciated value**” of a unit of property, being plant and equipment, at anytime means, subject to Division III.10—

- (a) in the case of a unit of property acquired by a person before the date on which that person derived income, which would be assessable under this Act, (and that unit of property was used by him as at that date for the purpose of producing exempt income or otherwise or installed ready for use for that purpose by him as at that date and held in reserve) the actual cost of the unit to that person less the sum of the amounts that, if—
 - (i) the Act had commenced to have effect at the commencement of the financial year in which that unit was acquired by that person and had applied to income in that year and each subsequent year before the first year of income to which the Act applies; and
 - (ii) the unit had been used during the whole of the period from the time of its acquisition by that person to the commencement of the first year of income to which the Act applies for the purpose of producing assessable income,
 - would have been allowed or allowable in respect of that unit as deductions by way of depreciation under Section 75(1)(a) or at the option of the taxpayer under Section 75(1)(b) from the assessable income of the taxpayer derived during those years; or
- (b) in the case of a unit of property to which Paragraph (a) applies, where that unit is subsequently used for the purpose of producing assessable income the actual cost of the unit to that person less the sum of—

¹⁰¹ Section 83(1) amended in consequence of No 68 of 2000.

¹⁰² Section 83(1) amended in consequence of No 68 of 2000.

- (i) the depreciation calculated under Paragraph (a) as allowed or allowable; and
 - (ii) the depreciation allowed or allowable in an assessment of income of a person under this Act by virtue of Section 75(1)(a) or at the option of the taxpayer under Section 75(1)(b); or
- (c) in the case of any other unit of property, the cost of the unit to the person who owned the property at that time, less the amount of depreciation (if any) allowed or allowable in respect of that unit in assessments of the income of that person, for any period before that time, under this Act.
- (2) The option referred to in Subsection (1)(a) or (b)–
- (a) shall be exercised by notice in writing to the Commissioner General; and
 - (b) applies to all units of property to which that paragraph relates; and
 - (c) shall be lodged with the Commissioner General on or before the date of lodgement of the return of income for the first year of income to which this Act applies or within such further time as the Commissioner General allows.

(3) Where a taxpayer has, in relation to a unit or units of property, exercised an option under Subsection (1)(a) or (b), he shall be deemed also to have exercised the option referred to in Section 75(1)(b) in relation to that unit or those units of property.

(4) For the purposes of the calculation of depreciated value of a unit of property under Subsection (1), that amount of the cost of that unit which has been relinquished by the taxpayer pursuant to an election under Section 97A shall be deemed to be depreciation allowed or allowable to the taxpayer under this Act.

84. NOTIONAL COST IN CERTAIN CIRCUMSTANCES.

(1) For the purposes of Section 75(1)(b) and 83, in any case in which Section 81 applied or applies in relation to a unit of property, the person who acquired or acquires the unit shall be deemed to have acquired or to acquire it at a cost equal to the depreciated value of the unit immediately before the time of the acquisition, or, if the case is one in which Section 81(2) applied or applies, the sum of that depreciated value and the amount required to be added to that depreciated value for the purposes of that subsection.

(2)¹⁰³ [*Repealed.*]

85. BAD DEBTS.

(1) Debts that are bad debts and are written off as such during the year of income and–

¹⁰³ Section 84(2) repealed by No 29 of 1960, s8.

- (a) have been brought to account by the taxpayer as assessable income of any year; or
- (b) are in respect of money lent in the ordinary course of the business of the lending of money by a taxpayer who carries on that business,

are allowable deductions, but no other bad debts are allowable deductions.

(2) Where, after a debtor incurs a debt so brought to account or a debt in respect of money so lent—

- (a) the debtor is adjudicated insolvent; or
- (b) the affairs of the debtor are liquidated by arrangement; or
- (c) the debtor makes a composition with his creditors,

the debt (where, in the opinion of the Commissioner General, no amount will be paid on account of the debt), or the amount by which, in the opinion of the Commissioner General, the amount that will be received on account of the debt will be less than the debt, shall be deemed to be a bad debt.

(3) Where in the year of income a taxpayer receives an amount in respect of a debt for which a deduction has been allowed to him under this Act, his assessable income shall include that amount.

86. COMMISSION.

Expenditure incurred by the taxpayer in the year of income by way of commission for collecting his assessable income is an allowable deduction.

87. PAYMENTS TO RELATIVES.

(1) Subject to this section, payments becoming due in the year of income by a taxpayer to a relative are allowable deductions only to the extent to which, in the opinion of the Commissioner General, they are reasonable in amount and *bona fide* made in the production of assessable income.

(2) Expenditure incurred, and payments becoming due, by the taxpayer in the year of income in or for the maintenance of the spouse of the taxpayer or of any member of the family of the taxpayer under the age of 16 years, are not, whether or not the expenditure was incurred in the production of assessable income, allowable deductions.

88. CONTRIBUTIONS TO FUND FOR BENEFIT OF EMPLOYEES OF TAXPAYER.

(1)¹⁰⁴ ¹⁰⁵Where a taxpayer sets apart or pays in the year of income a sum to an Authorized Superannuation Fund, an amount ascertained in accordance with the provisions of this section is an allowable deduction.

¹⁰⁴ Section 88 Subsection (1) substituted by No. 22 of 2004, s. 17.

¹⁰⁵ Section 88 Subsection (1) substituted by No. 22 of 2004, s. 17.

(1A)¹⁰⁶ In this Section—

“**dependant**”, in relation to an employee, includes the spouse and any child of the employee;

“**person**” includes a partnership;

¹⁰⁷¹⁰⁸“**fund**” means an Authorized Superannuation Fund;

(2) For the purposes of this section, the Commissioner General shall determine, in respect of each sum so set apart or paid—

- (a) the number of employees employed during the year of income who, or whose dependants, were eligible, or might become eligible, to receive benefits, pensions or retiring allowances from the fund; and
- (b) the part, if any, of the sum so set apart or paid that is attributable to the provision of benefits, pensions or retiring allowances for, or for dependants of, employees other than employees engaged during the year of income in producing assessable income of the taxpayer; and
- (c) where the taxpayer is a private company within the meaning of Division 7 of this Part and a part of the sum so set apart or paid is attributable to the provision of benefits, pensions or retiring allowances for a person, or for dependants of a person, who was, at any time during the year of income, both a shareholder and an employee of that company—the part (if any) of the sum set apart or paid that, in the opinion of the Commissioner General, would not have been set apart or paid if that person had not been a shareholder; and
- (d) the amount included in the sum so set apart or paid that is attributable to the provision of benefits, pensions or retiring allowances for, or for dependants of, each employee included in the number determined under Paragraph (a) who is not an employee or one of a number of employees in relation to whom a part has been determined under Paragraph (b), excluding any part of any such amount that has been determined under Paragraph (c).

(3) The amount that is an allowable deduction under this section is the amount remaining after deducting from the sum so set apart or paid the total of—

- (a) any amount determined by the Commissioner General under Subsection 2(b); and
- (b) any amount determined by the Commissioner General under Subsection 2(c); and
- (c) an amount equal to the sum of the respective amounts by which each of the amounts determined by the Commissioner General under Subsection 2(d) exceeds 15% of the fully taxed salary or wages paid by

¹⁰⁶ Section 88 Subsection (1A) amended by No. 22 of 2004, s. 17.

¹⁰⁷ Section 88 Subsection (1A) amended by No. 22 of 2004, s. 17.

¹⁰⁸ Section 88 Subsection (1A) amended by No. 22 of 2004, s. 17.

the taxpayer to the employee, in relation to whom the amount has been so determined, in respect of the year of income during which the sum was so set apart or paid.

(4) Where—

- (a) the provisions of Subsection 3(c) result in a reduction of the amount otherwise allowable as a deduction under the preceding provisions of this section; and
- (b) the Commissioner General is of opinion that the special circumstances of the case warrant the allowance of a higher amount as a deduction,

the Commissioner General shall allow as a deduction such higher amount (not exceeding the amount that would have been allowable if that paragraph did not apply) as he considers to be reasonable.

(5) In the application of this section—

- (a) the aggregate of all sums set apart or paid in the year of income by the taxpayer as or to any one fund shall be deemed to be one sum so set apart or paid; and
- (b) in the case of a taxpayer who has, in the year of income, set apart or paid sums as or to more than one fund, the deductions allowable under this section shall be ascertained in respect of the funds in such order as the Commissioner General thinks fit, and, in the application of this section in relation to such a fund, the amount specified in Subsection (3)(c) shall, in relation to any employee be reduced by the aggregate of any amounts determined in respect of that employee under Subsection (2)(d) in relation to any other funds, to the extent to which the amounts so determined have not been excluded in ascertaining the deductions allowable in relation to those other funds.

(6) A sum or part of a sum that is excluded in ascertaining the deduction under this section is not an allowable deduction under any other provision of this Act.

(7) Where a taxpayer who has been allowed a deduction of a sum, or part of a sum, set apart or paid as or to any such fund, receives from that fund a payment or other benefit that has a money value, his assessable income shall include that payment or the money value of that benefit.

(5) For the purposes of this section, a director of a company shall be deemed to be an employee of the company.

89. EXPENSES OF BORROWING.

(1) So much of the expenditure incurred by the taxpayer on or after 1 July 1959, in borrowing money used by him for the purpose of producing assessable income as bears to the whole of that expenditure the same proportion as that part of the period for which the money was borrowed that is in the year of income bears to the whole of that period is an allowable deduction.

(2) For the purposes of Subsection (1), if the period for which the money was borrowed is not fixed or exceeds five years, the period of five years from the date on which the money was borrowed shall be deemed to be the period for which the money was borrowed.

(3) Where the deduction allowable under Subsection (1) in a year of income would, but for this subsection, be less than K100.00, the deduction allowable is K100.00 or so much of the expenditure referred to in Subsection (1) as has not been allowed as a deduction in a previous year of income, whichever is the less.

90. EXPENSES OF PREPARING LEASE.

Expenditure incurred by the taxpayer in the year of income for the preparation, registration and stamping of a lease of property to be held by him for the purpose of producing assessable income is an allowable deduction.

91. EXPENSES RELATING TO GRANT OF PATENTS, ETC.

Expenditure incurred by the taxpayer (whether by payment of fees or otherwise) in the year of income in obtaining, or seeking to obtain for the purpose of producing assessable income—

- (a) the grant, or the extension of the term, of a patent for an invention; or
- (b) the registration, or the extension of the period of registration, of a design; or
- (c) the registration of a copyright,

is an allowable deduction.

92. LOSSES BY EMBEZZLEMENT, ETC.

Where a loss incurred by the taxpayer through the embezzlement, fraudulent misappropriation or larceny, by a person employed in the taxpayer's business, of money that is or has been included in the assessable income of the taxpayer, is ascertained in the year of income, that loss is an allowable deduction.

93¹⁰⁹. [REPEALED.]

94. SUBSCRIPTIONS TO ASSOCIATIONS.

(1) Where the carrying on of a business from which assessable income is derived by the taxpayer is conditional upon membership of an association, a periodical subscription paid by him in the year of income in respect of that membership is an allowable deduction.

(2) Where an association carries out, on behalf of its members, in the year of income, an activity of such a nature that, if carried out by the taxpayer on his own

¹⁰⁹ Section 93 repealed by No 65 of 1973, s3.

behalf, its expense would be an allowable deduction to him, any subscriptions, levies or contributions, not exceeding in the aggregate K52.00, paid by him in that year in respect of membership of that association, are allowable deductions, and any such subscriptions, levies or contributions exceeding in the aggregate that amount, are allowable deductions to the extent only of the greater of the two following amounts:—

- (a) K52.00;
- (b) so much of the subscriptions, levies or contributions as bears to the whole the same proportion as the losses and outgoings (not being losses or outgoings of capital or of a capital nature) incurred by the association in that year in carrying out that activity bear to its total losses and outgoings in that year.

(3) A periodical subscription to which Subsections (1) and (2) do not apply that is paid by the taxpayer in the year of income in respect of his membership of a trade, business or professional association is an allowable deduction.

(4) The total deduction allowable under Subsection (3) in respect of subscriptions to any one association in the year of income shall not exceed K52.00.

95. EXPENDITURE ON SCIENTIFIC RESEARCH.

(1) The following payments made, and expenditure incurred, during the year of income (other than an amount that is allowable as a deduction under any other section of this Act) by a person carrying on a business for the purpose of gaining or producing assessable income are allowable deductions:—

- (a) payments to—
 - (i) an approved research institute for scientific research related to that business; or
 - (ii) an approved research institute, the object of which is the undertaking of scientific research related to the class of business to which that business belongs;
- (b) expenditure of a capital nature on scientific research related to that business (except to the extent that it is expenditure on plant, machinery, land or buildings or on alterations, additions or extensions to buildings or in the acquisition of rights in or arising out of scientific research).

(2) Where, on or after 1 July 1959, a taxpayer carrying on a business for the purpose of gaining or producing assessable income incurs expenditure of a capital nature in the construction or acquisition of a building, or part of a building, or in making any alteration or addition to a building, in which scientific research related to that business is to be carried on by him or on his behalf, and the building, part of a building, alteration or addition, as the case may be, is of use for scientific research purposes only, an amount equal to one-third of that expenditure is an allowable deduction—

- (a) from the assessable income of the year of income in which the building, part of a building, alteration or addition is first used by or on behalf of the taxpayer for that scientific research; and
- (b) from the assessable income of each of the two years of income next succeeding that year of income, if he continues to carry on that business during the year in which that assessable income was derived.

(3) Where any expenditure or payment to which this section refers is incurred or made outside Papua New Guinea and the business in relation to which it is so incurred or made is carried on partly in and partly out of Papua New Guinea, the deduction allowable under this section is such part of the amount that would otherwise be allowable as the Commissioner General considers reasonable in the circumstances.

(4) Where any expenditure has been allowed or is allowable as a deduction under Subsection (2) and—

- (a) the taxpayer sells, transfers or otherwise disposes of the building or any part of the building; or
- (b) the building or any part of the building is destroyed,

the consideration received or receivable in respect of the disposal, loss or destruction shall, to the extent of the expenditure so allowed or allowable as a deduction, be included in the assessable income of the year of income in which the disposal, loss or destruction occurs, but, where the Commissioner General is of opinion that part only, or no part, of that consideration relates to the disposal, loss or destruction of any property that was acquired or created by that expenditure, that part only, or no part, as the case may be, of the consideration shall be taken into account for the purposes of this subsection.

(5) Notwithstanding anything contained in Section 74, the annual depreciation per centum in respect of plant used by the taxpayer for the purposes of scientific research only, being plant in respect of which depreciation is allowable under Section 73, shall be deemed to have been fixed under Section 74 as 33.

(6) In this section—

“an approved research institute” means any university, college, institute, association or organisation that is approved in writing for the purposes of this section by the Minister, as an institution, association or organisation for undertaking scientific research that is or may prove to be of value to the State;

“consideration received or receivable in respect of the disposal, loss or destruction” has the same meaning as that given to the expression “the consideration receivable in respect of the disposal, loss or destruction” by Section 78(8);

“scientific research” means any activities in the fields of natural or applied science for the extension of knowledge.

(7) An approval for the purposes of Subsection (6) may—

- (a) operate as from a date, whether before or after the date of the approval, specified in the instrument of approval; and
- (b) be withdrawn at any time.

(8) In this section, a reference to scientific research related to a business or class of business shall be read as including a reference to—

- (a) any scientific research that may lead to or facilitate an extension, or an improvement in the technical efficiency, of that business, or, as the case may be, of businesses of that class; and
- (b) any scientific research of a medical nature that is of special relation to the welfare of workers employed in that business, or as the case may be, in businesses of that class.

(9)¹¹⁰ ¹¹¹Where scientific research is carried out as prescribed, the deduction allowable under Subsection (1) shall be increased to 150% of the expenditure incurred under the provisions of this section.

(10)¹¹² ¹¹³The amount of the expenditure that would otherwise be deductible under Subsection (9) at a rate equal to 150% of the amount incurred shall be reduced by the amount (if any) of the expenditure that the taxpayer has been recouped or is entitled to recoup from the Government, an authority of the Government or any other person.

96. ELECTION EXPENSES OF CANDIDATES IN NATIONAL ELECTIONS.

(1) Expenditure incurred in the year of income by the taxpayer in being elected as a member, or in contesting an election for membership, of the National Parliament of Papua New Guinea is an allowable deduction.

(2) When a deduction has been allowed or is allowable under this section in respect of any expenditure and that expenditure or any part of it is reimbursed to the taxpayer or paid for him by any other person or by any organisation, the assessable income of the taxpayer of the year in which the amount is so reimbursed or paid shall include that amount.

97. CERTAIN EXPENDITURE ON LAND USED FOR PRIMARY PRODUCTION.

(1) Expenditure incurred in the year of income by a taxpayer engaged in primary production on any land in Papua New Guinea in—

- (a) the eradication or extermination of animal or vegetable pests from the land; or

¹¹⁰ Section 95 Subsection (9) inserted by No. 22 of 2004, s. 18.

¹¹¹ Section 95 Subsection (9) inserted by No. 22 of 2004, s. 18.

¹¹² Section 95 Subsection (10) inserted by No. 22 of 2004, s. 18.

¹¹³ Section 95 Subsection (10) inserted by No. 22 of 2004, s. 18.

- (b) the destruction and removal of timber, scrub or undergrowth indigenous to the land; or
- (c) the destruction of weed or plant growth detrimental to the land; or
- (d) the preparation of the land for agriculture; or
- (e) ploughing and grassing the land for grazing purposes; or
- (f) the draining of swamp or low-lying lands where that operation improves the agricultural or grazing value of the land; or
- (g) preventing or combating soil erosion on the land, otherwise than by the erection of fences; or
- (h) the construction of dams, earth tanks, underground tanks, irrigation channels or similar structural improvements, or the sinking of bores or wells, for the purpose of conserving or conveying water for use in carrying on primary production on the land; or
- (i) the construction on the land of levee banks or similar improvements having like uses; or
- (j) the construction on the land of roads, including bridges, culverts or similar works forming part of a road; or
- (k) the planting of the land with trees, including the purchase of seed, seedlings, cuttings and similar material; or
- (l) where the Commissioner General is satisfied that the land is in a district that is subject to the ravages of animal pests—the construction or alteration of fences on the land, being fences the sole purpose of which is to prevent animal pests entering upon the land or any part of the land; or
- (m) the construction and improvement of plantation employees' accommodation but not including the manager's residence or housing for any other employee deriving salary or wages income exceeding K35.00 per week,

is an allowable deduction.

(2) The amount of the deduction that would otherwise be allowable under Subsection (1)(g), (h), (i), (j) and (l) shall be reduced by the amount (if any) of the expenditure that the taxpayer has been recouped or is entitled to be recouped by the State, by an authority constituted by or under a law of Papua New Guinea or by any other person, where the amount recouped or to be recouped is not or will not be included in assessable income.

97A. DEDUCTION OF AGRICULTURAL DEVELOPMENT EXPENDITURE.

(1) In this section—

“**moneys paid on shares**”, in relation to a primary production company, means moneys paid to the company (whether on application for or

allotment of shares, to meet calls or otherwise) in respect of shares of the company by the owners of the shares, but does not include moneys paid to the company—

- (a) before 1 January 1987; or
- (b) in respect of a redeemable share; or
- (c) to the extent of that excess, which exceed the nominal paid up value of the share;

“primary production company” means a resident company engaged in primary production in Papua New Guinea;

“primary production development expenditure” means expenditure which is or would be deductible—

- (a) under the provisions of Section 97 of the Act; and
- (b) by way of depreciation in respect of assets, being plant or articles used directly for the purposes of agricultural production, under the provisions of Section 73;

“qualifying share” means a share in a primary production company in respect of which a declaration under Subsection (2) is lodged, other than a share which is the subject of a notice under Subsection (3) and which was thereby excluded from that declaration;

“redeemable share” shall have the same meaning as is attributed to it in Section 42(2);

“shareholder”, means a person who is the owner of a share in a primary production company and in the case of any dispute, shall be the shareholder who was shown as such in the company register of shareholders at the end of the year in respect of which a declaration under Subsection (2) is lodged.

(2) A primary production company which has incurred primary production development expenditure may, before the expiration of two months after the end of the year of income of the company in which that primary production development expenditure was incurred or within such further time as the Commissioner General allows, lodge with the Commissioner General a declaration, in writing, signed by the public officer of the company—

- (a) that the company—
 - (i) has expended as primary production development expenditure those amounts specified in the declaration; and
 - (ii) is relinquishing, wholly or in part, in favour of its shareholders its right to deduct from its income those amounts; and
- (b) which shows the following details:—
 - (i) names and addresses of the shareholders in the company;

- (ii) the number of shares held by each of those shareholders;
- (iii) the moneys paid on shares by each shareholder;
- (iv) the amount of primary production development expenditure applicable to each share;
- (v) particulars of all shares in respect of which a notice has been lodged under Subsection (3);
- (vi) copies of any notice, lodged under Subsection (3), which have not previously been supplied to the Commissioner General.

(3) A shareholder may elect, by notice in writing to the primary production company within one month after the end of the year of income, or within such further period as the Commissioner General allows, that part or all of his shareholding shall not be qualifying shares for the purposes of this section.

(4) A notice under Subsection (3) shall specify—

- (a) the name and address of the shareholder; and
- (b) the number of shares which the shareholder elects not to treat as qualifying shares; and
- (c) the moneys paid on those shares by the shareholder; and
- (d) the year of income to which this election will first apply,

and shall remain in force until such time as it is cancelled or varied pursuant to a further notice made under Subsection (3).

(5) Where a primary production company has lodged a declaration as specified in Subsection (2) the amount specified in the declaration shall, subject to Subsection (6)—

- (a) not be allowable as a deduction from the assessable income of that primary production company to the extent to which it is applicable to qualifying shares; and
- (b) be allowable as a deduction from the assessable income of the shareholder of any qualifying share in the company where—
 - (i) the amount deductible shall be calculated so that in respect of any one share that portion of the amount specified in the declaration is deductible which is proportionate to the amount that the moneys paid on the share bear to total moneys paid on shares; and
 - (ii) in respect of any one share the total of the amount deductible in that year and any amounts allowed as a deduction by virtue of this section in any prior year shall not exceed the total of the moneys paid on that share.

(6) If at any time the Commissioner General is not satisfied that moneys specified in a declaration lodged by a primary production company under the

provisions of Subsection (2) were expended in accordance with the declaration the Commissioner General may inform the primary production company, by notice in writing, that he is not so satisfied and, upon the company being so informed, the declaration shall be deemed not to have specified the moneys as to which the Commissioner General is not satisfied.

(7) Notwithstanding any other provision of this Act, when the Commissioner General has issued a notice under the provisions of Subsection (6) he may at any time amend any assessment to give effect to that notice.

97B. DEDUCTION FOR THE PROVISION OF AGRICULTURAL EXTENSION SERVICES.

¹¹⁴(1) Where a taxpayer engaged in primary production in Papua New Guinea provides, in the year of income, to smallholder primary producers, extension services as prescribed, he shall be entitled to a deduction equal to 150% of the expenditure incurred.

(2) The amount of the expenditure that would otherwise be deductible under Subsection (1) at a rate equal to 150% of the amount incurred shall be reduced by the amount (if any) of the expenditure that the taxpayer has been recouped or is entitled to recoup from the Government, an authority of the Government, an authority of the Government or any other person.

98. LOSS IN DERIVING EXEMPT INCOME.

(1) Where a loss is incurred in the year of income by a taxpayer in carrying on in Papua New Guinea a business the income from which, if any, would be exempt income (which business is, in this section, called “**the exempt business**”) that loss is an allowable deduction.

(2) In calculating the amount of that loss, no deduction may be made that would not have been an allowable deduction if the income (if any) had been assessable income.

(3) Notwithstanding any other provision of this Act, where a deduction allowable under this section has been made from the income of any of the three years immediately preceding the year of income, profits derived by the taxpayer from the exempt business in the year of income shall be included in his assessable income, but the amount so included shall not exceed the amount, if any, by which the deductions so made from the income of those three years exceed the profits included under this subsection in the assessable income of those years in respect of those deductions.

¹¹⁴ Section 97B Inserted by No. 22 of 2004, s. 19.

99¹¹⁵. [REPEALED.]**100. PENSIONS, ETC.**

Sums that are not otherwise allowable deductions and are paid by the taxpayer during the year of income as pensions, gratuities or retiring allowances to persons who are or have been employees or dependants of employees, to the extent to which, in the opinion of the Commissioner General, those sums are paid in good faith in consideration of the past services of the employees in any business operations that were carried on by the taxpayer for the purpose of gaining or producing assessable income are allowable deductions.

101. LOSSES OF PREVIOUS YEARS.

(1) In this section—

“**net exempt income**” means—

- (a) where the taxpayer is a resident—the amount by which his exempt income derived from all sources, except income exempt under Part III.1A, exceeds the sum of the expenses (not being expenses of a capital nature) incurred in deriving that income; and
- (b) where he is a non-resident—the amount by which his exempt income derived from sources in Papua New Guinea (other than income, if any, to which Section 189D applied) exceeds the sum of the expenses (not being expenses of a capital nature) incurred in deriving that income;

“**year of loss**”, in relation to a taxpayer, means a year in which the taxpayer incurred a loss.

(2) For the purposes of this section, and subject to Section 66A, a loss shall be deemed to be incurred in any year when the allowable deductions (other than deductions under this section or Section 101A), from assessable income (other than income derived by way of salary or wages or deemed by this Act to be salary or wages), exceed the sum of that income and the net exempt income of that year, and the amount of the loss, subject to Subsections (8), shall be deemed to be the amount of the excess.

(3)^{116 117} Subject to Section 66A(3), so much of the losses incurred by a taxpayer in any of the 20 years immediately preceding the year of income as has not been allowed as a deduction from his income of any of those years is allowable as a deduction in accordance with the following provisions:—

- (a) Where he has not in the year of income derived exempt income, the deduction shall be made from the assessable income.

¹¹⁵ Section 99 repealed by No 49 of 1972, s15.

¹¹⁶ Section 101 Subsection (3) amended by No. 22 of 2004, s. 20; Section 101(3) amended by No 6 of 2000.

¹¹⁷ Section 101 Subsection (3) amended by No. 22 of 2004, s. 20; Section 101(3) amended by No 6 of 2000.

- (b) Where he has in that year derived exempt income, the deduction shall be made successively from the net exempt income and from the assessable income.
- (c) Where a deduction is allowable under this section in respect of two or more losses, the losses shall be taken into account in the order in which they were incurred.
- (d) Where a deduction is allowable under this section, it shall be taken into account after the allowance of all allowable deductions.

(4A)^{118 119}Notwithstanding any other provision of this section, no loss incurred on or before 31 December 2000 shall be deductible, that, under the provisions in force prior to 1 January 2001, would not have been deductible from income derived in the year ended 31 December 2000 or in a later year.

(4)^{120 121}Where a taxpayer has incurred a loss in any of the 20 years next preceding the year of income and, for the purposes of Section 101A, a loss in engaging in primary production is to be deemed to have been incurred by him in that preceding year, so much only of the first-mentioned loss as exceeds the second-mentioned loss shall be taken into account for the purposes of Subsection (3).

(5) Notwithstanding any other provision of this section, where, before the year of income, a taxpayer has become a bankrupt or been adjudicated insolvent, or, not having become a bankrupt or been adjudicated insolvent, has been released from any debts by the operation of the law of Papua New Guinea relating to bankruptcy or insolvency, no loss to which this section applies that was incurred by him before the date on which he became a bankrupt or was adjudicated insolvent, or the date on which he was so released, as the case may be, is an allowable deduction.

(6)^{122 123}Where, in the year of income, a taxpayer pays an amount in respect of a debt incurred by him in one of the 20 years immediately preceding the year of income, being a year in which the taxpayer incurred a loss to which Subsection (5) applies but not being a year before the first year of income to which this Act applies, the amount paid by the taxpayer in respect of the debt is, subject to Subsection (7), an allowable deduction to the extent that it does not exceed so much of the debt as the Commissioner General is satisfied was taken into account in ascertaining the amount of the loss.

(7) The aggregate of the deductions allowable under Subsection (6) from the income of the taxpayer of the year of income in relation to the payment of amounts in respect of debts incurred by the taxpayer in a year of loss shall not exceed the amount of the loss incurred in that year less the sum of—

¹¹⁸ Section 101 Subsection (4A) inserted by No. 22 of 2004, s. 20.

¹¹⁹ Section 101 Subsection (4A) inserted by No. 22 of 2004, s. 20.

¹²⁰ Section 101(4) amended by No 6 of 2000.

¹²¹ Section 101(4) amended by No 6 of 2000.

¹²² Section 101(6) amended by No 6 of 2000.

¹²³ Section 101(6) amended by No 6 of 2000.

- (a) any deductions allowed under Subsection (6) from his income of a year or years of income preceding the year of income in relation to the payment of other amounts in respect of debts incurred by the taxpayer in the year of loss; and
- (b) so much of the loss as has been allowed under Subsection (3) as a deduction or deductions from his income (including his net exempt income) of a year or years of income preceding the year of income; and
- (c) so much of the loss as, but for Subsection (5), would have been allowed or allowable under Subsection (3) as a deduction or deductions from his net exempt income of the year of income or a year or years of income preceding that year; and
- (d) so much of a loss that, for the purposes of Section 101A, is to be deemed to have been incurred by him in the year of loss as has been allowed under Subsection (4) of that section as a deduction or deductions from his income (including his net exempt income) of a year or years of income before the year of income; and
- (e) so much of a loss that, for the purposes of Section 101A, is to be deemed to have been incurred by him in the year of loss as, but for Subsection (6) of that section, would have been allowed or allowable under Subsection (4) of that section as a deduction or deductions from his net exempt income of the year of income, or of a year or years of income before the year of income.

(8) This section does not apply to the amount of non-salary or wages loss for the purposes of Section 66A to the extent that that loss has been allowed by virtue of the calculation of a rebate under Section 214.

(9)¹²⁴ [*Repealed.*]

101A. LOSSES OF PREVIOUS YEARS INCURRED IN ENGAGING IN PRIMARY PRODUCTION.

(1) This section applies to losses incurred by a taxpayer in engaging in primary production in the year of income that commenced on 1 July 1959, and subsequent years.

(2) For the purposes of this section, a taxpayer who has engaged in primary production in any year shall be deemed to have incurred a loss in engaging in primary production in that year if—

- (a) the deductions (other than the deductions allowable under this section or Section 101) allowable from so much of the assessable income of that year as was derived from engaging in primary production exceed that assessable income; and

¹²⁴ Section 101(9) repealed by No 88 of 1967, s4(b).

- (b) for the purposes of Section 101, a loss was incurred by the taxpayer in that year,

and the amount of the loss that the taxpayer is to be deemed to have incurred in engaging in primary production in that year shall be deemed to be—

- (c) if the amount of the excess referred to in paragraph (a) is equal to the amount of the loss referred to in paragraph (b)—the amount of that excess; and
- (d) in any other case—the amount of the excess referred to in paragraph (a) or the amount of the loss referred to in paragraph (b), whichever is the less.

(3) The reference in Subsection (2) to the deductions allowable from so much of the assessable income of a year as was derived from engaging in primary production shall be read as a reference to—

- (a) any deductions allowable from the assessable income of that year that relate exclusively to engaging in primary production; and
- (b) any other deductions allowable from the assessable income of that year to the extent to which they relate to engaging in primary production.

(4) Subject to Section 66A(3), so much of the losses to which this section applies incurred by a taxpayer in any of the years preceding the year of income as has not been allowed as a deduction from his income of any of those years under this section is allowable as a deduction accordance with the following provisions:—

- (a) where he has not in the year of income derived exempt income, the deduction shall be made from the assessable income;
- (b) where he has in that year derived exempt income, the deduction shall be made successively from the net exempt income and from the assessable income;
- (c) where a deduction is allowable under this section in respect of two or more losses, the losses shall be taken into account in the order in which they were incurred; and
- (d) where a deduction is allowable under this section, it shall be taken into account after the allowance of all allowable deductions.

(5) In this section, “**net exempt income**” has the same meaning as in Section 101.

(6) Notwithstanding any other provision of this section, where, before the year of income, a taxpayer has become a bankrupt or been adjudicated insolvent or, not having become a bankrupt or been adjudicated insolvent, has been released from any debts by the operation of the law of Papua New Guinea relating to bankruptcy or insolvency, no loss to which this section applies that was incurred by him before the date on which he became a bankrupt or was adjudicated insolvent, or the date on which he was so released, as the case may be, is an allowable deduction.

(7) Where, in the year of income, a taxpayer pays an amount in respect of a debt incurred by him in the course of engaging in primary production in a year in which he incurred a loss to which Subsection (6) applies, being a year not later than the eighth year next preceding the year of income, the amount paid by the taxpayer in respect of the debt is, subject to Subsection (8), an allowable deduction to the extent to which it does not exceed so much of the debt as the Commissioner General is satisfied was taken into account in ascertaining the amount of loss.

(8) The aggregate of the deductions allowable under Subsection (7) from the income of the taxpayer of the year of income in relation to the payment of amounts in respect of debts incurred by the taxpayer in a year in which he incurred a loss to which this section applies (in this subsection referred to as “**the year of loss**”) shall not exceed the amount of that loss less the sum of—

- (a) the deductions, if any, allowed under Subsection (7) or under Section 101(6) from his income of a year or years of income before the year of income in relation to the payment of other amounts in respect of debts incurred by the taxpayer in the course of engaging in primary production in the year of loss; and
- (b) so much, if any, of the loss as has been allowed under Subsection (4) as a deduction or deductions from his income (including his net exempt income) of a year or years of income before the year of income; and
- (c) so much, if any, of the loss as, but for Subsection (6), would have been allowed or allowable under Subsection (4) as a deduction or deductions from his net exempt income of the year of income or of a year or years of income before the year of income; and,
- (d) the amount, if any, by which the sum, of—
 - (i) the deductions, if any, allowed under Section 101(6) from his income of a year or years of income before the year of income in relation to the payment of amounts in respect of debts (other than debts incurred in the course of engaging in primary production) incurred by the taxpayer in the year of loss; and
 - (ii) the deductions, if any, allowed under Section 101(3) from his income (including his net exempt income) of a year or years of income before the year of income in respect of a loss that, for the purposes of that section, is to be deemed to have been incurred by him in the year of loss; and
 - (iii) the deductions, if any, that, but for Section 101(5), would have been allowed or allowable in respect of that loss under Section 101(3) from his net exempt income of the year of income or of a year or years of income before the year of income,

exceeds the difference, if any, between the amount of the loss that, for the purposes of Section 101 is to be deemed to have been incurred by him in the year of loss and the

amount of the loss to which this section applies that was incurred by him in that year.

101B. ORDER IN WHICH DEDUCTIONS ALLOWABLE IN RESPECT OF LOSSES OF PREVIOUS YEARS ARE TO BE TAKEN INTO ACCOUNT.

Where deductions are allowable from the income of a taxpayer of the year of income under both Section 101(3) and Section 101A(4), any deductions allowable under Section 101(3) shall be taken into account before any deductions allowable under Section 101A(4).

101C. LIMITATIONS ON NET EXEMPT INCOME TO BE TAKEN INTO ACCOUNT IN RESPECT OF DEDUCTIONS UNDER SECTION 101A.

(1) Where, but for this section, the net exempt income of a taxpayer of the year of income would be taken into account both for the purpose of Section 101(3)(b) and for the purpose of Section 101A(4)(b), the amount of that net exempt income to be taken into account for the last-mentioned purpose shall not exceed the amount (if any) of that net exempt income that remains after deducting so much of the net exempt income as has been taken into account for the first-mentioned purpose.

(2) Where, but for this section, the net exempt income of a taxpayer of the year of income would be taken into account both for the purpose of Section 101(7)(c) and for the purpose of Section 101A(8)(c), the amount of that net exempt income to be taken into account for the last-mentioned purpose shall not exceed the amount (if any) of that net exempt income that remains after deducting so much of that net exempt income as has been taken into account for the first mentioned purpose.

101D. LOSSES OF PREVIOUS YEARS NOT TO BE TAKEN INTO ACCOUNT UNLESS THERE IS SUBSTANTIAL CONTINUITY OF OWNERSHIP OF SHARES IN COMPANY.

Notwithstanding Sections 101 and 101A, but subject to Sections 101E, 101F and 101G, a loss incurred by a taxpayer, being a company, in a year before the year of income shall not be taken into account for the purposes of Section 101 or 101A unless the company satisfies the Commissioner General that, at all times during the year of income, shares in the company carrying between them—

- (a) the right to exercise not less than 50% of the voting power in the company; and
- (b) the right to receive not less than 50% of any dividends that may be paid by the company; and
- (c) the right to receive not less than 50% of any distribution of capital of the company in the event of the winding-up, or of a reduction in the capital, of the company,

were beneficially owned by persons who, at all times during the year in which the loss was incurred, beneficially owned shares in the company carrying rights of those kinds.

101E. SPECIAL PROVISIONS RELATING TO BENEFICIAL OWNERSHIP OF, OR RIGHTS ATTACHED TO, SHARES.

(1) For the purposes of the application of Section 101D in determining whether a loss incurred by a company in a year before the year of income is to be taken into account, the succeeding provisions of this section have effect.

(2) Where shares in the company were allotted after the commencement of the year in which the loss was incurred and the allotment took place in the year of income in which the company was incorporated or within a period of two years, or such further period of a year or years as the Commissioner General approves for the purpose of this subsection in relation to the company, after the end of that year of income, the shares shall be deemed to have been allotted at the commencement of the year in which the loss was incurred and to have been beneficially owned, at all times from the commencement of that year until the time when the shares were in fact allotted, by the persons who beneficially owned the shares immediately after that last-mentioned time.

(3) Shares in the company that were beneficially owned by a person at any time shall be deemed to have been beneficially owned by the same person at a later time if the person had died and, at that later time, the shares were owned by the trustee of his estate in his capacity as trustee of that estate, or were beneficially owned by a person who received the shares as a beneficiary in that estate.

(4) Where shares in the company that were beneficially owned by a person at any time have been transferred by that person to a company and, at a later time, shares in the last-mentioned company carrying between them—

- (a) the right to exercise more than one-half of the voting power in the last-mentioned company; and
- (b) the right to receive more than one-half of any dividends that might be paid by the last-mentioned company; and
- (c) the right to receive more than one-half of any distribution of capital of the last-mentioned company in the event of the winding-up, or of a reduction in the capital, of that company,

were beneficially owned by that person or, if he has died, were owned by the trustee of his estate in his capacity as trustee of that estate or were beneficially owned by a person who received the shares as a beneficiary in that estate the Commissioner General may, if he considers that it is reasonable to do so, treat the shares in the first-mentioned company as having been beneficially owned by the first-mentioned person at that later time.

(5) Where—

- (a) a person who beneficially owned any shares in the company at all times during the year in which the loss was incurred also beneficially owned shares in the company at any time (in this subsection referred to as “**the relevant time**”) during the year of income; and
- (b) before or during the year of income, that person entered into a contract, agreement or arrangement, or granted or was granted a right, power or option (including a contingent right, power or option), that in any way, directly or indirectly, related to, affected, or depended for its operation on—
 - (i) the beneficial interest of that person in the last-mentioned shares, or the value of that interest; or
 - (ii) the right of that person to sell, or otherwise dispose of, that interest, or any such sale or other disposition; or
 - (iii) any rights carried by those shares, or the exercise of any such rights; or
 - (iv) any dividends that might be paid, or any distribution of capital that might be made, in respect of those shares, or the payment of any such dividends or the making of any such distribution of capital; and
- (c) the contract, agreement or arrangement was entered into, or the right, power or option was granted, for the purpose, or for purposes that included the purpose, of enabling the company to take into account for the purposes of Section 101 or 101A a loss that the company had incurred in a year before the year in which the contract, agreement or arrangement was entered into or the right, power or option was granted, or a loss that the company might incur in the last-mentioned year,

the Commissioner General may, subject to the succeeding provisions of this section, treat those shares as not having been beneficially owned by that person at the relevant time.

(6) Where the Commissioner General is satisfied that, by virtue of a provision in the constituent document of the company as in force at any time during the year of income or by virtue of an agreement or arrangement made before the end of the year of income between persons who at the time when the agreement or arrangement was made were, or since that time have become, beneficial owners of shares in the company, shares in the company that—

- (a) were beneficially owned at any time during the year of income by persons who beneficially owned any shares in the company at all times during the year in which the loss was incurred; and
- (b) carried any rights at all times during the year of income,

have ceased, or will or may cease, at any time after the end of the year of income, to carry those rights, the shares shall be deemed not to have carried those rights at any time during the year of income.

(7) Where the Commissioner General is satisfied that by virtue of a provision of the constituent document of the company as in force at any time during the year of income or by virtue of an agreement or arrangement made before the end of the year of income between persons who at the time when the agreement or arrangement was made were, or since that time have become, beneficial owners of shares in the company, shares in the company have commenced, or will or may commence, at any time after the end of the year of income, to carry rights that those shares did not carry at a time during the year of income—

- (a) if the shares were not beneficially owned at any time during the year of income by persons who beneficially owned any shares in the company at all times during the year in which the loss was incurred—the shares shall be deemed to have carried those rights at all times during the year of income; and
- (b) in any other case—the Commissioner General may, if he considers that, having regard to all the circumstances, it is reasonable to do so, treat the shares as having carried those rights at all times during the year of income.

(8) In ascertaining whether a person, being a person who beneficially owned shares in the company at all times during the year in which the loss was incurred, beneficially owned any shares in the company, at all times during the year of income any shares (other than shares allotted by the company before the year in which the loss was incurred) that are, or at the option of the company are to be, liable to be redeemed, shall be disregarded.

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

(1) Notwithstanding Sections 101, 101A and 101D, but subject to this section and to Section 101G, where a company in which no other company had a controlling interest (in this section referred to as “**the holding company**”) had a controlling interest in another company (in this section referred to as “**the subsidiary company**”) at any time during a year in which a loss was incurred by the subsidiary company, the loss shall not be taken into account for purposes of Section 101 or 101A unless the Commissioner General is satisfied that, at all times during the year of income of the subsidiary company—

- (a) the holding company had a controlling interest in the subsidiary company; and
- (b) shares in the holding company, carrying between them—
 - (i) the right to exercise not less than 50% of the voting power in the company; and
 - (ii) the right to receive not less than 50% of any dividends that may be paid by the company; and

- (iii) the right to receive not less than 50% of any distribution of capital of the company in the event of the winding-up, or of a reduction in the capital, of the company,

were beneficially owned by persons who, at all times during the year in which the loss was incurred by the subsidiary company, beneficially owned shares in the holding company carrying rights of those kinds.

(2) For the purposes of the application of Subsection (1), the provisions of Section 101E(3) to (8), inclusive, apply in relation to the holding company and in relation to every company that was at any relevant time interposed between the holding company and the subsidiary company as if references in those subsections to the company were references to the holding company or to the interposed company, as the case may be.

101G. LOSSES OF PREVIOUS YEARS MAY BE TAKEN INTO ACCOUNT WHERE COMPANY CARRIES ON SAME BUSINESS.

(1) Subject to Subsection (2), where—

- (a) the whole or part of a loss incurred by a taxpayer, being a company, in a year before the year of income would not, but for this section, by reason of Section 101D (including that section as affected by Section 101F) or Section 101F, be taken into account for the purposes of Section 101 or 101A; and
- (b) the whole of the loss would, but for a change that has taken place in the beneficial ownership of shares in the company or in a company that had a controlling interest in the company, have been so taken into account; and
- (c) the first-mentioned company carried on at all times during the year of income the same business as it carried on immediately before the change took place; and
- (d) the first-mentioned company did not, at any time during the year of income, derive income from a business of a kind that it did not carry on, or from a transaction of a kind that it had not entered into in the course of its business operations, before the change took place,

Section 101D or 101F, as the case may be, does not operate to prevent the whole of the loss being so taken into account.

(2) Subsection (1) does not apply in respect of a loss incurred by a taxpayer being a company in a year before the year of income if—

- (a) before the change took place, the company commenced to carry on a business that it had not previously carried on or entered into, in the course of its business operations, a transaction of a kind that it had not previously entered into; and

- (b) the company commenced to carry on that business or entered into that transaction for the purpose, or for purposes that included the purpose, of enabling the company to take into account for the purposes of Section 101 or 101A a loss that the company had incurred in a year before the first-mentioned year or might incur in the first-mentioned year.

101H. AMENDMENT OF ASSESSMENTS.

Notwithstanding anything in any other provision of this Act, the Commissioner General may amend an assessment for the purpose of giving effect to the provisions of Section 101E(5), (6), (7) or (8) (including those provisions as applied by Section 101F(2)) if the amendment is made within six years after the date upon which the tax became due and payable under the assessment.

102¹²⁵. [REPEALED.]

103. DOUBLE DEDUCTIONS.

(1) Where, in respect of any amount, a deduction would but for this section be allowable under more than one provision of this Act, and whether it would be so allowable from the assessable income of the same or different years, the deduction is allowable only under that provision which in the opinion of the Commissioner General is most appropriate.

(2)¹²⁶ [Repealed.]

(3) Where the profit arising from the sale of any property is included in the assessable income of any person, or where the loss arising from the sale is an allowable deduction, and any expenditure incurred by him in connection with that property is an allowable deduction under this Act, that expenditure shall not be deducted in ascertaining the amount of the profit or loss.

(4) The reference in Subsection (3) to expenditure incurred by a person in connection with property shall be read as not including a reference to expenditure that has been allowed or is allowable as a deduction under Section 97.

(5) Where expenditure incurred by a taxpayer in connection with property has been allowed or is allowable as a deduction or deductions in an assessment or assessments of the taxpayer under or by virtue of Section 97, that expenditure may be deducted in ascertaining the amount of any profit or loss arising from the sale of the property only to the extent that the deduction of the expenditure does not result in the tax payable by the taxpayer for the year or years of income in relation to which the deduction is made being reduced by an amount that is greater than the difference between—

- (a) the amount of that expenditure; and

¹²⁵ Section 102 repealed by No 49 of 1972, s19.

¹²⁶ Section 103(2) repealed by No 49 of 1972, s20.

- (b) the amount, or the sum of the amounts, by which tax payable by the taxpayer for the year of income and previous years of income will be or has been reduced by reason of the first-mentioned deduction or deductions.

Subdivision B.¹²⁷ –

104 - 115A¹²⁸. [*Repealed.*]

Division 4.¹²⁹

.

116 - 122¹³⁰. [*Repealed.*]

Division 5.

Partnership.

123. DEFINITIONS.

In this Division—

“**net income**”, in relation to a partnership, means the assessable income of the partnership, calculated as if the partnership were a taxpayer, less all allowable deductions except the deductions allowable under Section 101 or 101A in respect of losses of previous years;

“**partnership loss**” means the excess, if any, of the allowable deductions, except the deductions allowable under Section 101 or 101A in respect of losses of previous years, over the assessable income of a partnership, calculated as if the partnership were a taxpayer.

124. PARTNERSHIPS.

A partnership shall furnish a return of the income of the partnership, but is not, except as provided in this Division, liable to pay tax on that income.

¹²⁷ Subdivision III.3.B repealed by No 117 of 1975.

¹²⁸ Subdivision III.3.B repealed by No 117 of 1975; Section 104 repealed by No 117 of 1975; Section 105 repealed by No 117 of 1975; Section 106 repealed by No 117 of 1975; Section 107 repealed by No 117 of 1975; Section 108 repealed by No 117 of 1975; Section 109 repealed by No 117 of 1975; Section 110 repealed by No 117 of 1975; Section 111 repealed by No 117 of 1975; Section 112 repealed by No 117 of 1975; Section 113 repealed by No 117 of 1975; Section 114 repealed by No 117 of 1975; Section 115 repealed by No 117 of 1975; Section 115A repealed by No 117 of 1975.

¹²⁹ Division III.4 repealed by No 64 of 1986, s21.

¹³⁰ Division III.4 repealed by No 64 of 1986, s21; Section 116 repealed by No 64 of 1986, s21; Section 116A repealed by No 64 of 1986, s21; Section 117 repealed by No 64 of 1986, s21; Section 118 repealed by No 64 of 1986, s21; Section 119 repealed by No 64 of 1986, s21; Section 120 repealed by No 64 of 1986, s21; Section 121 repealed by No 64 of 1986, s21; Section 122 repealed by No 64 of 1986, s21.

125. INCOME OF PARTNER.

(1) The assessable income of a partner shall include his individual interest in the net income of the partnership of the year of income, and his individual interest in a partnership loss incurred in the year of income is an allowable deduction.

(2) The exempt income of a partner shall include his individual interest in the exempt income of the partnership of the year of income.

126. OPTIONS OF PARTNERS IN RESPECT OF LIVESTOCK.

(1) In calculating the net income of a partnership or a partnership loss for the purpose of assessing a partner's share, the partnership shall be deemed to have exercised or failed to exercise all options and rights to select a value for livestock under this Act in the same manner as the partner has in fact exercised or failed to exercise those options and rights, and the partnership is not, as a partnership, entitled to exercise any such option or right.

(2) The fact that a taxpayer has entered into a partnership, or that a variation has taken place in the membership of a partnership of which the taxpayer is a member does not—

- (a) affect an option or a right to select a value for livestock previously exercised by him under this Act; or
- (b) confer upon him any right to alter such an option or value without the leave of the Commissioner General.

127. PARTNER NOT IN RECEIPT AND CONTROL OF SHARE.

(1) Where a partnership is so constituted or controlled, or its operations are so conducted, that a partner has not the real and effective control and disposal of his share of the net income of the partnership, the Commissioner General may assess the additional amount of tax that would be payable if the share of that partner, or of all such partners if more than one—

- (a) had been received by the partner who has the real and effective control of that share; or
- (b) had been divided between such other partners as have the real and effective control of that share in proportion to the extent to which, in the opinion of the Commissioner General, they respectively have the real and effective control of that share,

(as the case may be) and had been added to and included in his or their assessable income, and the partnership is liable to pay the tax so assessed.

(2) Where the provisions of this section are applied to a share of the net income of a partnership, that share shall not be included in the assessable income of any partner.

(3) For the purpose of this section, but without limiting its application, a partner shall be deemed not to have the real or effective control and disposal of any

money received by him that is applied to meet the private or domestic obligations of any other partner.

Division 6.

Trusts and Trustees.

128. INTERPRETATION.

In this Division—

“foreign trust estate” means a trust estate other than a Papua New Guinea trust estate;

“the net income of a trust estate” means the total assessable income of the trust estate calculated under this Act—

- (a) in the case of a Papua New Guinea trust estate, as if the trust estate were a taxpayer resident in the country; and
- (b) in the case of a foreign trust estate, as if the trust estate were a taxpayer not resident in the country,

in respect of that income, less all allowable deductions;

“Papua New Guinea trust estate” means a trust estate which is, or has been at any time, resident in the country;

“tax” for the purpose of calculating the average rate of tax payable by a taxpayer under Section 133 includes salary or wages tax.

129. INCORPORATION OF TRUST ESTATE.

(1) A trust estate is, for the purposes of this Division, a corporation (distinct from the persons who may from time to time be the trustees).

(2) A trust estate shall be deemed to be resident in the country unless evidence, to the satisfaction of the Commissioner General, is produced that—

- (a) the general administration of the trust estate is ordinarily carried on outside the country; and
- (b) the trustees or a majority of them, during the whole of the year of income, are not resident or ordinarily resident in the country; and
- (c) the settlor was not, at the time of the creation of the trust, or where the trust arose by testamentary disposition or intestacy or partial intestacy, the person upon whose death the trust arose was not at the date of his death, domiciled or resident or ordinarily resident in the country; and
- (d) the beneficiaries or a majority of them are not domiciled or resident or ordinarily resident in the country; and
- (e) in all years of income, more than 50% of the income of the trust estate was derived from sources outside the country.

130. TRUSTEES.

(1) A trustee is liable to pay income tax upon the net income of the trust estate at such rates as are provided by Act and the trustee may deduct and retain for his own use so much of the net income of the trust estate as is necessary to pay the tax imposed by this section.

(2) For the purposes of this Division, neither the trustee nor the trust estate shall be entitled to any concessional rebate under Division 18A

131. ASSESSABLE INCOME OF BENEFICIARIES.

The assessable income of a person who is a resident shall include the net income of a trust estate (less the amount of any taxes paid by the trustee on that income) derived by him directly or indirectly from a resident trust estate whatever the source of income, notwithstanding that the trustee may have paid or may be liable to pay tax under this Division upon the income of the trust estate or estates from which such income was derived.

132. ASSESSABLE INCOME TO INCLUDE ENTITLEMENTS TO INCOME.

(1) Where a person who is a resident—

- (a) is presently entitled to an undistributed share of the net income of a trust estate; or
- (b) derives or is presently entitled to a share of the net income from a trust estate, where that trust was established by a Court or the Will of a deceased person,

wherever the trust is a resident and whatever the source of income, his assessable income shall include that share of the net income of the trust estate to which he is presently entitled notwithstanding that the trustee may have paid or may be liable to pay tax under this Division upon the income of that trust estate.

(2) The exempt income of any beneficiary to which Subsection (1) applies shall include his individual interest in the exempt income of the trust estate, except to the extent to which that exempt income is taken into account in calculating the net income of the trust estate.

133. CREDITS.

(1) Where the assessable income of a taxpayer includes income assessed under Section 132, the taxpayer is, subject to this Division, entitled to a credit ascertained in accordance with this section.

(2) The credit to which a taxpayer is entitled under Subsection (1) shall be—

- (a) any tax which the trustee has paid or is liable to pay under Section 130 in respect of that taxpayer's interest in the net income of the trust estate; or

- (b) the amount ascertained by applying to the income assessed to the taxpayer under Section 132 the average rate of tax payable by the taxpayer for the year of tax,

whichever is the less.

(3) A credit shall only be allowed under this section where the Commissioner General is satisfied that the tax payable by the trustee under Section 130 has been or will be paid.

134. EXERCISE OF DISCRETION BY TRUSTEE.

For the purposes of this Division, where a trustee has a discretion to pay or apply income of a trust estate to or for the benefit of specified persons, a person in whose favour the trustee exercises his discretion shall be deemed to have derived the amount paid to him or applied for his benefit by the trustee in the exercise of that discretion.

135. NON-RESIDENT BENEFICIARIES.

(1) Where the trustee of a Papua New Guinea trust estate distributes income of the trust estate to a person who is not a resident of the country, the trustee is liable to pay, in addition to the income tax imposed upon the trustee by Section 130, income tax upon the amount so distributed at such rate as is declared by Act.

(2) Where a beneficiary who is not a resident of the country is presently entitled to an undistributed share of income of a Papua New Guinea trust estate, the trustee of that trust estate is liable to pay, in addition to the income tax imposed upon the trustee by Section 130, income tax upon that share of that beneficiary in the net income of the trust estate at such rate as is declared by Act.

(3) Where a trustee has paid or is liable to pay income tax under Subsection (2), the trustee shall not be liable to pay income tax under Subsection (1) upon a distribution of that share of that beneficiary in the net income of the trust estate to that beneficiary.

(4) Where income tax is imposed upon a trustee by this section, the trustee may deduct and retain for his own use so much of the net income of the trust estate as is necessary to pay the tax imposed by this section.

(5) Income upon which income tax is payable by a trustee under this section shall not be included in the assessable income of the beneficiary.

(6) In this section, “**beneficiary**” includes any person who at any time becomes presently entitled to a share in the net income of the trust estate, or to whom at any time a distribution of any part of the net income of the trust estate is made.

136. ASSESSMENT OF INCOME OF DECEASED PERSONS.

Where in the year of income the trustee of the estate of a deceased person receives an amount that would have been assessable income in the hands of the

deceased person if it had been received by him during his lifetime, that amount shall be included in the assessable income of that year of the trust estate.

Division 6A.

Unit Trusts.

136A. INTERPRETATION.

In this Division and in Section 29, “**unit trust**” means unit trust or property unit trust as defined in Section 4.

136B. UNIT TRUST DEEMED TO BE A COMPANY.

In this Act—

- (a) a reference to a company or corporation (other than a reference to a company in the capacity of a trustee) shall be deemed to include a reference to a unit trust; and
- (b) a reference to a trust or trust estate shall be deemed not to include a reference to a unit trust; and
- (c) a reference to a distribution by a trust shall be deemed not to include a distribution by a unit trust or any unit trust dividend,

for the purpose of Part III, Division 1 (other than Sections 42 and 48), 2, 6, 13, 19 (other than Section 216) and 20; and Part VI, Divisions 1A, 3 and 3A.

136C. TAXATION OF UNIT TRUST.

A unit trust shall pay tax on its assessable income at the rate provided by the Act.

Division 6B.

Landowner Resources Trusts.

137. DECLARATION OF TRUST AS LANDOWNER RESOURCES TRUST.

(1) This section applies to trusts—

- (a) the trust property of which is or includes an interest in a landowner resources project in Papua New Guinea or a right to receive benefits (including royalties) derived from such a project; and
- (b) the beneficiaries of which are—
 - (i) citizens of Papua New Guinea who derive their beneficial interest in the trust by reason of being landowners in the area of the project or being resident or born in or being part of a clan whose village is situated in the region of such a project or the province in which such a project is located; or

- (ii) incorporated land groups representing such citizens of Papua New Guinea.

(2) The Minister may by regulation declare a trust to which this section applies to be a landowner resources trust.

138. DECLARATION OF PROJECTS AS LANDOWNER RESOURCES PROJECTS.

(1) For the purpose of this Division—

- (a) designated gas projects, mining projects and petroleum projects; and
- (b) any other natural resources project in Papua New Guinea in respect of which a declaration is made under Subsection (2),

are landowner resources projects.

(2) The Minister may by regulation declare a natural resources project in Papua New Guinea other than a designated gas project, mining project or petroleum project to be a landowner resources project for the purpose of this Division.

139. LANDOWNER RESOURCES TRUSTS TO BE TAXED AS RESOURCE COMPANY.

(1) In this section, a reference to a landowner resources trust includes a reference to the trustee of a landowner resources trust acting in that capacity.

(2) Notwithstanding any other provision of this Act, but subject to Subsection (4) and Section 140, where a landowner resources trust derives income from a landowner resources project in Papua New Guinea, either as an equity participant or through any other form of derivation of assessable income and whether carried on by the landowner resources trust or any other person, the landowner resources trust shall be taxed as though it were a company deriving that income.

(3)¹³¹ ¹³²A landowner resources trust deriving assessable income from gas operations, mining operations or petroleum operations shall be liable to additional profits tax under Subdivision III.10E if applicable.

(4)¹³³ ¹³⁴A landowner resources trust deriving assessable income from a landowner resources project subject to assessment under Subdivisions III.10A, III.10B, III.10C or III.10D shall be assessed in relation to each such project as if the assessable income derived from that project was the only assessable income derived by the landowner resources trust and without limiting, by implication, the foregoing—

¹³¹ Section 139 Subsection (3) amended by No. 22 of 2004, s. 21; Section 138(3) amended in consequence of No 68 of 2000.

¹³² Section 139 Subsection (3) amended by No. 22 of 2004, s. 21; Section 138(3) amended in consequence of No 68 of 2000.

¹³³ Section 139 Subsection (4) amended by No. 22 of 2004, s. 21; Section 138(4) amended in consequence of No 68 of 2000.

¹³⁴ Section 139 Subsection (4) amended by No. 22 of 2004, s. 21; Section 138(4) amended in consequence of No 68 of 2000.

- (a) all deductions that are allowable under this Act shall be deductible against assessable income from the landowner resources project only to the extent that the deductions are or are deemed to be attributable to the landowner resources project; and
- (b) all deductions that are allowable under this Act and which are or are deemed to be attributable to the landowner resources project shall be allowed only against assessable income that is derived from the landowner resources project.

(5) Notwithstanding any other provision of this Act, where a landowner resources trust derives royalties from a related landowner resources project which have already been subject to prescribed royalty payments withholding tax under Subdivision VI.2, the net royalty shall be exempt income of the landowner resources trust.

140. LANDOWNER RESOURCES TRUSTS DERIVING DIVIDENDS FROM LANDOWNER RESOURCES TRUST.

(1) Notwithstanding any other provision of this Act, where—

- (a) a landowner resources trust owns all of the issued shares of a company; and
- (b) that company derives income of the type referred to in Section 139(2),

dividends paid to the landowner resources trust out of profits derived from such income are exempt from income tax in the hands of the landowner resources trust.

(2) This section shall not operate to prevent the company referred to in Subsection (1) from being liable in respect of any tax on its income or dividend withholding obligation imposed under this or any other Act.

141. DERIVATION OF OTHER INCOME BY LANDOWNER RESOURCES TRUST.

(1) Where a landowner resources trust derives any assessable income other than assessable income referred to in Sections 139 or 140, that assessable income shall be taxed in the hands of the landowner resources trust as though the landowner resources trust was a company.

(2) The provisions of this Act other than this Division shall apply to the assessment of all income of a landowner resources trust other than income referred to in Sections 139 and 140.

142. DISTRIBUTIONS FROM LANDOWNER RESOURCES TRUSTS.

All distributions of income and capital by a landowner resources trust to its beneficiaries shall be exempt from income tax in the hands of the beneficiaries.

Division 7.

Private Companies.

Subdivision A.¹³⁵ –

143¹³⁶. [Repealed.]

Subdivision B. – Payments and Loans to Certain Persons.

144. INTERPRETATION.

(1)¹³⁷ In this Subdivision, unless the contrary intention appears—

¹³⁸“**gift**” includes a donation, settlement, a gift absolute and a disposition of property for (in the opinion of the Commissioner General) inadequate consideration, whether by way of conveyance, transfer or otherwise;

“**loan**” in relation to a shareholder, his relative or an associated person, includes an advance, a deposit, money otherwise let out and a credit given (including the forbearance of a debt), whether, in each case, on current account or otherwise;

“**nominee**”, in relation to any person, means any other person who may be required to exercise his voting power in relation to any company in accordance with the direction of that person, or who holds shares or debentures directly or indirectly on behalf of that person, and includes any relative of that person;

¹³⁹“**private company**” means a private company in relation to a year of income where—

- (a) at any time during the year of income, one person or persons not more than 20 in number held, or had the right to acquire or become the holder or holders of, shares representing not less than 50% of the paid up capital of the company, other than capital represented by shares entitled to a fixed rate of dividend only; or
- (b) at any time during the year of income, not less than 50% of the voting the year of income, not less than 50%, of the amount of that dividend would have been paid to one person or to persons not more than 20 in number; or
- (c) not less than 50% of—
 - (i) the amount of any dividend paid by the company during the year of income; or

¹³⁵ Subdivision A repealed by No 22 of 1980, ss23 to 30.

¹³⁶ Section 143 repealed by No 22 of 1980, ss23 to 30.

¹³⁷ Section 144 (definition of “associated person”) repealed by No 26 of 1989, s21(a).

¹³⁸ Section 144 (definition of “associated person”) repealed by No 26 of 1989, s21(a).

¹³⁹ Section 222 (definition of “private company”) repealed and replaced by No 28 of 2000.

- (ii) where more than one dividend was paid by the company during the year of income, the total amount of all the dividends paid by the persons not more than 20 in number; or
- (iii) a dividend was not paid by the company during the year of income but the Commissioner General is of the opinion that, if a dividend had been paid by the company at any time during the year of income, not less than 50%, of the amount of that dividend would have been paid to one person or to persons not more than 20 in number,

but does not include a company which is controlled by another company which does not satisfy any of the foregoing conditions.

(2) For the purposes of this Subdivision, unless the contrary intention appears, the following persons are associated persons in relation to each other:—

- (a) any two companies that consist substantially of the same shareholders or are under the control of the same persons;
- (b) any company and any person (other than a company) who holds paid up capital of the company;
- (c) any two persons who are relatives;
- (d) a partnership and any person, where that person and any partner in that partnership are, in accordance with this definition, associated persons;
- (e) a Papua New Guinea trust estate or a foreign trust estate, as defined in Section 128, and any person, where that person and any trustee, settlor or beneficiary of the Papua New Guinea or foreign trust estate are, in accordance with this definition, associated persons.

144A. DEEMED DIVIDENDS.

(1) Subject to Sections 144B and 144C, where amounts are paid or assets distributed by a private company to any of its shareholders by way of loans or gifts, or payments are made or expenditure is incurred by the company on behalf or for the benefit of any of its shareholders, (except gifts, payments or expenditure so incurred the amount of which is deductible, pursuant to this Act, in calculating the assessable income of the company), so much of the amount or value of those payments, assets distributed, loans, gifts, or that expenditure incurred that represent payments, distributions, loans, gifts or expenditure from either the income or the profits of the company shall, for all purposes of this Act (except, where a shareholder is other than a company, the purposes of Division III.13A and Division VI.4), be deemed to be dividends paid by the company out of taxable profits.

(2) Where, pursuant to Subsection (1), more than one shareholder is deemed to derive the same dividend, the dividend shall be deemed to be apportioned ratably

among those shareholders in proportion to the paid-up value of the interest of each in the share capital of the company.

(3) Where a shareholder is deemed to have derived a dividend pursuant to Subsection (1), the dividend shall be deemed to have been paid by the company on the last day of the year of income of—

- (a) the company in which the relevant transactions took place; or
- (b) the shareholder,

whichever is the earlier.

144AB. DEEMED DIVIDENDS OUTSIDE THE COUNTRY.

(1) Where, in the opinion of the Commissioner General, a resident company—

- (a) discontinues the business carried on by it; or
- (b) is in the course of discontinuing the business carried on by it; or
- (c) has substantially changed the nature of its business or the manner in which it conducts its business operations,

and that company (either directly or indirectly, including without limiting the foregoing through an associated person) makes an investment in property outside the country, that company shall be deemed to have paid a dividend to its shareholders on the date of the acquisition of the investment outside the country.

(2) Where there has been a deemed dividend under Subsection (1) the amount of the deemed dividend shall be the actual amount paid by the company in making the investment, and in the event that more than one payment is made, each such payment shall be deemed to be a separate dividend.

(3) The company shall, within 30 days after the making of the investment, have the right to apply in writing to the Commissioner General for a declaration that this section does not apply to the investment, and where the Commissioner General is satisfied that the investment is a *bona fide* business transaction which has been carried out at arms length, he shall declare that this section does not apply to such a transaction.

(4) For the purposes of this section “**investment in property**” shall (without limiting the meaning thereof) include the following:—

- (a) purchasing any real or personal property;
- (b) purchasing or acquiring an option to purchase or acquire any real or personal property;
- (c) purchasing or acquiring shares, debentures or other securities;
- (d) purchasing or acquiring an option to purchase or acquire shares, debentures or other securities;
- (e) the making of loans;
- (f) purchasing or acquiring any chose in action;

- (g) purchasing or acquiring an option to purchase or acquire any chose in action.

(5) Where, pursuant to this section, more than one shareholder is deemed to derive the same dividend, the dividend shall be deemed to be apportioned rateably among those shareholders in proportion to the paid-up value of the interest of each in the share capital of the company.

144B. REPAYMENT OF LOANS.

Where an amount (other than the amount of a gift) that, pursuant to Section 144A (1), is deemed to be a dividend is subsequently repaid to the company and it is established to the satisfaction of the Commissioner General that the repayment is made *bona fide* and is not, either directly or indirectly, made subject to or conditional upon a subsequent or simultaneous withdrawal which would itself be deemed to be a dividend by virtue of Section 144A, either wholly or in part and either during, or within 12 months after the last day of the year of income in respect of which the amount is deemed to be a dividend, the Commissioner General may at his discretion and to the extent he considers fit, reduce the deemed dividend by the amount of any repayment and, notwithstanding anything in this Act, may amend in such manner as he considers necessary the assessment made in respect of income derived by a shareholder during the year of income in which the dividend was included.

144C. LOANS TO ASSOCIATED PERSONS AND SHAREHOLDER COMPANIES.

Section 144A does not apply to or in relation to amounts paid or assets distributed by way of loans by a private company to a resident of Papua New Guinea—

- (a) who, in relation to that company, is an associated person; or
(b) that is a shareholder company,

where it is established, to the satisfaction of the Commissioner General, that such loans are in the nature of a *bona fide* investment or commercial transaction.

144D. LOANS, ETC. TO PERSONS ASSOCIATED WITH SHAREHOLDERS.

(1) Where a private company pays an amount or distributes an asset by way of loan or gift to, or makes a payment or incurs expenditure on behalf or for the benefit of, a person who is not a shareholder of the company but who, in relation to a shareholder, is an associated person, and which, if made or distributed to, or incurred on behalf or for the benefit of, that shareholder would, by virtue of Section 144A, be deemed to be a dividend paid to the shareholder, the amount or value of that payment, distribution, expenditure or benefit shall be deemed to be income of the shareholder as if made to, or on behalf or for the benefit of, the shareholder.

(2) For the purposes of this section, where there is, in the opinion of the Commissioner General, a person or entity interposed between a shareholder and an

associated person, the Commissioner General may disregard the person or entity so interposed.

144E. NOMINEE SHAREHOLDERS.

For the purposes of this Subdivision, where a nominee of any person holds any shares, nominal capital, paid-up capital, or voting power in a company, or has by any other means any power of control in a company, or is entitled to a share of profits distributed by a company, those shares or that capital or that voting power or that power of control or that entitlement to profits, as the case may be, shall be deemed to be held by that person, and in every such case that person and his nominees shall be deemed to be one person.

144F. DIVIDEND AS SATISFACTION FOR LOAN, ETC.

Where an amount or value (other than the amount or value of a gift) is deemed by virtue of this Subdivision to be a dividend paid by a company to a shareholder, and the company subsequently sets off the whole or a part of a dividend distributed by it in satisfaction, in whole or in part, of that amount or value, that dividend shall, to the extent to which it is so set off, be deemed not to be a dividend for the purposes of this Act.

145. PAYMENTS TO SHAREHOLDERS AND DIRECTORS.

(1) So much of a sum paid or credited by a private company to a person who is or has been a shareholder or director of the company or a relative of a shareholder or director, being, or purporting to be—

- (a) remuneration for services rendered by that person; or
- (b) an allowance, gratuity or compensation in consequence of the retirement of that person from an office or employment held by him in that company, or upon the termination of any such office or employment,

as exceeds an amount that, in the opinion of the Commissioner General, is reasonable, is not an allowable deduction and shall, for all purposes of this Act (except, where the shareholder is other than a company, for the purposes of Division III.13A and Division VI.4) be deemed to be a dividend paid by the company.

(1A) Where a person is deemed to have derived a dividend, pursuant to Subsection (1), the dividend shall be deemed to have been paid by the company on the last day of the year of income of—

- (a) the company in which the sum is paid or credited; or
- (b) the person deemed to have derived the dividend,

whichever is the earlier.

(2) Where in a fiscal year an amount deemed a dividend under this section has borne salary or wages tax in accordance with Part III.2B or Part VI.2A (but not

including amounts subject to Section 46B), then to that extent liability to tax in respect of that deemed dividend shall, for the purposes of this Act, be deemed to have been satisfied and, for the purpose of calculation of tax on income, other than salary or wages, under Section 46C, shall not be included as income other than salary or wages.

(3) Where in a fiscal year an amount deemed a dividend under this section has borne salary or wages tax by virtue of Section 46B, Section 232(1A)(d) shall apply and liability to tax shall be assessed in accordance with Section 46C as though that dividend so deemed was income other than salary or wages.

Division 7A.

Amalgamation of Companies.

145A. INTERPRETATION.

In this Division, unless the contrary intention appears—

¹⁴⁰“**accrual expenditure**” means expenditure incurred by an amalgamating company prior to the amalgamation some or all of which would, but for the amalgamation, be an allowable deduction of the amalgamating company in the year of income and/or in a subsequent year of income and without limiting the generality of this term, includes expenditure to which the provisions of Division 10 of III apply;

“**amalgamated company**” means a company which results from and continues after amalgamation, and may be one of the amalgamating companies or a new company;

“**amalgamating company**” means a company which amalgamates with one or more companies under an amalgamation and ceases to exist after amalgamation;

“**amalgamation**” means an amalgamation occurring under the *Companies Act 1997*;

“**financial arrangement**” means—

- (a) any debt or debt instrument; or
- (b) any arrangement whereby a person obtains money in consideration for a promise by any person to provide money to any person at some future time or times, or upon the occurrence or non-occurrence of some future event or events (including the giving of, or failure to give, notice); or
- (c) any arrangement which is of a substantially similar nature (including, without restricting the generality of the preceding provisions of this subparagraph, sell back and buy-back arrangements, debt defeasances, and assignments of income);

¹⁴⁰ Section 145A Amended by No. 22 of 2004, s. 22.

“qualifying amalgamation” means any amalgamation where each of the amalgamating companies and the amalgamated company is, at the time of the amalgamation, resident in Papua New Guinea and is not—

- (a) a company which, under a double tax avoidance agreement, is treated as not being resident in Papua New Guinea for the purposes of the double tax avoidance agreement; or
- (b) a company which derives only exempt income.

¹⁴¹**“unexpired accrual expenditure”** means the amount of accrual expenditure incurred by an amalgamating company prior to the date of amalgamation less the amount of that expenditure which has been or will be allowed as a deduction to the amalgamating company prior to the date of amalgamation and without limiting the generality of this term includes residual exploration expenditure and residual capital expenditure.

145B. NOTICE OF AMALGAMATION.

The amalgamated company shall give notice of amalgamation to the Commissioner General before the expiration of 30 days of the date of filing of the application for registration of amalgamation with Registrar of Companies as prescribed under Section 236 of the *Companies Act 1997* enclosing therewith a copy of application with all accompanying documents.

145C. TAX CONSEQUENCES SPECIFIED.

Notwithstanding anything to the contrary contained in any other law for the time being in force, the tax consequences of the amalgamation of companies shall be governed by the express provisions of this Division.

145D. CANCELLATION OF SHARES HELD BY AMALGAMATING COMPANY ON AMALGAMATION.

Where shares in any amalgamating company are held by another amalgamating company or by the amalgamated company in a qualifying amalgamation and cancelled on amalgamation, then for the purposes of this Act, the shares shall be deemed to have been disposed of by the shareholder company immediately before the amalgamation for a consideration equal to—

- (a) in the case of any shares held as trading stock by the shareholder company at the beginning of the income year in which the amalgamation takes place, at the election of the amalgamated company—
 - (i) the cost; or
 - (ii) the market selling price;

¹⁴¹ Section 145A Amended by No. 22 of 2004, s. 22.

of the shares at the time of the amalgamation; and

- (b) in any other case, the cost to the shareholder company of the shares.

145E. DEDUCTION TO AMALGAMATED COMPANY FOR BAD DEBTS, EXPENDITURE, ETC., ON QUALIFYING AMALGAMATION.

Where—

- (a) the amalgamated company in any period writes off as a bad debt any debt acquired from the amalgamating company at the time of the amalgamation or incurs any expenditure or loss by virtue of anything done or not done by the amalgamating company; and
- (b) the amount would have been allowed as a deduction to the amalgamating company but for the amalgamation,

the amount shall be allowed as a deduction to the amalgamated company for the period.

145F. AMALGAMATED COMPANY TO ASSUME UNEXPIRED ACCRUAL EXPENDITURE AND INCOME OF AMALGAMATING COMPANY ON QUALIFYING AMALGAMATION.

Where the amalgamated company assumes the unexpired accrual expenditure or income of the amalgamating company—

- (a) the unexpired portion of any amount of accrual expenditure of the amalgamating company for the income year shall be deemed to be the unexpired portion of an amount of accrual expenditure of the amalgamated company for the income year; and
- (b) any amount derived by the amalgamated company at any time after the amalgamation which would have been income of the amalgamating company but for the amalgamation, shall be income of the amalgamated company.

145G. TRANSFER OF PROPERTY OR OBLIGATION.

- (1) Where an amalgamated company, on a qualifying amalgamation acquires—
 - (a) trading stock, the amalgamating company shall be deemed to have disposed of and the amalgamated company shall be deemed to have purchased it at cost price paid by the amalgamating company; and
 - (b) any obligation or any property other than a property on which depreciation has been allowed, it shall be deemed that the obligation or the property has been acquired by the amalgamated company at the same value at which it was acquired by the amalgamating company; and
 - (c) any property on which depreciation has been allowed to the amalgamating company, it shall be deemed to have been acquired by the

amalgamated company at the cost of acquisition as reduced by the amount of depreciation allowed to the amalgamating company.

(2) In any cases other than those referred to in Subsection (1) the amalgamating company shall be treated as having disposed of the property or relieved itself of the obligation and the amalgamated company shall be treated as having acquired the property or assumed the obligations on the date of amalgamation for a consideration equal to the market value of the property, or market price for assuming such obligation.

145H. TRANSFER OF FINANCIAL ARRANGEMENT ON QUALIFYING AMALGAMATION.

(1) Where—

- (a) the amalgamated company uses the same method of calculating income and expenditure under the financial arrangement as the amalgamating company used; and
- (b) the amalgamated company elects to include the deemed income accrued or expenditure incurred by the amalgamating company in the year of amalgamation in its return of income for that year; and
- (c) the amalgamating company does not include any deemed income accrued or expenditure incurred by it in the year of amalgamation in its return of income to the date of amalgamation; and
- (d) the amalgamated company and the amalgamating company were members of a wholly owned group at all times in the income year of amalgamation,

then no tax consequences will arise in respect of transfer of a financial arrangement by the amalgamating company to the amalgamated company.

(2) Where the condition specified in Subsection (1)(a) is satisfied, but other conditions specified in Subsection (1) are not satisfied, the consideration for the transfer of the financial arrangement shall be a sum considered fair and reasonable to the satisfaction of the Commissioner General.

(3) Where the amalgamating company and the amalgamated company use different methods of calculating income and expenditure under the financial arrangement and other conditions specified in Subsection (1) are not satisfied, the transfer of a financial arrangement by the amalgamating company to the amalgamated company shall be deemed to have been made at the market price.

145I. LOSSES OF PREVIOUS YEARS OF AMALGAMATING COMPANY ON QUALIFYING AMALGAMATION.

Where an amalgamating company has incurred a loss, so much of the loss incurred in any of the seven years immediately preceding the year of amalgamation and during the year of amalgamation up to the date of amalgamation, as has not

been allowed as a deduction from its income of any of those years, is allowable as a deduction to the amalgamated company in accordance with the following provisions:—

- (a) in a case where the amalgamating company is a subsidiary of the amalgamated company, the loss would have been allowed as deduction during the year of amalgamation in accordance with the provisions of Section 101F;
- (b) in a case where the amalgamation is not covered by Paragraph (a), the loss shall be allowed as deduction to the amalgamated company only if there is at least 50% shareholder continuity in the amalgamating company from the beginning of the year in which loss was incurred until the date of amalgamation;
- (c) for the amalgamated company to offset the loss against its income, 50% shareholder continuity test must be met from the beginning of the year in which loss was incurred until the date of deduction.

145J. TRANSFER OF RETAINED PROFITS TO AMALGAMATED COMPANY.

Where retained profits of the amalgamating company are transferred to the amalgamated company under a qualifying amalgamation, the transfer shall not be treated as distribution of dividend.

145K. AMALGAMATED COMPANY TO ASSUME RIGHTS AND OBLIGATIONS OF AMALGAMATING COMPANY.

Subject to the provisions of this Division, the amalgamated company shall comply with all obligations of and meet all liabilities of, and be entitled to all rights, powers and privileges of, the amalgamating company under the laws pertaining to taxation with respect to the income year in which the amalgamation occurs and all preceding income years.

145L. TRANSFER OF INFRASTRUCTURE TAX CREDITS.

¹⁴²Where at the time of amalgamation an amalgamating company is entitled to carry forward expenditure or credits in accordance with the provisions of Section 219C, the amalgamating company shall be entitled to that expenditure or credit in the same way as the amalgamating company and the provisions of Section 219C shall apply to the amalgamated company in respect of that expenditure or credit as it would have applied to the amalgamating company if the amalgamation had not occurred.

¹⁴² Section 145L Inserted by No. 22 of 2004, s. 23.

Division 8.
Life Assurance Companies.

146. DEFINITIONS.

In this Division—

“**future premiums**” means such premiums as, according to the rate of interest and the rate of mortality assumed in the company’s actuarial valuation, are sufficient to provide for the risk incurred by the company in issuing the policies in force on the date in respect of which the valuation is made, exclusive of any addition thereto for office expenses and other charges;

“**life assurance company**” means a company the sole or principal business of which is life assurance;

“**valuation of liabilities**” means a valuation of the amount which, together with the future premiums payable, if accumulated at the rate of interest stated as assumed in the company’s actuarial valuation, would provide the amount required to pay in full on the respective dates of their maturity, according to the rates of mortality assumed in the valuation, the liabilities under policies in force on the date in respect of which the valuation is made.

147. PREMIUMS, ETC., NOT ASSESSABLE INCOME.

The assessable income of a life assurance company shall not include premiums received in respect of policies of life assurance or considerations received in respect of annuities granted.

148. DEDUCTIONS.

(1) Expenditure incurred by a life assurance company exclusively in gaining premiums or considerations referred to in Section 147 is not an allowable deduction.

(2) So much only of the expenditure incurred in the year of income in the general management of the business of a life assurance company as bears to that expenditure the same proportion as its assessable income bears to its total income is an allowable deduction.

(3) For the purposes of Subsection (2)—

(a) the expenditure exclusively incurred in gaining or producing assessable income, or exclusively incurred in gaining or producing income that is not assessable, shall be deemed not to be expenditure incurred in the general management of the business of the life assurance company; and

(b) the total income of the life assurance company shall include premiums and considerations referred to in Subsection (2).

149. CALCULATED LIABILITIES.

(1) Where an actuarial valuation of liabilities is made as at the end of the year of income, the “**calculated liabilities**” at that date shall be—

- (a) where the basis of the valuation is compound interest at the rate of 4% per annum or over—the amount of that valuation; or
- (b) where that basis is compound interest at a rate less than 4% and not less than 3½% per annum—95% of that valuation; or
- (c) where that basis is compound interest at a rate less than 3½% and not less than 3% per annum—90% of that valuation; or
- (d) where that basis is compound interest at a rate less than 3% per annum—85% of that valuation.

(2) Where an actuarial valuation of liabilities is not made as at the end of the year of income, a calculation shall be made of the proportion that the last preceding actuarial valuation of liabilities, as at some other date, bears to the value of all the assets of the company at that date and the amount which bears the proportion to the value of all the assets of the company at the end of the year of income shall be deemed to be an actuarial valuation of liabilities made as at the end of that year on the same basis as that last preceding valuation.

(3) An amount equal to 3% of that part of the calculated liabilities of a life assurance company at the end of the year of income that bears to the calculated liabilities the same proportion as the value at that date of the assets from which the company derives assessable income bears to the value at that date of all the assets of the company is an allowable deduction.

(4) When the calculated liabilities at the end of the year of income exceed the value at that date of all the assets of the company, the company is not liable to pay income tax in respect of the income derived in that year from the business of life assurance.

Division 9.***Co-operative and Mutual Companies.*****150. CO-OPERATIVE COMPANIES.**

In this Division, “**co-operative company**” means a company the rules of which limit the number of shares that may be held by, or by and on behalf of, any one shareholder, and prohibit the quotation of the shares for sale or purchase at any stock exchange or in any other public manner whatever, and includes a company that has no share capital, and that in either case is established for the purpose of carrying on any business having as its primary object or objects one or more of the following:—

- (a) the acquisition of commodities or animals for disposal or distribution among its shareholders;
- (b) the acquisition of commodities or animals from its shareholders for disposal or distribution;

- (c) the storage, marketing, packing or processing of commodities of its shareholders;
- (d) the rendering of services to its shareholders;
- (e) the obtaining of funds from its shareholders for the purpose of making loans to its shareholders to enable them to acquire land or buildings to be used for the purpose of residence or of residence and business.

151. COMPANY NOT CO-OPERATIVE IF LESS THAN 90% OF BUSINESS WITH MEMBERS.

If, in the ordinary course of business of a company in the year of income, the value of commodities and animals disposed of to, or acquired from, its shareholders by the company, or the amount of its receipts from the storage, marketing, packing and processing of commodities of its shareholders, or from the rendering of services to them, or the amount lent by it to them, is less respectively than 90% of the total value of commodities and animals disposed of or acquired by the company, or of its receipts from the storage, marketing, packing and processing of commodities, or from the rendering of services, or of the total amount lent by it, that company shall in respect of that year be deemed not to be a co-operative company.

152. SUMS RECEIVED TO BE TAXED.

The assessable income of a co-operative company shall include all sums received by it, whether from shareholders or from other persons, for the storage, marketing, packing or processing of commodities, or for the rendering of services, or in payment for commodities or animals or land sold, whether on account of the company or on account of its shareholders.

153. DEDUCTIONS ALLOWABLE TO CO-OPERATIVE COMPANY.

- (1) So much of the assessable income of a co-operative company as—
- (a) is distributed among its shareholders as rebates or bonuses based on business done by shareholders with the company; or
 - (b) is distributed among its shareholders as interest or dividends on shares; or
 - (c) in the case of a company having as its primary object that specified in Section 150(b)—is applied by the company for or towards the repayment of any moneys loaned to the company by the State to enable the company to acquire assets that are required for the purpose of carrying on the business of the company or to pay the State for assets so required that the company has taken over from the State,

is an allowable deduction.

(2) The deduction under Subsection (1)(c) is not allowable unless shares representing not less than 90% of the paid-up capital of the company are held by

persons who supply the company with the commodities or animals that the company requires for the purposes of its business.

(3) A rebate or bonus based on purchases made by a shareholder from the company shall not be included in his assessable income except where the price of those purchases is allowable as a deduction in ascertaining his taxable income of any year.

154. MUTUAL INSURANCE ASSOCIATIONS.

An association of persons formed for the purpose of insuring those persons against loss, damage or risk of any kind in respect of property shall, for the purposes of this Act, be deemed to be a company carrying on the business of insurance, and the assessable income of the company shall include all premiums derived by the company, whether from its shareholders or not, other than premiums received in respect of policies of life assurance or considerations received in respect of annuities granted.

Division 9A.

Incentive to Certain Corporations.

154A. INTERPRETATION.

In this Division, unless the context otherwise requires or some other meaning is clearly intended—

“benefit under Section 40B or 40C” means any reduction of income tax that arose out of the application of Section 40B or 40C, or 40B as in force immediately prior to the commencement of the *Income Tax (Repeal and Replacement of Section 40B) Act 1976*;

“qualifying corporation” means—

- (a) a business group registered under the *Business Groups Incorporation Act 1974*; and
- (b) an incorporated land group recognised under the *Land Groups Incorporation Act 1974*; and
- (c) a corporation incorporated under the *Companies Act 1997* the membership of which comprises none other than a resident who is—
 - (i) a citizen (other than a naturalised citizen); or
 - (ii) a qualifying corporation; or
 - (iii) a Provincial Government (including a provincial government body); or
 - (iv) a local government council, or a local level government body, by whatever name known, established by or under a

provincial law as defined in Section Sch.1.2 of the *Constitution*; or

- (v) the State or a statutory authority or statutory instrumentality of the State;

“share”, in relation to a corporation, includes the proprietary rights of a member of the corporation.

154B. APPLICATION OF SECTION 154C.

(1) Subject to Subsection (2), Section 154C only applies to a qualifying corporation where the Commissioner General is satisfied that—

- (a) at all times during the year of income or, where a corporation is a qualifying corporation during part only of a year of income, at all times during that part—
 - (i) all its issued shares were of one class; and
 - (ii) all its issued shares conferred equal voting rights upon their holders; and
 - (iii) all its issued shares conferred equal rights on their holders in the event of a winding-up or dissolution of the corporation; and
 - (iv) the beneficial owners of each share had equal rights amongst themselves; and
 - (v) the beneficial owners of the shares had equal rights amongst themselves in proportion to their respective beneficial interests; and
 - (vi) no person who is not a person referred to in Paragraph (b) had obtained an unreasonable benefit from the conduct of the affairs of the corporation; and
 - (vii) the affairs of the corporation are being conducted in the best interest of the corporation; and
- (b) no present or future legal or equitable right to or interest in any share in the corporation is beneficially owned by any person other than—
 - (i) a citizen (other than a naturalised citizen); or
 - (ii) a qualifying corporation; or
 - (iii) a Provincial Government (including a provincial government body); or
 - (iv) a local government body, or a local level government body, by whatever name known, established by or under a provincial law as defined in Section Sch.1.2 of the *Constitution*; or
 - (v) the State or a statutory authority or statutory instrumentality of the State.

- (2) Section 154C does not apply to—
- (a) a qualifying corporation that has gained or was entitled to have gained, in any year of income or part of a year of income, a benefit under Section 40B or 40C; or
 - (b) a qualifying corporation that has as a shareholder a person (other than the Rural Development Bank) who was a shareholder in a corporation where—
 - (i) 10% or more of the shares were beneficially owned by less than six shareholders; and
 - (ii) that corporation gained or was entitled to have gained a benefit under Section 40B or 40C; or
 - (ba) subject to Subsection (3) (but excluding a qualifying corporation of which Rural Development Bank is a shareholder) a qualifying corporation of which less than six shareholders are the beneficial owners of 10% or more of the shares of another qualifying corporation;
 - (bb) subject to Subsection (3) a qualifying corporation which, in the opinion of the Commissioner General, is one of two or more qualifying corporations carrying on the same business or sharing in the same business income; or
 - (bc) a qualifying corporation that is carrying on all or part of any business in respect of which another taxpayer has previously gained, in any year of income or part of a year of income, a benefit under Section 40B or 40C or has had Section 154C applied to him; or
 - (c) income derived by a qualifying corporation prior to the year of income that commenced on 1 January 1978 or the approved substituted accounting period of that corporation corresponding to that year of income; or
 - (d) income derived by a qualifying corporation after the year of income ending 31 December 1985 or the approved substituted accounting period of that corporation corresponding to that year of income.

(3) For the purposes of Subsection (2)(ba) and (bb), where more than one qualifying corporation referred to in the respective paragraphs would, but for this subsection, be a corporation to which Section 154C does not apply, that section applies only to the corporations respectively registered first on the appropriate register of incorporated companies kept by the Registrar of Companies under Section 395(1) of the *Companies Act 1997*.

154C. TAX LIABILITY OF QUALIFYING CORPORATION.

Subject to Section 154B, a qualifying corporation shall be liable to income tax on the taxable income derived while it was a qualifying corporation, at such rates as are declared by an Act.

154D. ELECTION BY CERTAIN CORPORATIONS.

(1) Where a corporation to which Section 40B or 40C applies has not gained or is not entitled to gain a benefit under Section 40B or 40C in relation to income derived during any year of income preceding the year of income that commenced on 1 January 1978, that corporation, where it is otherwise qualified, may elect to be a qualifying corporation, and by so doing shall forfeit any rights or benefits to which it may have been or may be entitled under those sections had such an election not been made, and thereupon those sections shall no longer apply to that corporation.

(2) Notwithstanding Section 154B(2)(a), where a corporation became a corporation to which Section 40B or 40C applies during the period commencing 1 July 1977 and ending 31 December 1977, that corporation, where it is otherwise qualified, may elect to be a qualifying corporation, and by so doing shall forfeit any rights or benefits to which it may have been or may be entitled under those sections had such an election not been made, and thereupon those sections shall no longer apply to that corporation.

(3) The election referred to in Subsections (1) and (2) shall be in writing and be lodged with the Commissioner General on or before the date on which the return of income of the year of income ended 31 December 1977 (or approved substituted accounting period of that corporation corresponding to that year of income) is to be furnished to the Commissioner General, or within such further time as the Commissioner General allows.

Division 10.¹⁴³***Mining, Petroleum and Gas Projects.******Subdivision A. – Subdivision A.-General Provisions Applicable To Mining, Petroleum And Designated Gas Projects.*****155. INTERPRETATION.**

(1)¹⁴⁴ 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

¹⁴³ Divisions III.10, 10A and 10B repealed and replaced by new Division 10 by No 68 of 2000.

¹⁴⁴ Section 155 Subsection (1) amended by No. 22 of 2004, s. 24; Subsection (1) amended by No. 22 of 2004, s. 24; Subsection (1) amended by No. 22 of 2004, s. 24; Subsection (1) amended by No. 22 of 2004, s. 24; Subsection (1) amended by No. 22 of 2004, s. 24; Subsection (1) amended by No. 22 of 2004, s. 24.

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 Section 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 Section 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 or recovery of that expenditure;

¹⁴⁵**“co-ordinate development agreement”** means –

- (a) an agreement between the licensees of two or more development licenses which provides for the unit development or co-ordinated petroleum development of one or more petroleum pools

¹⁴⁵ Section 155 Subsection (1) amended by No. 22 of 2004, s. 24.

underlying such development licenses, including agreements of the types referred to in Sections 64 and 65 of the *Oil and Gas Act 1998*; or

- (b) any other agreement between the licensees of two or more petroleum rights whereby the licensees of one petroleum right agree to compensate the licensees of another petroleum right for expenditure incurred or income foregone;

“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;

¹⁴⁶**“conversion date”** in relation to a field which is part of a petroleum project means the last day of the month prior to the date on which its production of gas exceeds the prescribed ratio of gas production to oil production.

¹⁴⁷**“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 prepared in accordance with the standards published by the International Accounting Standards Committee 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

¹⁴⁶ Section 155 Subsection (1) amended by No. 22 of 2004, s. 24.

¹⁴⁷ Section 155 Subsection (1) amended by No. 22 of 2004, s. 24.

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 does not include development drilling or operations conducted pursuant to a development licence;

¹⁴⁸¹⁴⁹**“exploration activities”** means exploration activities for the purpose of discovering petroleum or minerals in Papua New Guinea, and includes geophysical analysis 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 or a mining exploration 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*;

¹⁵⁰**“field”** means an area consisting of a single pool or multiple pools all grouped on or related to the same geological structural feature and/or stratigraphic condition including two or more reservoirs which may be separated vertically by intervening impervious strata or laterally by local geologic barriers or both, as variously described in either a Gas Agreement, a Petroleum Agreement, or the Approved Proposals of a Petroleum Development Licence;

¹⁵¹**“mining development licence”** means a mining lease or special mining lease issued under the *Mining Act 1992*;

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

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

¹⁵²**“petroleum development licence”** means a development licence, or a pipeline licence issued under the *Oil and Gas Act 1998*;

¹⁴⁸ Section 155 Subsection (1) amended by No. 22 of 2004, s. 24; Subsection (1) amended by No. 22 of 2004, s. 24; Subsection (1) amended by No. 22 of 2004, s. 24; Subsection (1) amended by No. 22 of 2004, s. 24; Subsection (1) amended by No. 22 of 2004, s. 24; Subsection (1) amended by No. 22 of 2004, s. 24.

¹⁴⁹ Section 155 Subsection (1) amended by No. 22 of 2004, s. 24.

¹⁵⁰ Section 155 Subsection (1) amended by No. 22 of 2004, s. 24.

¹⁵¹ Section 155 Subsection (1) amended by No. 22 of 2004, s. 24.

¹⁵³“**petroleum exploration licence**” means a petroleum prospecting licence, or petroleum retention licence issued under the *Oil and Gas Act 1998*;

¹⁵⁴“**petroleum right**” means a petroleum exploration licence or a petroleum development licence;

¹⁵⁵“**Producer Price Index of the United States**” means the producer price index for the industry of the relevant resource project as published by the United States Government at internet web site “[HTTP//STATS.BLS.GOV/PPIHOME.HTM](http://stats.bls.gov/ppihome.htm)”;

“**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;

¹⁵⁶“**redetermination**” means a determination or redemption pursuant to a co-ordinated development agreement of the rights and obligations of the parties to the agreement as to the costs of petroleum operations or gas operations in respect of the petroleum rights covered by the co-ordination development agreement and production of petroleum therefrom;

“**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 indirect full ownership through other corporations;

¹⁵² Section 155 Subsection (1) amended by No. 22 of 2004, s. 24.

¹⁵³ Section 155 Subsection (1) amended by No. 22 of 2004, s. 24.

¹⁵⁴ Section 155 Subsection (1) amended by No. 22 of 2004, s. 24.

¹⁵⁵ Section 155 Subsection (1) amended by No. 22 of 2004, s. 24.

¹⁵⁶ Section 155 Subsection (1) amended by No. 22 of 2004, s. 24.

¹⁵⁷“**residual exploration expenditure**” has the meaning given in Section 155B;

¹⁵⁸“**resource**” or “**resources**” means recoverable reserves of minerals, 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;

¹⁵⁹“**resource operations**” mean operations in Papua New Guinea by a resource project or holders of a resource right for the purposes of exploring for, or the development of, a resource;

“**resource product**” means minerals, petroleum or gas recovered by a resource project;

¹⁶⁰“**resource project**” means a designated gas project, a mining project, a mining project or a petroleum project;

¹⁶¹“**resource right**” means a resource development licence or an exploration licence;

(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.

¹⁵⁷ Section 155 Subsection (1) amended by No. 22 of 2004, s. 24.

¹⁵⁸ Section 155 Subsection (1) amended by No. 22 of 2004, s. 24.

¹⁵⁹ Section 155 Subsection (1) amended by No. 22 of 2004, s. 24.

¹⁶⁰ Section 155 Subsection (1) amended by No. 22 of 2004, s. 24.

¹⁶¹ Section 155 Subsection (1) amended by No. 22 of 2004, s. 24.

155A. ALLOWABLE EXPLORATION EXPENDITURE.

(1)¹⁶² ¹⁶³This section shall be read together with the sections dealing with specific items of allowable exploration expenditure in Subdivisions B, C, and D.

(2)¹⁶⁴ ¹⁶⁵For the purposes of this Division, but subject to Section 155M, allowable exploration expenditure of a taxpayer in relation to a resource project is so much of the expenditure incurred by the taxpayer for the purpose of exploration in Papua New Guinea as, at the date of issue of a resource development licence included in the resource project, was incurred within the 20 years prior to that date and which was incurred –

- (a) pursuant to an exploration licence from which the resource development licence was drawn; or
- (b) in relation to the areas (including relinquished areas) of an exploration licence which has been surrendered or cancelled or has expired,

and includes allowable exploration 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 Section 155L; and

¹⁶² Section 155A Subsection (1) amended by No. 22 of 2004, s. 25.

¹⁶³ Section 155A Subsection (1) amended by No. 22 of 2004, s. 25.

¹⁶⁴ Section 155A Subsection (2) substituted by No. 22 of 2004, s. 25.

¹⁶⁵ Section 155A Subsection (2) substituted by No. 22 of 2004, s. 25.

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

(d)¹⁶⁶ [Repealed.]

(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.

(10)¹⁶⁷ ¹⁶⁸Notwithstanding the provisions of this division, no deduction is allowable for exploration expenses incurred by a resource development project on or before 31 December 2000, to the extent that such a deduction would not have been allowable under the tax provisions then in force, if a resource development licence for that project had been issued on 31 December 2000.

155B. RESIDUAL EXPLORATION EXPENDITURE.

(1)¹⁶⁹ ¹⁷⁰The balance of residual exploration expenditure of taxpayer in relation to a resource project on 31 December 2000 (as 2000) shall, for the purposes of this Section, be deemed to be allowable exploration incurred on 1 January 2001.

(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 taxpayer 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

¹⁶⁶ Section 155A Subsection (6) amended by No. 22 of 2004, s. 25.

¹⁶⁷ Section 155A Subsection (10) inserted by No. 22 of 2004, s. 25.

¹⁶⁸ Section 155A Subsection (10) inserted by No. 22 of 2004, s. 25.

¹⁶⁹ Section 155B Subsection (1) substituted by No. 22 of 2004, s. 26.

¹⁷⁰ Section 155B Subsection (1) substituted by No. 22 of 2004, s. 26.

(c)¹⁷¹ 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 taxpayer in a preceding year of income.

(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)¹⁷² subject to Subsection (3), a number equal to the number of whole years in the estimate remaining life of production from 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.

(4)^{173 174}The amount of the deduction allowable under this section shall not exceed an amount equal to so much of the assessable income from resource operations derived by the taxpayer from the resource project in the year of income as remains after deducting from that income all allowable deductions relating to the project, other than any deductions allowable under this section or Section 155E

155D. ALLOWABLE CAPITAL EXPENDITURE.

(1)^{175 176}This section shall be read together with the sections dealing with specific items of allowable capital expenditure in Subdivisions B, C, and D.

(2)^{177 178}The balance of allowable capital expenditure on 1 January 2001 for a resource project shall be the allowable capital expenditure available for deduction on

¹⁷¹ Section 155B Subsection (2) amended by No. 22 of 2004, s. 26.

¹⁷² Section 155C Subsection (2) amended by No. 22 of 2004, s. 27.

¹⁷³ Section 155C Subsection (4) inserted by No. 22 of 2004, s. 27.

¹⁷⁴ Section 155C Subsection (4) inserted by No. 22 of 2004, s. 27.

¹⁷⁵ Section 155D Subsection (1) amended by No. 22 of 2004, s. 28.

¹⁷⁶ Section 155D Subsection (1) amended by No. 22 of 2004, s. 28.

31 December 2000, as calculated under the income tax provisions in force until 31 December 2000 and shall, for the purposes of this Section, be deemed to be allowable capital expenditure 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 Paragraphs (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

¹⁷⁷ Section 155D Subsection (2) amended by No. 22 of 2004, s. 28; Subsection (2) amended by No. 22 of 2004, s. 28.

¹⁷⁸ Section 155D Subsection (2) amended by No. 22 of 2004, s. 28; Subsection (2) amended by No. 22 of 2004, s. 28.

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—

- (j) 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
- (k) 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)¹⁷⁹ ¹⁸⁰Interest income, other than exempt income, derived by the taxpayer prior to the date of commencement of commercial operations and not already applied to reduce allowable exploration expenditure of the taxpayer pursuant to Section 155A(6), shall be applied in reduction of allowable capital expenditure, and shall, to the extent it reduces allowable capital expenditure, be deemed not to be assessable income.

155E. DEDUCTION FOR ALLOWABLE CAPITAL EXPENDITURE.

(1)¹⁸¹ ¹⁸²Subject to Sections 155F and 155I, the deduction for allowable capital expenditure of a taxpayer in respect of a resource project shall be –

- (a) subject to Subsection (4)(a), for allowable capital expenditure with an estimate effective life as at the date the expenditure was incurred of ten years or more, 1/10th of the amount of the allowable capital expenditure incurred during the year, commencing in the year that allowable capital expenditure was incurred and ending in the year when that expenditure has been fully deducted; and
- (b) for allowable capital expenditure with an estimated effective life as at the date the expenditure was incurred of less than ten years, there shall be established a pool of expenditure, to which shall be added allowable capital expenditure on such assets each year and from which shall be deducted –
 - (i) the amount of any deductions allowed against the amount of the pool for that year; and
 - (ii) the receipts, if any, from the sale or disposal of any assets forming part of the amount of the pool during the year,

and the deduction allowable each year shall be 25% of the amount 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

¹⁷⁹ Section 155D Subsection (6) substituted by No. 22 of 2004, s. 28.

¹⁸⁰ Section 155D Subsection (6) substituted by No. 22 of 2004, s. 28.

¹⁸¹ Section 155E Subsection (1) substituted by No. 22 of 2004, s. 29.

¹⁸² Section 155E Subsection (1) substituted by No. 22 of 2004, s. 29.

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 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)¹⁸³ the estimated remaining life of production of a resource project is less than ten years, the deduction calculated under Subsection (1)(a), both for expenditure incurred in that year of income and for expenditure incurred in earlier years of income shall be calculated by using such lesser divider than ten as would result in the undeducted balance of the allowable capital expenditure being deducted over the remaining life of the resource project; and
- (b) the estimated remaining life of a resource project is less than four years, the deduction calculated under Subsection (1)(b) shall be calculated by using such lesser divider than one quarter 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

¹⁸³ Section 155E Subsection (4) amended by No. 22 of 2004, s. 29.

the Commissioner General thinks reasonable, but not exceeding the divisors set out in Subsection (1).

(6)¹⁸⁴ ¹⁸⁵The amount of the deduction allowable under this section shall not exceed an amount equal to so much of the assessable income from resource operations derived by the taxpayer from the resource project in the year of income as remains after deducting from that income all allowable deductions relating to the project, other than any deductions allowable under this section.

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 OR INCOME 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.

¹⁸⁴ Section 155E Subsection (6) inserted by No. 22 of 2004, s. 29.

¹⁸⁵ Section 155E Subsection (6) inserted by No. 22 of 2004, s. 29.

(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)^{186 187}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 taxpayer in relation to 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 underdeducted balance of allowable 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 Central Bank in writing of the terms of the borrowing including the interest rate and other fees and charges related to the borrowing; and
- (c) the Central Bank 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.

¹⁸⁶ Section 155G Subsection (4) amended by No. 22 of 2004, s. 30; Subsection (4) amended by No. 22 of 2004, s. 30.

¹⁸⁷ Section 155G Subsection (4) amended by No. 22 of 2004, s. 30; Subsection (4) amended by No. 22 of 2004, s. 30.

(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:—

s. 155H.

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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 coordinated 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)¹⁸⁸ ¹⁸⁹Where capital items with a cost not exceeding K1,000.00 per item are acquired in relation to a resource project, 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

¹⁸⁸ Section 155I Subsection (1) substituted by No. 22 of 2004, s. 31.

¹⁸⁹ Section 155I Subsection (1) substituted by No. 22 of 2004, s. 31.

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) (i) 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

(ii) 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

(b) 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

(c) 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)¹⁹⁰ a person (in this section called **“the vendor”**) has incurred allowable exploration expenditure or allowable capital expenditure in relation to a resource project or resource right; and
- (b)¹⁹¹ 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 or resource right,

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—

¹⁹⁰ Section 155L Subsection (1) amended by No. 22 of 2004, s. 32.

¹⁹¹ Section 155L Subsection (1) amended by No. 22 of 2004, s. 32.

- (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)¹⁹² the resource project or projects or resource right or rights 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

¹⁹² Section 155L Subsection (3) amended by No. 22 of 2004, s. 32.

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 eligible 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, 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)¹⁹³ [*Repealed.*]

(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

¹⁹³ Section 155M Subsection (1) omitted by No. 22 of 2004, s. 33.

- (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)¹⁹⁴ ¹⁹⁵Where a taxpayer elects to add exploration expenditure incurred within an exploration licence area to the pool established under this Section, he may subsequently elect to re-transfer that exploration expenditure to any resource development licence drawn from that exploration licence area, subject to the following conditions –

- (a) an election to re-transfer expenditure from the exploration pool to any one resource development licence may only be made once in respect of that resource development licence; and
- (b) the election shall be made on or prior to the date of lodgement of the first tax return in relation to that resource development licence; and
- (c) the amount re-transferred may not exceed the lesser of –
 - (i) the amount or amounts originally added to the exploration pool from that exploration licence, less any deductions, calculated on a proportionate basis, allowed in respect of that amount or amounts under Subsection (3); or
 - (ii) the remaining amount of exploration expenditure in that pool.

(5)¹⁹⁶ ¹⁹⁷The pool of expenditure available for deduction under this Section shall be reduced by the amount of any expenditure re-transferred under Subsection (4).

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

¹⁹⁴ Section 155N Subsection (4) substituted by No. 22 of 2004, s. 34.

¹⁹⁵ Section 155N Subsection (4) substituted by No. 22 of 2004, s. 34.

¹⁹⁶ Section 155N Subsection (5) inserted by No. 22 of 2004, s. 34.

¹⁹⁷ Section 155N Subsection (5) inserted by No. 22 of 2004, s. 34.

- (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.

155S. PARTNERSHIPS.

¹⁹⁸Where all or part of a resource project is constituted by a partnership, 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 B. – Specific Provisions Applicable To Mining.

156. APPLICATION.

(1)¹⁹⁹ ²⁰⁰This 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, or a mining development licence.

(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.

¹⁹⁸ Section 155S Inserted by No. 60 of 2006, s. 1.

¹⁹⁹ Section 156 Subsection (1) amended by No. 22 of 2004, s. 35.

²⁰⁰ Section 156 Subsection (1) amended by No. 22 of 2004, s. 35.

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.

156C. ADDITIONAL ALLOWABLE EXPLORATION EXPENDITURE.

²⁰¹Where at a particular time a taxpayer ceases to have an interest in mining project consequent upon –

- (a) the surrender, cancellation or expiry of a mining development licence; or
- (b) the disposal or abandonment by the taxpayer of the whole of its interest in a mining project,

and immediately before such cessation, disposal or abandonment a taxpayer had residual exploration expenditure in relation to that mining 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 mining project from which the taxpayer or the related corporation is deriving assessable income from mining, to that mining project or those mining projects, as the case may be, in such proportions as the Commissioner General considers reasonable; or
- (d) in any other case, to any mining project carried on by the taxpayer or by a related corporation pursuant to any mining 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 mining project to which they were allocated (other than for the purposes of Subdivision E), with effect from the date of allocation.

156D. ADDITIONAL DEDUCTION FOR EXPLORATION EXPENDITURE INCURRED OUTSIDE THE MINING PROJECT.

²⁰²Notwithstanding the limitation in Section 155N(3)(b) for taxpayers carrying on mining operations and exploring for minerals, the limitation in that subsection shall be such amount as reduces the income tax which would, but for this section, be payable by the taxpayer in respect of those mining operations for that year of income, by 25%.

156E. DOUBLE DEDUCTION OF EXPLORATION EXPENDITURE.

²⁰³Notwithstanding the provisions of Sections 155A(6)(d) and 155N(6), exploration expenditure that has been incurred on or after 1 January 2003 and has been deducted, or remains deductible, under the provisions of Section 155N, shall be

²⁰¹ Section 156C Inserted by No. 60 of 2006, s. 2.

²⁰² Section 156D Inserted by No. 60 of 2006, s. 2.

²⁰³ Section 156E Inserted by No. 60 of 2006, s. 2.

allowable exploration expenditure to the extent it was incurred pursuant to an exploration licence issued under *Mining Act 1992*, from which a mining development licence was drawn on or after 1 January 2003.

156F. ADDITIONAL PROVISIONS FOR DEDUCTION OF ALLOWABLE CAPITAL EXPENDITURE.

²⁰⁴(1) This section applies to taxpayers carrying on mining operations pursuant to a mining lease or special mining lease issued under the *Mining Act 1992*, on or after 1 January 2003.

(2) For taxpayers qualifying under this section, Paragraphs (a) and (b) of Section 155E(1) shall be disregarded and allowable capital expenditure shall be deducted in the manner set out in Subsection (3).

(3) For all allowable capital expenditure there shall be established a pool of expenditure, to which shall be added allowable capital expenditure on such assets each year and from which shall be deducted –

- (a) the amount of any deductions allowed against the amount of the pool for that year; and
- (b) the receipts, if any, from the sale or disposal of any assets forming part of the amount of the pool during the year,

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

(4) All provisions of Section 155E, other than Subsection (1)(a) and (b), shall be applicable to the taxpayer in an unchanged manner.

156G. MODIFICATION OF THE ACT IN RELATION TO PORGERA PARTIES.

²⁰⁵The provisions of this Act are modified by the provisions of the Porgera Acquisition Agreements, insofar as they govern or affect the imposition of taxation under this Act on the Sellers, the Shareholders and the Other Shareholders mentioned in the Agreements.

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*.

²⁰⁴ Section 156F Inserted by No. 60 of 2006, s. 2.

²⁰⁵ Section 156G Inserted by No. 60 of 2006, s. 2.

(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.

(1A)²⁰⁶ ²⁰⁷The allowable exploration expenditure of a taxpayer in relation to a petroleum exploration license shall include –

- (a) 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 petroleum exploration licence referred to Section 155A(2)(i) and 155A(2)(ii) in relation to that petroleum project, but excluding expenditure incurred in acquiring an interest in a petroleum right; and
- (b) expenditure which is incurred by the taxpayer for exploration activities in the area of a petroleum exploration licence or development licence adjacent to a petroleum exploration licence referred to in Section 155A(2)(i) and 155A(2)(ii) in relation to that 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

²⁰⁶ Section 157B Subsection (1A) inserted by No. 22 of 2004, s. 36.

²⁰⁷ Section 157B Subsection (1A) inserted by No. 22 of 2004, s. 36.

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 petroleum pool or pools wholly or partly underlying such petroleum exploration licence, but excluding expenditure incurred in acquiring an interest in a petroleum right.

(1)²⁰⁸ ²⁰⁹A taxpayer may elect at any time on or prior to the date of lodgement of the first tax return of the taxpayer in relation to 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

²⁰⁸ Section 157B Subsection (1) amended by No. 22 of 2004, s. 36.

²⁰⁹ Section 157B Subsection (1) amended by No. 22 of 2004, s. 36.

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)²¹⁰ ²¹¹For the purpose of the calculation required by Section 155E and generally for the purposes of this Subdivision, the allowable capital expenditure of a taxpayer in relation to a year of income in relation to a petroleum project includes 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)²¹² expenditure which is incurred by the taxpayer for exploration activities in the area of a petroleum exploration 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

²¹⁰ Section 157C Subsection (1) amended by No. 22 of 2004, s. 37; Subsection (1) amended by No. 22 of 2004, s. 37.

²¹¹ Section 157C Subsection (1) amended by No. 22 of 2004, s. 37; Subsection (1) amended by No. 22 of 2004, s. 37.

²¹² Section 157C Subsection (1) amended by No. 22 of 2004, s. 37.

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; or

(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)²¹³ the surrender, cancellation or expiry of a petroleum development 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 residual capital expenditure in relation to that petroleum project, the Commissioner General may at any time allocate that residual 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

²¹³ Section 157C Subsection (3) amended by No. 22 of 2004, s. 37.

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 residual 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)²¹⁴ ²¹⁵Notwithstanding the provisions of this Division and Division 3, where, pursuant to a redetermination applying to a petroleum project or a petroleum

²¹⁴ Section 157E Subsection (1) substituted by No. 22 of 2004, s. 38.

exploration licence, a holder of a petroleum right (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 holders of other petroleum rights (in this Section called the “compensator”) due to the compensate having incurred more allowable exploration expenditure which would have been allowable capital expenditure but for an election under Section 155F or operating expenses of that petroleum project or petroleum exploration licence or having derived less petroleum or income than the compensate 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–
 - (1) the cost and depreciated value of such plant and articles of the compensator shall be increased accordingly; and
 - (2) 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–
 - (1) the allowable capital expenditure and residual capital expenditure of the compensator shall be increased accordingly; and

²¹⁵ Section 157E Subsection (1) substituted by No. 22 of 2004, s. 38.

- (2) 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 undeducted balance of allowable 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)²¹⁶ ²¹⁷A taxpayer who gives or receives compensation as described in Subsection (1) shall give notice thereof to the Commissioner General.

²¹⁶ Section 157E Subsection (3) amended by No. 22 of 2004, s. 38.

²¹⁷ Section 157E Subsection (3) amended by No. 22 of 2004, s. 38.

(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 disposal of property for the purposes of this Act.

157F. EFFECT OF CONVERSION OF A PETROLEUM PROJECT TO A DESIGNATED GAS PROJECT.

²¹⁸(1) Where a petroleum project is converted to a designated gas project or part of a designated gas project pursuant to Section 158B, the petroleum project shall cease on its conversion date.

(2) Where a conversion date of a petroleum project occurs during a year of income the deductions of a taxpayer in respect of residual exploration expenditure pursuant to Section 155C and allowable capital expenditure pursuant to Section 155E in relation to that petroleum project for that year of income shall be ascertained in accordance with the following formula: –

$$D = M/12 \times AD$$

Where –

“D” = the allowable deduction under Section 155C or 155E of the taxpayer for that year of income in respect of such residual exploration expenditure or allowable capital expenditure;

“M” = the number of months from the start of that year of income to the conversion date;

“AD” = the allowable deduction that would have been available to the taxpayer under Section 155C or 155E for that year of income in relation to that petroleum project in the absence of this Subsection.

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.

²¹⁸ Section 157F Inserted by No. 60 of 2006, s. 3.

(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 petroleum 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 in any other case

- (d) so much of that deduction or income as the Commissioner General considers is reasonable shall be taken to be derived from the designated gas project.

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

²¹⁹(1) A field that is part of 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 on the conversion date in respect of that field.

(2) The residual exploration expenditure and the undeducted balance of allowable capital expenditure of a taxpayer in relation to a field that is converted to a designated gas project pursuant to Subsection (1) shall become allowable exploration expenditure and allowable capital expenditure of the taxpayer in relation to that designated gas project and shall be deductible in accordance with this Section.

(3) Subject to Subsection (4), in each year of income, the deduction available to a taxpayer in respect of residual exploration expenditure or allowable capital expenditure that becomes residual exploration or allowable capital expenditure in relation to a designated gas project pursuant to Subsection (2) shall be calculated on the same basis as the deduction would have been calculated had the field in respect of which the expenditure was originally incurred continued to be part of the petroleum project referred to in Subsection (1).

(4) In the year of income in which the conversion date occurs, the deduction available to a taxpayer in respect of residual exploration expenditure or allowable capital expenditure that becomes residual exploration expenditure or allowable capital expenditure in relation to a designated gas project pursuant to Subsection (2) shall be ascertained in accordance with the following formula: –

$$D = M/12 \times AD$$

Where –

“D” = the allowable deduction available to the taxpayer under this Section in relation to the designated project for that year of income in respect of such residual exploration expenditure or allowable capital expenditure;

“M” = the number of months from the conversion date to the end of the year of income;

“AD” = the allowable deduction that would have been available to the taxpayer under this Section for that year of income in relation to such residual exploration expenditure or allowable capital expenditure in the absence of this Subsection.

158C. ADDITIONAL PROVISIONS, ALLOWABLE EXPLORATION EXPENDITURE.

(1)²²⁰ ²²¹The allowable exploration expenditure of a taxpayer in relation to a designated gas project shall include –

²¹⁹ Section 158B Substituted by No. 22 of 2004, s. 39.

²²⁰ Section 158C Subsection (1) substituted by No. 22 of 2004, s. 40.

²²¹ Section 158C Subsection (1) substituted by No. 22 of 2004, s. 40.

- (a) expenditure by the taxpayer for exploration activities, wherever carried out, which are certified (and to the extent to which there 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 petroleum exploration licence referred to in Subparagraphs 155A(2)(i) and 155A(2)(ii) in relation to that designated gas project, but excluding expenditure incurred in acquiring an interest in a petroleum right; and
 - (b) expenditure which is incurred by the taxpayer for exploration activities in the area of a petroleum exploration licence or development licence adjacent to a petroleum exploration licence referred to in Subparagraphs 155A(2)(i) and 155A(2)(ii) in relation to that designated gas project where the exploration activities are certified (and to the extent to which they are so certified) by the Departmental Head of 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 pools wholly or partly underlying such petroleum exploration licence, but excluding expenditure incurred in acquiring an interest in a petroleum right; and
 - (c) residual exploration expenditure of the taxpayer allocated to the designated gas project under Subsections (2) or (3) respectively; and
 - (d) 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)²²² expenditure which is incurred by the taxpayer for exploration activities in the area of a petroleum exploration 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; or

(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—

²²² Section 158D Subsection (1) amended by No. 22 of 2004, s. 41.

- (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 155C)–

- (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.

²²³This section applies equally to designated gas projects and petroleum used in gas operations, as Section 157D applies to petroleum projects and petroleum used in petroleum operations and that Section shall be read and construed for this purpose as if it referred to designated gas project and gas operations.

158H. ADJUSTMENTS PURSUANT TO REDETERMINATIONS.

²²⁴This section applies equally to redeterminations in respect of designated gas projects and gas operations, as Section 157E applies to redeterminations in respect of petroleum projects and petroleum operations and that Section shall be read and construed for this purpose as if it referred to designated gas projects and gas operations.

158I. APPORTIONMENT OF INCOME AND EXPENDITURE.

²²⁵(1) In this section –

“**pool**” means a porous and permeable under-ground formation containing an individual and separate nature accumulation of producible hydrocarbons consisting in part of oil and/or gas which is confined by impermeable rock or water barriers and is characterised by a single natural pressure system, and is otherwise known as a reservoir.

(2) If a pool is discovered in a field, which is part of a designated gas project and that pool does not exceed the prescribed ratio of gas production to oil production, then income from the sale of petroleum produced from that pool shall be assessable income from petroleum operations.

(3) If a petroleum project converts to a designated gas project pursuant to Section 158B and one or more of the fields in that petroleum project do not exceed the prescribed ratio of gas production to oil production, then income from the sale of petroleum produced from the field or those fields shall be assessable income from petroleum operations.

²²³ Section 158G Substituted by No. 22 of 2004, s. 42.

²²⁴ Section 158H Substituted by No. 22 of 2004, s. 42.

²²⁵ Section 158I Substituted by No. 22 of 2004, s. 42.

(4) Where, pursuant to Subsections (2) or (3), a taxpayer derives assessable income from petroleum operations from a designated gas project, the taxable income from petroleum operations or gas operations, as the case may be, in respect of that designated gas project shall be determined as follows: –

- (a) to the extent that deductions, including those for residual exploration expenditure, allowable capital expenditure and operating expenditure can be identified as relating specifically to the derivation of assessable income from petroleum operations, they shall be deductible against that petroleum income; and
- (b) to the extent that deductions, including those for residual exploration expenditure, allowable capital expenditure and operating expenditure can be identified as relating specifically to the derivation of assessable income from gas operations, they shall be deducted against assessable income from those gas operations; and
- (c) the sum of all other deductions shall be apportioned between assessable income from petroleum operations and assessable income from gas operations, in the same proportion that assessable income from petroleum operations and assessable income from gas operations bears to the total sum of income derived by the taxpayer from that designated gas project in that year of income.

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)²²⁶ In this Subdivision, unless the contrary intention appears–

²²⁷²²⁸“**accumulation rate X**” means –

- (a) the rate of 15% per annum; or
- (b) if the taxpayer makes an election under Subsection (5), the sum of the percentage rate of inflation for the year of income in the United States of America, as measured by the Producer Price Index of the United States of America, plus 12%;

²²⁹“**accumulation rate Y**” means –

- (a) the rate of 20% per annum; or

²²⁶ Section 159A Subsection (1) amended by No. 22 of 2004, s. 43; Subsection (1) amended by No. 22 of 2004, s. 43.

²²⁷ Section 159A Subsection (1) amended by No. 22 of 2004, s. 43; Subsection (1) amended by No. 22 of 2004, s. 43.

²²⁸ Section 159A Subsection (1) amended by No. 22 of 2004, s. 43.

²²⁹ Section 159A Subsection (1) amended by No. 22 of 2004, s. 43.

- (b) if the taxpayer makes an election under Subsection (5), the sum of the percentage rate of inflation for the year of income in the United States of America, as measured by the Producer Price Index of the United States of America, plus 17%;

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

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

“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)²³⁰ expenditure which becomes allowable exploration expenditure in relation to the project, other than expenditure allocated to the resource project under Sections 155N 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

²³⁰ Section 159A Subsection (1) amended by No. 22 of 2004, s. 43.

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)²³¹ for the purposes of calculation Y only, any additional profits tax paid or payable 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

²³¹ Section 159A Subsection (1) amended by No. 22 of 2004, s. 43.

- (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 resource operations of the taxpayer derived from the resource project in the year of income.

(5)²³² ^{233A} taxpayer who carries on resource operations may, on or before the date of the first lodgement of a tax return by the taxpayer in relation to that resource project, elect, by notice in writing to the Commissioner General, to have accumulation rate X and accumulation rate Y determined in accordance with paragraph (b) of the definitions of “accumulation rate X” and “accumulation rate Y”

²³² Section 159A Subsection (5) inserted by No. 60 of 2006, s. 4.

²³³ Section 159A Subsection (5) inserted by No. 60 of 2006, s. 4.

in Subsection (1), and the election once made shall apply to all net cash receipts from the resource project in that year of income and all subsequent years 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)²³⁴ for resource projects —

- (i) in existence 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 subject to additional profits tax, be the accumulated value of net project receipts been subject to the provisions of the previous Division 10 – Subdivision D, as in force until 31 December 2000; and
- (ii) other than those referred to in Paragraph (i), in respect of the year in which the uplift commencement date of the taxpayer occurs and all proceeding years of income – the sum of the net project receipts for the year of income plus the net project receipts for all preceding years of income;

(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

²³⁴ Section 159B Subsection (1) amended by No. 22 of 2004, s. 44.

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)²³⁵ 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; and
- (b)²³⁶ 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.

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%.

²³⁵ Section 159B Subsection (3) amended by No. 22 of 2004, s. 44.

²³⁶ Section 159B Subsection (3) amended by No. 22 of 2004, s. 44.

(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)²³⁷ that amount is the amount of the taxable additional profits from resource 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

²³⁷ Section 159D Subsection (5) amended by No. 22 of 2004, s. 45.

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)²³⁸ on the date of the conversion, the accumulated value of net project receipts on that date of that petroleum project shall be set at zero; and
- (b)²³⁹ 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 which, for the avoidance of doubt, may include such costs incurred prior to the conversion date; and
- (c)²⁴⁰ 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 taxpayer's accumulated value of net project receipts of PDL1 on that date as calculated under the provisions in force until 31 December 2000, until that date and as calculated under the provisions in force from 1 January 2001 subsequent to that date.

Subdivision F. – Mining Levy.

160. MINING LEVY.

²⁴¹(1) 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 who, on 31st December 2000, held a mining development licence and the amount payable shall,

²³⁸ Section 159F Amended by No. 22 of 2004, s. 46.

²³⁹ Section 159F Amended by No. 22 of 2004, s. 46.

²⁴⁰ Section 159F Amended by No. 22 of 2004, s. 46.

²⁴¹ Section 160 Substituted by No. 59 of 2006, s. 1.

subject to Subsection (2), be calculated in accordance with the following formula:—
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.

(2) The mining levy calculated under Subsection (1) shall be reduced as follows: —

- (a) for imports and purchases during the calendar year 2004, by 30%; and
- (b) for imports and purchases during the calendar year 2005, by 40%; and
- (c) for imports and purchases during the calendar year 2006, by 55%; and
- (d) for imports and purchases during the calendar year 2007, by 75%; and
- (e) for imports and purchases during the calendar year 2008 and for all subsequent years, by 100%.

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 authorized by the Commissioner General, signed by or on behalf of the taxpayer.

Penalty: ²⁴²For a breach of this section, a fine of not less than K500.00 and not exceeding K5,000.00 or imprisonment for a term not exceeding six months.

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 to it 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.

Subdivision G. – Tax Credits for Royalty and Development Levy paid.

161. INTERPRETATION.

²⁴³For the purposes of this subdivision, unless the contrary intention appears –
“**development levy**” means development levy payable pursuant to Section 160 of the *Oil and Gas Act 1998*;

“**royalty**” means royalty payable pursuant to Section 159 of the *Oil and Gas Act 1998*;

“**wellhead value**” means the wellhead value of petroleum and/or gas as prescribed under the provisions of Section 159 of the *Oil and Gas Act 1998*.

161A. TAX CREDIT ALLOWABLE.

²⁴⁴(1) Where the total of royalty and development levy payable by a petroleum or designated gas project for a year of income exceeds 2% of the wellhead value of petroleum and/or gas sales during that year, the amount of the excess is deemed to be income tax paid in respect of that year of income.

(2) If in any year the total of income tax deemed to be paid under this Subsection and Subsection (1) exceeds the amount of income tax payable in respect of

²⁴² Section 160A Amended by No. 22 of 2004, s. 47.

²⁴³ Section 161 of Division 10 of Part III Inserted by No. 60 of 2006, s. 5.

²⁴⁴ Section 161A of Division 10 of Part III Inserted by No. 60 of 2006, s. 5.

that year, the amount of the excess shall be deemed to be income tax paid in respect of the next succeeding year of income.

Division 11.

Timber Operations.

166. DEFINITIONS.

(1) In this Division—

“access road” means a road (including a bridge, culvert or similar work forming part of the road) constructed primarily and principally for the purpose of providing access to an area so as to enable—

- (a) the planting or tending of trees in the area; or
- (b) the removal from the area of timber felled in the area;

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

“housing and welfare” in relation to a taxpayer means—

- (a) residential accommodation provided by the taxpayer at, or at a place adjacent to, the site of timber operations carried on by the taxpayer, being accommodation provided for the use of employees of the taxpayer employed for the purposes of the operations of the taxpayer on that site or operations of the taxpayer connected with those operations or for the use of dependants of such employees; and
- (b) residential accommodation provided by the taxpayer at, or at a place adjacent to, the site of timber operations carried on by the taxpayer being accommodation provided for use of employees of the State or of a public authority under any agreement with or requirement of the State or for the use of dependants of such employees; and
- (c) health, educational, law and order, recreational, fire fighting, civil administration or other similar facilities, or facilities for the provision of meals provided by the taxpayer at, or at a place adjacent to, the site of timber operations carried on by the taxpayer being facilities that—
 - (i) are provided principally for the welfare of such employees or of dependants of such employees; and
 - (ii) are not conducted for the purpose of profit making by the taxpayer or any other person, and includes works carried out directly in connection with such accommodation or facilities including works for the provision of water, light, power, access or communications;

“**the Income Tax Act 1959-1973**” includes the *Income Tax Act 1959*, as amended by any Act up to and including Act No 65 of 1973;

“**port**” includes any place at which ships are able to be loaded or unloaded and includes any wharf or other facility for ships where the construction of such facilities was primarily and principally for the purpose of primary processing of timber;

“**primary processing of timber**” means—

- (a) the planting or tending of trees for felling; or
- (b) the felling of standing timber; or
- (c) the removal of felled timber; or
- (d) the sawing of felled timber at a sawmill; or
- (e) the preservation of sawn timber by a process, approved by the Managing Director of the Papua New Guinea Forestry Authority, at a sawmill; or
- (f) the planing, shaping and moulding of sawn timber at a sawmill; or
- (g) the processing of timber for veneer, plywood, woodchips or other primary timber products;

“**structural improvements**” means structural improvements used primarily and principally for the purpose of the carrying out of primary processing of timber and constructed on or adjacent to land used primarily and principally for that purpose;

“**timber operations**” means—

- (a) the planting or tending of trees for felling; or
- (b) the felling of standing timber; or
- (c) the removal of felled timber; or
- (d) the milling or other processing of felled timber.

(2) A reference in this Division to a deduction or deductions allowed or allowable under this Division (not including a reference to a deduction or deductions allowed or allowable under a specified provision of this Division) shall, unless the contrary intention appears, be read as including a reference to a deduction, or deductions allowed or allowable under Division III.11 of the *Income Tax Act 1959-1973*.

(3) In this Division, the reference to a year of income includes a reference to an accounting period adopted in the place of that year of income in accordance with Section 12A.

(4) Where a taxpayer carries on or carried on timber operations on two or more timber leases, this Division shall be construed as applying to the operations of that taxpayer on and in connection with each of those timber leases as if it were the only

timber lease on which the taxpayer carries on or carried on timber operations, and, for that purpose, amounts of expenditure or other amounts shall be apportioned in such manner as is reasonable.

167. DEDUCTION OF EXPENDITURE.

(1) Where a person, on or after 1 July 1946, in connection with the carrying on by him of timber operations in Papua New Guinea for the purpose of gaining or producing—

- (a) assessable income; or
- (b) income that would, if this Act had commenced to have effect on that date and had applied to income derived on or after that date and before the first year of income to which this Act applies, have been assessable income,

has incurred expenditure of a capital nature on an access road, port, housing and welfare or structural improvements (not being expenditure in respect of which a deduction has been allowed or is allowable under a provision of this Act, other than a provision of this Division, or which has been or is taken into account in ascertaining the amount of an allowable deduction under such a provision), an amount ascertained in accordance with this section is an allowable deduction in respect of that expenditure.

(2) The deduction allowable is the amount ascertained by dividing the residual capital expenditure, as at the end of the year of income, ascertained in accordance with the succeeding provisions of this section, by—

- (a) a number equal to the number of whole years, as at the end of the year of income, in the estimated period during which the access road, port, housing and welfare or structural improvements, as the case may be, will be used for the purpose for which it or they was or were primarily and principally constructed; or
- (b) 15,

whichever number is the less.

(3) For the purposes of this Division, but subject to Subsection (4), the residual capital expenditure shall be ascertained by deducting from the amount of expenditure specified in Subsection (1)—

- (a) any part of that expenditure that has been allowed or is allowable as a deduction under this section from the assessable income of a year of income preceding the year of income; and
- (b) any part of that expenditure that was incurred on—
 - (i) property that has been disposed of or destroyed; or
 - (ii) property the use of which by the taxpayer for the purpose for which the access road, port, housing and welfare or structural

improvements, as the case may be, was or were primarily and principally constructed has been otherwise terminated,

and has not been allowed and is not allowable as a deduction under this section from the assessable income of any year of income that ended before the year of income in which the disposal, destruction or termination of use took place; and

- (c) any part of that expenditure that would be required to be deducted by virtue of either of the last two preceding paragraphs if this Act had commenced to have effect on 1 July 1946, and had applied to income of the year commencing on that date and of each subsequent year before the first year of income to which this Act applies; and

(d)²⁴⁵ [*Repealed.*]

(4) Where a property referred to in Subsection (3)(b)(ii) again comes into use for the purpose for which the access road, housing and welfare or structural improvements, as the case may be, was or were primarily and principally constructed, the residual capital expenditure shall be deemed to be increased by so much of the expenditure on that property as the Commissioner General determines.

(5)²⁴⁶ [*Repealed.*]

167A. ELECTION THAT DEDUCTION NOT BE MADE.

A taxpayer may elect that no deduction shall be allowed under this Division in respect of expenditure on housing and welfare and on structural improvements specified in the election incurred in the year of income specified in the election or in any subsequent year, and where such an election has been made no such deduction is allowable.

168. DISPOSAL, DESTRUCTION OR TERMINATION OF USE OF PROPERTY.

(1) This section applies where deductions have been allowed or are allowable under Section 167 in respect of expenditure of a capital nature on an access road, port, housing and welfare or structural improvements and in the year of income, property on which any of that expenditure was incurred has been disposed of or destroyed, or the use by the taxpayer of that property for the purpose for which the access road, port, housing and welfare or structural improvements, as the case may be, was or were primarily and principally constructed has been otherwise terminated.

(2) Where—

²⁴⁵ Section 167(3)(d) repealed by No 22 of 1980.

²⁴⁶ Section 167(5) repealed by No 50 of 1979.

- (a) the consideration receivable in respect of the disposal or destruction of the property; or
- (b) in the case of other termination of the use of the property, the value of the property at the date of the termination of use,

exceeds the portion of the residual capital expenditure that, at the time of the disposal, destruction or termination of use, is attributable to expenditure on the property, so much of the amount of the excess as does not exceed the sum of the deductions allowed or allowable under Section 167 in respect of expenditure on the property so disposed of or destroyed, or the use of which has been so terminated, shall be included in the assessable income.

(3) Where the portion of the residual capital expenditure that, at the time of the disposal, destruction or termination of use of the property, is attributable to expenditure on the property exceeds—

- (a) the consideration receivable in respect of the disposal or destruction of the property; or
- (b) in the case of other termination of the use of the property, the value of the property at the date of the termination of use,

the amount of the excess is an allowable deduction.

(4) In this section, “**the consideration receivable in respect of the disposal or destruction**” means—

- (a) in the case of a sale of the property—
 - (i) where the Commissioner General is satisfied that the sale price is fair and reasonable—the sale price less the expenses of the sale of the property; or
 - (ii) where the Commissioner General is not so satisfied—such amount as, in his opinion, is fair and reasonable; and
- (b) in the case of destruction of the property—the amount or value received or receivable under a policy of insurance or otherwise in respect of the destruction; and
- (c) in the case where the property is sold with other property and no separate value is allocated to the property—the amount determined by the Commissioner General; and
- (d) in the case where the property is disposed of otherwise than by sale—the value, if any, of the property at the date of disposal,

but does not include an amount that is included, or will, when received, be included, in the assessable income of any year of income under Division 4 of this Part or Section 47A.

169. ACQUISITION OF PROPERTY.

(1) Where a person has purchased property from another person carrying on timber operations for the purpose of gaining or producing assessable income, so much (if any) of the purchase price as exceeds the sum of—

- (a) the amount that, if the property had not been sold, would have been, at the end of the year of income in which the sale took place, the portion of the residual capital expenditure of the vendor attributable to expenditure on that property; and
- (b) any part of the purchase price that is included in the assessable income of the vendor in pursuance of Section 168(2),

shall not, for the purposes of this Division, be included in the expenditure of the purchaser on that property.

(2) This section does not apply where the Commissioner General is of opinion that the circumstances are such that it should not apply.

170. TIMBER FELLED UPON ACQUIRED LAND OR UNDER RIGHT.

Where—

- (a) a taxpayer has acquired—
 - (i) land carrying standing timber, and part of the price paid for the land is attributable to that timber; or
 - (ii) a right to fell standing timber; and
- (b) during the year of income, the whole or a part of the timber is felled—
 - (i) for sale, or for use in manufacture, by the taxpayer for the purpose of producing assessable income; or
 - (ii) in pursuance of a right to fell timber granted by the taxpayer to another person in consideration of payments to be made to the taxpayer as or by way of royalty,

so much of that part of the price so paid by the taxpayer to acquire the land, or so much of the amount paid by him to acquire the right, as the case may be, as is attributable to the timber felled during the year is an allowable deduction.

170A. ELECTIONS.

An election under Section 167A—

- (a) shall be made in writing signed by or on behalf of the taxpayer; and
- (b) shall be delivered to the Commissioner General on or before the last day for the furnishing of the return of income for the year of income specified in the election, or within such further period as the Commissioner General allows.

170B. DEDUCTIONS NOT ALLOWABLE UNDER OTHER PROVISIONS.

(1) When the whole or a part of expenditure on ports or housing and welfare or on structural improvements has been allowed or is allowable as a deduction under this Division, that expenditure is not an allowable deduction, and shall not be taken into account in ascertaining the amount of an allowable deduction, under any provision of this Act other than a provision of this Division.

(2) Subsection (1) does not apply in relation to the residual capital expenditure on any structural improvements after the use of those improvements for the purposes for which they were primarily and principally constructed has terminated and the improvements have come into use for the purpose of producing assessable income otherwise than by the carrying out of the primary processing of timber.

Division 12.***Industrial Property.*****171. DEFINITIONS.**

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

“**the owner**”, in relation to a unit of industrial property, means the person who possesses the rights in respect of that unit of industrial property,

“**unit of industrial property**” means rights possessed by a person as—

- (a) the grantee or proprietor of a patent for an invention granted in Papua New Guinea; or
- (b) the owner of a copyright subsisting in Papua New Guinea; or
- (c) the owner of a design registered in Papua New Guinea; or
- (d) a licensee under such a patent, copyright or design,

and includes equitable rights in respect of such a patent, copyright or design or in respect of a licence under such a patent, copyright or design.

(2) A reference in this Division to expenditure of a capital nature does not include a reference to expenditure in respect of which a deduction has been allowed or is allowable under a provision of this Act, other than a provision of this Division, or which has been or is taken into account in ascertaining the amount of an allowable deduction under such a provision.

172. APPLICATION.

(1) This Division applies to the owner of a unit of industrial property who—

- (a) became the owner of the unit by reason—
 - (i) of being the inventor of an invention and being granted a patent for that invention; or

- (ii) of being the first owner of the copyright to which the unit relates; or
- (iii) of being the author of the design to which the unit relates and obtaining the registration of that design,

and, before the unit came into existence, incurred expenditure of a capital nature directly in relation to devising the invention, producing the work in which the copyright subsists or producing the design, as the case may be; or

- (b) incurred expenditure of a capital nature on the purchase of the unit of industrial property; or
- (c) acquired the unit of industrial property by virtue of the disposal, in whole or in part and otherwise than for valuable consideration, of a unit of industrial property by the owner of that last-mentioned unit in a case where a deduction under this Division in respect of that unit has been allowed or is allowable in an assessment in respect of income of that last-mentioned owner or would have been so allowable if that unit, or the invention, work or design to which that unit relates, had been used by that owner for the purpose of producing assessable income,

and has used the unit of industrial property of which he is the owner, or the invention, work or design to which that unit relates—

- (d) in the year of income or a previous year of income for the purpose of producing assessable income; or
- (e) in a year preceding the first year of income to which this Act applies for the purpose of producing income that would, if this Act had commenced to have effect at the commencement of that year and had applied to income of that year, have been assessable income.

(2) Where the owner of a unit of industrial property—

- (a) became the owner of the unit by reason of being granted a patent for an invention as the assignee of the inventor or by reason of obtaining the registration of a design as the assignee of the author of the design; and
- (b) incurred expenditure of a capital nature in obtaining the assignment,

he shall, for the purposes of this Division, be deemed to have incurred that expenditure on the purchase of the unit of industrial property.

173. ANNUAL DEDUCTIONS.

(1) Where, at anytime during the year of income, a taxpayer is the owner of a unit of industrial property to whom this Division applies, an amount equal to the residual value of the unit in relation to the taxpayer as at the end of the year of income divided by a number equal to the number of whole years in the effective life of

the unit in relation to the taxpayer as at the commencement of the year of income is, subject to this Act, an allowable deduction in respect of the unit.

(2) Where the deduction allowable under Subsection (1) would, but for this subsection, be less than K100.00, the deduction allowable is K100.00, or the amount of the residual value referred to in Subsection (1), whichever is the less.

(3) Where the owner of a unit of industrial property ceases to be the owner at any time before the expiration of the effective life of the unit in relation to him, a deduction under this section in respect of the unit is not allowable in the assessment in respect of his income of the year of income in which he so ceased to be the owner.

174. DEDUCTIONS ON THE DISPOSAL OR LAPSE OF A UNIT OF INDUSTRIAL PROPERTY.

(1) Where, at any time during the year of income, a taxpayer who is the owner of a unit of industrial property to whom this Division applies disposes of the unit in whole and the amount of the consideration receivable in respect of the disposal is less than the residual value of the unit in relation to him at that time, the amount of the residual value, less the amount of the consideration, is an allowable deduction.

(2) Where—

- (a) a unit of industrial property owned by a taxpayer who is an owner to whom this Division applies ceases to exist at any time during the year of income (being a time before the expiration of the effective life of the unit in relation to the taxpayer) by reason of the patent or copyright, or the registration of the design, to which the unit relates ceasing to be in force; or
- (b) a unit of industrial property owned by a taxpayer who is an owner to whom this Division applies and became the owner by reason of the grant, by licence, to him of an interest in a patent, copyright or design ceases to exist at any time during the year of income (being a time before the expiration of the effective life of the unit in relation to the taxpayer) by reason of a surrender of the licence otherwise than in consideration of the payment of a lump sum,

the residual value of the unit in relation to the taxpayer at that time is an allowable deduction.

175. AMOUNT TO BE INCLUDED IN ASSESSABLE INCOME ON DISPOSAL OF A UNIT OF INDUSTRIAL PROPERTY.

(1) Subject to Subsection (3), where—

- (a) at any time during the year of income a taxpayer who is the owner of a unit of industrial property to whom this Division applies disposes of that unit in whole or in part; and
- (b) the effective life of the unit in relation to the taxpayer had not expired at that time; and

- (c) the amount of the consideration receivable in respect of the disposal exceeds the residual value of the unit to the owner at that time,

the amount of the excess shall be included in his assessable income of the year of income.

(2) Subject to Subsection (3), where—

- (a) at any time during the year of income a taxpayer who is the owner of a unit of industrial property to whom this Division applies disposes of that unit in whole or in part; and
- (b) the effective life of the unit in relation to the taxpayer had expired at that time,

the amount of the consideration receivable in respect of the disposal shall be included in his assessable income of the year of income.

(3) The amount that, under either Subsection (1) or Subsection (2), is required to be included in the assessable income of a taxpayer of a year of income in respect of a unit of industrial property shall not exceed the sum of the deductions that have been allowed or are allowable in respect of the unit under this Division in assessments of income of the taxpayer, less the sum of the amounts, if any, that have, under this section, been included in the assessable income of the taxpayer of a previous year, or previous years, of income in respect of that unit.

176. DISPOSAL OF PART OF A UNIT OF INDUSTRIAL PROPERTY.

Subject to this Division, where the owner of a unit of industrial property disposes of that unit in part, that part of the unit of which he remains the owner shall, for the purposes of this Division, be deemed to be the same unit of industrial property as the unit of industrial property that he disposed of in part.

177. COST OF A UNIT OF INDUSTRIAL PROPERTY.

(1) For the purposes of this Division the cost of a unit of industrial property to the owner of the unit is, subject to Subsection (2)—

- (a) in the case of an owner referred to in Section 172(1)(a) or (b)—the expenditure referred to in whichever of those paragraphs is applicable to him; and
- (b) in the case of an owner referred to in Section 172(1)(c)—
 - (i) if the owner acquired a unit of industrial property of another person in whole—the residual value of that unit in relation to that other person at the time of the acquisition; or
 - (ii) in any other case—such amount as the Commissioner General determines.

(2) Where—

- (a) the Commissioner General is of the opinion that the expenditure of a capital nature incurred by the owner of a unit of industrial property on the purchase of the unit is, having regard to the value of the unit, excessive; or
- (b) a unit of industrial property was purchased by the owner of the unit with other assets and no separate price is allocated to the unit,

the cost of the unit to the owner of the unit shall, for the purposes of this Division, be deemed to be such amount as is determined by the Commissioner General.

178. RESIDUAL VALUE.

(1) Subject to this section, the residual value of a unit of industrial property at any time in relation to the owner of the unit shall, for the purposes of this Division, be ascertained by deducting from the cost of the unit to the owner the sum of—

- (a) any deductions allowed or allowable under this Division in respect of the unit in assessments in respect of income of the owner of a year or years of income that ended before that time; and
- (b) the consideration receivable by the owner in respect of any disposal by him of the unit in part before that time.

(2) Where the owner of a unit of industrial property has incurred expenditure of a capital nature in obtaining the surrender to him of a licence previously granted by him in respect of the patent, copyright or design, as the case may be, to which the unit relates, the residual value of the unit to the owner of the unit at any time after the surrender shall be increased by an amount equal to that expenditure or, if the Commissioner General is of the opinion that, having regard to the value of the licence, that expenditure is excessive, by such amount as the Commissioner General determines.

(3) Where a person was the owner of a unit of industrial property immediately before the commencement of the first year of income to which this Act applies, being a unit the effective life of which in relation to that person had commenced at the commencement of a year preceding that year of income, the residual value of the unit at any time in relation to the person shall be deemed to be the amount that would have been the residual value of the unit at that time if this Act had commenced to have effect at the commencement of the year at the commencement of which that effective life commenced and had applied to income of that year and of each subsequent year.

179. CONSIDERATION RECEIVABLE ON DISPOSAL.

For the purposes of this Division, the consideration receivable by the owner of a unit of industrial property in respect of the disposal in whole or in part of the unit means—

- (a) where the unit is disposed of in whole or in part, otherwise than as specified in Paragraph (b), in consideration of the payment of a lump sum—that sum, less the expenses of the disposal; or
- (b) where the unit is disposed of in whole or in part together with other assets in consideration of the payment of a lump sum and no separate amount is allocated to the unit or the part of the unit—such amount as is determined by the Commissioner General; or
- (c) in any other case—
 - (i) if the unit is disposed of in whole—an amount equal to the residual value of the unit in relation to the owner at the time of the disposal; or
 - (ii) if the unit is disposed of in part—such amount as is determined by the Commissioner General.

180. EFFECTIVE LIFE.

(1) For the purposes of this Division, the effective life of a unit of industrial property shall, in relation to the owner of the unit, be deemed to have commenced at the commencement of the year of income during which the owner of the unit first used that unit, or the invention, work or design to which the unit relates, for the purpose of producing assessable income and ends—

- (a) where the unit was purchased or otherwise acquired by him for a specified period—at the end of the year of income during which the patent, copyright or design to which the unit relates will terminate or at the end of the year of income during which the specified period will terminate, whichever will first occur; or
- (b) in any other case—
 - (i) if the unit relates to a patent or design—at the end of the year of income during which the patent or design will terminate; or
 - (ii) if the unit relates to a copyright—at the end of the year of income during which a period of 25 years, commencing on the date on which the owner of the unit became the owner, will expire or at the end of the year of income during which the copyright will terminate, whichever will first occur.

(2) Subject to Subsections (3) and (4)—

- (a) a patent shall be deemed to terminate at the expiration of a period of 16 years after the date of the patent; and
- (b) a copyright shall be deemed to terminate on a date on which it ceases to subsist; and
- (c) a design shall be deemed to terminate on a date 15 years after the date on which the registration of the design took effect.

(3) Where a person acquires a unit of industrial property that relates to a patent the term of which had been extended before the date of the acquisition, the patent shall, for the purposes of the application of Subsection (1) in relation to that person, be deemed to terminate at the expiration of the extended term.

(4) Where a person acquires a unit of industrial property that relates to a copyright in respect of a work of joint authorship after the expiration of a period of 50 years after the death of the author who first died, the copyright shall, for the purposes of that application of Subsection (1) in relation to that person, be deemed to terminate on such date as, having regard to the expectation of life of the surviving author or authors, the Commissioner General determines.

181. INTEREST BY LICENCE IN PATENT, ETC.

(1) For the purposes of this Division, the owner of a unit of industrial property who, by licence, grants to another person an interest in the patent, copyright or design to which the unit relates shall, subject to Subsection (2), be deemed to have disposed of the unit in part.

(2) For the purposes of this Division, where a person who became the owner of a unit of industrial property by reason of the grant to him, by licence, of an interest in a patent, copyright or design surrenders that licence—

- (a) that person shall not be deemed to have disposed of the unit unless the surrender was made in consideration of the payment to him of a lump sum; and
- (b) the person to whom the licence was surrendered shall not, by reason only of the surrender, be deemed to have acquired a unit of industrial property.

(3) Where a unit of industrial property arises out of the grant, by licence, of an interest in a patent, copyright or design, an extension of the term of that licence shall, for the purposes of this Division, be deemed to be the grant of a new licence.

182. DISPOSAL OF UNIT OF INDUSTRIAL PROPERTY ON CHANGE OF PARTNERSHIP, ETC.

Where—

- (a) for any reason (including the formation or dissolution of a partnership or a variation in the constitution of a partnership or in the interests of the partners) a change has occurred in the ownership of, or in the interests of persons in, a unit of industrial property; and
- (b) the person, or one or more of the persons, who owned the unit before the change has or have an interest in the unit after the change,

the provisions of this Division apply as if the person or persons who owned the unit before the change had, on the day on which the change occurred, disposed of the unit in whole to the person, or all the persons, by whom the unit is owned after the change for a consideration equal to the amount specified in the agreement in

consequence of which the change occurred as the value of the unit for the purposes of that agreement, or, if there is no such agreement or no amount is so specified or the Commissioner General is of the opinion that the amount so specified is excessive, an amount determined by the Commissioner General.

183. USE OF PATENT BY THE STATE.

Where—

- (a) a person is, or has been, the owner of a unit of industrial property that relates to a patent; and
- (b) a lump sum is paid to that person in respect of the making, using, exercising or vending by the State, or by a person authorized by the State, of the patented invention for the purposes of the State,

that first-mentioned person shall, for the purposes of this Division, be deemed to have disposed of the unit in part, at the time of payment, in consideration of the payment of that lump sum.

184. DAMAGES FOR INFRINGEMENT.

Where, in pursuance of a judgment of a court or otherwise, a lump sum is paid to a person who is or has been the owner of a unit of industrial property in respect of an infringement, or an alleged infringement, of the patent, copyright or design to which the unit relates, that person shall, for the purposes of this Division, be deemed to have disposed of the unit in part, at the time of payment, in consideration of the payment of that lump sum.

185. BENEFIT FROM OVERSEAS RIGHTS.

Where the owner of a unit of industrial property has obtained or is obtaining a benefit from a right exercisable in a place outside Papua New Guinea, being a right that relates to the invention, work or design to which the unit of industrial property relates, the Commissioner General may determine that any deduction allowable under this Division in respect of the unit of industrial property shall be reduced by such amount as the Commissioner General, having regard to that benefit, thinks fit, and the deduction shall be reduced accordingly.

Division 12A.

Receipts from Sales of Prescribed Products.

185A. APPLICATION OF DIVISION.

This Division applies notwithstanding anything in any other Act.

185B. INTERPRETATION.

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

“**authorized dealer**” includes any person who is authorized by the law of Papua New Guinea to acquire prescribed products for resale or to act as a central marketing body;

“**gross income**” means the total consideration paid or payable by an authorized dealer for any prescribed product;

“**person**” includes a company, and a trust estate;

“**prescribed product**” includes any product prescribed for the purposes of this Division.

(2) For the purposes of this Division, where any prescribed product is sold by a trust estate, the trustee of that trust estate shall be deemed to have derived the gross income.

185C. LIABILITY TO WITHHOLDING TAX.

(1) This section applies to the gross income derived by any person, other than an authorized dealer from the sale of a prescribed product.

(2) A person who derives income to which this section applies is liable to pay tax upon that income at the prescribed rate.

(3) Tax payable by a person in accordance with this section is in addition to any other tax payable by him upon income to which this section does not apply.

185D. PAYMENT OF PRESCRIBED PRODUCT (WITHHOLDING) TAX.

(1) Prescribed Product (Withholding) Tax is due and payable by the person liable to pay the tax at the expiration of 21 days after the end of the month in which the gross income to which the tax relates was derived by him, or such further period as the Commissioner General, in special circumstances, allows.

(2) Prescribed Product (Withholding) Tax, when it becomes due and payable, is a debt due to the State and payable to the Commissioner General.

(3) Subject to Subsection (4), if any Prescribed Product (Withholding) Tax remains unpaid at the expiration of 60 days after the time when it became due and payable, additional tax is due and payable at the rate of 20% per annum on the amount unpaid, computed from the expiration of that period.

(4) The Commissioner General may, in any case, for reasons that he thinks sufficient, remit the additional tax or any part of the additional tax.

(5) Any unpaid Prescribed Product (Withholding) Tax and any unpaid additional tax payable under this section, may be sued for and recovered in a court of competent jurisdiction by the Commissioner General suing in his official name.

(6) The ascertainment of the amount of any Prescribed Product (Withholding) Tax, shall not be deemed to be in assessment within the meaning of any of the provisions of this Act.

(7) The Commissioner General may serve on a person, by post or otherwise, a notice in which is specified—

- (a) the amount of any Prescribed Product (Withholding) Tax that the Commissioner General has ascertained is payable by that person; and
- (b) the date on which tax became due and payable.

(8) The production of a notice served under Subsection (7) or of a document under the hand of the Commissioner General purporting to be a copy of such a notice, is evidence that the amount of the Prescribed Product (Withholding) Tax specified in the notice or document became due and payable by the person on whom the notice was served on the date so specified.

Division 13.

Interest.

186. LIABILITY TO INTEREST (WITHHOLDING) TAX.

(1) Where interest is paid or credited by a financial institution, the Central Bank or a company to a person resident in Papua New Guinea, the person making the payment of or crediting interest in the account is liable to withhold and pay tax upon that amount at the rate declared by Act.

(2) Where interest is paid or credited by any person to a non-resident, the person making the payment or crediting interest in the account is liable to withhold and pay tax upon that income at the rate declared by Act.

(3) Where tax as provided under Subsection (2) has been deducted and paid—

- (a) the interest income shall not be included in assessable income; and
- (b) in computing assessable income of the taxpayer no deduction shall be allowed in respect of any expenditure for or in connection with the earning of interest income.

(4) The provisions of this section shall not apply—

- (a) where interest paid is exempt under provisions of this Act; or
- (b) where interest is received by a financial institution, Central Bank or the State.

(5) For the purposes of this Division—

“**financial institution**” shall have the meaning assigned to it under Section 35(1).

187. PAYMENT OF INTEREST (WITHHOLDING) TAX.

(1) Interest (Withholding) Tax is due and payable by the person liable to pay the tax within 21 days after the end of the month in which the interest income to which the tax relates was credited or paid (whichever occurs earlier), or such further time as the Commissioner General, in special circumstances, allows.

(2) Interest (Withholding) Tax, when it becomes due and payable, is a debt due to the Government and payable to the Commissioner General.

(3) Any unpaid Interest (Withholding) Tax payable under this Division may be sued for and recovered in a court of competent jurisdiction by the Commissioner General suing in his official name.

(4) The ascertainment of the amount of any Interest (Withholding) Tax, shall not be deemed to be an assessment within the meaning of any of the provisions of this Act.

(5) The Commissioner General may serve on a person, by post or otherwise, a notice in which is specified—

- (a) the amount of any Interest (Withholding) Tax that the Commissioner General has ascertained is payable by that person; and
- (b) the date on which tax became due and payable.

(6) The production of a notice served under Subsection (5) or of a document under the hand of the Commissioner General purporting to be a copy of such a notice, is evidence that the amount of Interest (Withholding) Tax specified in the notice or document became due and payable by the person on whom the notice was served on the date so specified.

188 - 189²⁴⁷. [**REPEALED.**]

Division 13A.

Dividends paid by Resident Companies.

189AA. APPLICATION OF DIVISION.

This Division applies notwithstanding anything in any other Act.

189A. INTERPRETATION.

(1) In this Division, unless the context otherwise requires or some other meaning is clearly intended—

“**dividend**” includes a part of a dividend;

“**person**” includes a trustee.

(2) For the purposes of this Division, other than Section 189D, where a dividend paid by a company that is a resident is included in the income of a trust estate, the trustee of that trust estate shall be deemed to have derived that dividend.

189B. LIABILITY TO DIVIDEND (WITHHOLDING) TAX.

(1) Subject to Subsection (2), this section applies to income that consists of a dividend—

²⁴⁷ Section 161A of Division 10 of Part III Inserted by No. 60 of 2006, s. 5.

- (a) paid by a company that is a resident; or
 - (b) derived from sources outside Papua New Guinea by a company that is a resident; or
 - (c) deemed to be a dividend by virtue of this Act and derived by a company that is a resident; or
 - (d) deemed to be a dividend paid by a company by virtue of Section 361;
- (2) This section does not apply to—
- (a) income derived by a non-resident that is exempt from income tax by virtue of Section 25(a) or (b) or Section 26, 27 or 28, and is exempt from income tax in the country in which the non-resident resides; or
 - (b) income derived by a resident that is exempt from income tax by virtue of Section 24, 25, 25A, 26, 27, 28 or 40A; or
 - (c) income derived by a resident who is referred to in Section 24(2), including income derived by a corporation which, in the opinion of the Commissioner General, is wholly beneficially owned by such a resident; or
 - (d) income that is exempt from income tax by virtue of Section 22A, 39(1) or 140(1); or
 - (e) income that consists of a dividend excluded from assessable income by virtue of Section 42; or
 - (f)²⁴⁸ income that consists of dividends derived by an Authorised Superannuation Fund or a non-resident superannuation fund; or
 - (g) dividends that are paid out of income that is pioneer income for the purposes of Part III of the *Industrial Development (Incentives to Pioneer Industries) Act* (Chapter 119) and which are exempt from income tax by virtue of Section 21(4) of that Act.

Note *Industrial Development (Incentives to Pioneer Industries) (Repeal) Act* repealed by No 36 of 1998.

(3) A person who derives income to which this section applies is liable to pay tax upon that income at the rate declared by Act.

(4) Tax payable by a person in accordance with this section is in addition to any other tax payable by him upon income to which this section does not apply.

189C. PAYMENT OF DIVIDEND (WITHHOLDING) TAX.

(1) Dividend (withholding) tax is due and payable by the person liable to pay the tax at the expiration of 21 days after the end of the month in which the income to

²⁴⁸ Section 189B Subsection (2) amended by No. 22 of 2004, s. 48.

which the tax relates was derived by him, or of such further period as the Commissioner General, in special circumstances, allows.

Note Mineral Resources Stabilization Fund Act repealed by No 29 of 2000.

(2) Dividend (withholding) tax, when it becomes due and payable, is a debt due to the State and payable, subject to the *Mineral Resources Stabilization Fund Act* (Chapter 194), to the Commissioner General.

(3) Subject to Subsection (4), if any dividend (withholding) tax remains unpaid at the expiration of 60 days after the time when it became due and payable, additional tax is due and payable at the rate of 20% per annum on the amount unpaid, computed from the expiration of that period.

(4) The Commissioner General may, in any case, for reasons that he thinks sufficient, remit the additional tax or any part of the additional tax.

(5) Any unpaid dividend (withholding) tax, and any unpaid additional tax payable under this section, may be sued for and recovered in a court of competent jurisdiction by the Commissioner General suing in his official name.

(6) Subject to the provisions of Part V.2, the ascertainment of the amount of any dividend (withholding) tax shall not be deemed to be an assessment within the meaning of any of the provisions of this Act.

(7) The Commissioner General may serve on a person, by post or otherwise, a notice in which is specified—

(a) the amount of any dividend (withholding) tax that the Commissioner General has ascertained is payable by that person; and

(b) the date on which that tax became due and payable.

(8) The production of a notice served under Subsection (7), or of a document under the hand of the Commissioner General purporting to be a copy of such a notice, is evidence that the amount of dividend (withholding) tax specified in the notice or document became due and payable by the person on whom the notice was served on the date so specified.

189D. CERTAIN INCOME NOT INCLUDED IN ASSESSABLE INCOME.

Income upon which dividend (withholding) tax is payable and has been paid is not included in the assessable income of a person who is a non-resident.

189E. REFUND OF DIVIDEND (WITHHOLDING) TAX.

(1) Subject to Subsection (12), where a resident company derives a dividend to which Section 189B applies, it shall record in its books of account the gross amount of such dividend (being the amount of the dividend before the amount of dividend (withholding) tax was deducted) in an account entitled “Undistributed Dividend Income Account” and the amount of dividend withholding tax for which it is liable

under Section 189B in respect of that dividend in an account entitled “Refundable Dividend (Withholding) Tax Account”.

(2) Subject to Subsections (11) and (13), a resident company is entitled to receive a refund of dividend (withholding) tax in respect of any amount paid out of the Undistributed Dividend Income Account as a dividend to a shareholder.

(3) The amount of refund under Subsection (2) is that proportion of the balance of the Refundable Dividend (Withholding) Tax Account as the amount paid or to be paid out of the Undistributed Dividend Income Account bears to the balance of that account before that payment is or was made, as the case may be.

(4) Where a resident company referred to in Subsection (1) declares a dividend in favour of an exempt body, it shall apply to the Commissioner General, in a form approved by him, advising him of the amount it intends to pay out of its Undistributed Dividend Income Account in respect of the declared dividend, and the Commissioner General shall refund to the resident company the dividend (withholding) tax calculated in accordance with Subsection (3).

(5) Where a resident company receives a refund of dividend (withholding) tax under Subsection (4) it shall, within 21 days immediately after receiving that refund, pay to the exempt body the amount of that dividend declared.

Penalty: A fine not exceeding double the amount refunded to and not paid out to the exempt body by the resident company and, in addition, the court shall order the resident company to repay to the Commissioner General the amount of that refund not paid out to the exempt body.

(6) Where a resident company pays a dividend out of its Undistributed Dividend Income Account to a shareholder who is not an exempt body, it may notify the Commissioner General, in a form approved by him, at least 14 days before the date it is required to make the payment under Division III.13A in respect of that dividend, requesting that the payment due or to become due under that Division be made from any refund payable to it under this section and, upon that application being made, the liability of the resident company under that Division in respect of the dividend, and the liability under Sections 189B and 189C of the recipient of the dividend, is discharged.

(7) Upon the payment of a dividend from the Undistributed Dividend Income Account, the resident company shall immediately deduct—

- (a) from that account, the gross amount of each dividend paid by it; and
- (b) from the Refundable Dividend (Withholding) Tax Account, the refund calculated under Subsection (3).

(8) Subject to Subsection (10), no resident company shall make an entry in its Undistributed Dividend Income Account or its Refundable Dividend (Withholding) Tax Account other than—

- (a) an entry provided for by Subsections (1) and (7); or

- (b) in the case of the Undistributed Dividend Income Account, an entry necessary to include as assessable income a dividend derived during the year of income by the resident.

(9 - 9A)²⁴⁹ [*Repealed.*]

(10) A resident company shall, in respect of any amount of dividend to which Section 189B applies and in respect of which it is not entitled to a refund of dividend (withholding) tax under this section, in addition to any entry referred to in Subsection (7), make the necessary accounting adjustments to its Undistributed Dividend Income Account and its Refundable Dividend (Withholding) Tax Account as soon as practicable after it is no longer entitled to a refund of dividend (withholding) tax in respect of that amount.

Penalty: A fine of not less than K200.00 and not more than K1,000.00.

(11) Subject to Subsections (4) and (6), instead of making a refund that might otherwise be made under this section, the Commissioner General may, where the resident company is liable or about to become liable to make a payment or a deduction under this Act, apply to that other liability the amount that would otherwise be refundable.

(12) A resident company that derives a dividend to which Section 189B applies may, on or before the date on which it derives that dividend or within such further time as the Commissioner General allows, lodge with the Commissioner General an election in writing to record only the net amount of the dividend derived or to be derived by it, and upon so electing, the provisions of this section do not apply to or in respect of that dividend.

(13) A resident company is not entitled to a refund of dividend (withholding) tax under this section in respect of the whole or any part of a dividend derived that has not been paid out as a dividend by the company within the seven years of income or substituted accounting periods immediately following the year of income or substituted accounting period in which the dividend was so derived.

(14) In this section “**exempt body**” means a person or body in respect of whose income Section 189B does not apply.

Division 14.

Oversea-Ships.

190. TAXABLE INCOME OF SHIPOWNER OR CHARTERER.

Where a ship belonging to or chartered by a person whose principal place of business is out of Papua New Guinea carries passengers, livestock, mails or goods shipped in Papua New Guinea, 5% of the amount paid or payable to him in respect of the carriage, whether that amount is payable in or out of Papua New Guinea, shall be deemed to be taxable income derived by him in Papua New Guinea.

²⁴⁹ Section 161A of Division 10 of Part III Inserted by No. 60 of 2006, s. 5.

190. TAXABLE INCOME OF SHIPOWNER OR CHARTERER.

²⁵⁰(1) Where a ship belonging to or chartered by a person whose principal place of business is out of Papua New Guinea carries passengers, livestock, mails or goods shipped in Papua New Guinea, 5% of the amount paid or payable to him in respect of the carriage, whether that amount is payable in or out of Papua New Guinea, shall be deemed to be taxable income derived by him in Papua New Guinea.

(2) The Commissioner General may exempt in whole or in part from liability under Subsection (1) to pay income tax in Papua New Guinea, any person, or any class or classes of persons, being resident in a country or territory outside Papua New Guinea, if and so far as the Commissioner General is satisfied that in corresponding circumstances a like person, or a like class or classes of persons, being resident in Papua New Guinea, are not liable to or are exempt from income tax imposed by the law of that country or territory.

191. MASTER OR AGENT TO MAKE RETURN.

The master of the ship, or the agent or other representative in Papua New Guinea of the owner or charterer, shall, when called upon by the Commissioner General by notice in the National Gazette or by any other notice to him, make a return of the amounts so paid or payable.

192. DETERMINATION BY COMMISSIONER GENERAL.

If a return referred to in Section 191 is not made, or if the Commissioner General is not satisfied with the return, he may determine the amount so paid or payable.

193. ASSESSMENT OF TAX.

The master, agent or representative, as agent for the owner or charterer, may be assessed upon the taxable income and is liable to pay the tax assessed.

194. MASTER LIABLE TO PAY.

(1) Where the assessment is made on the agent or representative, and the tax is not paid forthwith upon receipt of notice of the assessment, the master is liable to pay the tax.

(2) This section does not, so long as any tax for which the master becomes liable under this section remains unpaid, relieve any other person to whom notice of assessment has been given in respect of that tax from liability to pay the tax remaining unpaid.

²⁵⁰ Section 190 Inserted by No. 22 of 2004, s. 49.

195. NOTICE OF ASSESSMENT.

Where a person is liable to pay tax under this Division, the Commissioner General shall give notice to him of the assessment, and he shall forthwith pay the tax.

196. CLEARANCE OF SHIP.

A collector of customs or an officer of customs for Papua New Guinea shall not grant a clearance to the ship until he is satisfied that any tax that has been or may be assessed under this Division has been paid, or that arrangements for its payment have been made to the satisfaction of the Commissioner General.

Division 14A.***Oversea Contractors.*****196A. DEFINITIONS.**

(1) The object of the Division is to facilitate the collection of income tax from foreign contractors in relation to prescribed contract income derived by them, such tax being referred to in this Division as **“foreign contractor (withholding) tax”** and this Division shall be construed and administered accordingly.

(2) In this Division—

“contract” means a contract, whether express or implied, whether in writing or not, and whether or not enforceable or intended to be enforceable;

“foreign contractor” means a person who is a party to a prescribed contract and is not—

- (a) a resident company of Papua New Guinea; or
- (b) a person, other than a company, who is ordinarily resident in Papua New Guinea; or
- (c) a person to whom the provisions of Part III.2B apply; or
- (d) a person who derives a management fee to which Division III.14C applies.

“prescribed contract” means a contract or sub-contract for prescribed purposes;

“prescribed purposes” means purposes for or in connection with—

- (a) the installation, maintenance or use in Papua New Guinea of substantial equipment or substantial machinery; or
- (b) the construction in Papua New Guinea of structural improvements or other works, including—
 - (i) the construction of roads, including bridges, culverts or similar works forming part of a road; and

- (ii) the erection of buildings, fences or similar improvements; and
 - (iii) the clearing or draining of land; and
 - (iv) the construction of ports or port facilities; and
 - (v) the construction of facilities for the provision of water, light, power or communication; and
 - (vi) the provision or improvement of transport facilities of any kind; or
- (c) the use of, or right to use, in Papua New Guinea, any industrial, commercial or scientific equipment including any machinery or apparatus or appliance, whether fixed or not, and any vehicle, shipping vessel or aircraft; or
 - (d) the provision in Papua New Guinea of professional services or services as an adviser, consultant or manager, including services in conjunction with the purposes set out in Paragraphs (a), (b) or (c) of this definition.

196B. SOURCE OF INCOME.

For the purposes of Section 196D(1), income derived from a prescribed contract is deemed to be derived from a source in Papua New Guinea.

196C. LIABILITY OF FOREIGN CONTRACTOR.

A foreign contractor who derives income from a prescribed contract is liable to pay tax on that income.

196D. TAXABLE INCOME OF FOREIGN CONTRACTORS.

(1) Subject to Subsection (2), where a foreign contractor has derived income from a prescribed contract, an amount equal to 25% of the gross income, whether paid or payable in Papua New Guinea or out of Papua New Guinea, so derived shall be included in his taxable income.

(2) Where, in the case of a foreign contractor who derives income from a prescribed contract, the actual profit or loss derived or made by the foreign contractor in respect of the prescribed contract is established to the satisfaction of the Commissioner General, the taxable income of that foreign contractor in respect of that profit, or of the amount of the loss so made by him, shall, subject to this Act, be calculated by reference to receipts and expenditure taken into account in calculating that profit or loss.

(3) In calculating the actual profit or loss in relation to a prescribed contract under Subsection (2), the amount that may be deducted by way of general administration and management expenses (other than such expenses incurred

directly in deriving the income from the prescribed contract) incurred outside Papua New Guinea shall not exceed the lesser of—

- (a) 5% of the gross income from the prescribed contract; and
- (b) that proportion of the total general administration and management expenses (other than such expenses incurred directly in deriving the income from the prescribed contract) as the gross income from the prescribed contract bears to the world-wide income of the taxpayer.

(4) Where in a fiscal year a foreign contractor who derives or is about to derive income from a prescribed contract and seeks leave in writing to adopt a basis of annual assessment by virtue of Subsection (2) the Commissioner General may so grant leave subject to such conditions as he determines and provided that it is established to his satisfaction that the foreign contractor shall not default in either the lodgement of that return or in the payment of any tax due or which may become due in respect of the prescribed contract income.

(5) For the purpose of Subsection (2), the Commissioner General may seek an undertaking in writing from a person who or which pays or is about to pay a prescribed contract income payment to a foreign contractor, to the effect that should the foreign contractor default in respect of the provision of Subsection (2), that person shall pay any tax imposed by reason of that default.

196E. NOTICE OF DEEMED ASSESSMENT.

(1) Without limiting the powers of the Commissioner General to raise and amend assessments where a person has derived prescribed contract income to which this Division applies during a year of income and that person has not been given leave to lodge a return under Section 196D(4) in relation to that income at or before the end of the next succeeding year of income, there shall be deemed to be an assessment of prescribed contract (withholding) tax equal to the sum of the amount of instalments paid by or on behalf of the person.

(2) Where a person is liable to pay tax under this Division, the Commissioner General shall give notice to him of the assessment.

196F. LIABILITY OF AGENT.

(1) A person carrying on business in Papua New Guinea who has entered into a prescribed contract with a foreign contractor is deemed, for all purposes of this Act, to be the agent of the foreign contractor, and shall—

- (a) provide the Commissioner General with a copy of the signed contract or written notification of an agreement within 14 days of the signing; and
- (b) not make a payment of any income assessable under this Division to that foreign contractor, or transfer out of the country any such income for the purpose of making such a payment unless and until written confirmation is received from the Commissioner General stating that arrangements have been made to his satisfaction for the payment of any

income tax that has been, or may be, assessed to be paid by that foreign contractor.

(2) A person who fails to provide a copy of the signed contract, makes a payment or transfers any income in contravention of Subsection (1) is guilty of an offence.

Penalty: ²⁵¹The amount of the tax that is, or becomes payable in respect of that income by the foreign contractor for whom the person paying or transferring the income is deemed to be the agent; and in addition a fine of not less than K500.00 and not exceeding K5,000.00.

(3) Where a person who is liable to pay prescribed contract income to a foreign contractor and has received from the Commissioner General a written confirmation of the amount of tax, if any, to be retained in respect of tax due under Subsection (1)(b) that person shall, before or at the time a prescribed contract payment is paid, deduct the amount of tax ascertained by the Commissioner General.

(4) Where a person has made a deduction from a prescribed contract payment and the deduction was made or purports to have been made under Subsection (3), that person shall, within 21 days after the end of the month in which the prescribed contract payment was paid, become liable to be paid or was credited—

- (a) pay to the Commissioner General an amount equal to the deduction made; and
- (b) furnish to the Commissioner General a remittance advice in the form authorized by the Commissioner General signed by or on behalf of the person who made the deduction.

(5) A person making a payment in pursuance of this section shall be deemed to have been acting under the authority of the taxpayer and of all other persons concerned and is, by force of this subsection, indemnified in respect of that payment.

(6) Where an amount (in this subsection referred to as the “**principal amount**”) payable to the Commissioner General by a person by virtue of Subsection (4) remains unpaid after the end of the period within which it is required to be paid—

- (a) the principal amount continues to be payable by that person to the Commissioner General; and
- (b) that person is liable to pay to the Commissioner General by way of penalty an amount calculated at the rate of 20% per annum from the end of that period on so much of the principal amount as remains unpaid.

(7) The Commissioner General may, in any case, for reasons that he thinks sufficient, remit any penalty under Subsection (6), or any part of such a penalty.

(8) A person, other than the State, or an authority of the State, who fails to comply with Section (4)(a) is guilty of an offence.

²⁵¹ Section 196F Subsection (2) amended by No. 22 of 2004, s. 51.

Penalty: ²⁵²In the case of a natural person, a fine of not less than K500.00 and not exceeding K5,000.00 or imprisonment for a period not exceeding six months, and in the case of a corporate person, a fine not less than K1,000.00 and not exceeding K50, 000.00.

(9) A person, other than the State, or an authority of the State, who fails to comply with Subsection (4)(b) is guilty of an offence.

Penalty: ²⁵³A fine not less than K500.00 and not exceeding K5,000.00.

(10) An amount payable to the Commissioner General under the provisions of this Division is a debt due to the State and payable to the Commissioner General, and may be sued for and recovered in a court of competent jurisdiction by the Commissioner General suing in his official name.

(11) In an action against a person for the recovery of an amount payable to the Commissioner General under the provisions of this Division a certificate in writing signed by the Commissioner General or an Assistant Commissioner certifying that—

- (a) the person named in the certificate paid, was liable to pay or credited a prescribed contract payment to a foreign contractor; and
- (b) the sum specified in the certificate was, at the date of the certificate, due by that person to the State in respect of the amount payable to the Commissioner General under the provision of this Division,

is evidence of the matter stated in the certificate.

(12) A person who receives, is entitled to receive or is credited with a prescribed contract payment is liable to pay by way of an instalment of foreign contractor (withholding) tax an amount equal to the amount required to be deducted.

(13) An amount deducted and paid to the Commissioner General pursuant to Subsection (3) shall be deemed to be an instalment of foreign contractor (withholding) tax paid on behalf of a foreign contractor who received, was entitled to receive or was credited with the prescribed contract payment.

(14) In any assessment in relation to a year of income in respect of prescribed contract income to which this Division applies, a person by or on whose behalf an instalment of foreign contractor (withholding) tax has been paid is entitled to a credit equal to the sum of the instalments so paid.

(15) Where a person makes a deduction for the purposes of this Division or purporting to be for those purposes, from a prescribed contract payment and fails to deal with the amount so deducted in the manner required by this Division, he is deemed to be a trustee for such deductions and is liable to pay that amount to the Commissioner General.

(16) Where the property of a person has become vested in, or the control of the property of that person has passed to, a trustee, then the trustee is liable to pay the amount referred to in Subsection (4) to the Commissioner General.

²⁵² Section 196F Subsection (8) amended by No. 22 of 2004, s. 51.

²⁵³ Section 196F Subsection (9) amended by No. 22 of 2004, s. 51.

(17) Notwithstanding anything contained in any other Act, an amount payable to the Commissioner General by a trustee in pursuance of this Division has priority over all other debts (other than amounts payable under Sections 196W(7), 285(3), 299K(1) and 311K(1)), whether preferential, secured or unsecured.

(18) A person, who does not make a deduction from a prescribed contract payment as required by Subsection (3) or has deducted less than the amount required to be deducted, is guilty of an offence.

Penalty: ²⁵⁴A fine of not less than K500.00 and not exceeding K5,000.00.

(19) Where a person is convicted under Subsection (18), the Court may order the person to pay, in addition to any fine, an amount not exceeding the amount required to be deducted under Subsection (3).

(20) Where a person who was required to make a deduction under Subsection (3) has failed to make that deduction he is liable, in addition to any penalty for which he may be liable, to pay to the Commissioner General the amount that he has failed to deduct and the Commissioner General may sue for and recover that amount in any Court of competent jurisdiction, or the Court before which any proceedings for an offence are taken may order the person to pay that amount to the Commissioner General.

Division 14B.

Taxable Gains.

196G. DEFINITIONS.

In this Division—

“**purchaser**” includes any person who purchases or otherwise acquires shares;

“**undistributed profits**” means the total taxable income assessed or assessable to the company under this Act from its date of incorporation to the date of sale of the shares as reduced by—

- (a) all income taxes paid or payable under this Act in respect of that income; and
- (b) all dividends paid or deemed paid under this Act; and
- (c) any amount that was:—
 - (i) previously assessed; or
 - (ii) would, but for an exemption from tax, have been previously assessed,

as an undistributed profit under this Division.

“**vendor**” includes any person or association of persons (being persons as defined in Part III.7B) who sells or otherwise disposes of shares.

²⁵⁴ Section 196F Subsection (18) amended by No. 22 of 2004, s. 51.

196GA. NON-APPLICATION OF THIS DIVISION.

This Division does not apply to any shares sold or otherwise disposed of after 16 November 1993.

196H. LIABILITY.

Subject to Section 196I, where a vendor, who is or has been, on or after 9 November 1982, the beneficial holder of not less than 20% of the total issued capital of a company, sells the whole or part of his shareholding in that company, the consideration receivable for such sale shall be a taxable gain, and the vendor shall be liable to pay any specific gains tax on that gain at the rate declared by Act.

196I. LIMITATION.

Any taxable gain assessed in terms of Section 196H shall be limited to the extent that—

- (a) the consideration receivable exceeds the paid up value of the shares sold; or
- (b) that proportion of a total dividend to which the vendor of the shares sold or otherwise disposed of would have been entitled in respect of the shares sold or otherwise disposed of had the company declared a dividend to the extent of its undistributed profits,

whichever is the lesser.

196J. LIABILITY OF AGENTS.

For the purposes of this Division, the purchaser of the shares shall be deemed to be the agent of the vendor and shall not make a payment of any gain assessable under this Division to the vendor of the shares, or transfer out of Papua New Guinea any such gain for the purpose of paying for the shares, unless and until arrangements have been made to the satisfaction of the Commissioner General for the payment of any specific gains tax that has been or may be assessed under this Division.

196K. NOTIFICATION OF SALE.

Where a vendor sells shares and is liable to pay specific gains tax under this Division, the purchaser shall within 14 days of the date of sale—

- (a) notify the Commissioner General of the transaction on a prescribed form stating—
 - (i) the quantity and description of the shares being sold; and
 - (ii) the amount of the consideration payable; and
- (b) ascertain from the Commissioner General the amount of specific gains tax payable; and

- (c) pay to the Commissioner General the amount of specific gains tax assessable in respect of any taxable gain under this Division.

196L. DEDUCTION BY PURCHASER.

The purchaser may deduct and retain for his own use so much of the consideration payable for the shares as is necessary to pay the specific gains tax payable under this Division.

196M. REBATE OF TAX PAID.

Where a vendor pays specific gains tax under this Division on any taxable gain and that taxable gain is included in the income tax assessment of the vendor, the proportionate amount of the specific gains tax paid by the vendor in respect of the taxable gain shall be deducted from the total tax payable by that person and if that proportionate amount exceeds that total tax payable, the Commissioner General shall pay to that person the excess.

196N. OFFENCES.

Any purchaser or vendor who—

- (a) fails to notify the Commissioner General of any transaction to which this Division applies; or
- (b) in notifying the Commissioner General makes a statement which is false in any material particular,

is guilty of an offence.

Penalty: A fine not less than K200.00 and not exceeding K2,000.00 and in addition the Court may order that person to pay an amount equivalent to twice the specific gains tax which would have been payable had the notification of sale been in accordance with this Division.

196O. NOTICE OF ASSESSMENT.

Where a person is liable to pay specific gains tax under this Division, the Commissioner General shall give to him notice of the assessment, and he shall forthwith pay the balance of specific gains tax outstanding.

Division 14C.

Management Fee (Withholding) Tax.

196P. INTERPRETATION.

In this Division—

(a)²⁵⁵ [*Repealed.*]

(b) references to management fees paid or the payment of management fees includes management fees credited or the credit of management fees.

196Q. APPLICATION.

This Division applies to a taxable management fee that is paid to a non-resident after 8 November 1989 and that—

(a) is paid by a resident; or

(b) is paid by a non-resident, and—

(i) is, or is in part, an outgoing incurred by that person in carrying on business in Papua New Guinea at or through a permanent establishment in Papua New Guinea; or

(ii) is not an outgoing incurred by that person in carrying on business in another country at or through a permanent establishment in that other country,

but does not apply to a taxable management fee that is paid to a non-resident to the extent that it is derived by the non-resident in carrying on a business in Papua New Guinea at or through a permanent establishment in Papua New Guinea.

196R. LIABILITY TO MANAGEMENT FEE (WITHHOLDING) TAX.

(1) A person who derives income to which this Division applies is liable to pay tax upon that income at the rate declared by Act.

(2) Tax payable by a person in accordance with this Division is in addition to any other tax payable by him upon income to which this Division does not apply.

196S. TAXABLE MANAGEMENT FEE.

In this Division, “**taxable management fee**” means that part of a management fee that is an allowable deduction after the application of Section 68AD.

196T. PAYMENT OF MANAGEMENT FEE (WITHHOLDING) TAX.

(1) Management fee (withholding) tax is due and payable by the person liable to pay the tax at the expiration of 21 days after the end of the month in which the income to which the tax relates was derived by him or within such further period as the Commissioner General, in special circumstances, allows.

(2) Management fee (withholding) tax, when it becomes due and payable, is a debt due to the State and payable to the Commissioner General.

(3) Subject to Subsection (4), if any management fee (withholding) tax remains unpaid after the time when it became due and payable, additional tax is due and

²⁵⁵ Section 196P Amended by No. 22 of 2004, s. 52.

payable at the rate of 20% per annum on the amount unpaid, computed from the due date.

(4) The Commissioner General may, in any case, for reasons that he thinks sufficient, remit the additional tax or any part of the additional tax.

(5) Any unpaid management fee (withholding) tax, and any unpaid additional tax payable under this section, may be sued for and recovered in a court of competent jurisdiction by the Commissioner General suing in his official name.

(6) Subject to the provisions of Part V.2, the ascertainment of the amount of any management fee (withholding) tax shall not be deemed to be an assessment within the meaning of any of the provisions of this Act.

(7) The Commissioner General may serve on a person, by post or otherwise, a notice in which is specified—

- (a) the amount of any management fee (withholding) tax that the Commissioner General has ascertained is payable by that person; and
- (b) the date on which that tax became due and payable.

(8) The production of a notice served under Subsection (7), or of a document under the hand of the Commissioner General purporting to be a copy of such a notice, is evidence that the amount of management fee (withholding) tax specified in the notice or document became due and payable by the person on whom the notice was served on the date so specified.

(9) Income upon which management fee (withholding) tax is payable is not included in the assessable income of a person who is a non-resident.

196U. DEDUCTIONS FROM MANAGEMENT FEES.

A person who is liable to pay a taxable management fee to which this Division applies shall before or at the time the management fee is paid make a deduction from that management fee of an amount sufficient to pay the tax.

196V. PAYMENT TO COMMISSIONER GENERAL.

(1) Where a person has made a deduction of management fee (withholding) tax and that deduction was made, or purports to have been made, under Section 196U, that person shall—

- (a) within 21 days after the end of the month in which the deduction was made, pay to the Commissioner General an amount equal to the deduction; and
- (b) subject to Subsection (2), before the expiration of two months after the end of the financial year in which the deduction was made, furnish to the Commissioner General a statement with respect to the deduction, in a form authorized by the Commissioner General, signed by or on behalf of the person who made the deduction; and

(c) within 21 days after the end of the month in which the deduction was made, furnish to the Commissioner General a remittance advice in the form authorized by the Commissioner General signed by or on behalf of the person who makes the deduction.

(2) The Commissioner General may by written notice—

(a) allow further time for the furnishing of; or

(b) waive the requirement to furnish,

a statement under Subsection (1)(b) or (c).

(3) A person, other than the State, who fails to comply with Subsection (1)(a) is guilty of an offence.

Penalty: ²⁵⁶A fine of not less than K1,000.00 and not exceeding K50,000.00 or imprisonment for a period not exceeding six months.

(4) A person, other than the State, who fails to comply with Subsection (1)(b) is guilty of an offence.

Penalty: ²⁵⁷A fine of not less than K500.00 and not K5,000.00.

(5) Where an amount payable to the Commissioner General by a person under this section remains unpaid after the expiration of the period within which, by this section, it is required to be paid—

(a) that amount continues to be payable by that person to the Commissioner General; and

(b) an additional amount is, in addition to any other penalty to which that person may be liable, payable by that person to the Commissioner General at the rate of 20% per annum on the amount unpaid, computed from the expiration of that period.

(6) The Commissioner General may, in any case, for reasons that he thinks sufficient, remit any additional amount payable under Subsection (5) or any part of such an additional amount.

(7) A person making a payment in pursuance of this section shall be deemed to have been acting under the authority of the taxpayer and of all other persons concerned and is, by force of this subsection, indemnified in respect of that payment.

196W.LIABILITY OF PERSON WHO FAILS TO MAKE DEDUCTIONS, ETC.

(1) Where a person has failed to make a deduction of management fee withholding tax in accordance with Section 196U, that person is liable, in addition to any other penalty to which he may be liable, to pay the Commissioner General—

(a) an amount equal to any unpaid management fee withholding tax payable in respect of that management fee; and

²⁵⁶ Section 196V Subsection (3) amended by No. 22 of 2004, s. 53.

²⁵⁷ Section 196V Subsection (4) amended by No. 22 of 2004, s. 53.

(b) an amount equal to any unpaid additional tax payable under Section 196T in respect of that management fee withholding tax.

(2) Where a person has paid to the Commissioner General an amount payable by virtue of Subsection (1)(a), that person may recover that amount from the person liable to pay the management fee withholding tax under Section 196T.

(3) Where an amount payable under Subsection (1)(a) has been paid to the Commissioner General, the person liable to pay the management fee withholding tax to which the amount relates is entitled to a credit equal to that amount.

(4) Where a person has paid to the Commissioner General an amount payable by virtue of Subsection (1)(b) and the additional tax or part of the additional tax to which the amount relates is remitted by the Commissioner General under Section 196T(4)–

(a) any credit under Subsection (3) that relates to the amount shall be reduced by an amount equal to the additional tax that is remitted; and

(b) the Commissioner General shall pay to the person who paid the amount to the Commissioner General an amount equal to the additional tax that is remitted.

(5) Where a person makes a deduction for the purposes of this Division or purporting to be for those purposes from a management fee payment and fails to deal with the amount so deducted in the manner required by this Division, he is deemed to be a trustee for such deduction and is liable to pay that amount to the Commissioner General.

(6) Where the property of that person has become vested in, or the control of the property of that person has passed to, a trustee, then the trustee is liable to pay the amount referred to in Subsection (5) to the Commissioner General.

(7) Notwithstanding anything contained in any other Act, an amount payable to the Commissioner General by a trustee in pursuance of this section has priority over all other debts (other than amounts payable under Sections 196F(7), 285(3), 299K(1) and 311K(1)), whether preferential, secured and unsecured.

(8)²⁵⁸ ²⁵⁹A person, who breaches a provision of this section, is guilty of an offence.

Penalty: A fine of not less than K1,000.00 and not exceeding K50,000.00.

196X. RECOVERY OF AMOUNTS BY COMMISSIONER GENERAL.

(1) An amount payable to the Commissioner General under Section 196V by a person is a debt due to the State and payable to the Commissioner General and–

(a) that amount may be sued for and recovered in a court of competent jurisdiction by the Commissioner General suing in his official name; or

²⁵⁸ Section 196W Subsection (8) inserted by No. 22 of 2004, s. 54.

²⁵⁹ Section 196W Subsection (8) inserted by No. 22 of 2004, s. 54.

- (b) a court before which proceedings are taken against that person for an offence against this Division may order that person to pay that amount to the Commissioner General.

(2) The provisions of Section 333 apply in proceedings for the recovery of an amount payable to the Commissioner General under this Division in the same way as those provisions apply in proceedings for the recovery of a pecuniary penalty under this Act.

(3) The provisions of Section 339 apply to an order for the payment of a sum of money to the Commissioner General made under Subsection (1)(b) in the same way as they apply to an order for the payment of a sum of money to the Commissioner General made under Part VII.

Division 14D.

Training Levy.

196Y. INTERPRETATION.

In this Act, unless the contrary intention appears—

“approved business training course” means an industrial, commercial or business training course, seminar or other form of training, which may be full or part-time and which is approved by the Commissioner General as suitable for the purpose for which it was intended;

“pay-roll” means all amounts paid by an employer, or provided as benefits to an employee (in which case the taxable value of the benefit shall be included in the pay-roll), which are subject to salary or wages tax or which would be subject to salary or wages tax if no salary or wages declaration had been lodged;

“qualifying training expenses” means—

- (a) the payment of salary or wages to a *bona fide* apprentice registered with the Apprenticeship Board under the *Apprenticeship and Trade Testing Act 1986*; and
- (b) the payment of salary and wages to an employee, being a citizen receiving full-time professional training at—
 - (i) a Government training institution; or
 - (ii) a recognised University or Technical College; or
 - (iii) a prescribed place of tertiary education; or
 - (iv) an approved business training course; and
- (c) the payment of that part of salary or wages to citizen employees receiving part-time professional training at an approved business training course, which is proportionate to the time spent in attending that course; and

- (d) the payment of expenses necessarily incurred by a citizen employee in the course of, and as a result of, attendance at a professional training course at—
 - (i) a Government training institution; or
 - (ii) a recognised University; or
 - (iii) a prescribed place of tertiary education; or
 - (iv) an approved business training course; and
- (e) the payment of fees paid—
 - (i) to a Government training institution; or
 - (ii) to a recognised University; or
 - (iii) to a prescribed place of tertiary education; or
 - (iv) for an approved business training course,on behalf of a citizen employee receiving professional training; and
- (f) the payment of salary or wages to training officers who are engaged wholly and exclusively in training or educational activities for citizen employees and who are not engaged directly in the derivation of the assessable income of the taxpayer; and
- (g) the payment of that part of salary or wages, paid to citizen trainees receiving on-the-job training and trainers carrying out such training, which is proportionate to the amount of time spent on such training; and
- (h) the cost of consumables, including books, stationery, workshop materials and other similar aids used in the provision of training to citizen employees; and
 - (i) the value of depreciation allowable in respect of plant, machinery or other capital items used solely for citizen training purposes; and
- (j) the cost of running a full-time tertiary training institution, provided that that institution has been approved by the National Training Council as suitable for the purpose for which it was established; and
- (k) the cost of any payments made to an educational institution for the purpose of providing scholarships or other forms of training assistance to citizens; and
- (l) any other expenses which, in the opinion of the Commissioner General, were necessarily incurred for the purpose of training of citizen employees.

196Z. TRAINING LEVY.

(1) Subject to this Act, a tax by the name of training levy is imposed for—

- (a) the year of income that commenced on 1 January 1991; and
- (b) each subsequent year,

and shall be payable at the rate of 2% of the amount of the annual pay-roll payable by each employer.

(2)²⁶⁰ ²⁶¹Notwithstanding anything in this Act, training levy is not payable by an employer whose pay-roll in a year of income is less than K200,000.00.

(3) The amount of training levy payable shall be reduced by any qualifying training expenses incurred by the employer.

196ZA. NOTICE OF ASSESSMENT.

Where a person is liable to pay training levy under this Division, the Commissioner General shall give to him notice of the assessment and he shall forthwith pay the balance of training levy outstanding.

*Division 14E.*²⁶²

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196ZB - 196ZF²⁶³. [*Repealed.*]

Division 15.

Business Controlled Abroad.

197²⁶⁴. [*REPEALED.*]

Division 15.

Agreements and Determination of Source of Certain Income.

197A. INTERPRETATION.

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

“**acquire**” includes—

- (a) acquire by way of purchase, exchange, lease, hire or hire-purchase; and

²⁶⁰ Section 196Z(2) amended by No 46 of 2000.

²⁶¹ Section 196Z(2) amended by No 46 of 2000.

²⁶² Division III.14E repealed by No 36 of 1994, s3.

²⁶³ Division III.14E repealed by No 36 of 1994, s3; Section 196ZB repealed by No 36 of 1994, s3; Section 196ZC repealed by No 36 of 1994, s3; Section 196ZD repealed by No 36 of 1994, s3; Section 196ZE repealed by No 36 of 1994, s3; Section 196ZF repealed by No 36 of 1994, s3.

²⁶⁴ Section 197 repealed by No 48 of 1987.

(b) obtain, gain or receive;

“agreement” means any agreement, arrangement, transaction, understanding or scheme, whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings;

“derive” includes gain or produce;

“expenditure” includes loss or outgoing;

“income” includes any amount that is, or may be, included in assessable income or taken into account in calculating an amount that is, or may be, included in assessable income;

“permanent establishment”, in relation to a taxpayer, means—

- (a) a place that is a permanent establishment of the taxpayer by virtue of the definition “permanent establishment” in Section 4; or
- (b) a place at which any property of the taxpayer is manufactured or processed for the taxpayer, whether by the taxpayer or another person;

“property” includes—

- (a) a chose in action; and
- (b) any estate, interest, right or power, whether at law or in equity, in or over property; and
- (c) any right to receive income; and
- (d) services;

“right to receive income” means a right of a person to have income that will or may be derived (whether from property or otherwise) paid to, applied or accumulated for the benefit of, the person;

“services” includes any rights, benefits, privileges or facilities and, without limiting the generality of the foregoing, includes the rights, benefits, privileges or facilities that are, or are to be, provided, granted or conferred under—

- (a) an agreement for or in relation to—
 - (i) the performance of work (including work of a professional nature); or
 - (ii) the provision of, or the use or enjoyment of facilities for amusement, entertainment, recreation or instruction; or
 - (iii) the conferring of rights, benefits or privileges for which consideration is payable in the form of a royalty, tribute, levy or similar exaction; or

- (iv) the carriage, storage or packaging of any property or the doing of any other act in relation to property;
- (b) an agreement of insurance; or
- (c) an agreement between a banker and a customer of the bank entered into in the course of the carrying on by the banker of any business of banking; or
- (d) an agreement for or in relation to the lending of moneys;

“**supply**” includes—

- (a) supply by way of sale, exchange, lease, hire or hire-purchase; and
- (b) provide, grant or confer;

“**taxpayer**” includes a partnership and a taxpayer in the capacity of a trustee.

(2) The definition of “taxpayer” in Subsection (1) shall not be taken to affect in any way the interpretation of that expression where it is used in this Act other than this Division.

(3) In this Division, unless the contrary intention appears—

- (a) a reference to the supply or acquisition of property includes a reference to agreeing to supply or acquire property; and
- (b) a reference to consideration includes a reference to property supplied or acquired as consideration and a reference to the amount of any such consideration is a reference to the value of the property; and
- (c) a reference to the arm’s length consideration in respect of the supply of property is a reference to the consideration in respect of the supply if the property had been supplied under an agreement between independent parties dealing at arm’s length with each other in relation to the supply; and
- (d) a reference to the arm’s length consideration in respect of the acquisition of property is a reference to the consideration that might reasonably be expected to have been given or agreed to be given in respect of the acquisition if the property had been acquired under an agreement between independent parties dealing at arm’s length with each other in relation to the acquisition; and
- (e) a reference to the supply or acquisition of property under an agreement includes a reference to the supply or acquisition of property in connection with an agreement.

197B. OPERATION OF DIVISION.

(1) Nothing in the provisions of this Act other than this Division shall be taken to limit the operation of this Division.

(2) In the application of this Division, the operation of Section 53A shall be disregarded.

197C. INTERNATIONAL AGREEMENTS.

For the purposes of this Division, an agreement is an international agreement if—

- (a) a non-resident supplied or acquired property under the agreement otherwise than in connection with a business carried on in Papua New Guinea by the non-resident at or through a permanent establishment of the non-resident in Papua New Guinea; or
- (b) a resident carrying on a business outside Papua New Guinea supplied or acquired property under the agreement, being property supplied or acquired in connection with that business.

197D. ARM'S LENGTH CONSIDERATION DEEMED TO BE RECEIVED OR GIVEN.

(1) Where—

- (a) a taxpayer has supplied property under an international agreement; and
- (b) the Commissioner General, having regard to any connection between any two or more of the parties to the agreement or to any other relevant circumstances, is satisfied that the parties to the agreement, or any two or more of those parties, were not dealing at arm's length with each other in relation to the supply; and
- (c) consideration was received or receivable by the taxpayer in respect of the supply but the amount of that consideration was less than arm's length consideration in respect of the supply; and
- (d) the Commissioner General determines that this subsection should apply in relation to the taxpayer in relation to the supply,

then, for all purposes of the application of this Act in relation to the taxpayer, consideration equal to the arm's length consideration in respect of the supply shall be deemed to be the consideration received or receivable by the taxpayer in respect of the supply.

(2) Where—

- (a) a taxpayer has supplied property under an international agreement; and
- (b) the Commissioner General, having regard to any connection between any two or more of the parties to the agreement or to any other relevant circumstances, is satisfied that the parties to the agreement, or any two or more of those parties, were not dealing at arm's length with each other in relation to supply; and
- (c) no consideration was received or receivable by the taxpayer in respect of the supply; and

- (d) the Commissioner General determines that this subsection should apply in relation to the taxpayer in relation to the supply,

then, for all purposes of the application of this Act in relation to the taxpayer, consideration equal to the arm's length consideration in respect of the supply shall be deemed to have been received and receivable by the taxpayer in respect of the supply at the time when the property was supplied or, as the case requires, any of the property was first supplied, or at such later time or times as the Commissioner General considers appropriate.

- (3) Where—

- (a) a taxpayer has acquired property under an international agreement; and
- (b) the Commissioner General, having regard to any connection between any two or more of the parties to the agreement or to any other relevant circumstances, is satisfied that the parties to the agreement, or any two or more of those parties, were not dealing at arm's length with each other in relation to the acquisition; and
- (c) the taxpayer gave or agreed to give consideration in respect of the acquisition and the amount of that consideration exceeded the arm's length consideration in respect of the acquisition; and
- (d) the Commissioner General determines that this subsection should apply in relation to the taxpayer in relation to the acquisition.

then, for all purposes of the application of this Act in relation to the taxpayer, consideration equal to the arm's length consideration in respect of the acquisition shall be deemed to be the consideration given or agreed to be given by the taxpayer in respect of the acquisition.

(4) For the purposes of this section, where, for any reason (including an insufficiency of information available to the Commissioner General), it is not possible or not practicable for the Commissioner General to ascertain the arm's length consideration in respect of the supply or acquisition of property, the arm's length consideration in respect of the supply or acquisition shall be deemed to be such amount as the Commissioner General determines.

197E. DETERMINATION OF SOURCE OF INCOME.

- (1) Where—

- (a) by the application of Section 197D in relation to a taxpayer other than a partnership or trustee, the arm's length consideration in respect of the supply or acquisition of property by the taxpayer is deemed to have been received or receivable or received and receivable or to have been given or agreed to be given, as the case may be; and
- (b) a question arises whether, and if so, as to the, extent to which—

- (i) any income, being that consideration, is derived by the taxpayer from sources in Papua New Guinea or sources out of Papua New Guinea; or
- (ii) any income in the calculation of which that consideration is taken into account is derived by the taxpayer from sources in Papua New Guinea or sources out of Papua New Guinea; or
- (iii) that consideration is expenditure incurred by the taxpayer in deriving income from sources in Papua New Guinea or sources out of Papua New Guinea,

the income or expenditure shall be deemed, for all purposes of this Act, to have been derived or to have been incurred in deriving income, as the case may be, from such source, or from such sources and in such proportions, as the Commissioner General determines.

(2) Where—

- (a) by the application of Section 197D in relation to the taxpayer being a partnership, the arm's length consideration in respect of the supply or acquisition of property by the taxpayer is deemed to have been received or receivable or received and receivable, or to have been given or agreed to be given, as the case may be; and
- (b) in determining the net income, exempt income or partnership loss of the taxpayer or the extent to which the individual interest of a partner or the net income, exempt income or partnership loss of the taxpayer is attributable to sources in Papua New Guinea, a question arises whether, and if so, as to the extent to which—
 - (i) any income, being that consideration, is derived by the taxpayer from sources in Papua New Guinea or sources out of Papua New Guinea; or
 - (ii) any income in the calculation of which that consideration is taken into account is derived by the taxpayer from sources in Papua New Guinea or sources out of Papua New Guinea; or
 - (iii) that consideration is expenditure incurred by the taxpayer in deriving income from sources in Papua New Guinea or sources out of Papua New Guinea,

the income or expenditure shall be deemed, for all purposes of this Act, to have been derived or to have been incurred in deriving income, as the case may be, from such source, or from such sources and in such proportions, as the Commissioner General determines.

(3) Where—

- (a) by the application of Section 197D in relation to a taxpayer being the trustee of a trust estate, the arm's length consideration in respect of the supply or acquisition of property by the taxpayer is deemed to have been

received or receivable or received and receivable, or to have been given or agreed to be given, as the case may be; and

- (b) in determining the net income or exempt income of the trust estate or the extent to which the share of a beneficiary of the net income or exempt income of the trust estate is attributable to sources in Papua New Guinea, a question arises whether, and if so, as to the extent to which—
- (i) any income, being that consideration, is derived by the taxpayer from sources in Papua New Guinea or sources out of Papua New Guinea; or
 - (ii) any income in the calculation of which that consideration is taken into account is derived by the taxpayer from sources in Papua New Guinea or sources out of Papua New Guinea; or
 - (iii) that consideration is expenditure incurred by the taxpayer in deriving income from sources in Papua New Guinea or sources out of Papua New Guinea,

the income or expenditure shall be deemed, for all purposes of this Act, to have been derived or to have been incurred in deriving income, as the case may be, from such source, or from such sources and in such proportions, as the Commissioner General determines.

(4) Where—

- (a) a taxpayer other than a partnership or trustee is a resident and carries on a business in a country other than Papua New Guinea at or through a permanent establishment of the taxpayer in that other country or is a non-resident and carries on a business in Papua New Guinea at or through a permanent establishment of the taxpayer in Papua New Guinea; and
- (b) a question arises whether, and if so, as to the extent to which—
 - (i) any income derived by the taxpayer is derived from sources in Papua New Guinea or sources out of Papua New Guinea; or
 - (ii) any expenditure incurred by the taxpayer is incurred in deriving income from sources in Papua New Guinea or sources out of Papua New Guinea; and
- (c) none of the preceding provisions of this section applies in relation to determination of that question; and
- (d) that question, if determined on the basis of the return furnished by the taxpayer, would have a tax result more favourable to the taxpayer than the result that would occur if that question were determined in accordance with this subsection; and
- (e) in the opinion of the Commissioner General, the derivation of the income or the incurring of the expenditure is attributable, in whole or in

part, to activities carried on by the taxpayer at or through the permanent establishment,

the income or expenditure shall be deemed, for all purposes of this Act, to have been derived or to have been incurred in deriving income, as the case may be, from such source, or from such sources and in such proportions, as the Commissioner General determines.

(5) Where—

(a) a taxpayer—

- (i) is a partnership and carries on business in a country other than Papua New Guinea at or through a permanent establishment of the taxpayer in that other country; or
- (ii) carries on a business in Papua New Guinea at or through a permanent establishment of the taxpayer in Papua New Guinea and is a partnership in which any of the partners is a non-resident; and

(b) in determining the net income, exempt income or partnership loss of the taxpayer or the extent to which the individual interest of a partner in the net income, exempt income or partnership loss of the taxpayer is attributable to sources in Papua New Guinea, a question arises whether, and if so, as to the extent to which—

- (i) any income derived by the taxpayer is derived from sources in Papua New Guinea or sources out of Papua New Guinea; or
- (ii) any expenditure incurred by the taxpayer is incurred in deriving income from sources in Papua New Guinea or sources out of Papua New Guinea; and

(c) none of the preceding provisions of this section applies in relation to the determination of that question; and

(d) that question, if determined on the basis of the return furnished by the taxpayer, would have a tax result more favourable to a taxpayer than the result that would occur if that question were determined in accordance with this subsection; and

(e) in the opinion of the Commissioner General, the derivation of the income or the incurring of the expenditure is attributable, in whole or in part, to activities carried on by the taxpayer at or through the permanent establishment,

the income or expenditure shall be deemed, for all purposes of this Act, to have been derived or to have been incurred in deriving income, as the case may be, from such source, or from such sources and in such proportions as the Commissioner General determines.

(6) Where—

(a) a taxpayer—

- (i) is the trustee of a trust estate and carries on a business in a country other than Papua New Guinea at or through a permanent establishment of the taxpayer in that other country; or
 - (ii) carries on a business in Papua New Guinea at or through a permanent establishment of the taxpayer in Papua New Guinea and is the trustee of a trust estate of which any of the beneficiaries is a non-resident; and
- (b) in determining the net income or exempt income of the trust estate or the extent to which the share of a beneficiary of the net income or exempt income of the trust estate is attributable to sources in Papua New Guinea, a question arises whether, and if so, as to the extent to which—
- (i) any income derived by the taxpayer is derived from sources in Papua New Guinea or sources out of Papua New Guinea; or
 - (ii) any expenditure incurred by the taxpayer is incurred in deriving income from sources in Papua New Guinea or sources out of Papua New Guinea; and
- (c) none of the preceding provisions of this section applies in relation to the determination of that question; and
- (d) that question, if determined on the basis of the return furnished by the taxpayer, would have a tax result more favourable than the result that would occur if that question were determined in accordance with this subsection; and
- (e) in the opinion of the Commissioner General, the derivation of the income or the incurring of the expenditure is attributable, in whole or in part, to activities carried on by the taxpayer at or through the permanent establishment,

the income or expenditure shall be deemed, for all purposes of this Act, to have been derived or to have been incurred in deriving income, as the case may be, from such source, or such sources and in such proportions, as the Commissioner General determines.

(7) In the application of the preceding provisions of this section in determining the source or sources of any income derived by a taxpayer or the extent to which expenditure incurred by the taxpayer was incurred in deriving income from a particular source or sources, the Commissioner General shall have regard to—

- (a) the nature and extent of any relevant business carried on by the taxpayer and the place or places at which the business is carried on; and
- (b) if any relevant business carried on by the taxpayer is carried on at or through a permanent establishment—the circumstances that would have, or might reasonably be expected to have, existed if the permanent

establishment were a distinct and separate entity dealing at arm's length with the taxpayer and other persons; and

(c) such other matters as the Commissioner General considers relevant.

(8) A reference in this section to expenditure incurred by a taxpayer in deriving income includes a reference to expenditure incurred by the taxpayer in carrying on a business for the purpose of deriving income.

(9) In determining for the purposes of this section whether a question of the kind specified in Paragraph (1)(b), (2)(b), (3)(b), (4)(b), 5(b) or (6)(b) arises, Part III.2.C shall be disregarded.

197F. CONSEQUENTIAL ADJUSTMENTS TO ASSESSABLE INCOME AND ALLOWABLE DEDUCTIONS.

(1) Where, by reason of the application of Section 197D in relation to the supply or acquisition of property by a taxpayer, an amount is included in the assessable income of the taxpayer of a year of income or a deduction is not allowable or is not, in part, allowable, to the taxpayer in respect of a year of income, the Commissioner General may, in relation to any taxpayer (in this subsection referred to as the “**relevant taxpayer**”)–

(a) if, in the opinion of the Commissioner General–

(i) there has been included, or would but for this subsection be included in the assessable income of the relevant taxpayer of a year of income an amount that would not have been included or would not be included, as the case may be, in the assessable income of the relevant taxpayer of that year of income if the property had been supplied or acquired, as the case may be, under an agreement between independent parties dealing at arm's length with each other in relation to the supply or acquisition; and

(ii) it is fair and reasonable that that amount or a part of that amount should not be included in the assessable income of the relevant taxpayer of that year of income,

determine that that amount or that part of that amount, as the case may be should not have been included or shall not be included, as the case may be, in the assessable income of the relevant taxpayer of that year of income; and

(b) if, in the opinion of the Commissioner General–

(i) an amount would have been allowed or would be allowable to the relevant taxpayer as a deduction in relation to a year of income if the property had been supplied or acquired, as the case may be, under an agreement between independent parties dealing at arm's length with each other in relation to the supply or

acquisition, being an amount that was not allowed or would not, but for this subsection, be allowable, as the case may be, as a deduction to the relevant taxpayer in relation to that year of income; and

- (ii) it is fair and reasonable that that amount or a part of that amount should be allowable as a deduction to the relevant taxpayer in relation to that year of income,

determine that that amount or that part of that amount, as the case may be, should have been allowed or shall be allowable, as the case may be, as a deduction to the relevant taxpayer in relation to that year of income,

and the Commissioner General shall take such action as he considers necessary to give effect to any such determination.

(2) Where the Commissioner General makes a determination under Subsection (1) by virtue of which an amount is allowed as a deduction to a taxpayer in relation to a year of income, that amount shall be deemed to be so allowed as a deduction by virtue of such provision of this Act as the Commissioner General determines.

(3) Where—

- (a) by reason of the application of Section 197D in relation to the supply or acquisition of property by a taxpayer, an amount is included in the assessable income of the taxpayer of a year of income or a deduction is not allowable or is not, in part, allowable, to the taxpayer in respect of a year of income; and
- (b) in the opinion of the Commissioner General, an amount of tax has become payable and has been paid in respect of interest paid to a taxpayer (in this subsection referred to as the “**relevant taxpayer**”), being tax that would not have become payable if the property had been supplied or acquired by the first-mentioned taxpayer under an agreement between independent parties dealing at arm’s length with each other in relation to the supply or acquisition; and
- (c) in the opinion of the Commissioner General, it is fair and reasonable that that amount of tax or part of that amount of tax should not have become payable by the relevant taxpayer,

the Commissioner General may determine that that amount of tax or that part of that amount of tax, as the case may be, should not have become payable by the relevant taxpayer and the Commissioner General shall take such action as he considers necessary to give effect to any such determination.

(4) Where, at any time, a taxpayer considers that the Commissioner General ought to make a determination under Subsection (1) or (3) in relation to the taxpayer, the taxpayer may post to or lodge with the Commissioner General a request in writing for the making by the Commissioner General of a determination under the subsection concerned.

(5) The Commissioner General shall consider the request and serve on the taxpayer, by post or otherwise, a written notice of his decision on request.

(6) If the taxpayer is dissatisfied with the Commissioner General's decision on the request, the taxpayer may, within 60 days after the service on the taxpayer of notice of the decision of the Commissioner General, post to or lodge with the Commissioner General an objection in writing against the decision stating fully and in detail the grounds on which the taxpayer relies.

(7) The provisions of Part V.2 (other than Section 245) apply in relation to an objection made under Subsection (6) in like manner as those provisions apply in relation to an objection against an assessment.

197G. MODIFIED APPLICATION OF PART III.2.C.

Where—

- (a) by the application of Section 197D in relation to a taxpayer, the arm's length consideration in respect of the supply or acquisition of property by the taxpayer is deemed to have been received or receivable or received and receivable, or to have been given or agreed to be given, as the case may be; or
- (b) Section 197E has been applied in relation to any income derived by a taxpayer or any expenditure incurred by a taxpayer,

that consideration, income or expenditure, as the case may be, shall not be taken into account in the application of Part III.2.C in relation to the taxpayer or, where the taxpayer is a partnership or the trustee of a trust estate, in relation to a partner in the partnership or a beneficiary of the trust estate, as the case may be.

*Division 16.*²⁶⁵

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198 - 201²⁶⁶. [*Repealed.*]

Division 17.

Insurance with Non-Residents.

202. DEFINITIONS.

In this Division—

“insurance contract” means a contract or guarantee whereby liability is undertaken, contingent upon the happening of a specified event, to pay any money or make good any loss or damage, but does not include a contract of life assurance;

²⁶⁵ Division III.16 repealed by No 48 of 1987.

²⁶⁶ Division III.16 repealed by No 48 of 1987; Section 198 repealed by No 48 of 1987; Section 199 repealed by No 48 of 1987; Section 200 repealed by No 48 of 1987; Section 201 repealed by No 48 of 1987.

“insured event” means an event upon the happening of which the liability under an insurance contract arises;

“insured person” means a person with whom an insurance contract is entered into by an insurer;

“insured property” means the property the subject of an insurance contract made or given by an insurer;

“insurer” means a non-resident who undertakes liability under an insurance contract.

203. INCOME DERIVED BY NON-RESIDENT INSURER.

(1) Where—

- (a) an insured person, whether a resident or non-resident, has entered into an insurance contract with an insurer; and
- (b) the insured property at the time of the making of the contract is situated in Papua New Guinea or the insured event is one that can happen only in Papua New Guinea,

the premium paid or payable under the contract shall—

- (c) be included in the assessable income of the insurer; and
- (d) shall be deemed to be derived by him from sources in Papua New Guinea,

and, unless the contract was made by a principal office or branch established by the insurer in Papua New Guinea, this Division applies to that premium.

(2) Where—

- (a) an insured person who is a resident has entered into an insurance contract with an insurer; and
- (b) an agent or representative in Papua New Guinea of the insurer was in any way instrumental in inducing the entry of the insured person into that contract,

any premium paid or payable under the contract shall—

- (c) wherever the insured property is situated or the insured event may happen, be included in the assessable income of the insurer; and
- (d) be deemed to be derived by him from sources in Papua New Guinea,

and, unless the contract was made by a principal office or branch established by the insurer in Papua New Guinea, this Division applies to that premium.

(3)²⁶⁷ [*Repealed.*]

²⁶⁷ Section 203(3) repealed by No 36 of 1976.

204. TAXABLE INCOME OF NON-RESIDENT INSURER.

(1) Subject to Subsection (2), the insurer shall be deemed to have derived in any year, in respect of the premiums paid or payable in that year under those contracts, a taxable income equal to 10% of the total amount of those premiums.

(2) Where the actual profit or loss derived or made by the insurer in respect of those premiums is established to the satisfaction of the Commissioner General, the taxable income of the insurer in respect of that profit, or the amount of the loss so made by him, shall, subject to this Act, be calculated by reference to receipts and expenditure taken into account in calculating that profit or loss.

205. LIABILITY OF AGENTS OF INSURER.

(1) The insured person and any person in Papua New Guinea acting on behalf of the insurer shall be deemed to be the agents of the insurer, and are jointly and severally liable as such for the purposes of this Act.

(2) If either of those persons pays or credits to the insurer any amount in respect of the insurance contract before arrangements have been made to the satisfaction of the Commissioner General for the payment of any income tax that has been or may be assessed under this Division in respect of that amount, that person is personally liable to pay that tax.

206. DEDUCTION OF PREMIUMS.

Notwithstanding any other provision of this Act, no such premium is an allowable deduction to the insured person unless arrangements have been made to the satisfaction of the Commissioner General for the payment of any income tax that has been or may be assessed in respect of that premium.

207. EXPORTER TO FURNISH INFORMATION.

A person who exports any goods from Papua New Guinea shall furnish to a Collector of Customs for transmission to the Commissioner General a copy of the customs entry for those goods, and shall show on the entry such information as is prescribed regarding the insurance of those goods.

208. RATE IN SPECIAL CIRCUMSTANCES.

Where the insurer satisfies the Commissioner General that, on account of special circumstances, it is necessary that the rate of tax payable by him under this Division should be ascertained at the time when premiums are paid to him, the Commissioner General may direct that the tax so payable in respect of premiums paid during any fiscal year shall be calculated at the rate that would have been payable if an assessment had been made in respect of those premiums at the date when they were paid.

209. REINSURANCE WITH NON-RESIDENTS.

(1) Notwithstanding anything contained in this Act, but subject to this section, where a person carrying on the business of insurance in Papua New Guinea reinsures out of Papua New Guinea the whole or part of any risk with a non-resident—

- (a) any premium paid or credited in respect of the reinsurance—
 - (i) is not an allowable deduction to the person carrying on the business of insurance in Papua New Guinea; and
 - (ii) shall not be included in the assessable income of the non-resident; and
- (b) the income of the person carrying on the business of insurance in Papua New Guinea shall not include sums recovered from that non-resident in respect of a loss on a risk so reinsured.

(2) A person carrying on the business of insurance in Papua New Guinea who reinsures out of Papua New Guinea the whole or part of a risk with a non-resident may elect, in accordance with this section, that the provisions of Subsection (1) shall not be applied in arriving at his taxable income, and, upon that person so making an election—

- (a) those provisions do not apply in arriving at his taxable income of a year of income to which the election applies; and
- (b) that person is liable to furnish returns, and to pay tax, in accordance with Subsection (3), as agent for all non-residents with whom he so reinsures.

(3) Where a person makes an election under Subsection (2), he shall, subject to Subsection (5), be assessed and is liable to pay tax as agent, on an amount equal to 10% of the sum of the gross amounts of the premiums paid or credited by him in the year of income (being a year of income to which the election applies) to non-residents in respect of all such reinsurances, as if that amount were the taxable income of a non-resident company (not being a private company) not carrying on business in Papua New Guinea by means either of a principal office or a branch.

(4) A person who has made an election under this section shall, as agent, furnish to the Commissioner General, within the prescribed time, or within such further time as the Commissioner General allows, in respect of every year of income to which the election applies—

- (a) a return showing the gross amounts of the premiums paid or credited by him to non-residents in respect of all such reinsurances; or
- (b) two returns, of which—
 - (i) one shall show the gross amounts of the premiums paid or credited by him to non-residents that are companies; and
 - (ii) the other shall show the gross amounts of the premiums paid or credited by him to non-residents who are not companies.

(5) Where returns are furnished by a person in accordance with Subsection (4)(b), there shall be excluded from the amount on which that person shall be assessed and is liable to pay tax as agent in pursuance of Subsection (3) an amount equal to 10% of the sum of the gross premiums properly shown in the return specified in Subsection (4)(b)(ii), and that person shall, in addition to any other tax that he is liable under this section to pay as agent, be assessed and liable to pay tax as agent on the amount so excluded as if it were the taxable income of a non-resident company (being a private company) not carrying on business in Papua New Guinea by means either of a principal office or a branch.

(6) An election for the purposes of this section shall—

- (a) be made in writing; and
- (b) be signed, in the case of a company, by the public officer of the company; and
- (c) be delivered to the Commissioner General on or before the last day for the furnishing of the taxpayer's return of income of the year of income in respect of which the election is first to apply, or within such further time as the Commissioner General allows; and
- (d) first apply in respect of a year of income which shall be specified in the election; and
- (e) apply in respect of all subsequent years of income.

(7) An assessment for the purposes of Subsection (3) or (5) shall be made and notified separately from any other assessment.

(8) Where a person is liable, in pursuance of an assessment for the purposes of this section, to pay tax, in respect of any premiums, as agent for more than one non-resident, the amount that he is liable to pay as agent for any one of those non-residents is so much of the tax so payable as bears to the whole of that tax the same proportion as the total amount of such of those premiums as were paid to that non-resident bears to the total amount of those premiums.

(9) Where a person is or may become liable under this section to pay tax as agent for a non-resident in respect of any premium paid or credited by him to that non-resident—

- (a) he shall, for the purposes of Section 355, be deemed to have received the premium in his representative capacity immediately before it was so paid or credited; and
- (b) if he pays or credits the premium before arrangements have been made to the satisfaction of the Commissioner General for the payment of any tax that may be assessed in respect of that premium, he is personally liable to pay that tax.

*Division 18.**Abnormal Income of Authors and Inventors.***210. APPLICATION OF DIVISION.**

(1) Subject to Subsection (2), this Division applies to a taxpayer who is the author of a literary, dramatic, musical or artistic work or the inventor of an invention.

(2) This Division does not apply where the taxpayer is a company, except where, in respect of abnormal income, it is assessable as a trustee.

211. ABNORMAL INCOME.

(1) For the purposes of this Division, the abnormal income of a taxpayer to whom this Division applies is so much of the assessable income of the taxpayer of the year of income as consists of—

- (a) lump sum earnings of the taxpayer; and
- (b) that part, if any, of the aggregate of the recurrent earnings of the taxpayer derived during the year of income that exceeds—
 - (i) one-third of the aggregate of the recurrent earnings of the taxpayer included in his assessable income of each of the three years of income immediately preceding the year of income; or
 - (ii) K1,000.00,

whichever is the greater.

(2) For the purposes of Subsection (1)(b), recurrent earnings of a taxpayer received in any of the three years immediately preceding the first year of income to which this Act applies, being earnings that would, if this Act had commenced to have effect at the commencement of the first of those three preceding years and had applied to income of each of those years, have been included in his assessable income of the year in which he received those earnings, shall be treated as if those earnings were recurrent earnings included in his assessable income of that year.

(3) In this section—

“lump sum earnings” means an amount received in a lump sum by the taxpayer—

- (a) as consideration—
 - (i) for the assignment, in whole or in part, of, or for the grant of an interest by licence in, the copyright in a literary, dramatic, musical or artistic work of which the taxpayer is the author or the patent for an invention of which the taxpayer is the inventor; or

- (ii) for an assignment by virtue of which the assignee has the right to make an application for a patent for an invention of which the taxpayer is the inventor; or
- (b) as an advance on account of royalties in respect of such a copyright or patent, not being an advance that is subject to a condition as to repayment; or
- (c) as a prize in respect of such a work or invention;

“recurrent earnings” means an amount (other than lump sum earnings or remuneration for the employment of, or for services rendered by, the taxpayer) received, by way of royalties or otherwise, by the taxpayer in respect of, or in respect of the copyright in, a literary, dramatic, musical or artistic work of which the taxpayer is the author or in respect of, or in respect of the patent, for, an invention of which the taxpayer is the inventor.

212. DETERMINATION OF NOTIONAL INCOME.

(1) Where the assessable income derived during the year of income by a taxpayer, to whom this Division applies includes abnormal income, he may, on or before the date of lodgment of his return of income in respect of the year of income or on or before such later date as the Commissioner General determines, apply in writing to the Commissioner General for the determination under this Division of a notional income in respect of the year of income.

(2) Where a taxpayer makes an application to the Commissioner General in accordance with Subsection (1), the succeeding subsections apply for the determination of a notional income for the purposes of any Act whereby a rate of tax upon the taxable income of a taxpayer is fixed by reference to a notional income.

(3) Subject to Subsection (5), where the taxable income of the taxpayer is greater than his abnormal income, the notional income is the amount ascertained by deducting from the taxable income an amount equal to two-thirds of the abnormal income.

(4) Subject to Subsection (5), where the taxable income of the taxpayer is not greater than his abnormal income, the notional income is an amount equal to one-third of the taxable income.

(5) Where Section 117(2) applies in respect of the taxpayer, the notional income is, in lieu of the notional income determined in accordance with that subsection—

- (a) where the notional income determined in accordance with that subsection is greater than the abnormal income of the taxpayer—the amount ascertained by deducting from the notional income so determined an amount equal to two-thirds of the abnormal income; or

- (b) where the notional income determined in accordance with that subsection is not greater than the abnormal income of the taxpayer—an amount equal to one-third of the notional income so determined.

213. JOINT AUTHORS AND INVENTORS.

A reference in this Division to the author of a literary, dramatic, musical or artistic work or to the inventor of an invention includes a reference to one of two or more joint authors of such a work or to one of two or more joint inventors of an invention, as the case may be.

Division 18A.

Concessional Rebates.

213A. INTERPRETATION OF DIVISION 18A.

(1) In this Division—

“**dependant**” means a person who is—

- (a) a spouse of the taxpayer; or
- (b) an unmarried child less than 16 years of age; or
- (c) a student child; or
- (d) an invalid relative; or
- (e) a parent of the taxpayer or of his spouse, where the parent is a resident of Papua New Guinea;

“**invalid relative**” means a person who is not less than 16 years of age and is a child, brother or sister of the taxpayer and in respect of whom the taxpayer produces to the Commissioner General a certificate issued by a medical officer of the Public Service certifying that the person is permanently incapacitated from work;

“**separate net income**”—

- (a) does not include an allowance under Clause 10 of the Public Service (Overseas) Officers Allowances Determination 1964; and
- (b) does not include child endowment paid under the *Social Services Act* 1947, as in force from time to time, of Australia; and
- (c) in the case of a child under 16 years of age or a student—
 - (i) includes the value of any assistance (consisting of money, accommodation or maintenance) provided to him in connection with his education; and
 - (ii) does not include the value or amount of any scholarship, bursary, exhibition or prize except to the extent that it consists of assistance in the form of accommodation or maintenance;

“**student**” means a person who is not less than 16 years of age but is less than 25 years of age and is receiving full-time education at a school, college or university.

(2) For the purposes of this Division, where two persons have been married in accordance with custom, the Commissioner General may treat each of those persons as being the spouse of the other.

213B. REBATE ALLOWABLE TO RESIDENT ONLY. .

A rebate under this Division is allowable only where the taxpayer is a resident.

213C. NON-APPLICATION OF DIVISION.

This Division does not apply to—

- (a) assessment of salary or wages tax imposed under Subdivision III.2.B by virtue of the allowance of concessional rebates being incorporated within Schedule 1 to the *Income Tax (Salary or Wages Tax) (Rates) Act 1979*; or
- (b)²⁶⁸ assessments of income other than salary or wages where the total of income includes salary or wages in excess of K17,072.00,

except to the extent that the provisions of the Division relating to a class or classes of dependants apply for the purposes of making a prescribed declaration or except for purposes of the Notes in Schedule 1 of the *Income Tax (Salary or Wages Tax) (Rates) Act 1979*.

213D. ENTITLEMENT TO REBATE FOR DEPENDANTS.

(1) Subject to Section 213E, where during the year of income a taxpayer wholly maintains a dependant, he is entitled to a rebate, in his assessment of tax, equal to—

- (a) in respect of one such dependant—
 - (i) 15% of the amount of the tax assessed; or
 - (ii) K450.00,

whichever is the lesser amount but being not less than K45.00; and
- (b) in respect of each other such dependant—
 - (i) 10% of the amount of tax assessed; or
 - (ii) K300.00,

whichever is the lesser amount but not being less than K30.00 for each such dependant.

²⁶⁸ Section 213C(b) amended by No 46 of 2000.

(2) For the purposes of this Division a dependant shall be deemed to be wholly maintained if—

- (a) the taxpayer is the sole contributor to the maintenance of the dependant; and
- (b) the separate net income derived by the dependant from all sources—
 - (i) during the year of income did not exceed K1,040.00; or
 - (ii) for the purposes of assessing salary or wages tax during that fortnight does not exceed K40.00.

(3) Where—

- (a) the taxpayer contributes to the maintenance of a dependant during part only of the year of income; or
- (b) during the whole or part of the year of income two or more persons contribute to the maintenance of a dependant; or
- (c) a child attains the age of 16 years during the year of income; or
- (d) a student ceases to be a student or attains the age of 25 years during the year of income; or
- (e) a dependant being a spouse of the taxpayer, is married to the taxpayer during part only of the year of income; or
- (f) any dependant as defined in Subsection (2), is such a dependant during part only of the year of income,

the rebate allowable to the taxpayer in respect of that dependant shall be such part of the amount specified in Subsection (1) as in the opinion of the Commissioner General is reasonable in the circumstances.

213E. LIMIT TO REBATE ENTITLEMENT.

Subject to Section 218—

- (a) the sum of the rebates allowed under this Division shall not exceed—
 - (i)²⁶⁹ 35% of the amount of tax payable on the taxable income of the year of income; or
 - (ii)²⁷⁰ K105.00,

whichever is the greater; and
- (b)²⁷¹ the sum of rebates allowable to a taxpayer under this Division shall not exceed K1,050.00.

²⁶⁹ Section 213E Amended by No. 22 of 2004, s. 55.

²⁷⁰ Section 213E Amended by No. 22 of 2004, s. 55.

²⁷¹ Section 213E Amended by No. 22 of 2004, s. 55.

213F. CALCULATION OF REBATE.

Subject to Sections 213D and 213E, where an assessment is made in terms of Section 46C the concessional rebate, if any, shall be calculated in accordance with the following formula:—

$$A - B = C$$

Where—

“A” = Rebate allowable in respect of the total of (a) and (b) by reference to Schedule 1 of the *Income Tax (Rates) Act (Consolidated) 1976*, and (c) by reference to the *Income Tax (Salary or Wages Tax) (Rates) Act 1979*, where—

- (a) = the tax assessable on an income equivalent to the total salary or wages (but not including income or payments deemed salary or wages under Section 46B or as defined in Section 65A and Section 65AB); and
- (b) = the tax assessable on all other taxable income not being salary or wages; and
- (c) = the tax assessable at the rate of 2% of income or payments deemed to be salary or wages under Section 46B or as defined in Section 65A and Section 65AB; and

“B” = Rebate allowable in respect of the total of (a) and (b) where—

- (a) = the tax assessable under Schedule 1 of the *Income Tax (Rates) Act (Consolidated) 1976* on an income equivalent to the total salary or wages (but not including income or payments deemed salary or wages under Section 46B or as defined in Section 65A and Section 65AB); and
- (b) = the tax assessable at the rate of 2% of income or payments deemed to be salary or wages under Section 46B or as defined in Section 65A and Section 65AB; and

“C” = The amount of concessional rebate allowable in respect of taxable income from sources other than salary or wages,

provided that upon calculation of total tax assessable for the purposes of the above formula or any component thereof, the total tax assessable shall be reduced by the amount of any rebate allowable to the taxpayer by virtue of Division III.20, in order to ascertain the net allowable concessional rebate.

Division 19.***Rebates.*****214. REBATE OF SALARY OR WAGES TAX.**

(1) Where, in a fiscal year, a taxpayer—

- (a) incurs losses or outgoings—
 - (i) in the course of deriving salary or wages, and such losses or outgoings exceed K200.00; or
 - (ii) for which a deduction may be allowed under Section 69, 69A, 69C, 69E, 96 or 97A; and
- (b) such losses or outgoings would, but for Section 66A(1), have been allowable deduction in terms of Part III.3A,

he may, subject to Subsections (2) and (3) apply to the Commissioner General for a rebate under this section.

(2) An application for a rebate under Subsection (1) shall be deemed to be an objection for the purposes of Part V.2 and shall—

- (a) include full particulars of the taxpayer's claim; and
- (b) be lodged in writing with the Commissioner General before 1 March in the year following the fiscal year in which the losses or outgoings were incurred, or within such further time as the Commissioner General may allow.

(3) Where the Commissioner General is satisfied that—

- (a) losses or outgoings to the extent that they exceed K200.00 were necessarily incurred by the taxpayer in the course of his employment; or
- (b) losses or outgoings of a kind referred to in Subsection (1)(a)(ii) were incurred by the taxpayer,

he shall allow a rebate of 25% of the losses or outgoings incurred, provided that a rebate allowed under this section shall not exceed the total salary or wages tax paid during the fiscal year in which the losses or outgoings were incurred, after allowance of any rebate for non-salary or wages loss under Subsection (4).

(4) Where in a fiscal year a taxpayer—

- (a) by virtue of Section 66A(2), incurs a non-salary or wages loss in the course of deriving non salary or wage income; and
- (b) that income had a source within Papua New Guinea,

a rebate shall be allowed being the difference between the gross tax payable on income equivalent to the total of salary or wages derived (but not including income or payments to which Section 1(2) of the *Income Tax (Salary or Wages Tax) (Rates) Act 1979* applies by reference to Schedule 1 of the *Income Tax (Rates) Act (Consolidated) 1976*, and the gross tax payable by reference to that schedule on the remainder of salary or wages derived (but excluding income or payments to which Section 1(2) of the *Income Tax (Salary or Wages Tax) (Rates) Act 1979* applies) after deducting the amount of non-salary or wages loss, provided that—

- (c) the rebate shall not exceed the total salary or wages tax paid during the fiscal year in which the non-salary or wages loss was incurred after allowance of any rebate by virtue of Subsection (1); and

- (d) by virtue of the allowance of an annual deduction of K200.00 in respect of salary or wages income in the *Income Tax (Salary or Wages Tax) (Rates) Act 1979*, the rebate shall not further allow that K200.00 or any part thereof; and
- (e) in any case where the non-salary or wages loss is equal to or exceeds the total of salary or wages derived (including income or payments to which Section 1(2) of the *Income Tax (Salary or Wages Tax) (Rates) Act 1979* applies), the amount of the rebate shall be equal to the salary or wages tax deducted during that fiscal year.

(5) An application for a rebate under Subsection (4) shall be made by lodgement of a return of income as required from year to year by notice in the National Gazette and shall be deemed an objection for the purposes of Part V.2.

214A²⁷². [REPEALED.]

214B. REBATE OF EDUCATION EXPENSES.

²⁷³(1) In this section—

“dependent student child” means a child or student wholly maintained by the taxpayer, in respect of whom he is incurring net education expenses; and

“net education expenses” means amounts of educational fees paid by the taxpayer to any primary or high school, whether within or outside Papua New Guinea, less any subsidy, allowance or assistance received.

(2) Where, during a year of income a taxpayer incurs expenses in relation to the education of a dependent student child and he has not been, or will not be, allowed a deduction in respect of those expenses under Section 70A, he is entitled to a rebate equal to the lesser of—

- (a) 25% of the net education expenses incurred; or
- (b) K750.00 for that dependent student child.

(3) An application for a rebate under Subsection (2) shall be made by lodgement of a return of income as required from year to year by notice in the National Gazette and shall be deemed to be an objection for the purposes of Part V.2.

215²⁷⁴. [REPEALED.]

216. REBATE ON DIVIDENDS.

(1) Subject to this section, a taxpayer, being a company that is a resident, is entitled to a rebate in its assessment of the amount obtained by applying to that part

²⁷² Section 214A repealed by No 65 of 1973, s6.

²⁷³ Section 214B repealed and replaced by No 46 of 2000.

²⁷⁴ Section 215 repealed by No 77 of 1969, s11.

of its taxable income that represents dividends the average rate of tax payable by the company.

(2) For the purposes of Subsection (1), the part of the taxable income of a company that represents dividends shall be deemed to be the amount remaining after deducting from the amount of dividends included in the assessable income of the company of the year of income such deductions allowed or allowable from the assessable income as relate directly to income from dividends.

(3)²⁷⁵ [*Repealed.*]

217²⁷⁶. [REPEALED.]

217A. LIABILITY FOR ADDITIONAL AMOUNT.

Where a rebate has been allowed under this Act in respect of an amount of tax or salary or wages tax paid by the taxpayer and some or all of that tax is refunded to the taxpayer (whether or not within the same year of income or fiscal year), the taxpayer is liable to pay an additional amount of income tax or salary or wages tax equal to the amount so refunded.

218. MAXIMUM AMOUNT OF REBATES.

Notwithstanding anything contained in this or any other Act, the sum of the rebates allowable under this Act shall not exceed the amount of tax or salary or wages tax which would otherwise be payable by the taxpayer.

Division 20.

Credits in Respect of Tax Paid.

219. CREDITS.

(1) Where—

- (a) the assessable income of a year of income of a taxpayer who is a resident includes income derived from sources in a country outside Papua New Guinea; and
- (b) the taxpayer has paid, directly or indirectly, income tax payable in respect of the income so derived under the law of that country, being tax for which he was personally liable under that law,

the taxpayer is, subject to this Division, entitled to a credit ascertained in accordance with this section.

(2) Subject to Subsections (3) and (3A), the credit to which a taxpayer is entitled under this Division is the amount of the income tax referred to in Subsection

²⁷⁵ Section 216(3) repealed by No 68 of 1996, s37.

²⁷⁶ Section 217 repealed by No 49 of 1972.

(1)(b), as reduced by the amount of any refund or credit of that income tax to which the taxpayer is entitled in respect of the income to which the tax relates.

(3) The credit shall not exceed—

- (a) in the case of a taxpayer, not being a company—an amount that bears to the Papua New Guinea tax of the taxpayer the same proportion as the non-Papua New Guinea income of the taxpayer bears to the sum of the taxable income and salary or wages income (but not including income or payments to which Section 1(2) of the *Income Tax (Salary or Wages Tax) (Rates) Act 1979* applies) of the taxpayer;
- (b) in the case of a taxpayer, being a company—
 - (i) an amount ascertained by applying to the non-Papua New Guinea income of the taxpayer, other than dividends included in that income, the average rate of tax payable by the company for the year of tax; or
 - (ii)²⁷⁷ [*Repealed.*]
- (c) in any case—the amount of the sum of the tax and salary or wages tax payable by the taxpayer under this Act, after the allowance of any rebate by virtue of Section 214, in respect of his taxable income and salary or wages income of the year of income but before the allowance of any credit to which the taxpayer is entitled under this Division.

(3A) Where a relevant part of a company's income of the year of income consists of dividends in respect of which it is entitled to a rebate under Section 216, and income tax referred to in Subsection (1)(b) was payable in respect of those dividends, the credit to which the taxpayer is entitled under Subsection (2) shall be reduced by the amount of such income tax.

(4)²⁷⁸ In this section—

²⁷⁹“**income derived from sources in a country outside Papua New Guinea**”, in relation to a dividend paid by a company, means a dividend paid by a company that is not a resident of Papua New Guinea but is a resident of a country outside Papua New Guinea for the purposes of a law of that country that imposes a tax upon incomes;

“**the non-Papua New Guinea income**” in relation to a taxpayer, means the amount of the income derived from sources in a country outside Papua New Guinea in respect of which he has paid, either directly or indirectly, income tax for which he was personally liable under the law of that country, less the sum of such of the deductions allowed or

²⁷⁷ Section 219(3)(b)(ii) repealed by Act No 64 of 1986, s23(a).

²⁷⁸ Section 219(4) (definition of “the adjusted non-Papua New Guinea income”) repealed by No 64 of 1986, s23(b); Section 219(4) (definition of “adjusted taxable income”) repealed by No 117 of 1975, s18(b); Section 219(4) (definition of “the undistributed amount”) repealed by No 117 of 1975, s23(b).

²⁷⁹ Section 219(4) (definition of “the adjusted non-Papua New Guinea income”) repealed by No 64 of 1986, s23(b); Section 219(4) (definition of “adjusted taxable income”) repealed by No 117 of 1975, s18(b); Section 219(4) (definition of “the undistributed amount”) repealed by No 117 of 1975, s23(b).

allowable from the assessable income of the year of income as relates directly to the income so derived;

“Papua New Guinea Tax”, in relation to a taxpayer means the sum of his salary or wages tax (including that tax imposed in respect of income or payments to which Section 1(2) of the *Income Tax (Salary or Wages Tax) (Rates) Act 1979* applies) and tax payable on income other than salary or wages under Section 46C, after the allowance of any concessional rebate by virtue of Section 213F and in any case after the allowance of any rebate by virtue of Section 214, but before the allowance of any other rebates or credits to which the taxpayer is entitled under this Act;

(5)²⁸⁰ [*Repealed.*]

219A. CREDITS IN RESPECT OF DEDUCTIONS MADE FROM DIVIDENDS.

(1) Where the assessable income of a taxpayer, not being a company (other than a company in its capacity as a trustee of a trust estate or a unit trust for the purposes of Section 136A), includes dividends paid by a resident company upon which that taxpayer, or in the case of a trust estate, the trustee, was liable to dividend (withholding) tax, and such tax has been paid directly or indirectly, the taxpayer is entitled to a credit of an amount equal to the lesser of—

- (a) the dividend (withholding) tax paid in respect of those dividends; and
- (b) the amount that bears to the sum of the tax on the taxable income and salary or wages income the same proportion as those dividends bear to the sum of that taxable income and salary or wages income of the taxpayer (but not including income or payments to which Section 1(2) of the *Income Tax (Salary or Wages Tax) (Rates) Act 1979* applies).

(2) For the purposes of Subsection (1), the part of the taxable income that represents those dividends shall be deemed to be the amount of those dividends remaining after deducting from the amount of dividends included in the assessable income of the year of income, such deductions allowed or allowable from the assessable income as relate directly to income from those dividends.

(3) In this section—

“tax on the taxable income and salary or wages income” has the same meaning as “Papua New Guinea Tax” in Section 219.

219B. CREDITS IN RESPECT OF DEDUCTIONS OF PRESCRIBED PRODUCT (WITHHOLDING) TAX.

Where the assessable income of a taxpayer includes income from the sale of any prescribed product upon which that taxpayer, or in the case of a trust estate, the trustee, was liable to Prescribed Product (Withholding) Tax under Part III.12A, and

²⁸⁰ Section 219(5) repealed by No 49 of 1972.

such tax has been paid directly or indirectly, the taxpayer is entitled to a credit of the Prescribed Product (Withholding) Tax paid.

219BB. CREDITS IN RESPECT OF DEDUCTION OF INTEREST (WITHHOLDING) TAX.

Where the assessable income of a resident taxpayer includes income from interest upon which that taxpayer was liable to Interest (Withholding) Tax, and such tax has been paid, the taxpayer is entitled to a credit of the Interest (Withholding) Tax paid.

219C. CREDITS IN RESPECT OF PRESCRIBED INFRASTRUCTURE DEVELOPMENTS.

²⁸¹(1) In this Section –

“**eligible taxpayer**” means –

- (a) a taxpayer engaged in mining, petroleum or gas operations; or
- (b) a taxpayer engaged in primary production;

“**Gas Agreement**” means the Gas Agreement between the State, the Bank of Papua New Guinea and the Project Developers signed in Port Moresby on the 6th of June 2002;

“**gas project companies**” means the companies defined as gas project companies in Section 1.1 of the Gas Agreement;

(2) Where an eligible taxpayer has, in a year of income, incurred expenditure in relation to a prescribed infrastructure development, the amount of such expenditure is, subject to this section, deemed to be income tax paid in respect of that taxpayer’s liability assessed for the year of tax relating to that year of income, limited to the lesser of –

- (a) for a taxpayer engaged in –
 - (i) mining, petroleum or gas operations – 0.75% of the assessable income derived in the year of income; and
 - (ii) primary production – 1.0% of the assessable income derived in the year of income 2005 or in subsequent years; or
- (b) the amount of tax payable.

(3) Where in any year the actual expenditure by an eligible taxpayer is less than the maximum amount of expenditure which, under Subsection (2), the taxpayer would be entitled to claimed tax paid, the difference may be carried forward to be expended in the next two years of income.

(4) Amounts expended in a year of income pursuant to Subsection (3) shall be in addition to amounts which may be expended under Subsection (2).

²⁸¹ Section 219C repealed and replaced by No 46 of 2000; Substituted by No. 22 of 2004, s. 56.

(5) Where in any year eligible taxpayer has incurred expenditure greater than the total of the amounts he is entitled to expend under Subsections (2) and (3), for the purposes of this section the amount of the excess shall be deemed to be expenditure of the next succeeding year of income.

(6) Where an eligible taxpayer would have been, on 1 January 2001, entitled to expend additional amounts on prescribed infrastructure development under the provisions of this section as they were in force prior to that date, that entitlement may be expended before 31 December 2003 and shall be in addition to the amounts which may be expended under Subsections (2) and (3).

(7) Where an eligible taxpayer incurs, in the year of income 2002 or the year of income 2005, expenditure on the construction, upgrading or repair of a prescribed section of the Highlands Highway, the amount of such expenditure is, subject to this section, deemed to be income tax paid in respect of that taxpayer's liability assessed for the year of tax relating to that year of income, limited to the lesser of –

- (a) Expenditure incurred or income derived by the taxpayer in the year of income, which shall be additional to the amount provided in Subsection (2)(a); or
- (b) the amount of tax payable.

(8) Expenditure incurred or income tax deemed to be tax paid under Subsection (7) may be carried forward, separately from expenditure deemed to be income tax paid under Subsection (2) and the provisions of Subsections (3), (4) and (5) shall apply in the same manner they apply to expenditure incurred or tax deemed under the provisions of Subsection (2).

(9) Where a gas project company incurs expenditure on behalf of the State on the construction, upgrading or repair of a road defined under the heading 'State Road Commitments' in Section 1(a) of Attachment 3 to the Gas Agreement, the amount of such expenditure is, subject to this section, deemed to be income tax paid in respect of that taxpayers liability assessed for the year of tax relating to that year of income, limited to the lesser of –

- (a) for expenditure on behalf of the State on construction of the other roads defined in the Gas Agreement under the heading "State Road Commitments", 1.25% of the assessable income derived by the taxpayer at any time following the PNG Gas Project Decision as defined in Section 1.1 of the Gas Agreement,

which shall be additional to the amount provided in Subsection (2)(a); or

- (b) 50% of the amount of tax payable.

(10) Expenditure incurred or income tax deemed to be tax paid under Subsection (9) may be carried forward, separately from expenditure deemed to be income tax paid under Subsection (2) and the provisions of Subsections (3), (4) and (5) shall apply in the same manner the apply to expenditure incurred or tax deemed under the provisions of Subsection (2).

(11) Where an eligible taxpayer incurs, in the year of income 2003, expenditure on the construction of roads between Gobe-Semberigi-Erave, the amount of such expenditure is, subject to this section, deemed to be income tax paid in respect of that taxpayer's liability assessed for the year of tax relating to that year of income, limited to the lesser of –

- (a) 1.25% of the assessable income derived by the taxpayer in the year of income, which shall be additional to the amount provided in Subsections (2)(a) and (7(a)); or
- (b) the amount of tax payable,

and expenditure incurred or income tax deemed to be tax paid under this Subsection may be carried forward, separately from expenditure deemed to be income tax paid under Subsection (2) and the provisions (3), (4) and (5) shall apply in the same manner they apply to expenditure incurred or tax deemed under the provisions of Subsection (2).

219D. CREDITS IN RESPECT OF BANK COMMUNITY SERVICE OBLIGATIONS.

²⁸²(1) In this Section –

- “**agency**” means a banking agency through which banking facilities are provided to the public, not being a branch or sub-branch;
- “**area 1**” means an area, as prescribed, adequately supplied with banking facilities;
- “**area 2**” means an area, as prescribed, moderately supplied with banking facilities;
- “**area 3**” means an area, not falling within area 1 or 2, inadequately supplied with banking facilities;
- “**ATM**” means an automated teller machine dispensing cash, as used in banking;
- “**bank**” means a bank licensed under the *Banks and Financial Institutions Act 2000* and providing a basic banking product;
- “**basic banking product**” means a banking service being the provision of account facilities to any customer desiring such services with the following characteristics –
 - (a) the customer is able to make deposits into, or withdrawals from, the account;
 - (b) the customer is allowed 52 free transactions per year, transaction fees may be charged only for transactions in excess of that figure; and

²⁸² Section 219D repealed by No 11 of 1998; Substituted by No. 22 of 2004, s. 56.

- (c) the customer is allowed access to electronic banking through EFTPOS or ATM machines;
- (d) there is no minimum account balance required; and
- (e) there are no other restrictions imposed on the account;

“**branch**” means a branch of a bank providing full banking facilities to the public;

“**CPI**” means the annual consumer price index for Papua New Guinea published by the National Statistician appointed under *Statistical Services Act 1980*;

“**EFTPOS**” means a machine used for electronic fund transfers at point of sale, enabling transfers electronically from one bank account into another bank account;

“**sub-branch**” means a branch of an bank not providing full banking facilities.

(2) Where a bank, in a year of income prior to the year 2002, incurs expenditure for the provision of banking services outside area 1, that expenditure is deemed to be, to the extent set out in Subsections (3), (4), (5) and (6), income tax paid in respect of the tax liability of that taxpayer for that year of income.

(3) Subject to Subsection (5), for banking services provided in area 2 –

- (a) for each branch – K175,000.00 as calculated;
- (b) for each sub-branch – K100,000.00 as calculated;

(4) Subject to Subsection (5), for banking services provided in area 3 –

- (a) for each branch – K350,000.00 as calculated;
- (b) for each sub-branch – K200,000.00 as calculated;
- (c) for each agency – K25,000.00 as calculated;
- (d) for the purchase of a new ATM, not to be located within or adjacent to a branch or sub-branch – K30,000.00;
- (e) for the purchase of a new EFTPOS, not to be located within or adjacent to a branch or sub-branch – K1,000.00;
- (f) for the provision of an ATM service, not to be located within or adjacent to a branch or sub-branch – K5,000.00;
- (g) for the provision of an EFTPOS service, not to be located within or adjacent to a branch or sub-branch – K5000.00;

(5) in Subsections (3) and (4) “as calculated” means –

- (a) in the case of a bank that provides a service or facility for the full year of income, the amount set out in those Sections; or
- (b) in the case of a bank that provides a service or facility for a period being less than a full year of income, an amount, being a proportion of the

amounts set out in those Sections, proportionate to the amount of time during which the service or facility was provided;

- (6) Notwithstanding the provisions of Subsections (3) and (4) –
- (a) for a branch or sub-branch, expenditure on the provision of banking services is deemed to be income tax paid only if the relevant branch or sub-branch provides a basic banking product;
 - (b) expenditure on the provision of banking services is deemed to be income tax paid only to the extent that such expenditure, as calculated by the provisions of those Subsections, exceeds K1,000,000.00 in a year of income; and
 - (c) the amount set out in Subsections (3) and (4) shall be increased, at the beginning of each year of income commencing in 2003, by the CPI for the previous year of income.

(7) If in any year amount deemed to be income tax paid by a taxpayer under this Section (including, for the avoidance of doubt, an amount deemed to be income tax paid in a year of income under the provisions of this Subsection) exceeds the amount of income tax payable by that taxpayer for that year, the amount of the excess shall be deemed to be income tax paid by that taxpayer in respect of the next succeeding year of income.

219E²⁸³. [REPEALED.]

220. APPLICATION OF CREDIT.

(1) The amount of any credit to which a taxpayer is entitled under this Division is, subject to Subsection (2), a debt due and payable to the taxpayer by the Commissioner General on behalf of the State.

(2) The Commissioner General may apply the whole or any part of the credit in total or partial discharge of any liability to the State of the person entitled to the credit arising under or by virtue of this Act or any other Act of which the Commissioner General has the general administration.

(3) Where the Commissioner General has applied any amount of credit to which a taxpayer is entitled under this Division in discharge of any debt of the taxpayer in respect of income tax or any other tax, the taxpayer shall be deemed to have paid to the Commissioner General the amount so applied for the purpose for which, and at the time at which, it has been so applied,

(4)²⁸⁴ [*Repealed.*]

²⁸³ Section 219E repealed by No 19 of 1998.

²⁸⁴ Section 220(4) repealed by No 64 of 1986, s24.

221. DETERMINATION OF CLAIMS FOR CREDITS.

(1) Where a taxpayer makes a claim for a credit under this Division, the Commissioner General shall determine whether a credit is allowable and, if so, the amount of the credit.

(2) A determination under this Division does not form part of an assessment under this Act.

(3) As soon as conveniently may be after a determination is made, the Commissioner General shall serve notice in writing of the determination, by post or otherwise, upon the person claiming the credit.

(4) The notice in writing under Subsection (3) may be included in a notice of assessment.

(5) The production of a notice of a determination, or of a document under the hand of the Commissioner General or an Assistant Commissioner purporting to be a copy of a notice of a determination, is conclusive evidence of the due making of the determination and (except in proceedings on appeal against the determination) that the determination is correct.

(6) Subject to Subsections (7) and (8), the Commissioner General may at any time amend a determination in such manner as he thinks necessary.

(7) Where a person claiming a credit has made to the Commissioner General a full and true disclosure of all the material facts necessary for the making of a determination and a determination is made after that disclosure, an amendment of the determination decreasing the amount of a credit shall not be made except to correct an error in calculation or a mistake of fact or in consequence of an adjustment, credit or refund of income tax or salary or wages tax payable under this Act or of income tax referred to in Section 219(1)(b).

(8) An amendment of a determination increasing the amount of a credit shall not be made except to correct an error in calculation or a mistake of fact or in consequence of an adjustment, credit or refund of income tax or salary or wages tax payable under this Act or income tax referred to in Section 219(1)(b).

(9) Nothing in this section prevents the amendment of a determination in order to give effect to the decision upon an appeal or review, or the amendment of a determination increasing the amount of a credit in pursuance of an objection made by the person who claimed the credit or pending an appeal or review.

(10) An amended determination shall, for the purposes of this Act, be deemed to be a determination.

(11) The provisions of Division V.2 apply to and in relation to determinations under this Division in like manner as they apply to and in relation to assessments and, for the purposes of those provisions as so applying—

- (a) a reference in Division V.2 to an assessment shall be read as a reference to a determination under this Division; and

- (b) the reference in Section 248(2) to the reduction of an assessment shall be read as a reference to the allowance of a credit or of an increase in the amount of a credit; and
- (c) the reference in Section 250(b) to the burden of proving that an assessment is excessive shall be read as a reference to the burden of proving that a determination allows insufficient credit; and
- (d) the references in Section 251 to the reduction of an assessment by the Commissioner General and to the reduced assessment shall be read as references to the amendment of a determination by the Commissioner General and to the amended determination, respectively.

(12) The fact that an appeal or reference in respect of a determination is pending does not in the meantime interfere with or affect the determination or an assessment of tax or salary or wages tax against which a credit is claimed, and tax or salary or wages tax may be recovered on the assessment as if an appeal or reference were not pending.

(13) A credit under this Division shall not be allowed unless, within three years after the date upon which the income tax or salary or wages tax payable under this Act against which the credit is claimed became due and payable (or within such further period, not exceeding three years, as the Commissioner General, in special circumstances, determines), the person claiming the credit furnishes to the Commissioner General all the information necessary for the purpose of determining the amount of the credit.

222. RECOVERY OF OVERPAYMENT OF CREDITS.

Where, by reason of any adjustment, credit or refund of any tax or salary or wages tax or for any other reason, the amount, or the sum of the amounts, applied or paid by the Commissioner General in respect of a credit under this Division exceeds the amount of the credit to which the taxpayer is entitled, the Commissioner General may recover the amount of the excess as if it were income tax or salary or wages tax due and payable by the taxpayer.

PART IV. – RETURNS AND ASSESSMENTS.**223. ANNUAL RETURNS.**

(1) Every person shall, if required by the Commissioner General by notice published in the National Gazette, furnish to the Commissioner General in the prescribed manner, within the time specified in the notice, or such extended time as the Commissioner General may allow, a return signed by him setting forth a full and complete statement of the total income derived by him during the year of income, and of any deductions claimed by him.

(2) The Commissioner General may, in the notice, exempt from liability to furnish returns such classes of persons as he thinks fit, and any person included in a class of persons so exempted need not furnish a return unless he is required by the Commissioner General to do so.

(3) If a taxpayer is absent from Papua New Guinea, or is unable from physical or mental infirmity to make a return required by this section, the return may be signed and delivered by a person duly authorized.

224. FURTHER RETURNS, ETC.

(1) A person shall, if required by the Commissioner General, whether before or after the expiration of the year of income, furnish to the Commissioner General, in the manner and within the time required by him, a return, or a further or fuller return, of the income or any part of the income derived by him in any year, whether on his own behalf or as agent or trustee, and whether a return has or has not previously been furnished by him for the same period.

(2) If no income has been so derived by the person so required to furnish a return, he shall nevertheless furnish a return stating that fact.

225. SPECIAL RETURNS.

A person, whether a taxpayer or not, if required by the Commissioner General, shall, in the manner and within the time required by him, furnish a return required by the Commissioner General for the purposes of this Act.

226. RETURNS DEEMED TO BE DULY MADE.

A return purporting to be made or signed by or on behalf of a person shall be deemed to have been, duly made by him or with his authority until the contrary is proved.

227. CERTIFICATE OF SOURCES OF INFORMATION.

(1) A person who charges directly or indirectly a fee for preparing or assisting in the preparation of a return required by this Act or the regulations or by the Commissioner General shall sign a certificate (in this Act called an “**agent’s certificate**”) in the prescribed form to be endorsed on or annexed to the return

setting out such information as to the sources available for the compilation of the return as is prescribed.

(2) The agent's certificate shall, for the purposes of this Act, be deemed to be duly signed, in the case of a partnership or a company that is registered as a tax agent in pursuance of Part VIII, if it is signed in the name of the partnership or company, as the case requires, by a person who is registered as a nominee of that partnership or company for the purposes of that Part, and that person's name is also appended, and not otherwise.

(3) A person carrying on business who does not furnish with his return an agent's certificate shall furnish particulars in the prescribed form, endorsed on or annexed to the return, setting out such information as to the sources available for the compilation of the return as is prescribed.

228. ASSESSMENTS.

(1) From the returns, and from any other information in his possession, or from any one or more of these sources, the Commissioner General shall make an assessment of the amount of taxable income or salary or wages income of a taxpayer and of the tax or salary or wages tax payable on that income.

(2) For the purposes of this Act, and subject to Sections 46B, 46C and 65F, deduction of tax in accordance with the provisions of the *Income Tax (Salary or Wages Tax) (Rates) Act 1979* from salary or wages shall be deemed to be an assessment of salary or wages tax.

229. DEFAULT ASSESSMENTS.

If—

- (a) a person makes default in furnishing a return; or
- (b) the Commissioner General is not satisfied with the return furnished by a person; or
- (c) the Commissioner General has reason to believe that a person who has not furnished a return has derived taxable income,

the Commissioner General may make an assessment of the amount upon which in his judgment income tax ought to be levied, and that amount shall be the taxable income of that person for the purpose of Section 228.

230. SPECIAL ASSESSMENTS.

(1) The Commissioner General may at any time during any year, or after its expiration, make an assessment of the taxable income derived in that year or any part of it by a taxpayer, and of the tax payable on that income.

(2) Where the income, other than salary or wages from which tax is deducted, in respect of which an assessment is made under Subsection (1), is derived in a

period less than one year, the assessment shall be made as if the beginning and end of that period were the beginning and end respectively of the year of income.

231. ASSESSMENTS ON ALL PERSONS LIABLE TO TAX.

Where under this Act a person is liable to pay tax, the Commissioner General may make an assessment of the amount of that tax.

232. AMENDMENT OF ASSESSMENTS.

(1) The Commissioner General may, subject to this section, 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.

(1A) The Commissioner General may only amend an assessment raised pursuant to Section 228(2)–

- (a) in order to correct an error in accordance with the prescribed Declaration lodged by the taxpayer and the *Income Tax (Salary or Wages Tax) (Rates) Act 1979*; or
- (b) to correct an error in the calculation of the deduction where the Declaration lodged by the taxpayer is not true and correct in every particular; or
- (c) in order to allow or partly allow an objection for the purposes of Section 214; or
- (d) in order to apply the provisions of Section 145; or
- (e) for the purposes of allowing a credit in terms of Part III.20.

(2) Where a taxpayer has not made to the Commissioner General a full and true disclosure of all the material facts necessary for his assessment, and there has been an avoidance of tax, the Commissioner General may–

- (a) where he is of opinion that the avoidance of tax is due to fraud or evasion—at any time; and
- (b) in any other case—within six years from the date upon which the tax became due and payable under the assessment,

amend the assessment by making such alterations in, or additions to, the assessment as he thinks necessary to correct an error in calculation or a mistake of fact, or to prevent avoidance of tax, as the case may be.

(3) Where a taxpayer has made to the Commissioner General a full and true disclosure of all the material facts necessary for his assessment, and an assessment is made after that disclosure, an amendment of the assessment increasing the liability of the taxpayer in any particular shall not be made after the expiration of–

- (a) in the case of a deemed assessment under Section 228(2), six years; or
- (b) in any other case, three years,

from the date upon which the tax became due and payable under that assessment.

(4) An amendment effecting a reduction in the liability of a taxpayer under an assessment shall not be made after the expiration of—

- (a) in the case of a deemed assessment under Section 228(2), six years; or
- (b) in any other case, three years,

from the date upon which the tax became due and payable under that assessment.

(5) Where an assessment has, under this section, been amended in any particular, the Commissioner General may, within three years from the date upon which the tax became due under the amended assessment, make, in or in respect of that particular, such further amendment in the assessment as, in his opinion, is necessary to effect such reduction in the liability of the taxpayer under the assessment as is just.

(6) Where an application for an amendment in his assessment is made by a taxpayer within three years from the date upon which the tax became due and payable under that assessment, and the taxpayer has supplied to the Commissioner General within that period all information needed by the Commissioner General for the purpose of deciding the application, the Commissioner General may amend the assessment when he decides that application notwithstanding that that period has elapsed.

(7) This section does not prevent the amendment of an assessment in order to give effect to the decision upon an appeal or review, or its amendment by way of reduction in any particular in pursuance of an objection made by the taxpayer or pending an appeal or review.

(8) Where—

- (a) a provision of this Act is expressly made to depend in any particular upon a determination, opinion or judgment of the Commissioner General; and
- (b) an assessment is affected in any particular by that determination, opinion or judgment,

then if, after the making of the assessment it appears to the Commissioner General that the determination, opinion or judgment was erroneous, he may correct it and amend the assessment accordingly in the same circumstances as he could under this section amend an assessment by reason of a mistake of fact.

(9) Notwithstanding anything contained in this section, when the assessment of the taxable income of a year includes an estimated amount of income derived by the taxpayer in that year from an operation or series of operations the profit or loss on which was not ascertainable at the end of that year owing to the fact that the operation or series of operations extended over more than one or parts of more than one year, the Commissioner General may, at any time within three years after ascertaining the total profit or loss actually derived or arising from the operation or

series of operations, amend the assessment so as to ensure its completeness and accuracy on the basis of the profit or loss so ascertained.

(10)²⁸⁵ ²⁸⁶This section does not prevent the amendment, at any time, of an assessment for the purpose of giving effect to Sections 12, 12A, 48(3B), 53A, 57A, 78(6), 140(2)(b) or (3).

233. WHERE NO NOTICE OF ASSESSMENT SERVED.

(1) Where a taxpayer has duly furnished to the Commissioner General a return of income, and no notice of assessment in respect of that return has been served within 12 months after the return has been so furnished, he may in writing by registered post request the Commissioner General to make an assessment.

(2) If within three months after the receipt by the Commissioner General of the request a notice of assessment is not served upon the taxpayer, an assessment subsequently issued in respect of that income shall be deemed to be an amended assessment and, for the purpose of determining whether such an amended assessment may be made, the taxpayer shall be deemed to have been served on the last day of the three months with a notice of assessment in respect of which income tax was payable on that day.

(3) Where salary or wages tax has been paid pursuant to Section 228(2), notice of assessment shall be deemed to have been served.

234. REFUND OF TAXES OVERPAID.

²⁸⁷Where by reason of an amendment the taxpayer's liability is reduced the Commissioner General shall—

- (a) apply the credit to any other income tax or withholding tax or salary or wages tax payable by the taxpayer; or
- (b) refund any tax or salary or wages tax overpaid; or
- (c) in the case of salary or wages tax, authorize the employer to deduct future deductions at a decreased amount; or

²⁸⁸and the Commissioner General may —

- (d)²⁸⁹ [*Repealed.*]
- (e) apply the credit to any customs duty, excise duty, stamp duties and any other duty or impost payable by the taxpayer and charged, levied or imposed under any revenue legislation administered by the Commissioner General.

²⁸⁵ Section 232 Subsection (10) amended by No. 22 of 2004, s. 57.

²⁸⁶ Section 232 Subsection (10) amended by No. 22 of 2004, s. 57.

²⁸⁷ Section 234 Amended by No. 22 of 2004, s. 58.

²⁸⁸ Section 234 Amended by No. 22 of 2004, s. 58.

²⁸⁹ Section 234 Amended by No. 22 of 2004, s. 58.

235. AMENDED ASSESSMENT TO BE AN ASSESSMENT.

Except as otherwise provided, an amended assessment shall be deemed to be an assessment for the purposes of this Act.

236. NOTICE OF ASSESSMENT.

(1) Subject to Subsection (2), the Commissioner General shall, as soon as conveniently may be after an assessment is made, serve notice of the assessment in writing by post or otherwise on the person liable to pay the tax.

(2) Where salary or wages tax has been paid pursuant to Section 228(2), notice of assessment shall be deemed to have been served.

237. VALIDITY OF ASSESSMENT.

The validity of an assessment is not affected by reason that any of the provisions of this Act have not been complied with.

238. JUDICIAL NOTICE OF SIGNATURES.

All courts and all persons having by law or consent of parties authority to hear, receive and examine evidence shall take judicial notice of the signature of every person who is or has been the Commissioner General or an Assistant Commissioner if the signature is attached or appended to an official document.

239. EVIDENCE.

(1) The production of a notice of assessment, or of a document under the hand of the Commissioner General or an Assistant Commissioner purporting to be a copy of a notice of assessment, is conclusive evidence of the due making of the assessment and (except in proceedings on appeal against the assessment) that the amount and all the particulars of the assessment are correct.

(2) The production of a National Gazette containing a notice purporting to be issued by the Commissioner General is conclusive evidence that the notice was so issued.

(3) The production of a document under the hand of the Commissioner General or an Assistant Commissioner purporting to be a copy of a document issued by either the Commissioner General or an Assistant Commissioner is conclusive evidence that the document was so issued.

(4) The production of a document under the hand of the Commissioner General or an Assistant Commissioner purporting to be a copy of or extract from a return or notice of assessment is evidence of the matter set forth in the document to the same extent as the original would be if it were produced.

PART V. – OBJECTIONS AND APPEALS.

Division 1.

Constitution of Review Tribunal.

240. APPOINTMENT OF REVIEW TRIBUNAL.

(1) For the purposes of this Act, there shall be a Review Tribunal, which shall be constituted by one person appointed by the Minister.

(2) The person constituting the Tribunal shall be appointed for a period of three years, but is eligible for re-appointment.

(3) The person constituting the Tribunal—

(a) holds office on such terms and conditions; and

(b) shall be paid such remuneration, allowances, fees and expenses,

as the Minister determines.

241. ILLNESS, SUSPENSION OR ABSENCE OF TRIBUNAL.

(1) In the event of the absence (through illness or otherwise) or the suspension of the person constituting the Tribunal, the Minister may appoint a person to act in the place of that first-mentioned person during the absence or suspension and the person so appointed, while so acting, has all the powers, and may perform all the duties, of the person constituting the Tribunal.

(2) A person appointed under Subsection (1)—

(a) shall be appointed on such terms and conditions; and

(b) shall be paid such remuneration, allowances, fees and expenses,

as the Minister determines.

242. TRIBUNAL MAY NOT BE SUED.

An action or suit shall not be brought or maintained against a person who constitutes, or has constituted, the Review Tribunal, or a person who acts or has acted in the place of such a person, for any non-feasance or misfeasance in connection with his duties.

243. REMOVAL OR SUSPENSION OF PERSON CONSTITUTING TRIBUNAL.

(1) The Minister may remove the person constituting the Tribunal from office on an address praying for his removal being presented to the Minister.

(2) The Minister may suspend the person constituting the Tribunal from office for misbehaviour or incapacity.

(3) The Minister shall cause a statement of the cause of the suspension to be laid before the National Parliament within seven sitting days of the House after the suspension.

(4) If, within 15 sitting days of the National Parliament after the statement has been laid before the National Parliament an address is presented to the Minister by the National Parliament praying for the restoration of the person to office, the person shall be restored accordingly, but, if no such address is so presented, the Minister may declare the office of the person to be vacant, and the office shall thereupon become and be vacant.

244. VACATION OF OFFICE.

(1) The person constituting the Tribunal may resign his office by writing under his hand addressed to the Minister.

(2) If the person constituting the Tribunal—

- (a) engages in paid employment outside the duties of his office without the approval of the Minister; or
- (b) is adjudicated insolvent, applies to take the benefit of an Act for the relief of insolvent debtors, compounds with his creditors or makes an assignment of his salary for their benefit; or
- (c) except on leave granted by the Minister, fails to attend to the duties of his office for 14 consecutive days; or
- (d) becomes permanently incapable of performing his duties,

the Minister shall, by notice in the National Gazette, declare that the office of the person is vacant, and thereupon the office shall be deemed to be vacant.

Division 2.

Reviews and Appeals.

245. OBJECTIONS.

(1) Subject to Subsection (2), a taxpayer dissatisfied with an assessment under this Act may, within 60 days after service of the notice of assessment, post to or lodge with the Commissioner General an objection in writing against the assessment stating fully and in detail the grounds on which he relies.

(2)²⁹⁰ ²⁹¹Where the assessment has been amended in any particular, the right of a taxpayer to object against the amended assessment is limited to a right to object against alterations or additions in respect of or matters relating to that particular.

(3) Where a taxpayer lodges an application for refund of salary or wages tax in accordance with Section 214, that application shall, for the purposes of this Division, be deemed to be an objection.

²⁹⁰ Section 245 Subsection (2) substituted by No. 22 of 2004, s. 59.

²⁹¹ Section 245 Subsection (2) substituted by No. 22 of 2004, s. 59.

246. DECISION OF COMMISSIONER GENERAL.

(1) The Commissioner General shall consider the objection, and may either disallow it, or allow it either wholly or in part, and shall serve the taxpayer by post or otherwise with written notice of his decision.

(2)²⁹² ²⁹³The Commissioner General may, where he considers it necessary, require the taxpayer in writing to furnish information relating to assessment or objection, before making decision on the objections of the taxpayer.

247. APPLICATION FOR REVIEW OR APPEAL.

²⁹⁴A taxpayer dissatisfied with the decision may, within 60 days after service of the notice either—

- (a) make an application to the Review Tribunal for Review in the prescribed form; or
- (b) file an appeal to the National Court in accordance with the National Court Rules.

248. REFERENCE TO TRIBUNAL.

²⁹⁵An application for Review shall be accompanied by a fee of—

- (a) where the value of tax in dispute does not exceed K2,000.00 per year of tax—K50.00; or
- (b) where the value of tax in dispute exceeds K2,000.00 per year of tax—K250.00.

249²⁹⁶. [REPEALED.]**250. GROUNDS OF OBJECTION AND BURDEN OF PROOF.**

Upon a reference or appeal—

- (a) the taxpayer is limited to the grounds stated in his objection; and
- (b) the burden of proving that the assessment is excessive lies upon the taxpayer.

251. REDUCED ASSESSMENTS.

If the assessment has been reduced by the Commissioner General after considering the objection, the reduced assessment is the assessment to be dealt with on the reference or appeal.

²⁹² Section 246(2) added by *Income Tax (Budget Provisions 2000) Act 1999* (No 19 of 1999), s6.

²⁹³ Section 246(2) added by *Income Tax (Budget Provisions 2000) Act 1999* (No 19 of 1999), s6.

²⁹⁴ Section 247 repealed and replaced by *Income Tax (Budget Provisions 2000) Act 1999* (No 19 of 1999), s7.

²⁹⁵ Section 248 repealed and replaced by *Income Tax (Budget Provisions 2000) Act 1999* (No 19 of 1999), s8.

²⁹⁶ Section 249 repealed by *Income Tax (Budget Provisions 2000) Act 1999* (No 19 of 1999), s9.

252. REVIEW BY TRIBUNAL.

The Review Tribunal has power to review such decisions of the Commissioner General or an Assistant Commissioner as are referred to it under this Act.

253. POWERS OF TRIBUNAL.

(1) For the purpose of reviewing decisions of the Commissioner General or an Assistant Commissioner, the Review Tribunal has, subject to this section, all the powers and functions of the Commissioner General in making assessments, determinations and decisions under this Act, and the assessments, determinations and decisions of the Tribunal, and its decision upon review, shall for all purposes (except for the purpose of objections thereto and review thereof and appeals therefrom) be deemed to be assessments, determinations or decisions of the Commissioner General.

(2) The Review Tribunal has no power to review decisions of the Commissioner General relating to the remission of additional tax or penalty, except decisions relating to the remission of additional tax or penalty imposed by Section 316, where the additional tax or penalty payable, after the making by the Commissioner General of his decision, exceeds—

- (a) in any case to which Section 316(1) applies—the greater of the following amounts, namely, the sum of K100.00 for each complete calendar month or part of a calendar month or an amount calculated at the rate of 20% per annum of the tax assessable to the taxpayer, both amounts calculated in respect of the period commencing on the last day allowed for furnishing the return or information and ending on the day upon which the return or information is furnished or the day upon which the assessment is made, whichever first happens; or
- (b) in any case to which Section 316(2) applies—the greater of the following amounts, namely, the sum of K100.00 for each complete calendar month or part of a calendar month or an amount calculated at the rate of 20% per annum of the difference between the tax properly payable by the taxpayer and the tax that would be payable if it were assessed on the basis of the return furnished by him, both amounts calculated in respect of the period commencing on the last day allowed for furnishing the return and ending on the day upon which the assessment or notice in respect of the omitted income or excessive deduction is made.

254. DECISION OF TRIBUNAL.

(1) Upon a reference to the Review Tribunal, it shall give a decision in writing and may either confirm, reduce, increase or vary the assessment.

(2) Upon the request of the Commissioner General or the taxpayer, made at the hearing, the Tribunal when giving its decision shall state in writing its findings of fact and its reasons in law for the decision.

255. APPEAL OR REFERENCE TO NATIONAL COURT.

(1) The Commissioner General or taxpayer may appeal to the National Court from any decision of the Review Tribunal that involves a question of law.

(2) The Tribunal shall, upon the request of the Commissioner General or taxpayer, refer to the National Court any question of law arising before the Tribunal.

256. ORDER OF NATIONAL COURT ON APPEAL.

The National Court may, on the hearing of an appeal under this Division, make such order as it thinks fit, and may by the order confirm, reduce, increase or vary the assessment.

257. PENDING APPEAL NOT TO DELAY PAYMENT OF TAX.

The fact that an appeal or reference is pending does not in the meantime interfere with or affect the assessment the subject of the appeal or reference and income tax may be recovered on the assessment as if no appeal or reference were pending.

258. ADJUSTMENT OF TAX AFTER APPEAL.

If the assessment is altered on the appeal or reference, a due adjustment shall be made, for which purpose amounts paid in excess shall be refunded, and amounts short paid shall be recoverable as arrears.

PART VI. – COLLECTION AND RECOVERY OF TAX.***Division 1.******General.*****258A. INTERPRETATION.**

For the purposes of this Part, but without affecting the generality thereof and excepting the purposes of Sections 259, 261, 262, 263 and 264, “**tax**” or “**income tax**” includes–

- (a) income tax; and
- (b) additional taxes imposed by Section 65H, 136E, 136G, 189C, 196F, 196T, 196V, 265, 275F, 284, 299G, 304, 311E, 316, 350 or 357; and
- (c)²⁹⁷ additional profits tax imposed by Division III.10E; and
- (d) dividend (withholding) tax; and
- (e) an instalment of royalty tax under Section 357; and
- (f) salary or wages tax payable under Part III.2B; and
- (g) management fee withholding tax payable under Part III.14C; and
- (h) an instalment of notional tax payable under Part VI.1A; and
- (i) tax instalment deductions made prior to 1 January 1980 under Part VI.2; and
- (j) tax deducted from eligible business income and royalty payments under Part VI.2; and
- (k) tax deducted from salary or wages under Part VI.2A; and
- (l - m)²⁹⁸ [Repealed.]
- (n) training levy payable under Section 196Z; and
- (o) advance tax payable under Division VI.3B; and
- (p)²⁹⁹ [Repealed.]
- (q)³⁰⁰ mining levy payable under Division III.10F; and
- (r) company provisional tax payable under Division VI.1B.

259. WHEN TAX PAYABLE.

Subject to this Part, any income tax assessed is due and payable by the person liable to pay the tax on the date specified in the notice as the date upon which tax is

²⁹⁷ Section 258A(c) amended in consequence of No 68 of 2000.

²⁹⁸ Section 248 repealed and replaced by *Income Tax (Budget Provisions 2000) Act 1999* (No 19 of 1999), s8.

²⁹⁹ Section 258A(p) repealed by No 8 of 1994, s3.

³⁰⁰ Section 258A(q) amended in consequence of No 68 of 2000.

due and payable, not being less than 30 days after the service of the notice, or, if no date is so specified, on the 30th day after the service of the notice.

260. TAXPAYER LEAVING PAPUA NEW GUINEA.

Where the Commissioner General has reason to believe that a person liable to pay tax may leave Papua New Guinea before the date on which the tax is due and payable, the tax is due and payable on such date as the Commissioner General notifies to that person.

261. EXTENSION OF TIME AND PAYMENT BY INSTALMENTS.

The Commissioner General may in any case grant such extension of time for payment, or permit payment to be made by such instalments and within such time, as he considers the circumstances warrant and in any such case the tax is due and payable accordingly.

262. PENALTY FOR UNPAID TAX.

(1) If any tax remains unpaid after the time when it becomes due and payable, additional tax is due and payable at the rate of 20% per annum on the amount unpaid, computed from that time or, where an extension of time has been granted under Section 261, from such date as the Commissioner General determines, not being a date before the date on which the tax was originally due and payable.

(2) The Commissioner General may, in any case, for reasons that he thinks sufficient, remit the additional tax or any part of that tax.

(3) Notwithstanding anything contained in this section, the Commissioner General may sue for recovery of any tax unpaid immediately after the expiry of the time when it becomes due and payable.

263. TAX A DEBT DUE TO THE STATE.

Income tax, when it becomes due and payable, is a debt due to the State and payable, subject to the *Mineral Resources Stabilization Fund Act* (Chapter 194), to the Commissioner General in the manner and at the place prescribed.

Note The *Mineral Resources Stabilization Fund Act* was repealed by No 29 of 2000.

264. RECOVERY OF TAX.

Any tax unpaid may be sued for and recovered in any court of competent jurisdiction by the Commissioner General suing in his official name.

264A. RECOVERY OF COSTS.

In any action before a court by the Commissioner General for the recovery of unpaid tax, the Commissioner General may also sue for an additional amount equivalent to the costs incurred by him in prosecuting that action.

265. ISSUE OF TAX CLEARANCE CERTIFICATES.

(1) Upon application by or on behalf of a person about to leave Papua New Guinea, the Commissioner General or an Assistant Commissioner may, if he is satisfied—

- (a) that tax is not payable by that person; or
- (b) that arrangements have been made to the satisfaction of the Commissioner General for the payment of any tax that is or may become payable by that person; or
- (c) that tax payable by that person is irrecoverable,

issue a certificate that there is no objection to the departure of that person from Papua New Guinea.

(2) A certificate issued under Subsection (1) remains in force until—

- (a) the expiration of a period of one month from the date of issue of the certificate or of such other period, if any, as is specified in the certificate; or
- (b) the certificate is revoked,

whichever first occurs.

266. TAX CLEARANCE CERTIFICATES TO BE PRODUCED TO SHIPOWNER, ETC.

(1) When so required by the Commissioner General, the owner or charterer or an agent or other representative of the owner or charterer, of a ship or aircraft shall not issue or permit the issue of an authority for a person to travel from Papua New Guinea on the ship or aircraft unless there has been presented to the owner, charterer, agent or other representative, as the case may be, a certificate issued in respect of that person under Section 265, being a certificate that is in force on the day on which it is presented.

(2) A person who, in contravention of Subsection (1), issues, or permits the issue of, an authority for a person to travel on a ship or aircraft is personally liable to pay the amount of tax, if any, that is or may become due or payable by that last-mentioned person and, in addition, is guilty of an offence punishable upon conviction by a fine of not less than K400.00 and not exceeding K1,000.00.

(3) Where a ship or aircraft departs from a place at which the ship or aircraft has taken on board passengers in respect of whom certificates issued under Section 265 have been presented for the purpose of obtaining authorities for those persons to travel from Papua New Guinea in that ship or aircraft, the owner or charterer of the ship or aircraft, or, if the owner or charterer does not have a place of business at that place, the principal agent of the owner or charterer at that place, shall, not later than the first working day after the departure of the ship or aircraft from that place, or as soon thereafter as is practicable, lodge, or cause to be lodged, at the office of the Commissioner General—

- (a) those certificates; and
- (b) a list showing the name, last-known address in Papua New Guinea and place of destination of every person (other than members of the crew or staff of the ship or aircraft) taken on board the ship or aircraft at that first-mentioned place.

(4) A person who fails to comply with Subsection (3) is guilty of an offence punishable upon conviction by a fine of not less than K400.00 and not more than K1,000.00.

(5) This section does not apply in relation to travel by a member of the Defence Force who is certified by a person authorized in that behalf by the Minister for Defence to be travelling in the course of his duty as such a member.

267. TEMPORARY BUSINESS.

(1) Where the Commissioner General has reason to believe that a person establishing or carrying on business in Papua New Guinea intends to carry on that business for a limited period only, or where the Commissioner General for any other reason thinks it proper so to do, he may at any time and from time to time require that person to give security by bond or deposit or otherwise to the satisfaction of the Commissioner General for the due return of, and payment of income tax on, the income derived by that person.

(2)³⁰¹ ³⁰²A person who fails to give security when required to do so under this section is guilty of an offence punishable upon conviction by a fine of not less than K500.00 and not exceeding K5,000.00.

268. SUBSTITUTED SERVICE.

(1) The Commissioner General may serve any process in proceedings against a person for recovery of income tax or dividend withholding tax or for the recovery of a pecuniary penalty, without leave of the Court, by posting the process or a sealed copy of the process in a letter addressed to the person at his last known place of business or abode in Papua New Guinea.

(2) A person who changes his address and fails to give to the Commissioner General notice of his new address shall not be permitted to plead the change of address as a defence in any proceedings instituted under this Act.

269. LIQUIDATORS, ETC.

- (1) A person (in this section called “**the trustee**”)–
 - (a) who is a liquidator of a company that is being wound up; or
 - (b) who is receiver for any debenture holders and has taken possession of any assets of a company; or

³⁰¹ Section 267 Subsection (2) amended by No. 22 of 2004, s. 60.

³⁰² Section 267 Subsection (2) amended by No. 22 of 2004, s. 60.

- (c) who is agent for a non-resident and has been required by his principal to wind up the business or realise the assets of his principal,

shall, within 14 days after he has become liquidator, after he has so taken possession of assets or after he has been so required by his principal, as the case may be, give notice thereof to the Commissioner General.

(2) The Commissioner General shall, as soon as practicable after receiving that notice, notify to the trustee the amount that appears to the Commissioner General to be sufficient to provide for any tax that then is or will subsequently become payable by the company or principal, as the case may be.

(3) The trustee—

- (a) shall not without the leave of the Commissioner General part with any of the assets of the company or principal until he has been so notified; and
- (b) shall set aside, out of the assets available for the payment of the tax, assets to the value of the amount so notified, or the whole of the assets so available if they are of less than that value; and
- (c) is, to the extent of the value of the assets that he is so required to set aside, liable as trustee to pay the tax.

(4)³⁰³ ³⁰⁴If the trustee fails to comply with a provision of this section (or fails as trustee duly to pay the tax for which he is liable under Subsection (3)), he is, to the extent of the value of the assets of which he has taken possession and which were available at any time for the payment of tax, personally liable to pay the tax, and is guilty of an offence punishable upon conviction by a fine of not less than K500.00 and not exceeding K5,000.00.

(5) Where more than one person is the trustee, the obligations and liabilities attaching to the trustee under this section attach to those persons jointly.

(6) Upon the winding up of a company, the Commissioner General may, if all other creditors of that company whose debts rank in priority to the costs, charges and expenses incurred by the liquidator agree to do likewise, permit all such costs, charges and expenses that, in the opinion of the Commissioner General, have been properly incurred by the liquidator, including the remuneration of the liquidator, to be paid out of the assets of the company in priority to any tax payable by the company.

270. WHEN TAX NOT PAID DURING LIFETIME.

The following provisions apply in any case where, whether intentionally or not, a taxpayer escapes full taxation in his lifetime by reason of not having duly made full, complete and accurate returns:—

³⁰³ Section 269 Subsection (4) amended by No. 22 of 2004, s. 61.

³⁰⁴ Section 269 Subsection (4) amended by No. 22 of 2004, s. 61.

- (a) The Commissioner General has the same powers and remedies against the trustees of the estate of the taxpayer in respect of the taxable income of the taxpayer as he would have against the taxpayer if the taxpayer were still living.
- (b) The trustees shall make such returns as the Commissioner General requires for the purpose of an accurate assessment.
- (c) The trustees are subject to additional tax to the same extent as the taxpayer would be subject to additional tax if he were still living, but the Commissioner General may in any particular case, for reasons that he thinks sufficient, remit the additional tax or any part of that tax.
- (d) The amount of any tax payable by the trustees is a first charge on all the taxpayer's estate in their hands.

271. PROVISION FOR PAYMENT OF TAX BY TRUSTEES OF DECEASED PERSON.

(1) Where at the time of a person's death, tax has not been assessed and paid on the whole of the income derived by that person up to the date of his death, the Commissioner General has the same powers and remedies for the assessment and recovery of tax from the trustees of that person's estate as he would have had against that person, if that person were alive.

(2) The trustees shall furnish a return of any income derived by the deceased person in respect of which no return has been lodged by him.

(3) Where the trustees are unable or fail to furnish a return, the Commissioner General may make an assessment of the amount on which, in his judgment, tax ought to be levied and the trustees are liable to pay tax as if that amount were the taxable income of the deceased.

272. COMMISSIONER GENERAL MAY COLLECT TAX FROM PERSON OWING MONEY TO TAXPAYER.

(1) The Commissioner General may at any time, or from time to time, by notice in writing (a copy of which shall be forwarded to the taxpayer at his last place of address known to the Commissioner General), require—

- (a) any person by whom any money is due or accruing or may become due to a taxpayer; or
- (b) any person who holds or may subsequently hold money for or on account of a taxpayer; or
- (c) any person who holds or may subsequently hold money on account of some other person for payment to a taxpayer; or
- (d) any person having authority from some other person to pay money to a taxpayer,

to pay to the Commissioner General, either forthwith upon the money becoming due or being held or at or within a time specified in the notice (not being a time before the money becomes due or is held)–

- (e) so much of the money as is sufficient to pay the amount due by the taxpayer in respect of any tax and of any fines and costs imposed upon him under this Act, or the whole of the money when it is equal to or less than the amount; or
- (f) such amount as is specified in the notice out of each of any payments that the person so notified becomes liable from time to time to make to the taxpayer, until the amount due by the taxpayer in respect of any tax and of any fines and costs imposed upon him under this Act is satisfied,

and may at any time, or from time to time, amend or revoke any such notice, or extend the time for making any payment in pursuance of the notice.

(2) A person who fails to comply with a notice under this section is liable to pay–

- (a) the amount specified in the notice; or
- (b) the amount due or held on behalf of the taxpayer,

whichever is the lesser amount, and any amount collected under this subsection shall be applied against the debt of the taxpayer.

(2A)³⁰⁵ ³⁰⁶In addition to any amount that he is liable to pay under Subsection (2), a person who fails to comply with a notice under this section is guilty of an offence punishable upon conviction by a fine of not less than K500.00 and not exceeding K5,000.00.

(3) A person making a payment in pursuance of this section shall be deemed to have been acting under the authority of the taxpayer and of all other persons concerned and is, by force of this subsection, indemnified in respect of that payment.

(4) If the Commissioner General receives a payment in respect of the amount due by the taxpayer before payment is made by the person so notified he shall forthwith give notice of receipt of the payment to that person.

(5) In this section–

“tax” means income tax, salary or wages tax or dividend (withholding) tax, and includes a judgment debt and costs in respect of any such tax;

“person” includes company, partnership, and any public authority constituted by or under a law of Papua New Guinea.

(6) A notice to be given under this section to the State may be served upon such person as is prescribed and a notice so served shall be deemed to have been served upon the State.

³⁰⁵ Section 272 Subsection (2A) amended by No. 22 of 2004, s. 62.

³⁰⁶ Section 272 Subsection (2A) amended by No. 22 of 2004, s. 62.

273. CONSOLIDATION ASSESSMENTS.

Where several persons are in receipt of income for or on behalf of a non-resident or a person absent from Papua New Guinea, the Commissioner General, if it appears to him to be expedient to do so, may—

- (a) consolidate all or any of the assessments in respect of that income;
- (b) declare any one of those persons to be the agent of the non-resident or absent person in respect of the consolidated assessment; and
- (c) require him to pay income tax on the amount of that assessment,

and thereupon the person so declared to be agent is liable to pay the tax.

274. WHERE NO ADMINISTRATION.

(1) Where—

- (a) in respect of the estate of a deceased taxpayer, probate has not been granted or letters of administration have not been taken out within six months of his death; and
- (b) tax has not been assessed and paid on the whole of the income derived by that person up to the date of his death,

the Commissioner General may make an assessment of the amount of tax payable in respect of that income.

(2) The Commissioner General shall cause notice of the assessment to be published twice in a daily newspaper circulating in Papua New Guinea.

(3) A person claiming an interest in the estate of the taxpayer, may, within 60 days of the first publication of notice of the assessment, post to or lodge with the Commissioner General an objection in writing against the assessment stating fully and in detail the grounds on which he relies, and, upon the posting or lodging of the objection, the provisions of this Act relating to objections and appeals apply in relation to the objection as if the person so claiming an interest were the taxpayer.

(4) Subject to any amendment of the assessment by the Commissioner General, by the Review Tribunal or by a Court, the published notice of the assessment so made is conclusive evidence of the indebtedness of the deceased to the Commissioner General.

(5) The Commissioner General may issue an order in the prescribed form authorizing a member of the Police Force or any other person named in the order, to levy the amount of tax assessed, with costs, by distress and sale of any property of the deceased.

(6) Upon the issue of any such order the member or person so authorized has power to levy that amount accordingly in the prescribed manner.

(7) Notwithstanding anything contained in Subsection (4), (5) or (6), if at any time probate of the will of the deceased is granted to, or letters of administration of the estate are taken out by, a person, that person may, within 60 days after the date

on which probate was granted or letters of administration were taken out, lodge an objection against the assessment, stating fully and in detail the grounds on which he relies.

(8) The provisions of this Act relating to objections and appeals apply in relation to an objection lodged by a person under Subsection (7) as if he were the taxpayer.

275. INSOLVENCY AND COMPANIES BEING WOUND UP.

(1) A person who is a trustee within the meaning of the *Insolvency Act 1951* shall, notwithstanding anything contained in that Act, apply the estate of the insolvent in payment of tax due under this Act (whether assessed before or after the date on which he became an insolvent) in priority to all other unsecured debts other than debts of a class specified in Section 37, or in Section 119(c) or (d), of that Act.

(2) The liquidator of a company that is being wound up shall, notwithstanding anything contained in any other Act, apply the assets of the company in payment of tax due under this Act (whether assessed before or after the date of the commencement of the winding up) in priority to all other unsecured debts other than—

- (a) the costs and expenses of the winding up; and
- (b) debts of a class specified in Section 119(c) or (d) of the *Insolvency Act 1951*.

(3) A person who fails to comply with a provision of this section is guilty of an offence punishable upon conviction by a fine not exceeding K200.00 or by imprisonment not exceeding six months, or both, and, in addition, the court may order the person to pay to the Commissioner General a sum not exceeding double the amount of tax due by the insolvent estate or company in liquidation, as the case may be, on the date on which the offence occurred.

Division 1A.

Collection of Tax on Companies by Instalment.

275AA. APPLICATION.

This Division does not apply, in relation to income derived after 31 December 1992, to a company that derives assessable income to which Subdivisions III.10CA or III.10C or Divisions III.10A or III.10B apply or holds a special mining lease under the *Mining (Bougainville Copper Agreement) Act 1974* or the *Mining (Ok Tedi Agreement) Act 1976*.

275A. DEFINITIONS.

(1) In this Division, unless the contrary intention appears—“**income tax**” or “**tax**” does not include income tax that a company is liable to pay in the capacity of a trustee.

(2) In Sections 261, 262, 263, 264, 268, 272, 355, 356, 359 and 360, but not in any other section, “**income tax**” or “**tax**” includes an instalment of notional tax payable in accordance with this Division.

(3) In Sections 263, 264, 268, 272, 355, 356, 359 and 360, but not in any other section, “**income tax**” or “**tax**” includes additional tax payable in accordance with Section 275F(6) and (7).

(4) The ascertainment of the amount of any notional tax, or the amount of any instalment of tax, in accordance with this Division, shall not be deemed to be an assessment within the meaning of any of the provisions of this Act.

(5) All amounts of instalments of tax shall be calculated to the nearest Kina.

275B. LIABILITY TO PAY NOTIONAL TAX.

(1) Subject to Subsection (2), for the purpose of securing generally the more expeditious collection of income tax payable by companies, a notional tax, calculated in accordance with Section 275C will fall due on 31 March in the year of tax, but may, at the option of the company, be paid in three equal instalments, payable in accordance with Section 275E.

(2) Notional tax is not payable in a year of tax unless an Act declaring the rates of income tax payable for that year of tax is in force, or an Act declaring the rates of income tax payable for the year of tax next preceding that year of tax, provides that notional tax is payable in respect of that year of tax in accordance with the provisions of this Division.

275C. AMOUNT OF NOTIONAL TAX.

(1) Subject to this section, the notional tax of a company in respect of a year of tax is an amount equal to the tax assessed in respect of the taxable income of the next preceding year of tax reduced by the amount of company provisional tax payable for that year of tax.

(2) Subject to the following provisions of this section, where—

- (a) the rates of income tax payable by companies for a fiscal year are different from the rates declared by the Parliament for the next succeeding fiscal year; and
- (b) provision is made by the regulations for varying the amount of notional tax of companies in respect of the year of tax to which the last-mentioned rates apply,

then, on and after such date as is prescribed, the notional tax of the company in respect of that year of tax is the amount ascertained in accordance with Subsection (1) as varied in accordance with the provisions so made by the regulations.

(3) Where—

- (a) no assessment has been made of the amount of income tax payable by a company in respect of the year of tax; and

- (b) no assessment has been made of the amount of income tax payable by the company in respect of the next preceding year of tax; and
- (c) the Commissioner General has reason to believe that income tax will be payable by the company in respect of the year of tax,

then, subject to Subsection (4), the notional tax of the company in respect of the year of tax is such amount as the Commissioner General estimates to be the amount of income tax that will be so payable by the company.

(4) Subject to Subsection (6), where, in relation to the calculation of the notional tax in respect of the year of tax, the company has estimated in pursuance of Section 275F(1) the amount of income tax that will be payable in respect of the year of tax and has furnished to the Commissioner General a statement in accordance with that subsection, then—

- (a) where the amount payable by the company as the notional tax is required to be ascertained under Section 275F(4) on and after the date specified in the notice in respect of that notional tax served on the company in accordance with Section 275E as the date on which the amount specified in that notice was due and payable, the notional tax of the company in respect of the year of tax is an amount equal to the amount so estimated by the company; or
- (b) where the amount payable by the company as the notional tax is required to be ascertained under Section 275F(5)(b)(i)—on and after the date specified in the notice in respect of that payment of notional tax served on the company in accordance with Section 275E as the date on which the amount specified in that notice was due and payable, the notional tax of the company in respect of the year of tax is an amount equal to the amount estimated by the Commissioner General under Section 275F(5)(a) as the amount that, in his opinion, should have been the amount estimated by the company in pursuance of Section 275F(1) in respect of the year of tax.

(5) Where—

- (a) a notice is served on a company in accordance with Section 275E; and
- (b) the amount specified in the notice as the amount payable by the company as notional tax in respect of the year of tax is calculated by reference to a notional tax of the company in respect of the year of tax ascertained accordance with Subsection (3); and
- (c) on or after the date shown on the notice as being the date of issue of notice an assessment is made of the amount of income tax payable by the company in respect of its taxable income of the next preceding year of tax,

this section has effect as if that assessment had not been made.

(6) Where an assessment has been made of the amount of income tax payable by a company in respect of the year of tax, then, on and after the date shown on the

notice of that assessment served on the company as being the date of issue of that notice, the notional tax of the company in respect of the year of tax is an amount equal to the amount of income tax so payable.

275D. AMOUNT OF INSTALMENT OF TAX.

(1) Subject to Subsections (2) and (3), the amount payable by a company as an instalment of tax in respect of a year of tax, is an amount equal to one-third of the amount that, on the date shown on the notice in respect of that notional tax served on the company in accordance with Section 275E as being the date of issue of that notice, is the notional tax of the company in respect of that year of tax.

(2) The Commissioner General may, having regard to the purpose for which this Division was enacted and to particular circumstances that exist in relation to a company, determine that the amount that, but for this subsection, would be payable by the company as an instalment of tax in respect of a year of tax shall be reduced by such amount as he thinks appropriate or that an instalment of tax that would otherwise be payable by the company in respect of a year of tax is not payable.

(3) Where the Commissioner General has reason to believe that the amount of income tax that will be payable by a company in respect of a year of tax will be greater than the notional tax, he may, for the purposes of the notice to be served on the company in respect of that notional tax in accordance with Section 275E determine that the amount that, but for this subsection, would be payable by the company under Subsection (1) as notional tax shall be increased by such amount as he thinks appropriate.

(4) Where, on the date on which income tax becomes due and payable by a company in respect of a year of tax the whole or part of an amount payable as notional tax in respect of that year of tax has not been paid and there is no other instalment of tax in respect of that year of tax, the whole or a part of which has not been paid—

- (a) where no part of the income tax assessed in respect of that year of tax has been paid—so much if any, of the amount of notional tax unpaid, as exceeds the amount of that income tax assessed, ceases, on that date, to be payable; or
- (b) where part only of the income tax assessed in respect of that year of tax has been paid—so much, if any, of the amount of notional tax unpaid as exceeds the amount of that income tax assessed, ceases, on that date, to be payable; or
- (c) where the whole of the income tax assessed in respect of that year of tax has been paid—the amount of notional tax unpaid, ceases, on that date, to be payable.

(5) Where, on the date on which income tax becomes due and payable by a company in respect of a year of tax, there are two or more instalments of notional tax in respect of that year of tax the whole or part of each of which has not been paid—

- (a) where no part of the income tax in respect of that year of tax has been paid—the Commissioner General may determine that the whole or any part of all or any of the amounts unpaid in respect of those instalments shall cease, on that date, to be payable; or
- (b) where the whole of the income tax in respect of that year of tax has been paid—each of the amounts unpaid in respect of those instalments ceases, on that date, to be payable.

(6) In making a determination for the purposes of Subsection (5)(a), the Commissioner General shall have regard to the extent, if any, to which the sum of the amounts unpaid in respect of the instalments of tax referred to in that paragraph exceeds the amount of the income tax referred to in that paragraph that has not been paid and to any other relevant matters.

275E. WHEN INSTALMENT OF TAX PAYABLE.

(1) The Commissioner General may during the year of tax cause a notice in writing to be served on a company specifying—

- (a) the amount payable by the company as a “notional tax” by the company together with a form of election enabling the company—
 - (i) to pay by three equal instalments; or
 - (ii) pay the full amount by 31 March; and
- (b) in the case of payment by instalments the dates on which these payments are due.

(2) Unless an election to pay by instalments is received by the Commissioner General prior to 31 March in the year of tax the full “notional tax”, calculated in accordance with Section 275C will be due and payable on that date.

(3) Where the taxpayer elects to pay the notional tax by instalment—the instalments will be due and payable—

- (a) 1st instalment due 31 March; and
- (b) 2nd instalment due 30 June; and
- (c) 3rd instalment due 30 September.

(4) Where a taxpayer has outstanding taxes payable in respect of an earlier year of tax then the right of electing to pay by instalments will not be available unless the outstanding taxes are paid prior to the date of the first instalment.

275F. ESTIMATED INCOME TAX.

(1) Subject to Subsections (2) and (3), a company that has been served with a notice under Section 275E(1) may, not later than the date specified in that notice as the date on which the amount of the 1st instalment of tax specified in that notice is due and payable, make an estimate of the amount of income tax, if any, that will be payable by the company in respect of the year of tax to which the notional tax relates

and furnish to the Commissioner General a statement in writing showing the amount so estimated (in this section referred to as the “**estimated income tax**”) and the basis on which the estimate has been made.

(2) A company is not entitled to make an estimate and furnish to the Commissioner General a statement in pursuance of Subsection (1) if the amount specified in the notice referred to in that subsection as the amount payable by the company as that notional tax was calculated by reference to an amount of notional tax ascertained under Section 275C(6).

(3) Where in relation to the notional tax in respect of a year of tax, the company has made an estimate and furnished to the Commissioner General a statement in pursuance of Subsection (1), the company is not entitled to make a further estimate and furnish to the Commissioner General a further statement in relation to any other instalment of tax in respect of that year of tax.

(4) Where a company duly furnishes to the Commissioner General in relation to an instalment of notional tax a statement under Subsection (1), the amount payable by the company as that instalment is, subject to Subsection (5), an amount (in this section and Section 275G referred to as the “**adjusted instalment of tax**”) equal to one-third of the estimated income tax.

(5) Where, having regard to the information in returns of income lodged by the company and any other information in his possession, the Commissioner General has reason to believe that the amount of income tax that will be payable by the company in respect of the year of tax is different from the estimated income tax—

- (a) the Commissioner General may estimate the amount that, in his opinion, should have been the amount estimated by the company in pursuance of Subsection (1) in respect of that year of tax; and
- (b) the amount payable by the company as the instalment of notional tax in relation to which the statement was furnished under Subsection (1) is—
 - (i) an amount equal to one-third of the amount of notional tax so estimated by the Commissioner General; or
 - (ii) the amount of the instalment of tax as specified in the notice referred to in Subsection (1),

whichever is the less.

(6) Where the amount of income tax payable by the company in respect of the year of tax exceeds the estimated notional tax and that amount of income tax has become due and payable, then additional tax, in respect of the period that commenced on the day immediately following the date specified in the notice referred to in Subsection (1) as the date on which the amount of the notional tax instalment of notional tax specified in that notice was due and payable and ended on the day on which that amount of income tax became due and payable is due and payable by the company at the rate of 20% per annum on the amount by which—

- (a) the amount payable as the notional tax as specified in the notice referred to in Subsection (1); or
- (b) an amount equal to one-third of the amount of income tax so payable by the company,

whichever is the less, exceeds—

- (c) the adjusted notional tax; or
- (d) in a case to which Subsection (5) applies—the amount ascertained in accordance with Subsection (5)(b),

whichever is the greater, but the Commissioner General may in a particular case, for reasons that he thinks sufficient, remit that additional tax or any part of that additional tax.

(7) Where—

- (a) an amount payable by the company as notional tax in respect of the year of tax was calculated under Section 275D(1) by reference to an amount of notional tax ascertained under Section 275C(4); and
- (b) the amount of income tax payable by the company in respect of the year of tax exceeds the estimated notional tax; and
- (c) the amount of income tax referred to in Paragraph (b) has become due and payable,

then additional tax, in respect of the period that commenced on the day immediately following the date specified in the notice in respect of that notional tax served on the company in accordance with Section 275E as the date on which the amount payable as that notional tax was due and payable and ended on the day on which the amount of income tax referred to in Paragraph (b) became due and payable, is due and payable by the company at the rate of 20% per annum on the amount by which—

- (d) the amount that, but for the operation of Section 275C(4) would have been payable as that notional tax under Section 275D(1); or
- (e) an amount equal to one-third of the amount of income tax referred to in Paragraph (b),

whichever is the less, exceeds—

- (f) the adjusted notional tax; or
- (g) the amount that was payable by the company as notional tax,

whichever is the greater, but the Commissioner General may, in a particular case, for reasons that he thinks sufficient, remit that additional tax or any part of that additional tax.

(8) In determining for the purposes of this section whether an amount of income tax has become due and payable by a company and, if an amount of income tax has become due and payable by a company, the day on which that amount became due and payable, the operation of Section 261 shall be disregarded.

275G. NOTICE OF ALTERATION OF AMOUNT OF INSTALMENT.

(1) Where—

- (a) a notice has been served on a company under Section 275E(1) specifying the amount payable by the company as notional tax in respect of the year of tax; and
- (b) by reason of—
 - (i) the making of a determination by the Commissioner General under Section 275D(5)(a); or
 - (ii) the operation of Section 275D(5) or (6) or of Section 275F(4) or (5),
the amount payable as the notional tax/instalment of notional tax has been reduced or the notional tax/instalment of notional tax is not payable,

the Commissioner General shall cause to be served on the company a further notice in writing specifying the reduced amount as the amount payable as the notional tax/instalment of notional tax or stating that the notional tax/instalment of notional tax is not payable, as the case may be, and, if the further notice so specifies a reduced amount, the reduced amount is payable or shall be deemed to have been payable, as the case may be, on the date specified in the first-mentioned notice.

(2) Where, by reason of the operation of Section 275F(5) the amount payable by a company as notional tax is greater than the adjusted notional tax, the notice served on the company under Subsection (1) continues to have effect but the Commissioner General shall cause to be served on the company a further notice in writing specifying—

- (a) the amount of the increase in the notional tax that became payable by reason of Section 275F(5); and
- (b) a date as the due date for payment of that amount, being a date not less than 14 days after the date of service of the last-mentioned notice,

and the amount of the increase in the notional tax so specified is, notwithstanding the provisions of Section 275E, due and payable on the date so specified.

275H. APPLICATION OF PAYMENTS OF NOTIONAL TAX.

(1) Where—

- (a) a company has been served, in accordance with Section 275E(1), with a notice specifying an amount payable as notional tax in respect of a year of tax; and
- (b) the company has been served, in accordance with Section 275G(1), with a further notice specifying a reduced amount as the amount of the notional tax; and
- (c) the company has paid, in respect of the notional tax an amount exceeding—

- (i) in a case to which Subparagraph (ii) does not apply—the reduced amount; or
- (ii) where the company has been served in accordance with Section 275G(2) with a further notice specifying an amount of an increase in the notional tax—the sum of the reduced amount of the increase,

the Commissioner General shall credit the amount of the excess in payment successively of—

- (d) any income tax due and payable by the company in respect of that year of tax; and
- (e) any amount payable by the company as any other instalment of notional tax in respect of the year of tax whether or not that amount is due for payment; and
- (f) any other income tax or any withholding tax payable by the company whether or not that income tax or withholding tax is due for payment, or any deduction of salary or wages tax payable by the company in its capacity as an employer,

and is liable to refund to the company so much of the excess as is not so credited.

(2) Where a company has paid the whole or part of its notional tax in respect of its notional tax in respect of a year of tax and—

- (a) an assessment has been made of the amount of income tax payable by the company in respect of that year of tax; or
- (b) the Commissioner General is satisfied that no income tax will be payable by the company in respect of that year of tax,

the Commissioner General shall credit the amount (in this subsection referred to as the “**residual amount**”) remaining after deducting from the amount so paid by the company any part of the amount so paid that has been, or is required to be credited or refunded in accordance with Subsection (1), in payment successively of—

- (c) any income tax payable by the company in respect of that taxable income whether or not that income tax is due for payment; and
- (d) any other income tax or any withholding tax payable by the company whether or not that income tax or withholding tax is due for payment, or any deduction of salary or wages tax payable by the company in its capacity as an employer,

and is liable to refund to the company so much of the residual amount as is not so credited.

275I. NOTICE OF NOTIONAL TAX TO BE PRIMA FACIE EVIDENCE.

(1) The production of a notice specifying an amount payable by a company, or a paper purporting to be a copy of such a notice, is *prima facie* evidence that the amount of the notional tax and all particulars relating to the notional tax are correct.

(2) In this section, a reference to an instalment of tax includes a reference to an increase in an instalment of tax.

Division 1B.***Company Provisional Tax.*****275J. APPLICATION.**

This Division does not apply to a company that derives assessable income to which Subdivisions III.10CA or III.10C or Divisions III.10A or III.10B apply or holds a special mining lease under the *Mining (Bougainville Copper Agreement) Act 1974* or the *Mining (Ok Tedi Agreement) Act 1976*.

275K. DEFINITIONS.

(1) In this Division unless the contrary intention appears “**income tax**” or “**tax**” does not include tax that a company is liable to pay in the capacity of a trustee.

(2) In Sections 261, 262, 263, 264, 268, 272, 355, 356, 359 and 360, but not in any other section, “**income tax**” or “**tax**” includes an instalment of company provisional tax payable in accordance with this Division.

(3) In Sections 263, 264, 268, 272, 355, 359 and 360, but not in any other section, “**income tax**” or “**tax**” includes additional tax payable in accordance with Section 275O.

(4) The ascertainment of the amount of any company provisional tax, or the amount of any instalment of tax, in accordance with this Division, shall not be deemed to be an assessment within the meaning of any of the provisions of this Act.

(5) All amounts of instalment of tax shall be calculated to the nearest Kina.

275L. LIABILITY TO PAY COMPANY PROVISIONAL TAX.

In any year a company is liable to pay company provisional tax for the next succeeding year of tax calculated in accordance with Section 275M.

275M. AMOUNT OF COMPANY PROVISIONAL TAX.

(1) Subject to this section, the provisional tax of a company in respect of a year of tax is an amount equal to the tax assessed in respect of the next preceding year of tax.

(2) Subject to the following provisions of this section, where the rates of income tax payable by companies for a fiscal year are different from the rates declared by Parliament for the next succeeding fiscal year, then the amount of provisional tax

calculated shall be varied in accordance with the change in company tax rates announced.

(3) Where—

- (a) no assessment has been made of the amount of income tax payable by a company in respect of the year of tax; and
- (b) no assessment has been made of the amount of income tax payable by the company in respect of the next preceding year of tax; and
- (c) the Commissioner General has reason to believe that income tax will be payable by the company in respect of the year of tax,

then, subject to Section 275N, the provisional tax in respect of the year of tax is such amount as the Commissioner General estimates to be the amount of income tax that will be so payable by the company.

275N. NOTICE OF COMPANY PROVISIONAL TAX PAYABLE.

(1) Where the Commissioner General has determined the company provisional tax for a year of tax he shall issue a notice setting out the amount of tax payable and this shall be paid in three equal instalments no later than 30 April, 31 July and 31 October in the year preceding the year of tax.

(2) Where in relation to a year of tax the Commissioner General has issued a notice setting out the company provisional tax payable, the company may at any time prior to payment of the third instalment, furnish to the Commissioner General an estimate of the company provisional tax payable for the year of tax.

(3) At any time the Commissioner General may re-estimate the company provisional tax payable for the year of tax based on an estimate as provided in Subsection (2), or any other information.

(4) After making an estimate under Subsection (3) the Commissioner General shall issue a notice setting out the amended company provisional tax and instalments due.

275O. UNDER ESTIMATION OF COMPANY PROVISIONAL TAX.

(1) Where the Commissioner General reduces the company provisional tax based on an estimate by the taxpayer and the provisional tax estimated is less than 75% of the income tax ultimately assessed for the year of tax, then additional tax may be charged in accordance with Subsection (2).

(2) Additional tax shall be assessed at 20% of the difference between the company provisional tax estimated by the taxpayer and the company provisional tax originally determined by the Commissioner General or the actual income tax payable, whichever is less.

(3) The Commissioner General may, where he believes there is sufficient reason, remit the whole or any part of the additional tax charged under Subsection (2).

275P. APPLICATION OF PAYMENTS OF PROVISIONAL TAX.

(1) Where provisional tax has been reduced in accordance with re-estimation under Section 275N(3) and the provisional tax already paid exceeds the full amount subsequently assessed, the Commissioner General shall credit the amount of the excess in payment successively of—

- (a) any income tax payable by the company in respect of the year of tax whether or not the income tax is due for payment; and
- (b) any other tax, duty or levy payable to the Commissioner General in respect of any law administered by him,

and is liable to refund to the company so much of the excess amount as is not so credited.

(2) Where an income tax assessment for a year of tax has been issued and the amount assessed is less than the provisional tax paid in respect of that year of tax, the Commissioner General shall credit the excess tax paid in payment successively of any other tax, duty or levy payable to the Commissioner General in respect of any law administered by him, and is liable to refund of the excess as is not so credited.

275Q. NOTICE OF COMPANY PROVISIONAL TAX TO BE *PRIMA FACIE* EVIDENCE.

The production of a notice specifying an amount payable by a company, purporting to be a copy of such a notice, is *prima facie* evidence that the amount of company provisional tax and all particulars relating to the provisional tax are correct.

275R. TRANSITIONAL PROVISIONS.

For the purposes of this Division, the amount of company provisional tax payable by a company shall be determined in accordance with the following schedule:—

- (a) for the 2000 year of tax, 25% of the amount determined in accordance with Section 275M;
- (b) for the 2001 year of tax, 50% of the amount determined in accordance with Section 275M;
- (c) for the 2002 year of tax, 75% of the amount determined in accordance with Section 275M;
- (d) for the 2003 and subsequent years of tax, 100% of the amount determined in accordance with Section 275M.

Division 2.**Collection of tax in respect of certain payments of business income and royalty payments.****276A. APPLICATION.**

(1) Notwithstanding anything in this Division, the provisions of this Division, to the extent that they would apply to a payment that is a business income payment by virtue of Division IX.2A, shall not apply to such payment made after 31 December 1992.

(2) Subsection (1) does not affect the application of this Division to a business income payment which is also an eligible payment by virtue of Division IX.2A, where such payment is made to a person who has not obtained a compliance certificate under Section 354L.

276. INTERPRETATION.

(1)³⁰⁷ In this Division, unless the contrary intention appears—

“annual reconciliation form”, means a document in a form approved by the Commissioner General for the purposes of Section 280(1)(f)(ii);

“business income payee declaration” means a declaration furnished in accordance with Section 279;

“business income payee” means a person who receives, or is entitled to receive, a business income payment under a contract;

“business income payment” means a payment of a kind declared by the Regulations to be a business income payment for the purposes of this Division that is made, or is liable to be made, under a contract the performance of which, in whole or in part, involves the performance of work (whether or not by the person to whom the payment is made or is liable to be made), but does not include—

- (a) a payment of salary or wages; or
- (b) a payment under a contract that is a prescribed contract for the purposes of Division III.14A; or
- (c) a payment of exempt income; or
- (d) a payment made to or by a trustee, being the trustee of the estate of a bankrupt or the liquidator of a company that is being wound up;

“contract” means a contract, whether express or implied, whether or not in writing and whether or not enforceable, or intended to be enforceable, by legal proceedings;

³⁰⁷ Section 276(1) (definition of “monthly return form”) repealed by No 42 of 1990, s30.

“eligible payment” means a business income payment or a prescribed royalty payment;

“income tax deduction certificate” means a certificate issued by a paying authority under Section 280;

³⁰⁸**“nil deduction authority”** means an authority issued by the Commissioner General under Section 289;

“payee” means business income payee or a person to whom is paid a prescribed royalty payment;

“paying authority” means a person who makes, or is liable to make, an eligible payment and—

- (a) is not a natural person; or
- (b) is a natural person and the payment is not wholly or principally of a private or domestic nature;

“prescribed royalty payment” means a royalty payment prescribed by the Regulations for the purpose of this Division;

“registration form” means a document in a form that is approved by the Commissioner General for the purposes of Section 277;

“work” includes—

- (a) services; and
- (b) the provision of materials or goods in connection with the provision of any services; and
- (c) work of a professional, technical, skilled or artistic kind.

(2) A payment made by a natural person shall be taken not to be of a private or domestic nature if it is made by the person in his capacity as trustee of a trust estate or as a member of a religious, charitable, social, cultural, recreational or other organisation or body.

277. REGISTRATION OF PAYING AUTHORITIES.

(1) Subject to Subsection (3), where a person—

- (a) is, on 1 January 1990, a paying authority in relation to an eligible payment that is liable to be made under a contract; or
- (b) after 1 January 1990, enters into a contract under which the person is liable to make an eligible payment; or
- (c) after 1 January 1990 becomes liable to make an eligible payment,

the person shall (where he is not already registered with the Commissioner General), furnish to the Commissioner General before 15 January 1990 or within 14 days after

³⁰⁸ Section 276(1) (definition of “monthly return form”) repealed by No 42 of 1990, s30.

the person enters into the contract or becomes liable to make the payment, as the case may be, a registration form.

(2) Where, before 1 January 1990 a person is of the opinion that, on that date, he will be a person to whom Subsection (1)(a) applies, he may furnish to the Commissioner General before that date a registration form.

(3) A person is not required under Subsection (1) to furnish a registration form to the Commissioner General if the person has previously furnished a registration form to the Commissioner General under that subsection or under Subsection (2).

(4) A person who refuses or fails as and when required by this section to furnish a registration form to the Commissioner General is guilty of an offence.

Penalty: ³⁰⁹A fine of not less than K500.00 and not exceeding K5,000.00.

278. CANCELLATION OF PAYING AUTHORITY REGISTRATION.

(1) The Commissioner General may—

- (a) upon an application in writing by a paying authority setting out the reasons for seeking cancellation of his registration; or
- (b) for any other reason,

cancel the registration of a paying authority and the Commissioner General shall notify the paying authority of his decision.

(2) A cancellation under Subsection (1) shall take effect from the date specified in the notice.

279³¹⁰. [REPEALED.]

280. DUTIES OF PAYING AUTHORITY.

(1) A person who is registered, or is required to be registered as a paying authority under Section 277 at any time during a month (in this subsection referred to as the “**relevant month**”) shall—

- (a) deduct the required amount from each payment; and
- (b) not later than 14 days after the end of the relevant month—
 - (i)³¹¹ *[Repealed.]*
 - (ii) pay to the Commissioner General the total amount of tax deducted from eligible payments made during that month; and
 - (iii) furnish to the Commissioner General a remittance advice stating—

³⁰⁹ Section 277 Subsection (4) amended by No. 22 of 2004, s. 63.

³¹⁰ Section 279 repealed by No 68 of 1996, s43.

³¹¹ Section 280(1)(b)(i) repealed by No 42 of 1990.

- (A) the total amount of eligible payments made during the relevant month; and
 - (B) the total amount of tax deducted from those payments or that there was no tax deducted, if that was the case; and
- (iv)³¹² [*Repealed.*]
- (c) unless within 60 days after a business income payee completes a contract with the paying authority, the paying authority and the business income payee enter into another contract, issue to that business income payee an income tax deduction certificate (in duplicate) setting out the total amount of business income payments and the amount of tax deducted (if any) from those payments, but not from amounts that have been included in an income tax deduction certificate previously issued to that business income payee; and
 - (d) not later than 21 January in each year issue to each payee an income tax deduction certificate (in duplicate) setting out the total of the amount of eligible payments made by the paying authority to the payee during the year that ended on 31 December preceding and the total amount of tax deducted (if any) from those payments during the year that ended on 31 December preceding, but not for the amounts that have been included in an income tax deduction certificate previously issued to that payee; and
 - (e) upon having furnished to him, by a business income payee, an official copy of a nil deduction authority issued to that payee under Section 289 where the official copy is so furnished during the period specified in the authority, issue to that business income payee an income tax deduction certificate (in duplicate) setting out the total of the amounts of business income payments made by the paying authority to the payee and the total amount of tax deducted (if any) from those payments, but not for amounts that have been included in an income tax deduction certificate previously issued to that payee; and
 - (f) not later than 21 February in each year, furnish to the Commissioner General—
 - (i) a copy of each income tax deduction certificate issued by him to each payee in respect of eligible payments made by him and the total amount of tax deducted from those payments by him as a paying authority during the 12 months that ended 31 December in the preceding year; and
 - (ii) an annual reconciliation form signed by the paying authority reconciling the amounts shown on the copies of the income tax deduction certificates with the tax deducted from the payments.

³¹² Section 280(1)(b)(iv) repealed by No 8 of 1996, s44.

(2) A paying authority to whom the Commissioner General has supplied any income tax deduction certificate forms in respect of a year of income or has allotted any serial numbers to be marked on income tax deduction certificate forms in respect of a year of income shall, not later than 21 February next following the end of that year, forward to the Commissioner General any of those forms, and any forms marked with any of those numbers, that have not been issued as income tax deduction certificates.

(3) The Commissioner General may, by notice in writing served on a paying authority, vary, in relation to that paying authority, in such instances and to such extent as he thinks fit, any of the requirements of Subsection (1), and that paying authority shall comply with those requirements as so varied.

(4) Where, by reason of a notice given under Subsection (3) an income tax deduction certificate is not required to be issued in respect of a deduction made by a paying authority, the Commissioner General shall apply the provisions of Section 282 as if an income tax deduction certificate in respect of the deduction has been received by him.

(5) Where the Commissioner General has credited in payment of tax, or made a payment in respect of, an amount shown in an income tax deduction certificate that is in excess of the amount that the paying authority by whom the certificate was issued has deducted from the eligible payments made to the payee to whom the certificate was issued in respect of the period specified in the certificate—

- (a) the paying authority shall be liable to pay to the Commissioner General the amount of the excess; and
- (b) the paying authority may sue for and recover from the payee as a debt due to him any amount paid or recovered by the Commissioner General in pursuance of this subsection.

(6) A paying authority who contravenes, or fails to comply with, a provision of this section that is applicable to him is guilty of an offence.

(7)^{313 314}The penalty for a failure to comply with any one of the requirements of Subsection (1), or with the requirements of that subsection as varied in pursuance of Subsection (3), is a fine of not less than K500.00 and not more than K5,000.00 or imprisonment for a term not exceeding six months, and the penalty for any other offence under this Section is a fine of not less than K500.00 and not more than K5,000.00.

(8) Where a person is convicted of an offence to which Subsection (1)(a) applies in relation to an amount required to be deducted from a payment, the court may, in addition to imposing a penalty under Subsection (7) in respect of the offence, order the person to pay to the Commissioner General as a penalty a sum not exceeding the amount required to be deducted.

(9) In Subsection (1), “**required amount**” means—

³¹³ Section 280 Subsection (7) amended by No. 22 of 2004, s. 64.

³¹⁴ Section 280 Subsection (7) amended by No. 22 of 2004, s. 64.

- (a) in the case of a business income payment 10% of the gross amount of the payment; or
- (b) in the case of a payment of a prescribed royalty payment—5% of the gross amount of the payment.

281. PAYEE TO FORWARD INCOME TAX DEDUCTION CERTIFICATE, ETC.

A payee shall forward any income tax deduction certificate issued to him in respect of deductions made in any year of income from his eligible income to the Commissioner General with the return that he is required under Section 223 to furnish in respect of that year of income.

282. CREDITS IN RESPECT OF DEDUCTIONS.

(1) Where—

- (a) the Commissioner General receives an income tax deduction certificate or income tax deduction certificates in relation to deductions made in a year of income from payments to a person, not being a partnership; and
- (b) an assessment has been made of the tax payable, or the Commissioner General is satisfied that no tax is payable, by the person in relation to the year of income,

the person is entitled to a credit of an amount equal to the amount of the deductions recorded in the income tax deduction certificate or income tax deduction certificates.

(2) Where—

- (a) the Commissioner General receives an income tax deduction certificate in relation to deductions made in a year of income from payments to a partnership; and
- (b) the return of income of the partnership in relation to the year of income has been furnished to the Commissioner General; and
- (c) an assessment has been made of the tax payable, or the Commissioner General is satisfied that no tax is payable, in relation to the year of income by a partner in the partnership whose individual interest in the net income or partnership loss of the partnership is wholly or partly attributable to the payments,

the partner is entitled to a credit of an amount equal to so much of the sum of the deductions as bears to that sum the same proportion as so much of that individual interest as is attributable to the payments bears to so much of the net income or partnership loss as is attributable to the payments.

(3) Where the credit to which a person is entitled under Subsection (1) or (2) exceeds the total tax payable by him under the provisions of this Act, he shall be entitled to a refund of the excess.

(4) Subsections (1) and (2) do not apply where the Commissioner General is satisfied that an income tax deduction certificate received by him records, as a deduction from a payment, an amount that was not deducted from a payment.

(5) Where, in relation to a deduction that the Commissioner General is satisfied was made from a payment—

- (a) an income tax deduction certificate has not been received by the Commissioner General; or
- (b) the Commissioner General is satisfied that particulars contained in an income tax deduction certificate received by him in relation to the deduction (including particulars relating to the payee in relation to the payment from which the deduction was made) are incorrect,

Subsections (1), (2) and (3) apply as if the Commissioner General had received an income tax deduction certificate in relation to the deduction that recorded particulars in relation to the deduction that the Commissioner General is satisfied are correct.

(6) Where a person has become entitled to a credit under Subsection (5) in relation to an amount deducted from a payment in a case to which either Subsection (5)(a) or (b) applies, the person is not entitled to receive any further credit on receipt by the Commissioner General of an income tax deduction certificate in relation to that amount.

(7) If the amount credited by the Commissioner General in pursuance of the preceding provisions of this section is less than the amount of tax payable by the payee under any laws administered by the Commissioner General, the Commissioner General may credit in payment or part payment of that tax an amount equal to the amount of any deductions shown in any other income tax deduction certificate received by him from the payee if he is satisfied that it is desirable to do so by reason of special circumstances and that the amounts of the deductions, not so credited, that have been, or will have been, made from a payment to the payee before the close of the year of income to which that other income deduction certificate relates will be sufficient to pay the tax payable by the payee in respect of that year of income.

(8) If the amount credited by the Commissioner General in pursuance of the preceding provisions of this section is less than the amount of tax payable by the payee—

- (a) the Commissioner General shall apply the amount so credited in payment, so far as that amount extends, of such tax payable by the payee as the Commissioner General determines and that amount shall be deemed to have been paid by the payee in satisfaction, to that extent, of that tax, and not otherwise; and
- (b) the payee is liable or continues to be liable (as the case may be) to pay the remainder of the tax payable by the payee on the date or dates specified in the notice or notices of assessment.

(9) Where in pursuance of Subsection (7), the Commissioner General credits in payment or part payment of any tax payable by the payee part only of the amount of

any deductions shown in an income tax deduction certificate, he shall issue to the payee an interim receipt showing an amount equal to so much of the amount shown in the certificate as is not so credited but, where the amount that would be shown in an interim receipt is less than K2.00 the Commissioner General shall, instead of issuing an interim receipt, pay that amount to the payee.

(10) The Commissioner General shall deface all income tax deduction certificates in respect of which he credits an amount, makes a payment or issues an interim receipt and shall retain them for such period as he thinks fit, after which he shall cause them to be destroyed.

(11) If the Commissioner General has reason to believe that an income tax deduction certificate received by him for the purposes of this section is incorrect in any particular, he may retain the certificate for such period as he thinks fit and shall not deal with the certificate as required by the preceding provisions of this section until he is satisfied as to the correctness of that certificate.

(12) Notwithstanding anything contained in this Act, where a person has forwarded to the Commissioner General an income tax deduction certificate issued to him in respect of deductions made in a year from his eligible payments, and the difference between the available deductions and the income tax that would, but for this subsection, be payable by that person in respect of the taxable income derived by him in that year is not more than K2.00, the income tax payable by that person in respect of that taxable income is an amount equal to the available deductions.

(13) Subsection (12) does not apply—

- (a) in relation to a person who is liable to pay provisional tax in respect of his income of the year immediately succeeding the year referred to in that subsection; or
- (b) in any case in which the amount of income tax that would, but for this section, be payable is K2.00 and the available deductions exceed K2.00.

(14) In this section, “**the available deductions**” means the amount of the deductions specified in an income tax deduction certificate referred to in Subsection (1).

(15) Subject to this Division, the provisions of this Division apply in relation to an interim receipt as if it were an income tax deduction certificate issued to the payee in accordance with this Division for an amount of deductions equal to the amount for which the receipt is issued and made from the eligible payment made to the payee in the year of income specified in the receipt.

(16) Except in accordance with the provisions of this Division or with the consent of the Commissioner General, a person shall not sell or otherwise dispose of, or purchase or otherwise acquire, an interim receipt.

Penalty: A fine not exceeding K1,000.00.

(17) If the Commissioner General is satisfied that an income tax deduction certificate has been stolen, lost or destroyed, and is satisfied as to the amount of the deductions that were shown in that certificate, the Commissioner General shall

apply the provisions of this section in the same manner as if the certificate had been received by the Commissioner General.

(18) Where the Commissioner General has applied the provisions of Subsection (17) in respect of an income tax deduction certificate, a person is not entitled to receive a further benefit on production of that certificate, and a person who subsequently has that certificate in his possession shall forthwith forward it to the Commissioner General together with a statement of the circumstances of his possession.

Penalty: A fine not exceeding K200.00.

(19) The Commissioner General, or an officer authorized in that behalf by the Commissioner General, may require a person to deliver to him an income tax deduction certificate that is in the person's possession, and a person so required shall deliver the certificate to the Commissioner General or authorized person accordingly.

Penalty: A fine not exceeding K2,000.00.

(20) If the Commissioner General suspects that an income tax deduction certificate received by him has been obtained in a manner not authorized by this Division, he may retain that certificate for such period as he thinks fit and shall not grant a benefit in respect of that certificate unless and until he is satisfied as to the identity of the person who is entitled to receive that benefit.

283. FAILURE TO MAKE DEDUCTIONS FROM ELIGIBLE PAYMENTS.

(1) Where a paying authority refuses or fails, at the time of making a payment to a payee, to deduct from the payment the amount required to be deducted under this Division, the paying authority is liable to pay to the Commissioner General by way of penalty—

- (a) an amount (in this subsection referred to as the “**undeducted amount**”) equal to the amount that the paying authority failed to deduct; and
- (b) an amount equal to 20% per annum of so much of the undeducted amount as remains unpaid, computed from the date on which the paying authority, had the paying authority deducted the amount required to be deducted under this Division, would have been required to pay the amount of the deduction to the Commissioner General.

(2) The paying authority may sue for and recover from the payee as a debt due to him any amount referred to in Subsection (1)(a) paid to or recovered by the Commissioner General.

284. FAILURE TO PAY AMOUNTS DEDUCTED TO COMMISSIONER GENERAL.

(1) Where an amount (in this subsection referred to as the “**principal amount**”) payable to the Commissioner General by a paying authority by virtue of

Section 283 or Section 280(1) remains unpaid after the expiration of the period within which it is required to be paid—

- (a) the principal amount continues to be payable by the paying authority to the Commissioner General; and
- (b) the paying authority is liable to pay to the Commissioner General additional tax by way of penalty being—
 - (i) an amount (in this subparagraph referred to as the “**relevant penalty amount**”) equal to 20% of the principal amount; and
 - (ii) an amount at the rate of 20% per annum on the sum of so much of the principal amount as remains unpaid and so much of the “relevant penalty amount” as remains unpaid, computed from the expiration of that period.

(2) Where—

- (a) an amount (in this section referred to as the “**late payment penalty**”) is payable by a person under Subsection (1)(b)(ii) or Section 283 in relation to another amount that has not been paid (in this section referred to as the “**principal amount**”); and
- (b) the Commissioner General is satisfied that there are special circumstances by reason of which it would be fair and reasonable to remit the late payment penalty or part of the late payment penalty,

the Commissioner General may remit the late payment penalty or part of the late payment penalty.

(3) The Commissioner General may, in any case, for reasons that he thinks sufficient, remit the whole or any part of any amount payable by a person under this section or Section 283.

285. PAYING AUTHORITY NOT ACCOUNTING FOR DEDUCTIONS.

(1) Where a paying authority makes a deduction for the purposes of this Division or purporting to be for those purposes, from the eligible payments paid to a payee and fails to deal with the amount so deducted in the manner required by this Division, he is deemed to be a trustee for such deductions and is liable to pay that amount to the Commissioner General.

(2) Where the property of the paying authority has become vested in or where the control of such property has passed to a trustee, then the trustee is liable to pay the amount referred to in Subsection (1) to the Commissioner General.

(3) Notwithstanding anything contained in any other Act, an amount payable to the Commissioner General by a trustee in pursuance of this section has priority over all other debts (other than amounts payable under Sections 299K(1) and 311K(1)), whether preferential, secured or unsecured.

286. PERSON DISCHARGED FROM LIABILITY.

Where a person has made a deduction from an eligible payment and that deduction was made, or purports to have been made, for the purposes of Section 280, the person is, by force of this section, discharged from all liability to pay or account for the deduction to any person other than the Commissioner General.

287. RECOVERY OF AMOUNTS BY COMMISSIONER GENERAL.

(1) An amount payable to the Commissioner General under this Division is a debt due to the State and payable to the Commissioner General and—

- (a) that amount may be sued for and recovered in a court of competent jurisdiction by the Commissioner General suing in his official name; or
- (b) a court before which proceedings are taken against that person for an offence against a provision of this Division may order that person to pay that amount to the Commissioner General.

(2) Where—

- (a) two or more amounts payable to the Commissioner General by a person would, but for this subsection, be debts due to the State under Subsection (1); and
- (b) an amount (in this subsection referred to as the “**relevant payment**”) is paid to the Commissioner General in respect of one or more of those amounts; and
- (c) the sum of the amounts payable exceeds the relevant payment,

the Commissioner General may, notwithstanding any direction to the contrary by or on behalf of the person by whom the amounts are payable or the person making the relevant payment, apply the relevant payment in partial discharge of the sum of the amounts payable and recover as a debt due to the State the amount by which the sum of the amounts payable exceeds the relevant payment.

(3) In an action against a person for the recovery of an amount payable to the Commissioner General under the provisions of this Division, a certificate in writing signed by the Commissioner General, an Assistant Commissioner or a prescribed delegate of the Commissioner General, certifying that—

- (a) the person named in the certificate is, or was on the date specified in the certificate, a paying authority; and
- (b) the sum specified in the certificate was, at the date of the certificate, due by that person to the State in respect of amounts payable to the Commissioner General under the provisions of this Division,

is evidence of the matters stated in the certificate.

288. MONEYS RECEIVED UNDER THIS DIVISION FORM PART OF PUBLIC REVENUES, ETC.

All moneys received by the Commissioner General in pursuance of this Division form part of the public revenue of Papua New Guinea and there is payable out of the public revenue such amounts as the Commissioner General becomes liable to pay in accordance with the provisions of this Division.

289. NIL DEDUCTION AUTHORITY.

(1) Subject to this section, on application in writing by a business income payee in a form approved by the Commissioner General for the purposes of this section, the Commissioner General may issue a nil deduction authority and such official copies of the nil deduction authority as the Commissioner General considers is warranted, to the person in relation to a specified period.

(2) Subject to Subsection (3), the Commissioner General shall not issue a nil deduction authority to a person (in this subsection referred to as the **“applicant”**) unless the Commissioner General is satisfied—

- (a) that the applicant has, for a period (in this subsection referred to as the **“relevant period”**) of four years immediately preceding the date of the application, been regularly engaged in carrying on a business in Papua New Guinea; and
- (b) that the applicant has for each business he has carried on during the relevant period—
 - (i) maintained such accounting and taxation records as correctly record and explain the transactions and financial position of the business including a statement of income and expenditure over the relevant period and a statement of assets and liabilities; and
 - (ii) conducted the business at or from established premises that were advertised to the public as being premises from which the business was carried on; and
 - (iii) conducted all financial transactions relating to the business through a bank account or bank accounts that was or were separate from any private or domestic account maintained by the applicant; and
- (c) that during that relevant period the applicant has satisfactorily complied with his obligations under all Acts administered by the Commissioner General; and
- (d) that the circumstances referred to in Subparagraphs (ii) and (iii) will not change after the nil deduction authority is issued.

(3) Where the Commissioner General, having regard to—

- (a) the purposes of this Division; and

- (b) the special circumstances (if any) that exist or existed in relation to the person; and
- (c) such other matters (if any) as he thinks fit,

is of the opinion that it would be unreasonable to issue, or refuse to issue, a nil deduction authority to a person, the Commissioner General may refuse to issue or issue, as the case may be, a nil deduction authority to the person.

(4) Subject to Section 290, a nil deduction authority remains in force during the period specified in the authority as the period during which the authority is to remain in force.

(5) Where—

- (a) if a payment is to be made to a business income payee in person—
 - (i) the payment is to be made during a period that the business income payee is the holder of a nil deduction authority and the nil deduction authority has not been revoked; and
 - (ii) the business income payee has produced to the paying authority an official copy of a nil deduction authority issued to the business income payee and applicable to the time when the payment is to be made; and
 - (iii) the paying authority has no reasonable grounds for believing that the nil deduction authority has been revoked; or
- (b) if the payment is not to be made to the business income payee in person—
 - (i) the payment is to be made during a period that the business income payee has declared, in a business income payee declaration to be a period during which he is a holder of a nil deduction authority and the nil deduction authority has not been revoked; and
 - (ii) the paying authority has no reasonable grounds for believing that the nil deduction authority has been revoked,

the paying authority shall not make any deduction from the payment under Section 280.

(6) Where—

- (a) a person has furnished an official copy of a nil deduction authority to a paying authority or has falsely declared himself to be the holder of a nil deduction authority under Subsection 5(b)(i); and
- (b) after the authority is furnished or the declaration is made, the person received notification of the revocation of the nil deduction authority; and
- (c) after the receipt of the notification, the person received a payment from the paying authority; and

- (d) the person did not, before receipt of the payment, notify the paying authority of the revocation of the nil deduction authority,

the person is guilty of an offence.

Penalty: ³¹⁵A fine of not less than K500.00 and not exceeding K5,000.00.

290. REVOCATION OF CERTIFICATES.

(1) The Commissioner General may, at any time, revoke a nil deduction authority, and where he does so, he shall, in writing, notify the person or persons to whom the authority was issued of the revocation.

(2) A person who is notified by the Commissioner General under Subsection (1) of the revocation of an authority shall, within 14 days after he receives the notification, return the authority and all official copies of such authority in his possession to the Commissioner General.

Penalty: ³¹⁶A fine of not less than K500.00 and not exceeding K5,000.00.

291. NOTIFICATION AND REVIEW OF DECISIONS.

(1) Where the Commissioner General makes a decision on an application under Section 289, the Commissioner General shall give notice in writing of his decision to the applicant.

(2) Where a person who has been notified of a decision of the Commissioner General made under this Division is dissatisfied with the decision, the person may, within 60 days after service on the person of notice of the decision of the Commissioner General, lodge with the Commissioner General an objection in writing against the decision stating fully and in detail the grounds on which the person relies.

(3) The provisions of Division V.2 (other than Section 245) apply in relation to an objection made under Subsection (2) in like manner as those provisions apply in relation to an objection against an assessment.

292. OFFENCES.

A person who—

- (a) endeavours to obtain, for his own advantage or benefit, credit with respect to, or payment of, the amount of a deduction made from a payment made to another person; or
- (b) presents, for the purpose of obtaining credit, payment or other benefit, an income tax deduction certificate, or document purporting to be an income tax deduction certificate other than an income tax deduction certificate form duly delivered to him; or

³¹⁵ Section 289 Subsection (6) amended by No. 22 of 2004, s. 65.

³¹⁶ Section 290 Subsection (2) amended by No. 22 of 2004, s. 66.

- (c) alters a nil deduction authority or produces to a paying authority a nil deduction authority or an official copy of a nil deduction authority that has been altered without the authority of the Commissioner General; or
- (d) without lawful excuse, has in his possession a forgery or colourable imitation of a nil deduction authority; or
- (e) falsely pretends to be the person named in a nil deduction authority; or
- (f) by the production of a document other than a nil deduction authority issued to him that is for the time being in force, causes an eligible paying authority to refrain from making a deduction from a business income payment or to make a deduction from a business income payment of an amount less than the amount required by this Division; or
- (g) makes, for the purposes of this Division or the Regulations prescribing matters in relation to this Division, a declaration that is false or misleading in a particular,

is guilty of an offence.

Penalty: ³¹⁷A fine of not less than K1,000.00 and not exceeding K50,000.00 or both.

293. JOINDER OF CHARGES UNDER THIS DIVISION.

(1) Charges against the same person for any number of offences against this Division may be joined in one complaint if those charges are founded on the same facts or forms, or are part of, a series of offences of the same or similar character.

(2) Where more than one charge is included in the same complaint in pursuance of Subsection (1), particulars of each offence charged shall be set out in a separate paragraph.

(3) All charges so joined shall be tried together unless the court considers it just that any charge should be tried separately and makes an order to that effect.

(4) If a person is found guilty of more than one offence, the court may, if it thinks fit, impose one penalty in respect of all offences of which the person has been found guilty, but that penalty shall not exceed the sum of the maximum penalties that could be imposed if penalties were imposed for each offence separately.

294. POWER OF COMMISSIONER GENERAL TO OBTAIN INFORMATION.

Section 366 applies, for the purposes of this Division, as if the reference in Subsection (1)(b) of that section to a person's income or assessment were a reference to a matter relevant to the administration or operation of this Division.

³¹⁷ Section 292 Amended by No. 22 of 2004, s. 67.

295. DECLARATIONS.

Any form that is approved by the Commissioner General for the purposes of this Division may be required to contain a declaration by the person using the form.

296. SPECIAL PROVISIONS RELATING TO PARTNERSHIPS.

(1) Subject to this section, this Division applies in relation to the making and receipt of payments by a partnership as if the partnership were a person.

(2) Where, but for this subsection, an obligation would be imposed on a partnership by virtue of the operation of Subsection (1), the obligation may be discharged by any of the partners.

(3) Where, by virtue of the operation of Subsection (1), an amount is payable under this Division by a partnership, the partners are jointly and severally liable to pay that amount.

(4) Where, by virtue of the operation of Subsection (1), an offence against this Division is deemed to have been committed by a partnership, that offence shall be deemed to have been committed by each of the partners.

297. PROSECUTIONS.

A prosecution for an offence against any of the provisions of this Division may be commenced at any time.

298³¹⁸. [REPEALED.]***Division 2A.******Collection of Salary or Wages Tax.*****299A. NON-APPLICATION AND TRANSITIONAL PROVISION.**

(1) This Division does not apply in respect of salary or wages derived prior to 1 January 1980.

(2) Where, after 1 January 1993, a taxpayer receives or is entitled to receive from an employer a lump sum payment being back payment of salary or wages (and not being income or payment to which Section 1(2) of the *Income Tax (Salary or Wages Tax) (Rates) Act 1979* applies) which is calculated by reference to a period in excess of one fortnight in relation to an adjustment of salary or wages for a period which commenced prior to 1 January 1993, the employee is deemed to be entitled to receive such adjusted salary or wages in respect of each fortnight or part thereof in the period to which the payment relates, but not exceeding a period of 26 fortnights preceding the date on which the payment is received.

(3) The employer shall make a deduction of salary or wages tax from a payment referred to in Subsection (2) and, for the purposes of calculating additional

³¹⁸ Section 298 repealed by No 52 of 1960, s31.

liability to salary or wages tax, shall deduct from the payment the aggregate of the increase in liability for each fortnight or part thereof salary or wages tax at the rate declared by the *Income Tax (Salary or Wages Tax) (Rates) Act 1979* for the period to which the payment relates calculated in accordance with the following formula:—

$$A - B = C$$

where—

- “A” = salary or wages tax in respect of the sum of the previous income per fortnight plus additional salary or wages income so deemed by virtue of Subsection (2); and
- “B” = salary or wages tax in respect of the previous salary or wages income; and
- “C” = increase in liability for salary or wages tax.

(3A) Notwithstanding the provisions of Section 299D(2), where a taxpayer receives or is entitled to receive from an employer a lump sum payment, and the payment relates to period of service prior to a change in the rate of tax declared under the *Income Tax (Salary or Wages Tax) (Rates) Act 1979*, the employer shall make a deduction of salary or wages tax from the aggregate of the increase in liability for each fortnight or part thereof at the rate declared for the period to which the payment relates calculated in accordance with the following formula:—

$$A - B = C$$

where—

- “A” = salary or wages tax in respect of the sum of the previous income per fortnight plus additional salary or wages income; and
- “B” = salary or wages tax in respect of the previous salary or wages income; and
- “C” = increase in liability for salary or wages tax,

provided that no change in tax rate shall be taken into account if the change occurred more than six years prior to the date of payment, in which case the current rate of tax shall apply to the part of the payment to which a disregarded rate would have applied.

(4) Where, before 1 January 1993, a taxpayer receives or is entitled to receive from an employer a lump sum payment being advance-payment of salary or wages (and not being income or payment to which Section 1(2) of the *Income Tax (Salary or Wages Tax) (Rates) Act 1979* applies) which is calculated by reference to a period in excess of one fortnight commencing on a date prior to 1 January 1993 and continuing beyond 1 January 1993, the employee is deemed to be entitled to receive such salary or wages in respect of each fortnight or part thereof in the period to which the payment relates and the employer shall deduct salary or wages tax at the rate declared by the *Income Tax (Salary or Wages Tax) (Rates) Act 1979* for the period to which the payment relates.

299B. OBJECT OF DIVISION.

The object of this Division is to facilitate the collection of salary or wages tax and this Division shall be construed and administered accordingly.

299C. INTERPRETATION.

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

“deduction” means a deduction under Section 299D from the salary or wages of an employee;

“employer” means a person who pays or is liable to pay any salary or wages, and includes—

- (a) in the case of an unincorporated body of persons other than a partnership—the manager or other principal of that body; and
- (b) in the case of a partnership—each partner, and, except in relation to the imposition of a penalty, also includes the State, an authority of the State or a public authority constituted by or under an Act, a Provincial Government, a Local-level Government, a local government body, or a local level government body by whatever name known established by a provincial law;
- (c) in the case of the payment of a capital amount of any allowance, gratuity or compensation paid in a lump sum under Section 46B, the payer of that amount;

“group employer” means a person who is registered as a group employer under Section 299G and includes, unless the contrary intention appears, a person who is required to be registered pursuant to that section;

“statement of earnings” means a certificate in a form authorized by the Commissioner General and issued by a group employer, or by or on behalf of an authority with which an arrangement has been entered into in pursuance of Section 299M, to an employee in accordance with this Division in respect of the salary or wages of the employee.

(2) For the purposes of this Division and by virtue of the rate declared by the *Income Tax (Salary or Wages Tax) (Rates) Act 1979* in respect of payments made under Section 46B or Part III.2A, Section 299D(2) and (3) do not have effect with regard to such payments.

299D. DEDUCTION BY EMPLOYER FROM SALARY OR WAGES.

(1) For the purposes of enabling the collection of salary or wages tax from employees, where an employee receives or is entitled to receive from an employer in respect of a fortnight, or part of a fortnight, salary or wages, the employer shall make a deduction from the salary or wages at such rate as is declared by Act.

Penalty: ³¹⁹A fine of not less than K500.00 and not exceeding K5,000.00.

(2) For the purposes of this section, where an employee receives from an employer salary or wages, the employee, subject to Section 299C(2), shall—

- (a) where the salary or wages is or are paid in respect of piece work performed by the employee, or in respect of services rendered under a contract that is wholly or substantially for the labour of the employee—be deemed to be entitled to receive that salary or those wages in respect of the period of time from the commencement of the performance of the work or services until the completion of the work or services; and
- (b) where the salary or wages is or are paid in respect of any other service performed or rendered but not in respect of a period of time—be deemed to be entitled to receive that salary or those wages in respect of the period during which the service was performed, but not to exceed a period of 26 fortnights preceding the date on which the payment is received; and
- (c) if he is entitled, or deemed to be entitled, to receive the salary or wages in respect of a period of time in excess of one fortnight—be deemed to be entitled to receive, in respect of each fortnight or part of a fortnight in that period, an amount of that salary or those wages ascertained by dividing the salary or wages by the number of days in the period and multiplying the resultant amount—
 - (i) in the case of each fortnight—by 14; and
 - (ii) in the case of a part of a fortnight—by the number of days in the part of a fortnight.

(3) Subject to Section 299C(2), where salary or wages for, or deemed to be received in respect of, a fortnight or part of a fortnight is or are paid in two or more separate sums, all sums so paid shall, for the purpose of computing the amount of the deduction under this section, be deemed as being paid on the last day of a fortnightly pay period and aggregated with any other payment made within that period.

(4) Subject to Section 65E, where an employee receives from his employer, in addition to his salary or wages, meals, sustenance or the use of premises or quarters or the use of a motor vehicle as part consideration for his services, he shall for the purpose of computing the amounts of deductions under this section be deemed to receive as salary or wages in addition to any money actually paid to him—

- (a) in respect of each fortnight or part of a fortnight during which he receives the meals or sustenance—an amount calculated at a rate determined by the Commissioner General in respect of that employee; and
- (b) in respect of each fortnight or part of a fortnight during which he receives the use of premises or quarters or the use of a motor vehicle—an

³¹⁹ Section 299D Subsection (1) amended by No. 22 of 2004, s. 68.

amount calculated at a rate determined by the Commissioner General in respect of that employee.

(5)³²⁰ [*Repealed.*]

(6) Where an employee derives a benefit by way of paid leave fares to which Section 65E(i)(e) applies and such leave fares are not exempt under Section 40AA, the actual cost of those leave fares shall be deemed to be salary or wages paid in respect of the period during which the leave fares accrued but not to exceed a period of 26 fortnights preceding the date on which the leave fare is paid.

299DA. CALCULATION OF DEDUCTION FOR PART OF A FORTNIGHT.

(1) This section applies where salary or wages tax deductions are required to be calculated for a part of a fortnight (being a period of less than 11 days) by reason of a person commencing or ceasing to be employed in Papua New Guinea by a person.

(2) In this section:—

“**notional fortnightly payment**” means the amount ascertained in accordance with the following formula –

$$\frac{S \times 11}{N}$$

where –

“S” equals salary or wages received in relation to the part of a fortnight; and

“N” equals the number of days worked during the part of a fortnight.

(3) The salary or wages tax to be deducted in relation to the part of a fortnight shall be such amount as bears the same proportion to the notional fortnightly deduction as N bears to 11.

299E. VARIATION OF DEDUCTIONS.

(1) Notwithstanding anything contained in Section 299D, the Commissioner General may vary the amount or amounts of salary or wages tax to be deducted from the salary or wages of an employee or class of employees for the purpose of meeting the special circumstances of any case or class of cases.

(2) For the purposes of Section 234, the Commissioner General may vary the amount to be deducted from the salary or wages of an employee.

(3) For the purposes of Subsection (1), where an employee derives or receives salary or wages income being an allowance or in the nature of an allowance, and the Commissioner General is satisfied that the allowance is derived or received by way of

³²⁰ Section 299D(5) repealed by No 34 of 1992, s32(b).

reimbursement by the employer to the employee for expenditure that is or is likely to be incurred in the course of deriving salary or wages and, but for Section 66A, that expenditure would be or would have been an allowable deduction, the Commissioner General may vary the amount of salary or wages tax to be deducted from the allowance, provided that, by virtue of the allowance of an annual deduction of K200.00 in respect of salary or wages income in the *Income Tax (Salary or Wages Tax) (Rates) Act 1979*, the amount so varied shall not further allow that K200.00 or any part thereof.

(3A)³²¹ [*Repealed.*]

(4) Where the Commissioner General so varies the amounts to be deducted, he shall notify the employer of the employee or class of employees, in writing, of the variation, and the employer shall thereafter make deductions of salary or wages tax from the salary or wages payable to the employee or employees in accordance with the amount so notified.

Penalty: ³²²A fine of not less than K500.00 and not exceeding K5,000.00.

299F. CERTIFICATE OF EXEMPTION.

(1) The Commissioner General shall issue to an employee whose salary or wages is exempt from tax by virtue of Division III.1 a certificate that no deduction need, during the period specified in that certificate, be made from the salary or wages of that employee.

(2) An employee who receives a certificate under Subsection (1) shall furnish the certificate to his employer who shall hold such certificate as an authority for the non-application of the salary or wages tax provisions.

(3) The Commissioner General may, at any time, cancel a certificate issued under this section, and, within 21 days after the Commissioner General has notified him of any such cancellation, the person named in the certificate shall return the certificate to the Commissioner General.

Penalty: ³²³A fine of not less than K500.00 and not exceeding K5,000.00.

(4) A person who—

- (a) alters a certificate issued under this section or exhibits to an employer any such certificate that has been altered without the authority of the Commissioner General; or
- (b) without lawful excuse, proof of which lies upon him has in his possession a colourable imitation of any such certificate; or
- (c) falsely pretends to be the person named in any such certificate; or

³²¹ Section 299E(3A) repealed by No 8 of 1994, s4.

³²² Section 299E Subsection (4) amended by No. 22 of 2004, s. 69.

³²³ Section 299F Subsection (3) amended by No. 22 of 2004, s. 70.

- (d) causes an employer to refrain from making a deduction from his salary or wages by the production of a document other than a certificate issued to him under this section and for the time being in force,

is guilty of an offence.

Penalty: ³²⁴A fine of not less than K1,000.00 and not exceeding K50,000.00.

299G. GROUP EMPLOYERS.

(1) An employer who is not already registered as a group employer and who commences to carry on a business or becomes an employer and who, in consequence of commencing to carry on a business or becoming an employer, has in his employment one or more employees from whose salary or wages he is required to make deductions shall, within seven days after commencing to carry on the business or after becoming an employer, as the case may be, apply to the Commissioner General, in the form approved by the Commissioner General, for registration as a group employer.

(2) The Commissioner General may register as a group employer any employer, or any person acting on behalf of two or more employers, whether or not he is required by this section to apply for registration as a group employer, and shall notify the group employer in writing that he has been so registered, or that his registration has been cancelled as the case may be.

(3) An employer registered as a group employer shall remain registered as a group employer until notified by the Commissioner General that his registration has been cancelled.

(4) A group employer shall—

(a) not later than the seventh day of each month—

- (i) furnish to the Commissioner General a statement of the total number of employees from whose salary or wages he was required to make deductions or that there were no such employees if that was the case; and
- (ii) furnish to the Commissioner General a statement of the total salary or wages paid to employees in the preceding month; and
- (iii) furnish to the Commissioner General a statement of the total amount of deductions made from employees' salary or wages in the preceding month; and
- (iv) pay to the Commissioner General the total amount of deductions made in the preceding month; and

(b) not later than 14 January in each year, issue to each employee a statement of earnings setting out the total of the amounts of salary or wages of that employee during the period of twelve months ended on 31

³²⁴ Section 299F Subsection (4) amended by No. 22 of 2004, s. 70.

December in the preceding year, other than amounts that have been included in a statement of earnings previously issued to that employee; and

- (c) within seven days after an employee ceases to be employed by him, issue to that employee a statement of earnings setting out the total of the salary or wages of that employee, other than amounts that have been included in a statement of earnings previously issued to that employee; and
- (d) upon production to him by an employee of a certificate issued to that employee in pursuance of Section 299F, where the certificate is so produced during the period specified in the certificate, issue to that employee a statement of earnings setting out the total of the salary or wages of that employee, other than amounts that have been included in a statement of earnings previously issued to that employee; and
- (e) at the time of issuing to an employee a statement of earnings, issue to that employee a copy of that statement; and
- (f) not later than 14 February in each year, furnish to the Commissioner General—
 - (i) a copy of each statement of earnings issued by him to each employee in respect of salary or wages paid by him and the total of the amount of deductions made by him as a group employer during the period of 12 months that ended 31 December in the preceding year; and
 - (ii) a statement in a form approved by the Commissioner General signed by the group employer, reconciling the total of the amounts of the deductions shown in each of those copies of statements of earnings with the total of the amounts paid to the Commissioner General in respect of those deductions; and
- (g) not later than 14 February in each year, furnish to the Commissioner General a statement in a form approved by the Commissioner General signed by the group employer stating the amount of motor vehicle excess benefit tax paid under Division III.14E.

(5) A group employer to whom the Commissioner General has supplied any statement of earnings forms in respect of a year of income or has allotted any serial numbers to be marked on statement of earnings forms in respect of a year of income shall, not later than 14 February next following the end of that year, forward to the Commissioner General any of those forms, and any forms marked with any of those numbers, that have not been issued as statements of earnings.

(6) The Commissioner General may, by notice in writing served on a group employer, vary, in relation to that group employer, in such instances and to such extent as he thinks fit, any of the requirements of Subsection (4) and that group employer shall comply with those requirements as so varied.

(7) Where the Commissioner General determines that salary or wages tax has not been deducted in accordance with the rates specified by Act and the amount (if any) deducted is less than the amount which should have been deducted—

- (a) the group employer shall be liable to pay to the Commissioner General the amount of the difference; and
- (b) the group employer may sue for and recover from the employee as a debt due to him any amount paid to or recovered by the Commissioner General in pursuance of this subsection.

(8) Where an amount (in this subsection referred to as the “**principal amount**”) payable to the Commissioner General by a group employer under this section remains unpaid after the expiration of the period within which it is required to be paid—

- (a) the principal amount continues to be payable by the group employer to the Commissioner General; and
- (b) the group employer is liable to pay to the Commissioner General additional tax by way of penalty being—
 - (i) an amount (in this subparagraph referred to as the “**relevant penalty amount**”) equal to 20% of the principal amount; and
 - (ii) an amount at the rate of 20% per annum of the sum of so much of the principal amount as remains unpaid and so much of the relevant penalty amount as remains unpaid, computed from the expiration of that period,

but the Commissioner General may, in any case, for reasons he thinks sufficient, remit any additional tax payable under the provisions of this section.

(9) An employer who contravenes, or fails to comply with a provision of this section that is applicable to him is guilty of an offence.

(10)³²⁵ ³²⁶The penalty for failure to comply with any one of the requirements of Subsection (4)(a), or with the requirements of that paragraph as varied in pursuance of Subsection (6), is a fine of not less than K500.00 and not exceeding K5,000. 00 or imprisonment for a term not exceeding six months, and the penalty for any other offence under this Section is a fine of not less than K500.00 and not exceeding K5,000.00.

299H. STATEMENT OF EARNINGS TO BE FORWARDED WITH RETURN.

(1) Where an employee is required to lodge a return under Section 223 he shall include with that return a copy of the statement of earnings issued to him in respect of any salary or wages received.

³²⁵ Section 299G Subsection (10) amended by No. 22 of 2004, s. 71.

³²⁶ Section 299G Subsection (10) amended by No. 22 of 2004, s. 71.

(2) The Commissioner General shall deface all statements of earnings in which he credits an amount, makes a payment or allows a rebate and shall retain them for such a period as he thinks fit, after which he shall cause them to be destroyed.

(3) Where the Commissioner General has reason to believe that a statement of earnings received by him for the purpose of allowing a rebate under Section 214 is incorrect in any particular, he may retain that statement of earnings for such period as he thinks fit and shall not deal with the statement or application for rebate until he is satisfied as to the correctness of that statement.

(4) Where the Commissioner General in applying the provisions of this Division has allowed any credit or rebate in respect of deductions, a person is not entitled to receive any further benefit in respect of those deductions.

299I. POWERS OF COMMISSIONER GENERAL IN RELATION TO CERTIFICATES.

The Commissioner General or an officer authorized by him in that behalf, may require an employer to deliver to him a statement of earnings, and an employer so required shall deliver that statement of earnings to the Commissioner General or authorized person accordingly.

Penalty: ³²⁷A fine of not less than K500.00 and not exceeding K5,000.00.

299J. RECOVERY OF AMOUNTS NOT DEDUCTED.

(1) Where an employer fails to make a deduction, he is liable, in addition to any penalty for which he may be liable, to pay to the Commissioner General the amount that he has failed to deduct, and the Commissioner General may sue for and recover the amount that the employer is so liable to pay in any court of competent jurisdiction, or the court before which any proceedings for an offence are taken may order the employer to pay that amount to the Commissioner General.

(2) The Commissioner General shall apply an amount so recovered by, or paid to, him in or towards payment of the tax payable by the employee.

(3) The employer may recover from the employee any amount that he has failed to deduct and that he has paid to the Commissioner General, or that has been recovered from him by the Commissioner General, in pursuance of Subsection (1).

299K. EMPLOYER NOT ACCOUNTING FOR DEDUCTIONS.

(1) Where an employer makes a deduction for the purposes of this Division or purporting to be for those purposes, from the salary or wages paid to an employee and fails to deal with the amount so deducted in the manner required by this Division, he is deemed to be a Trustee for such deductions and is liable to pay that amount to the Commissioner General.

³²⁷ Section 299I Amended by No. 22 of 2004, s. 72.

(2) Where the property of the employer has become vested in or where the control of such property has passed to a trustee, then the trustee is liable to pay the amount referred to in Subsection (1) to the Commissioner General.

(3) Notwithstanding anything contained in any other Act, an amount payable to the Commissioner General by a trustee in pursuance of this section has priority over all other debts (other than an amount payable under Sections 285(1) and 311K(1)(a)), whether preferential, secured or unsecured.

299L. RECOVERY OF AMOUNTS BY COMMISSIONER GENERAL.

(1) An amount payable to the Commissioner General under the provisions of this Division is a debt due to the State and payable to the Commissioner General, and may be sued for and recovered in any court of competent jurisdiction by the Commissioner General suing in his official name.

(2) In an action against a person for the recovery of an amount payable to the Commissioner General under the provisions of this Division, a certificate in writing signed by the Commissioner General, an Assistant Commissioner or a prescribed delegate of the Commissioner General, certifying that—

- (a) the person named in the certificate is, or was on the date specified in the certificate, a group employer; and
- (b) the sum specified in the certificate was, at the date of the certificate, due by that person to the State in respect of amounts payable to the Commissioner General under the provisions of this Division,

is evidence of the matters stated in the certificate.

(3) For the purpose of protection of the Revenue, the provisions of Part VI except, by virtue of this Division, those provisions contained in Sections 259, 261, 262, 263 and 264, shall have application.

299M. PAYMENTS TO AND FROM PUBLIC REVENUE.

All moneys received by the Commissioner General in pursuance of this Division form part of the public revenue of Papua New Guinea and there is payable out of the public revenue such amounts as the Commissioner General becomes liable to pay in accordance with the provisions of this Act.

299N. OFFENCES.

A person who—

- (a) presents a document under the hand of the Commissioner General for the purpose of obtaining credit with respect to, or a payment of the amount of a deduction made from the salary or wages of a person other than the person named in the document; or

- (b) presents a document under the hand of the Commissioner General and falsely pretends to be the person named in the document for the purpose of obtaining credit or payment or other benefit under this Division; or
- (c) endeavours to obtain for his own advantage or benefit credit with respect to, or a payment of, the amount of a deduction made from the salary or wages of another person; or
- (d) presents, for the purposes of obtaining credit payment or other benefit, a statement of earnings or a document purporting to be a statement of earnings, other than a statement of earnings duly issued to him in respect of salary and wages derived; or
- (e) makes for the purposes of any of the regulations prescribing matters in relation to this Division, a declaration that is false or misleading in a particular,

is guilty of an offence.

Penalty: ³²⁸A fine of not less than K1,000.00 and not exceeding K50,000.00 or imprisonment for six months.

2990. JOINDER OF CHARGES UNDER THIS DIVISION.

(1) Charges against the same person for any number of offences against the preceding provisions of this Division may be joined in one complaint if those charges are founded on the same facts or form, or are part of, a series of offences of the same or similar character.

(2) Where more than one such charge is included in the same complaint, particulars of each offence charged shall be set out in a separate paragraph.

(3) All charges so joined shall be tried together unless the court deems it just that any charge should be tried separately and makes an order to that effect.

(4) If a person is found guilty of more than one offence the court may, if it thinks fit, inflict one penalty in respect of all offences of which he has been found guilty, but that penalty shall not exceed the sum of the maximum penalties that could be inflicted if penalties were imposed for each offence separately.

299P. OFFENCES BY PARTNERS.

Notwithstanding anything contained in this Division, a member of a partnership shall not be punished for a contravention of any of the preceding provisions of this Division for which another member of that partnership has already been punished.

³²⁸ Section 299N Amended by No. 22 of 2004, s. 73.

299Q. PROSECUTIONS.

A prosecution for an offence against any of the provisions of this Division may be commenced at any time.

Division 3.***Provisional Tax.*****299R. NON-APPLICATION.**

(1) This Division does not apply to the calculation of liability to provisional tax in respect of a year of income which commenced on 1 January 1980, nor for subsequent years of income, except for the purposes of Section 311AA of Part VI.3A.

(2) This Division does not apply, in relation to income derived after 31 December 1992, to a taxpayer who derives assessable income to which Division III.10CA, III.10C or III.10A applies or holds a special mining lease under the *Mining (Bougainville Copper Agreement) Act 1974* or the *Mining (Ok Tedi Agreement) Act 1976*.

300. INTERPRETATION.

(1)³²⁹ In this Division, unless the contrary intention appears—

³³⁰“**estimated taxable income**”, in relation to a year of income, means the amount of the estimated taxable income of the taxpayer for that year of income as shown in a statement furnished to the Commissioner General under Section 304T;

“**provisional income**”, in relation to a year of income, means—

- (a) an amount equal to the taxable income of the taxpayer for the year immediately preceding that year of income; or
- (b) where the taxpayer commenced, during the year immediately preceding that year of income, to derive income from any source—such amount as the Commissioner General estimates would have been the taxable income for that preceding year if the taxpayer had commenced, at the beginning of that preceding year, to derive income from that source;

“**provisional tax**” means any amount payable as provisional tax in accordance with this Division;

“**taxpayer**” means a taxpayer who is liable, under Section 301, to pay provisional tax under this Division.

³²⁹ Section 300(1) (definition of “estimated chargeable income”) repealed by No 117 of 1975; Section 300(1) (definition of “salary or wages”) repealed by No 64 of 1966, s24(c).

³³⁰ Section 300(1) (definition of “estimated chargeable income”) repealed by No 117 of 1975; Section 300(1) (definition of “salary or wages”) repealed by No 64 of 1966, s24(c).

(1A)³³¹ [*Repealed.*]

(2) In Sections 261, 262, 263, 264, 268, 272, 355, 356, 359 and 360, but not in any other section of this Act, “**income tax**” or “**tax**” includes provisional tax.

(3) The ascertainment of the amount of any provisional tax shall not be deemed to be an assessment within the meaning of any of the provisions of this Act.

(4) All amounts of provisional tax shall be calculated to the nearest kina.

301. LIABILITY TO PROVISIONAL TAX.

(1) For the purpose of enabling the income tax that will be payable by taxpayers to whom this section applies to be collected during the financial year for which the income tax is levied, a taxpayer to whom this section applies is liable to pay provisional tax in accordance with this Division in respect of income of the year of income.

(2) Where—

- (a) a percentage of an amount paid or payable to a person in respect of the carriage by ship of passengers, live stock, mails or goods is, under Division III.14, deemed to be taxable income derived in Papua New Guinea by the person; and
- (b) the tax in respect of that taxable income has been paid, or the Commissioner General is satisfied that that tax will be paid, during the year of income in which that amount was paid or became payable; and
- (c) the person has not, during that year of income, derived any taxable income other than amounts deemed to be taxable income under that Division,

the person is not liable to pay provisional tax in respect of his income of the year of income next succeeding that year of income.

(3) In this section, “**taxpayer to whom this section applies**”, in relation to the financial year for which the income tax is levied, means a person (other than a company) or a company in the capacity of a trustee who or which derives assessable income, other than salary or wages, during the financial year.

302. AMOUNT OF PROVISIONAL TAX.

(1) Subject to this Division, the amount of provisional tax payable by a taxpayer in respect of the income of a year of income is—

- (a) where the provisional income of the taxpayer is equal to his taxable income for the year immediately preceding that year of income—an amount equal to the income tax assessed in respect of the taxable income of that preceding year; and

³³¹ Section 300(1A) repealed by No 117 of 1975, s29(c).

- (b) in any other case—an amount equal to the income tax that would have been payable in respect of the taxable income of that preceding year if that taxable income had been equal to the provisional income.

(2) Where the assessable income of the taxpayer for the year of income immediately preceding a year of income included salary or wages, the provisional tax payable in respect of the income of that last-mentioned year of income is such part of the provisional tax otherwise payable in accordance with Subsection (1) as the Commissioner General determines.

(3) Where the rates of income tax declared by Act for a fiscal year are higher or lower than the rates declared for the immediately preceding fiscal year, the provisional tax otherwise payable in respect of the income to which those first-mentioned rates are applicable shall be increased or decreased, as the case may be, accordingly.

(4) Where—

- (a) a taxpayer did not lodge a return of income under Part IV with the Commissioner General in respect of the year immediately preceding the year of income, and that taxpayer has, up to 30 September in the year of income, derived assessable income (other than salary or wages) in excess of K312.00;

(b)³³² [*Repealed.*]

the taxpayer shall, not later than 15 October in the year of income, or within such extended time as the Commissioner General allows, furnish to the Commissioner General a statement, in the form provided by the Commissioner General for the purpose, showing the amount of assessable income derived by him up to 30 September in the year of income and the amount of assessable income that he estimates will be derived by him during the remainder of the year of income, together with such other information as is specified in the form.

(5) The amount of provisional tax payable by a taxpayer to whom Subsection (4) applies shall be the amount that the Commissioner General estimates, from the statement furnished in pursuance of that subsection or from any other information in his possession, will be the income tax payable by the taxpayer in respect of the income (other than salary or wages) of the year of income.

303. WHEN PROVISIONAL TAX PAYABLE.

(1) The amount of provisional tax payable by a taxpayer in respect of the income of a year of income may be—

- (a) notified on the notice of assessment of the income tax (other than tax payable under Division III.7) payable by that taxpayer in respect of the income of the year immediately preceding that year of income, and in that case shall be due and payable on the date specified in that notice as the date on which tax is due and payable; or

³³² Section 302(4)(b) repealed by No 59 of 1967, s9(c).

- (b) specified in a notice served by the Commissioner General on the taxpayer, and in that case shall be due and payable on the date specified in the notice, not being less than 30 days after the service of the notice.

(2) Where, under Subsection (1), the due date for payment of provisional tax in respect of income of a year of income would be a date before 30 September in that year, that provisional tax shall be due and payable on that last-mentioned date.

304. PROVISIONAL TAX ON ESTIMATED INCOME.

(1) A taxpayer who receives a notice of assessment on which is notified the amount of provisional tax payable in respect of the income of a year of income (including an accounting period adopted by the taxpayer under this Act) may, not later than—

- (a) the due date for the payment of the tax notified by that notice; or
- (b) 30 September in that year of income or, in the case of an accounting period, the last day of the ninth month of that accounting period,

whichever is the later, make an estimate of—

- (c) the amount of his taxable income for the whole of that year of income;
- (d) the respective amounts of salary or wages and income other than salary or wages comprised in the estimated taxable income; and
- (e) the amount of the deductions that have been and will be made from his salary or wages during that year of income in accordance with Section 277,

and furnish to the Commissioner General a statement showing—

- (f) the amounts so estimated; and
- (g) the amount of provisional tax payable in accordance with Subsection (2).

(2) Where in relation to a year of income, a taxpayer duly furnishes to the Commissioner General a statement under Subsection (1), the amount of provisional tax payable by the taxpayer in respect of the income of that year of income is, subject to Subsection (4), an amount ascertained—

- (a) by calculating the amount of tax that would be payable in respect of the income of the year of income if the taxable income of that year were an amount equal to the estimated taxable income and consisted of the amounts of salary or wages and of income other than salary or wages comprised in that estimated taxable income; and
- (b) by deducting from the amount so calculated the estimated amount of deductions under Section 277 as shown in the statement.

(3) Where provisional tax is payable in accordance with Subsection (2), that provisional tax is, notwithstanding the provisions of Subsection (2), due and payable on the date that is the date not later than which a taxpayer is permitted to furnish a statement under Subsection (1).

(4) Where the Commissioner General has reason to believe that the taxable income that will be or has been derived by a taxpayer in a year of income is greater than the estimated taxable income, the Commissioner General may—

- (a) estimate the respective amounts that, in his opinion, should have been the amounts estimated by the taxpayer in pursuance of Subsection (1) in respect of that year of income; and
- (b) calculate the amount of provisional tax that would be payable if the amount so estimated had been shown in a statement duly furnished by the taxpayer under Subsection (1); and
- (c) serve on the taxpayer notice in writing specifying the amount of provisional tax so calculated,

and the amount of provisional tax so specified is the amount of provisional tax payable by the taxpayer.

(5) The amount estimated by the Commissioner General in accordance with Subsection (4) as the amount of the taxable income of the taxpayer shall not be greater than the taxable income of the taxpayer for the year immediately preceding the year of income and the amount so estimated by the Commissioner General as the amount of salary or wages or income other than salary or wages shall not be greater than the amount of the salary or wages or the income other than salary or wages, as the case may be, derived by the taxpayer in the year immediately preceding the year of income.

(6) A notice under Subsection (4) shall state the amount of any additional provisional tax that becomes payable by reason of the operation of that subsection and shall specify a date as the due date for the payment of that additional provisional tax, being a date not less than 14 days after the date of service of the notice, and the amount of additional provisional tax so stated is, notwithstanding the provisions of Section 303, due and payable on that date.

305. PROVISIONAL TAX IN RESPECT OF FIRST YEAR TO WHICH THIS ACT APPLIES.

(1) The Commissioner General may, by notice published in the National Gazette within one month after the commencement of this Act, require each person, or each person included in a class of persons, specified in the notice to furnish to the Commissioner General, in the manner and within the time specified in the notice, a statement signed by the person showing—

- (a) an estimate of the amount of his taxable income for the whole of the first year of income to which this Act applies; and
- (b) estimates of the respective amounts of salary or wages and income other than salary or wages comprised in the estimate of the taxable income; and

- (c) an estimate of the amount of the deductions that have been and will be made from his salary or wages during that year of income in accordance with Section 277; and
- (d) the amount of provisional tax payable in accordance with Subsection (4)(a).

(2) The Commissioner General may extend, for such period as he thinks fit, the time within which a person is required to comply with a notice published under Subsection (1).

(3) Subject to Section 302(4), where a person is not required by any notice published under Subsection (1) to comply with such a notice, that person is not liable to pay provisional tax in respect of the income of the first year of income to which this Act applies.

(4) The amount of provisional tax payable by a person in respect of the income of the first year of income to which this Act applies, being a person who is required by a notice published under Subsection (1) to comply with that notice, is—

- (a) where the person has furnished to the Commissioner General a statement in accordance with the notice—an amount ascertained—
 - (i) by calculating the amount of tax that would be payable in respect of the income of that year of income if the taxable income of that year were an amount equal to the amount shown in the statement as the estimate of the taxable income and consisted of the amounts of salary or wages and of income other than salary or wages comprised in that estimate; and
 - (ii) by deducting from the amount so calculated the estimated amount of deductions under Section 277 as shown in the statement; or
- (b) in any other case—such amount as the Commissioner General estimates, from any information in his possession, will be the amount of tax payable by that person in respect of income of that year of income.

(5) The provisional tax payable by a person (being a person to whom Subsection (4) applies) in respect of the income of the first year of income to which this Act applies is payable on or before such date (being a date not earlier than 31 March 1960) as is specified by the Commissioner General in a notice served on the person.

(6) Where the amount shown in a statement furnished in accordance with a notice published under Subsection (1) as the estimate of the taxable income of a person for the first year of income to which this Act applies is less than three-quarters of the taxable income of the person of that year of income, the Commissioner General may, by notice in writing to the person, require the person to furnish to the Commissioner General, in such manner and within such time as is specified in the notice, a return signed by him setting forth a full and complete statement of the income derived by him during the year immediately preceding that

year of income and such other particulars as, by the notice, the Commissioner General requires to be furnished for the purpose of enabling him to determine whether a penalty is payable by the person under Section 306 and the amount of that penalty, if any.

(7) If a person is absent from Papua New Guinea, or is unable from physical or mental infirmity to furnish to the Commissioner General—

- (a) a statement in accordance with a notice published under Subsection (1);
or
- (b) a return in accordance with a notice given to the person under Subsection (6),

the statement or return, as the case may be, may be signed and furnished on his behalf by a person duly authorized by him.

(8) In the application of Section 306 in respect of the first year of income to which this Act applies—

- (a) a reference in that section to the estimated taxable income shall be read as a reference to the amount shown in the statement furnished by the taxpayer in accordance with a notice published under Subsection (1) as the estimate of his taxable income for that year of income; and
- (b) the reference in that section to the provisional income shall be read as a reference to—
 - (i) such amount as, in the opinion of the Commissioner General (having regard to any return furnished to him by the taxpayer in accordance with a notice given to the taxpayer under Subsection (6) and any other information in his possession) would have been the taxable income of the taxpayer of the year immediately preceding the first year of income to which this Act applies if this Act had commenced to have effect at the commencement of that preceding year and had applied to income of that year and the rates of income tax for that year had been declared by Act to be rates the same as the rates specified in the *Income Tax (Rates) Act 1959*; or
 - (ii) where the taxpayer commenced, during that preceding year, to derive income from any source—such amount as the Commissioner General estimates (having regard to any return furnished to him by the taxpayer in accordance with a notice given to the taxpayer under Subsection (6) and any other information in his possession) would have been the taxable income of the taxpayer of that preceding year if the taxpayer had commenced, at the beginning of that preceding year, to derive income from that source and this Act had commenced to have effect at the commencement of that year and had applied to income of that year and the rates of income tax for that year had been declared by Act to be rates the

same as the rates specified in the *Income Tax (Rates) Act 1959*;
and

- (c) the reference in that section to the taxpayer's taxable income for the year immediately preceding the year of income in respect of which provisional tax is payable shall be read as a reference to such amount as, in the opinion of the Commissioner General (having regard to any return furnished to him by the taxpayer in accordance with a notice given to the taxpayer under Subsection (6) and any other information in his possession) would have been the taxable income of the taxpayer for the year immediately preceding the first year of income to which this Act applies if this Act had commenced to have effect at the commencement of that preceding year and had applied to income of that year and the rates of income tax for that year had been declared by Act to be rates the same as the rates specified in the *Income Tax (Rates) Act 1959*; and
- (d) a reference in that section to four-fifths shall be read as a reference to three-quarters; and
- (e) the reference in Subsection (5) of that section to the date not later than which the taxpayer was permitted by Section 304 to furnish a statement of estimated taxable income shall be read as a reference to the date not later than which the taxpayer was required by a notice published under Subsection (1) to furnish a statement.

(9) The production of a certificate under the hand of the Commissioner General or an Assistant Commissioner stating that an amount is due for provisional tax under this section is evidence that the amount of provisional tax so specified and all particulars relating to that amount of provisional tax are correct.

306. PENALTY WHERE INCOME UNDERESTIMATED.

(1) Where, in respect of a year of income, the estimated taxable income is less than four-fifths of the provisional income and is also less than four-fifths of the taxable income, the taxpayer is liable to pay to the Commissioner General, by way of penalty, an amount equal to one-fifth of—

- (a) the amount by which the amount of tax that would be payable in respect of a taxable income equal to four-fifths of the taxpayer's taxable income exceeds the amount of provisional tax payable in respect of the estimated taxable income; or
- (b) the amount by which the amount of tax that would be payable in respect of a taxable income equal to four-fifths of the taxpayer's taxable income for the year immediately preceding that year of income exceeds the amount of provisional tax payable in respect of the estimated taxable income,

whichever is the less.

(2) In the application of Subsection (1)–

- (a) the reference in Paragraph (a) to the amount of provisional tax payable in respect of the estimated taxable income shall be read, in the case of a taxpayer whose income for the year of income includes salary or wages, as a reference to an amount equal to the sum of that provisional tax and an amount equal to four-fifths of the amount of the deductions made in accordance with Section 277 from that salary or wages; and
- (b) the reference in Paragraph (b) to the amount of provisional tax payable in respect of the estimated taxable income shall be read, in the case of a taxpayer whose income for the year immediately preceding the year of income included salary or wages, as a reference to an amount equal to the sum of that provisional tax and an amount equal to four-fifths of the amount of the deductions made in accordance with Section 277 from that salary or wages.

(3) An amount that becomes payable to the Commissioner General under Subsection (1) is a debt due to the State and may be sued for and recovered in a court of competent jurisdiction by the Commissioner General suing in his official name.

(4) In an action against a person for the recovery of such an amount, a certificate in writing, signed by the Commissioner General or an Assistant Commissioner, certifying that the sum specified in the certificate was, at the date of the certificate, due by that person to the State under the provisions of this section is evidence of the matters stated in the certificate.

(5) Where the Commissioner General is satisfied that a penalty under this section became payable by a taxpayer in relation to provisional tax for a year of income by reason of circumstances affecting his taxable income of that year of which circumstances he was not aware at the date not later than which he was permitted by Section 304 to furnish a statement of estimated taxable income, the Commissioner General may remit the penalty or a part of the penalty.

307. REDUCTION OF PROVISIONAL TAX.

Where, by reason of the provisions of Division III.20, the amount of income tax that a person will be liable to pay in respect of the income of a year of income is likely to be less than the amount of provisional tax that, but for this section, would be payable in respect of that income, the Commissioner General may reduce the provisional tax by such amount as he thinks reasonable in the circumstances.

308. PROVISIONAL TAX TO BE CREDITED AGAINST TAX ASSESSED.

Where a taxpayer has paid provisional tax in respect of income of a year of income, and an assessment of income tax in respect of that income has been made, or the Commissioner General is satisfied that no income tax (other than income tax payable under Division III.7) will be payable in respect of that income, the Commissioner General shall credit the amount of that provisional tax in payment successively of–

- (a) such income tax (if any) as is payable by the taxpayer in respect of that income (not being income tax payable under Division III.7);
- (b) any provisional tax notified to the taxpayer in respect of income of the year next succeeding that year of income; and
- (c) any other income tax payable by the taxpayer,

and is liable to refund to the taxpayer the amount of that provisional tax not so credited.

309. PROVISIONAL TAX NOT TO BE NOTIFIED WHERE INCOME TAX ASSESSED.

Notwithstanding anything contained in this Division, provisional tax shall not be notified to a taxpayer in respect of the income of any year of income where the Commissioner General has made an assessment in respect of that income.

310. ALTERATION OF NOTICE OF PROVISIONAL TAX.

(1) Where an alteration of the amount of provisional tax notified as payable by a taxpayer is, in the opinion of the Commissioner General, necessary, by reason of the amendment of any assessment of income tax or otherwise, the Commissioner General may make the necessary alteration and shall notify the taxpayer in writing of the altered amount.

(2) Upon the service of a notice under Subsection (1)–

- (a) if the amount of provisional tax payable is increased, the additional amount shall become due and payable on the date specified in the notice, not being less than 30 days after service of the notice; or
- (b) if the amount of provisional tax payable is reduced, the Commissioner General shall credit any provisional tax overpaid in payment of any income tax payable by the taxpayer and refund to the taxpayer any amount of provisional tax overpaid not so credited.

311. NOTICE OF PROVISIONAL TAX TO BE EVIDENCE.

The production of a notice of assessment or other notice on which an amount of provisional tax payable by any person is specified, or of a document under the hand of the Commissioner General or an Assistant Commissioner purporting to be a copy of any such notice of assessment or other notice, is evidence that the amount of provisional tax and all particulars relating to that amount of provisional tax are correct.

Division 3A.

Provisional Tax from 1 January 1980.

311AA. NON-APPLICATION AND TRANSITIONAL PROVISION.

(1) This Division applies to the calculation of provisional tax in respect of a year of income which commenced on 1 January 1980 and for subsequent years of income.

(2) For the purposes of the calculation of provisional tax on estimated income and for any reason as he thinks fit, the Commissioner General may have regard to Division 3 in order to ascertain liability to provisional tax, penalty where income has been underestimated, reduction of provisional tax or the application of credit for provisional tax against tax assessed, in respect of any matter relating to provisional tax for the income year to 31 December, 1980.

311AB. INTERPRETATION.

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

“business income payment” means an eligible payment as defined in Section 276(1);

“estimated taxable income”, in relation to a year of income, means the amount, subject to Sections 46B, 46C and 65F, of income of the taxpayer other than salary or wages for that year of income as shown in a statement furnished to the Commissioner General under Section 311AF;

“income tax” means tax on income other than salary or wages, subject to Sections 46B, 46C and 65F, after the allowance of any rebates under Section 214 or credit by virtue of Section 219;

“provisional income”, in relation to a year of income, means—

- (a) an amount equal to the taxable income of the taxpayer for the year immediately preceding that year of income; or
- (b) where the taxpayer commenced, during the year immediately preceding that year of income, to derive income from any source—such amount as the Commissioner General estimates would have been the taxable income for that preceding year if the taxpayer had commenced, at the beginning of that preceding year, to derive income from that source;

“provisional tax” means any amount payable as provisional tax in accordance with this Division;

“taxable income” means, subject to Sections 46B, 46C and 65F, taxable income of the taxpayer but does not include income by way of salary or wages;

“taxpayer” means a taxpayer who is liable under Section 311AC, to pay provisional tax.

(2) In Sections 261, 262, 263, 264, 268, 272, 354A, 355, 356, 359, 360 and 361, but not in any other section, of this Act, “**income tax**” or “**tax**” includes provisional tax.

(3) The ascertainment of the amount of provisional tax shall not be deemed to be an assessment within the meaning of any of the provisions of this Act.

(4) All amounts of provisional tax shall be calculated to the nearest kina.

311AC. LIABILITY TO PROVISIONAL TAX.

(1) For the purpose of enabling the income tax that will be payable by taxpayers to whom this section applies to be collected during the fiscal year for which the income tax is levied, a taxpayer to whom this section applies is liable to pay provisional tax in accordance with this Division in respect of income of the year of income.

(2) Where—

- (a) a percentage of an amount paid or payable to a person in respect of the carriage by ship of passengers, livestock, mail or goods, is, under Part III.14 deemed to be taxable income derived in Papua New Guinea by the person; and
- (b) the tax in respect of that taxable income has been paid, or the Commissioner General is satisfied that that tax will be paid, during the year of income in which that amount was paid or became payable; and
- (c) the person has not, during that year of income, derived any taxable income other than amounts deemed to be taxable income under that Division,

the person is not liable to pay provisional tax in respect of his income of the year of income next succeeding that year of income.

(3) In this section, “**taxpayer to whom this section applies**”, in relation to the fiscal year for which the income tax is levied, means a person (other than a company) or a company in the capacity of a trustee who or which derives assessable income, other than salary or wages, during the fiscal year.

311AD. AMOUNT OF PROVISIONAL TAX.

(1) Subject to this Division, the amount of provisional tax payable by a taxpayer in respect of the taxable income of a year of income is—

- (a) where the provisional income of the taxpayer is equal to his taxable income for the year immediately preceding that year of income—an amount equal to the income tax assessed in respect of the taxable income of that preceding year; and
- (b) in any other case—an amount equal to the income tax that would have been payable in respect of the taxable income of that preceding year if that taxable income had been equal to the provisional income.

(2) Where the rates of income tax declared by Act for a fiscal year are higher or lower than the rates declared for the immediately preceding fiscal year, the provisional tax otherwise payable in respect of the income to which those first-mentioned rates are applicable shall be increased or decreased, as the case may be, accordingly.

(3) Where a taxpayer did not lodge a return of income under Part IV with the Commissioner General in respect of the year immediately preceding the year of income, and that taxpayer has, up to 30 September in the year of income, derived taxable income (other than salary or wages) in excess of K312.00, the taxpayer shall, not later than 15 October in the year of income, or within such extended time as the Commissioner General allows, furnish to the Commissioner General a statement in the form provided by the Commissioner General for the purpose, showing the amount of assessable income derived by him up to 30 September in the year of income and the amount of assessable income that he estimates will be derived by him during the remainder of the year of income, together with such other information as is specified in the form.

(4) The amount of provisional tax payable by a taxpayer to whom Subsection (3) applies shall be the amount that the Commissioner General estimates, from the statement furnished in pursuance of that subsection or from any other information in his possession, will be the income tax payable by the taxpayer in respect of the income (other than salary or wages) of the year of income, less the amount that the Commissioner General estimates will be the sum of any amounts deducted under Section 280(1)(a) from eligible payments that have been, or will be, made to the taxpayer during the year of income.

311AE. WHEN PROVISIONAL TAX PAYABLE.

(1) The amount of provisional tax payable by a taxpayer in respect of income of a year of income may be—

- (a) notified on the notice of assessment of the income tax payable by that taxpayer in respect of the income of the year immediately preceding that year of income, and in that case shall be due and payable on the date specified in that notice as the date on which tax is due and payable; or
- (b) specified in a notice served by the Commissioner General on the taxpayer, and in that case shall be due and payable on the date specified in the notice, not being less than 30 days after the service of the notice.

(2) Where, under Subsection (1), the due date for payment of provisional tax in respect of income of a year of income would be a date before 30 September in that year, that provisional tax shall be due and payable on that last-mentioned date.

311AF. PROVISIONAL TAX ON ESTIMATED INCOME.

(1) A taxpayer who receives a notice of assessment on which is notified the amount of provisional tax payable in respect of the taxable income of a year of income

(including an accounting period adopted by the taxpayer under this Act) may, not later than—

- (a) the due date for the payment of the tax notified by that notice; or
- (b) 30 September in that year of income or, in the case of an accounting period, the last day of the ninth month of that accounting period,

whichever is the later, make an estimate of—

- (c) the amount of his taxable income for the whole of that year of income; and
- (d) the amount of the eligible payments from which deductions have been or will be made in accordance with Division VI.2 during that year of income; and
- (e) the amount of the deductions that have been or will be made under Division VI.2 from eligible payments that have been and will be made to the taxpayer during the year of income,

and furnish to the Commissioner General a statement showing—

- (f) the amounts as estimated; and
- (g) the amount of provisional tax,

payable in accordance with Subsection (2).

(2) Where in relation to a year of income, a taxpayer duly furnishes to the Commissioner General a statement under Subsection (1) the amount of provisional tax payable by the taxpayer in respect of the income of that year of income is, subject to Subsection (4), an amount ascertained by calculating the amount of tax that would be payable in respect of the taxable income of the year of income if the taxable income of that year were an amount equal to the estimated taxable income and consisted of income other than salary or wages comprised in that estimated taxable income and by deducting from the amount so calculated the estimated amount of deductions under Division VI.2 as shown in the statement.

(3) Where provisional tax is payable in accordance with Subsection (2) that provisional tax is, notwithstanding the provisions of Section 311AE, due and payable on the date that is the date not later than which a taxpayer is permitted to furnish a statement under Subsection (1).

(4) Where the Commissioner General has reason to believe that the taxable income that will be or has been derived by a taxpayer in a year of income is greater than the estimated taxable income, the Commissioner General may—

- (a) estimate the respective amounts that, in his opinion, should have been the amounts estimated by the taxpayer in pursuance of Subsection (1) in respect of that year of income; and
- (b) calculate the amount of provisional tax that would be payable if the amount so estimated had been shown in a statement duly furnished by the taxpayer under Subsection (1); and

- (c) serve on the taxpayer notice in writing specifying the amount of provisional tax so calculated,

and the amount of provisional tax so specified is the amount of provisional tax payable by the taxpayer.

(5) The amount estimated by the Commissioner General in accordance with Subsection (4) as the amount of the taxable income of the taxpayer shall not be greater than the taxable income of the taxpayer for the year immediately preceding the year of income.

(6) A notice under Subsection (4) shall state the amount of any additional provisional tax that becomes payable by reason of the operation of that subsection and shall specify a date as the due date for the payment of that additional provisional tax, being a date not less than 14 days after the date of service of the notice, and the amount of additional provisional tax so stated is, notwithstanding the provisions of Section 311AE, due and payable on that date.

311AG. PENALTY WHERE INCOME UNDERESTIMATED.

(1) Where, in respect of a year of income, the estimated taxable income is less than four-fifths of the provisional income and is also less than four-fifths of the taxable income, the taxpayer is liable to pay to the Commissioner General, by way of penalty, an amount equal to one-fifth of—

- (a) the amount by which the amount of tax that would be payable in respect of a taxable income equal to four-fifths of the taxpayer's taxable income exceeds the amount of provisional tax payable in respect of the estimated taxable income; or
- (b) the amount by which the amount of tax that would be payable in respect of a taxable income equal to four-fifths of the taxpayer's taxable income for the year immediately preceding that year of income exceeds the amount of provisional tax payable in respect of the estimated taxable income,

whichever is the lesser.

(1A) In the application of Subsection (1)—

- (a) the reference in Subsection (1)(a) to the amount of provisional tax payable in respect of the estimated taxable income shall be read, in the case of a taxpayer whose income for the year of income includes eligible payments, as a reference to an amount equal to the sum of that provisional tax and an amount equal to four-fifths of the amount of the deductions made in accordance with Section 280(1)(a) from those eligible payments; and
- (b) the reference in Subsection 1 (b) to the amount of provisional tax payable in respect of the estimated taxable income shall be read, in the case of a taxpayer whose income for the year immediately preceding the year of income, included eligible payments, as a reference to an amount

equal to the sum of that provisional tax and an amount equal to four-fifths of the amount of the deductions made in accordance with Section 280(1)(a) from those eligible payments.

(2) An amount that becomes payable to the Commissioner General under Subsection (1) is a debt due to the State and may be sued for and recovered in a court of competent jurisdiction by the Commissioner General suing in his official name.

(3) In an action against a person for the recovery of such an amount, a certificate in writing, signed by the Commissioner General or an Assistant Commissioner, certifying that the sum specified in the certificate was, at the date of the certificate, due by that person to the State under the provisions of this section is evidence of the matters stated in the certificate.

(4) Where the Commissioner General is satisfied that a penalty under this section became payable by a taxpayer in relation to provisional tax for a year of income by reason of circumstances affecting his taxable income of that year of which circumstances he was not aware at the date not later than which he was permitted by Section 311AF to furnish a statement of estimated taxable income, the Commissioner General may remit the penalty or a part of the penalty.

311AH. REDUCTION OF PROVISIONAL TAX.

Where, by reason of the provisions of Part III.20 the amount of income tax that a person will be liable to pay in respect of the income of a year of income is likely to be less than the amount of provisional tax, that, but for this section, would be payable in respect of that income, the Commissioner General may reduce the provisional tax by such amount as he thinks reasonable in the circumstances.

311AI. PROVISIONAL TAX TO BE CREDITED AGAINST TAX ASSESSED.

Where a taxpayer has paid provisional tax in respect of income of a year of income, and an assessment of income tax in respect of that income has been made, or the Commissioner General is satisfied that no income tax will be payable in respect of that income, the Commissioner General shall credit the amount of that provisional tax in payment successively of—

- (a) such income tax (if any) as is payable by the taxpayer in respect of that income; and
- (b) any provisional tax notified to the taxpayer in respect of income of the year next succeeding that year of income; and
- (c) any other income tax or salary or wages tax payable by the taxpayer,

and is liable to refund to the taxpayer the amount of that provisional tax not so credited.

311AJ. PROVISIONAL TAX NOT TO BE NOTIFIED WHERE INCOME TAX ASSESSED.

Notwithstanding anything contained in this Division, provisional tax shall not be notified to a taxpayer in respect of the taxable income of any year of income where the Commissioner General has made an assessment in respect of that income.

311AK. ALTERATION OF NOTICE OF PROVISIONAL TAX.

(1) Where an alteration of the amount of provisional tax notified as payable by a taxpayer is, in the opinion of the Commissioner General necessary, by reason of the amendment of any assessment of income tax or otherwise, the Commissioner General may make the necessary alteration and shall notify the taxpayer in writing of the altered amount.

(2) Upon the service of a notice under Subsection (1)–

- (a) if the amount of provisional tax payable is increased, the additional amount shall become due and payable on the date specified in the notice, not being less than 30 days after service of the notice; or
- (b) if the amount of provisional tax payable is reduced, the Commissioner General shall credit any provisional tax overpaid in payment of any income tax or salary or wages tax payable by the taxpayer and refund to the taxpayer any amount of provisional tax overpaid not so credited.

311AL. NOTICE OF PROVISIONAL TAX TO BE EVIDENCE.

The production of a notice of assessment or other notice on which an amount of provisional tax payable by any person is specified, or of a document under the hand of the Commissioner General or an Assistant Commissioner purporting to be a copy of any such notice of assessment or other notice, is evidence that the amount of provisional tax and all particulars relating to that amount of provisional tax are correct.

Division 3B.***Collection of Tax on Income from Mining and Petroleum Operations.*****311AM. OBJECT.**

³³³The object of this Division is to enable the collection of tax in the year of income on income derived by a taxpayer from mining operations, petroleum operations or gas operations to which Division III.10 applies, or who holds a special mining lease under the *Mining (Bougainville Copper Agreement) Act 1974* or the *Mining (Ok Tedi Agreement) Act 1976*.

³³³ Section 311AM amended in consequence of No 68 of 2000.

311AN. INTERPRETATION.

In this Division—

“additional tax” means income tax or tax and for the purposes of Sections 261, 262, 263, 264, 268, 272, 355, 356, 359 and 360, but not in any other section, includes additional tax payable in accordance with Section 311AT;

³³⁴**“tax”** means income tax and for the purposes of Sections 261, 262, 263, 264, 268, 272, 355, 356, 359, and 360, but not in any other section, includes an instalment of income tax determined by the Commissioner General as being payable under this Division by a taxpayer who derives assessable income from mining operations, petroleum operations or gas operations to which Division III.10 applies, or who holds a special mining lease under the *Mining (Bougainville Copper Agreement) Act 1974* or the *Mining (Ok Tedi Agreement) Act 1976*;

“year of income” in relation to a taxpayer liable to pay a tax instalment under Division, means the fiscal year or the accounting period adopted under this Act.

311AO. TAXPAYER TO ESTIMATE INCOME.

(1)³³⁵ ³³⁶A taxpayer who derives assessable income from mining operations, petroleum operations or gas operations to which Division III.10 applies or who derives assessable income to which a special mining lease granted under the *Mining (Bougainville Copper Agreement) Act 1974* or the *Mining (Ok Tedi Agreement) Act 1976* applies shall, by 31 March of the year of income, furnish the Commissioner General with an estimate of the taxable income likely to be derived during the year of income by the taxpayer and the basis on which the estimate is made.

(2) Where a taxpayer has not by the due date furnished the estimate required under Subsection (1), the Commissioner General, relying on any information that he deems appropriate, shall make an estimate of the taxable income in respect of that taxpayer.

(3) Where, in relation to the estimate furnished by the taxpayer, the Commissioner General is of the opinion that the estimate does not reflect the taxable income likely to be derived by the taxpayer, the Commissioner General may, on the basis of any information he has in his possession or obtains for the purpose, make an estimate of the taxable income as he deems reasonable.

311AP. DETERMINATION OF TAX PAYABLE.

Where a taxpayer furnishes an estimate of taxable income, the Commissioner General shall determine the amount of tax payable taking into account—

³³⁴ Section 311AN (definition of “tax”) amended in consequence of No 68 of 2000.

³³⁵ Section 311AO(1) amended in consequence of No 68 of 2000.

³³⁶ Section 311AO(1) amended in consequence of No 68 of 2000.

- (a) the estimate furnished by the taxpayer and any other information accompanying the estimate; or
- (b) where no estimate is furnished, or where the estimate furnished does not fairly reflect the taxable income of the taxpayer, the estimate determined by him.

311AQ. PAYMENT OF TAX.

(1) An amount determined by the Commissioner General to be the estimated taxable income liable to tax under this Division shall be taxed at the rates declared by the *Income Tax, Dividend (Withholding) Tax and Interest (Withholding) Tax Rates Act 1984* and shall be payable in three instalments, falling due on 30 April, 31 July, and 31 October.

(2) Where the Commissioner General has determined the amount of tax payable, he shall notify the taxpayer of the determination and the date due for payment.

(3) For the purposes of this Division, a determination by the Commissioner General of tax payable by a taxpayer is not an assessment within the meaning of any of the provisions of this Act.

- (4) All amounts of instalment tax shall be calculated to the nearest kina.

311AR. RECOVERY OF AMOUNTS BY COMMISSIONER GENERAL.

(1) An amount payable to the Commissioner General under this Division by a person is a debt due to the State and payable to the Commissioner General and—

- (a) that amount may be sued for and recovered in a court of competent jurisdiction by the Commissioner General suing in his official name; or
- (b) a court before which proceedings are taken against that person for an offence against this Division may order that person to pay that amount to the Commissioner General.

(2) The provisions of this Act apply to proceedings for the recovery of amounts payable to the Commissioner General under this Division in the same way as those provisions apply in proceedings for the recovery of a pecuniary penalty under this Act.

(3) The provisions of Section 339 apply to an order for the payment of a sum of money to the Commissioner General made under Subsection (1)(b) in the same way as those provisions apply in proceedings for the recovery of a pecuniary penalty under this Act.

311AS. VARIATION OF ESTIMATE.

(1) Where, as a result of any change as to the basis upon which an estimate of taxable income and a determination of tax payable was made, the Commissioner General is of the opinion that an increase in the amount of tax is warranted, he may

vary the amount of tax previously determined as payable and issue a notice of the increase to the taxpayer.

(2) A taxpayer required to furnish an estimate of taxable income under this Division may apply to the Commissioner General, on payment of the instalment due, for review of the estimate of taxable income previously furnished.

(3) Where the Commissioner General receives an application under Subsection (2) and he is satisfied that a change in circumstances justifies a review of the estimated taxable income likely to be derived by the taxpayer, he shall revise the amount previously determined as payable and notify the taxpayer of the revised determination.

(4) Where the amount of tax or instalment of tax is varied under Subsection (1) or (2), the Commissioner General shall issue a further notice in writing specifying the varied amount as the tax or instalment of tax payable, and the amount specified in the notice shall be deemed to have been payable, as the case may be, on the date specified in the first mentioned notice.

311AT. INCREASED TAX.

Where by reason of the operation of Section 311AS the amount payable by a taxpayer as tax is greater than the adjusted tax, the notice served on the taxpayer under Section 311AS(1) continues to have effect but the Commissioner General shall cause to be served on the taxpayer a further notice in writing specifying—

- (a) the amount of the increase in the tax that becomes payable by reason of Section 311AS(1); and
- (b) a date as the due date for payment of the amount, being a date not less than 14 days after the date of service of the last mentioned notice,

and the amount of the increase in the tax so specified is, notwithstanding the provisions of Section 311AQ(1), due and payable on the date so specified.

311AU. REFUNDS.

(1) Where—

- (a) a company has been served, in accordance with Section 311AO(3), with a notice specifying an amount payable as tax in respect of a year of income; and
- (b) the company has been served, in accordance with Section 311AS(4), with a further notice specifying a reduced amount as the amount of tax instalment; and
- (c) the company has paid, in respect of the instalment an amount exceeding—
 - (i) in a case to which Subsection (ii) does not apply—the reduced amount; or

- (ii) where the company has been served in accordance with Section 311AT with a further notice specifying an amount of an increase in tax—the sum of the amount of the increase,
the Commissioner General shall credit the amount of the excess in payment successively of—
- (iii) any income tax due and payable by the company in respect of that year of income; and
- (iv) any amount payable by the company as any other instalment of tax in respect of the year of income whether or not that amount is due for payment; and
- (v) any other income tax or any withholding tax payable by the company whether or not that income tax or withholding tax is due for payment, or any deduction of salary or wages tax payable by the taxpayer in his capacity as an employer,
and is liable to refund to the taxpayer so much of the excess as is not so credited.

(2) Where a taxpayer has paid the whole or part of the tax in respect of a year of income and—

- (a) an assessment has been made of the amount of income tax payable by the taxpayer in respect of that year of income; or
- (b) the Commissioner General is satisfied that no income tax will be payable by the taxpayer in respect of that year of income,

the Commissioner General shall credit the amount (in this subsection referred to as the **“residual amount”**) remaining after deducting the amount so paid that has been, or is required to be credited or refunded in accordance with Subsection (1), in payment successively of—

- (c) any income tax payable by the taxpayer in respect of that taxable income whether or not that income tax is due for payment; and
- (d) any other income tax or any withholding tax payable by the taxpayer whether or not that income tax or withholding tax is due for payment, or any deduction of salary or wages tax payable by the taxpayer in his capacity as an employer,

and is liable to refund to the taxpayer so much of the residual amount as is not so credited.

311AV. UNPAID INSTALMENTS.

(1) Where, on the date on which income tax becomes due and payable by a taxpayer in respect of a year of tax, the whole or part of an amount payable as an instalment in respect of that year of income has not been paid and there is no other

instalment of tax in respect of that year of tax, the whole or a part of which has not been paid—

- (a) where no part of the income tax assessed in respect of that year of tax has been paid—so much if any, of the amount of instalment unpaid as exceeds the amount of that income tax assessed, ceases, on that date, to be payable; or
- (b) where part only of the income tax assessed in respect of that year of tax has been paid—so much, if any, of the amount of instalment unpaid as exceeds the amount of that income tax assessed, ceases, on that date, to be payable; or
- (c) where the whole of the income tax assessed in respect of that year of tax has been paid—the amount of instalment unpaid, ceases, on that date, to be payable.

(2) Where, on the date on which income tax becomes due and payable by a taxpayer in respect of a year of tax, there are two or more instalments of tax in respect of that year of tax the whole or part of each of which has not been paid—

- (a) where no part of the income tax assessed in respect of that year has been paid—the Commissioner General may determine that the whole or any payment of all of any of the amounts unpaid in respect of those instalments shall cease, on that date, to be payable; or
- (b) where the whole of the income tax in respect of that tax has been paid—each of the amounts unpaid in respect of those instalments ceases, on that date, to be payable.

311AW. PENALTY FOR LATE PAYMENT.

(1) Where an amount or amounts of tax determined as payable by a taxpayer is not paid on the due date, the taxpayer shall, in addition to the payment of the tax due, be liable to a penalty tax at the rate of 20% per annum of the amount of unpaid tax.

(2) The Commissioner General may, where he believes there is sufficient reason, remit the whole or any part of the penalty tax charged under Subsection (1).

311AX. TRANSITIONAL ARRANGEMENTS.

For the purposes of this Division the amount of tax determined as payable on the estimated taxable income for the years 1993, 1994 and 1995, shall be paid in accordance with the following schedule:—

- (a) in addition to any tax assessed for the year of tax 1993, an amount equal to 60% of the total amount determined as payable for the year of income 1993, and payable in three instalments on the dates specified in Section 311AQ(1);

- (b) in addition to any tax assessed for the year of tax 1994, an amount equal to 80% of the total amount determined as payable for the year of income 1994, and payable in three instalments on the dates specified in Section 311AQ(1);
- (c) in addition to any tax assessed for the year of tax 1995, an amount equal to 100% of the total amount determined as payable for the year of income 1995, and payable in three instalments on the dates specified in Section 311AQ(1).

Division 4.

Collection of Dividend (Withholding) Tax.

311A. OBJECT OF DIVISION 4.

The object of this Division is to facilitate the collection of dividend (withholding) tax, and this Division shall be construed and administered accordingly.

311B. INTERPRETATION.

(1) In this Division, unless the contrary intention appears, “**dividend**” includes a part of a dividend.

(2) A reference in this Division to a company shall, in relation to distributions by a liquidator of the company or by any other person that, by virtue of Section 48, are deemed to be dividends paid by the company, be read as including a reference to the liquidator or that other person.

311C. DEDUCTIONS FROM DIVIDENDS.

(1) A company that is a resident shall, subject to this section and to Section 311D, before or at the time when a dividend of the company is paid, make a deduction from the dividend of an amount determined in accordance with the Regulations.

(1A) For the purposes of this section, an amount which, by virtue of Part III.7.B is deemed to be a dividend, shall be deemed to have been paid by the company on the last day of the year of income of—

- (a) the company in which the transactions relating to that deemed dividend were made; or
- (b) the person deemed to have derived the deemed dividend,

whichever is the earlier.

(2) Subject to this section and to Section 311D, where—

- (a) a dividend of a company that is a resident is paid to—
 - (i) the State (excluding a corporation or body, other than a local government body, established by an Act); or

- (ii) a Provincial Government or provincial government body excluding a corporation or body, other than a local level government body, established by a provincial law as defined in Section Sch. 1.2(1) of the *Constitution*); or
- (iii) a Local-level Government; or
- (iv) a local level government body, by whatever name known, established by a provincial law,

(in this subsection referred to as “**the payee**”); and

- (b) another person who is entitled–
 - (i) to receive the dividend or a part of the dividend, or the amount of the dividend or of a part of the dividend, from the payee; or
 - (ii) to have the dividend or a part of the dividend, or the amount of the dividend or of a part of the dividend, credited to him, or otherwise dealt with on his behalf or as he directs, by the payee,

the payee shall, except as provided by the regulations, forthwith make a deduction from the dividend, or the part of the dividend, of an amount determined in accordance with the regulations.

(3) A person is not required to make a deduction from a dividend under this section–

- (a) if dividend (withholding) tax is not payable in respect of the dividend; or
- (b) if an amount has, or amounts have, previously been deducted from the dividend under this section and that amount, or the sum of those amounts, is not less than the dividend (withholding) tax payable in respect of the dividend.

(4) Notwithstanding anything contained in the regulations made for the purposes of this section, a person is not required to make a deduction from a dividend under this section of an amount that exceeds the dividend (withholding) tax payable in respect of the dividend.

(5) This section does not apply in relation to a dividend that is not paid in money or is not credited to a person.

(6)³³⁷ ³³⁸A person, other than the State or an authority of the State, who does not make a deduction from a dividend as required by this section is guilty of an offence against this Act punishable upon conviction by a fine of not less than K500.00 and not exceeding K5,000.00.

(7) In this section, “**money**” includes postal orders, money orders, bills of exchange, promissory notes, drafts and letters of credit.

³³⁷ Section 311C Subsection (6) amended by No. 22 of 2004, s. 74.

³³⁸ Section 311C Subsection (6) amended by No. 22 of 2004, s. 74.

311D. EXEMPTIONS AND VARIATIONS.

The Commissioner General may, for the purpose of meeting the special circumstances of a case or of the cases included in a class of cases, by notice in writing to a person—

- (a) exempt that person from an obligation imposed on him by Section 311C; or
- (b) vary the amount to be deducted under that section by that person from a dividend or from the dividends included in a class of dividends.

311E. DEDUCTIONS TO BE FORWARDED TO THE COMMISSIONER GENERAL.

(1) Where a person has made a deduction from a dividend and that deduction was made, or purports to have been made, under Section 311C that person shall within 21 days after the end of the month in which the deduction was made—

- (a) pay to the Commissioner General an amount equal to the deduction; and
- (b) furnish to the Commissioner General a statement in the form authorized by the Commissioner General signed by or on behalf of the person who made the deduction.

(2)³³⁹ ^{340A} A person, other than the State, or an authority of the State, who fails to comply with of Subsection (1)(a) is guilty of an offence against this Act punishable, upon conviction, by a fine of not less than K500.00 and not exceeding K5,000.00 or imprisonment for a period not exceeding six months.

(3)³⁴¹ ^{342A} A person, other than the State, or an authority of the State, who fails to comply with of Subsection (1)(b) is guilty of an offence against this Act punishable, upon conviction, by a fine of not less than K500.00 and not exceeding K5,000.00.

(4) Where an amount payable to the Commissioner General by a person under this section remains unpaid after the expiration of the period within which, by this section, it is required to be paid—

- (a) that amount continues to be payable by that person to the Commissioner General; and
- (b) an additional amount is, in addition to any other penalty to which that person may be liable, payable by that person to the Commissioner General at the rate of 20% per annum on the amount unpaid, computed from the expiration of that period.

³³⁹ Section 311E Subsection (2) amended by No. 22 of 2004, s. 75.

³⁴⁰ Section 311E Subsection (2) amended by No. 22 of 2004, s. 75.

³⁴¹ Section 311E Subsection (3) amended by No. 22 of 2004, s. 75.

³⁴² Section 311E Subsection (3) amended by No. 22 of 2004, s. 75.

(5) The Commissioner General may, in any case, for reasons that he thinks sufficient, remit any additional amount payable under Subsection (4) or any part of such an additional amount.

311F. DIVIDENDS NOT IN MONEY NOT TO BE PAID UNTIL PAYMENT MADE TO COMMISSIONER GENERAL ON ACCOUNT OF TAX.

(1) Where—

- (a) a dividend is to be paid by a company to a person; and
- (b) the company would, but for Section 311C(5), be required to make a deduction under that section from the dividend,

the company shall not pay, credit or distribute the dividend to any person until an amount equal to the amount that, but for that subsection, would have been required to be deducted has been paid to the Commissioner General in respect of the dividend.

(2) Where—

- (a) a dividend is paid to the State, an authority of the State or a person in Papua New Guinea (in this section referred to as “**the payee**”); and
- (b) the payee would, but for Section 311C(5), be required to make a deduction under that section from a dividend or a part of the dividend,

the payee shall not pay, credit or distribute the dividend, or the part of the dividend, to any person until an amount equal to the amount that, but for that subsection, would have been required to be deducted has been paid to the Commissioner General in respect of the dividend.

(3) A person who has paid an amount to the Commissioner General in respect of a dividend for the purposes of this section may, in writing, request the Commissioner General to inform the company by which the dividend is to be paid, or any person to whom the dividend has been paid, that that amount has been so paid in respect of that dividend, and, upon receipt of such a request, the Commissioner General shall, in writing, inform that other person accordingly.

(4) A person other than the State or an authority of the State who fails to comply with a provision of this section is guilty of an offence.

Penalty: ³⁴³A fine not less than K500.00 and not exceeding K5,000.00.

311G. LIABILITY OF PERSON WHO FAILS TO MAKE DEDUCTIONS, ETC.

(1) Where a person has failed to make a deduction from a dividend in accordance with Section 311C or has contravened Section 311F(1) or (2) in relation to a dividend, that person is liable, in addition to any other penalty to which he may be liable, to pay to the Commissioner General—

- (a) an amount equal to any unpaid dividend (withholding) tax payable in respect of that dividend; and

³⁴³ Section 311F Subsection (4) amended by No. 22 of 2004, s. 76.

(b) an amount equal to any unpaid additional tax payable under Section 189C(3) in respect of that dividend (withholding) tax.

(2) Where a person has paid to the Commissioner General an amount payable by virtue of Subsection (1)(a), that person may recover an amount equal to that amount from the person liable to pay the dividend (withholding) tax to which that first-mentioned amount relates.

(3) Where an amount payable under Subsection (1) has been paid to the Commissioner General, the person liable to pay the dividend (withholding) tax to which the amount relates is entitled to a credit equal to that amount.

(4) Where a person has paid to the Commissioner General an amount payable by virtue of Subsection (1)(b) and the additional tax or any part of the additional tax to which the amount relates is remitted by the Commissioner General under Section 189C(4)–

(a) any credit under Subsection (3) that relates to the amount shall be reduced by an amount equal to the additional tax that is remitted; and

(b) the Commissioner General shall pay to the person who paid the amount to the Commissioner General an amount equal to the additional tax that is remitted.

311H. RECOVERY OF AMOUNTS BY COMMISSIONER GENERAL.

(1) An amount payable to the Commissioner General under this Division by a person is a debt due to the State and payable to the Commissioner General and–

(a) that amount may be sued for and recovered in a court of competent jurisdiction by the Commissioner General suing in his official name; or

(b) a court before which proceedings are taken against that person for an offence against this Division may order that person to pay that amount to the Commissioner General.

(2) The provisions of Section 333 apply in proceedings for the recovery of an amount payable to the Commissioner General under this Division in the same way as those provisions apply in proceedings for the recovery of a pecuniary penalty under this Act.

(3) The provisions of Section 339 apply to an order for the payment of a sum of money to the Commissioner General made under Subsection (1)(b) in the same way as they apply to an order for the payment of a sum of money to the Commissioner General made under Part VII.

311I. CREDITS IN RESPECT OF DEDUCTIONS MADE FROM DIVIDENDS.

(1) A person who is liable, under Section 189B, to pay dividend (withholding) tax on a dividend from which a deduction has been made, or purports to have been made, under Section 311C is entitled to a credit–

- (a) where the whole of the deduction has been borne by that person—of an amount equal to the deduction; or
- (b) where part only of the deduction has been borne by that person—of an amount equal to that part.

(2) A person who is liable, under Section 189B, to pay dividend (withholding) tax on a dividend in respect of which an amount has been paid to the Commissioner General for the purposes of Section 311F is entitled to a credit—

- (a) where the whole of that amount has been met by that person—of an amount equal to that amount; or
- (b) where part only of that amount has been met by that person—of an amount equal to that part.

311IA. [REPEALED.]

311J. APPLICATION OF CREDITS.

(1) Subject to this section, the amount of a credit to which a person is entitled under this Division is a debt due and payable to that person by the Commissioner General on behalf of the State.

(2) The Commissioner General may apply the whole or a part of a credit to which a person is entitled under this Division in total or partial discharge of any liability to the State of the person entitled to the credit arising under, or by virtue of, this Act or any other Act of which the Commissioner General has the general administration.

(3) Where, under Subsection (2), the Commissioner General has applied an amount of credit in discharge of a liability of a person to the State, that person shall be deemed to have paid the amount so applied—

- (a) for the purposes for which it has been so applied; and
- (b) at the time at which it has been so applied or at such earlier time as the Commissioner General determines.

(4) Where the amount, or the sum of the amounts, applied or paid by the Commissioner General as a credit to which a person is entitled under this Division exceeds the amount of the credit to which that person is so entitled, the Commissioner General may recover the amount of the excess as if it were income tax due and payable by that person.

311K. LIABILITY OF TRUSTEE TO PAY DEDUCTIONS TO COMMISSIONER GENERAL.

(1) Where—

- (a) an amount deducted from a dividend is payable to the Commissioner General under this Division by a person; and

- (b) the property of that person has become vested in, or the control of the property of that person has passed to, a trustee,

the trustee is liable to pay that amount to the Commissioner General.

(2) Notwithstanding anything contained in any other Act, an amount payable to the Commissioner General by a trustee under this section has priority over all other debts (other than debts payable to the Commissioner General), whether preferential, secured or unsecured.

(3) Where a trustee, being the trustee of the estate of a bankrupt or the liquidator of a company that is being wound up, is liable to pay an amount to the Commissioner General under this section, Subsection (2) does not operate so as to make that amount payable in priority to any costs, charges or expenses of the administration of the estate or of the winding-up of the company (including costs of a creditor or other person upon whose petition the sequestration order or the winding-up order, if any, was made and remuneration of the trustee) that are lawfully payable out of the assets of the estate or of the company except where, in the case of the winding-up of a company, any creditor is entitled to payment of a debt by the liquidator in priority to all or any of those costs, charges and expenses and has not waived that priority.

311L. PERSONS DISCHARGED FROM LIABILITY IN RESPECT OF DEDUCTIONS.

Where a person has made a deduction from a dividend, being a deduction made, or purporting to have been made, under Section 311C, the person is, by force of this section, discharged from all liability to pay or account for the deduction to any person other than the Commissioner General.

311M. PAYMENTS TO AND FROM GENERAL REVENUE.

(1) All moneys received by the Commissioner General under this Division shall be paid into the General Revenue of Papua New Guinea.

(2) An amount that the Commissioner General is liable to pay under this Division is payable out of the General Revenue of Papua New Guinea, which, is to the necessary extent, appropriated accordingly.

311N. TIME FOR PROSECUTIONS.

A prosecution for an offence against any provision of this Division may be commenced at any time.

311O. JOINDER OF CHARGES UNDER THIS DIVISION.

(1) Charges against the same person for any number of offences against this Division may be joined in one complaint if those charges are founded on the same facts or form, or are part of, a series of offences of the same or a similar character.

(2) Where more than one charge is included in the same complaint in pursuance of Subsection (1), particulars of each offence charged shall be set out in a separate paragraph.

(3) All charges so joined shall be tried together unless the court deems it just that any charge should be tried separately and makes an order to that effect.

(4) If a person is found guilty of more than one offence, the court may, if it thinks fit, inflict one penalty in respect of all offences of which he has been found guilty, but that penalty shall not exceed the sum of the maximum penalties that could be inflicted if penalties were imposed for each offence separately.

Division 5.

Collection of Prescribed Product (Withholding) Tax.

312A. OBJECT OF DIVISION 5.

The object of this Division is to facilitate the collection of Prescribed Product (Withholding) Tax, and this Division shall be construed and administered accordingly.

312B. INTERPRETATION.

In this Division unless the contrary appears—

“**authorized dealer**” includes any person authorized by the law of Papua New Guinea to acquire or act as central marketing agent in respect of any prescribed product;

“**gross income**” means the total consideration paid or payable by an authorized dealer for a prescribed product;

“**person**” includes a company and a trust estate;

“**prescribed product**” means any product prescribed for the purposes of Part III.12A.

312C. DEDUCTION FROM GROSS INCOME.

(1) A person who is an authorized dealer shall before or at the time when gross income or consideration is paid to the vendor of a prescribed product, make a deduction from the gross income of an amount as prescribed.

(2) A person, other than the State, who does not make a deduction of Prescribed Product (Withholding) Tax as required by this section is guilty of an offence.

Penalty: ³⁴⁴A fine of not less than K500.00 and not exceeding K5,000.00.

³⁴⁴ Section 312C Subsection (2) amended by No. 22 of 2004, s. 77.

312D. EXEMPTIONS AND VARIATIONS.

The Commissioner General may, for the purpose of meeting the special circumstances of a case or of the cases included in a class of cases, by notice in writing to a person—

- (a) exempt that person from an obligation imposed on him by Section 312C; or
- (b) vary the amount to be deducted under that section by that person from the gross income from sale of a particular prescribed product.

312E. DEDUCTIONS TO BE FORWARDED TO THE COMMISSIONER GENERAL.

(1) Where a person has made a deduction of Prescribed Product (Withholding) Tax and that deduction was made, or purports to have been made, under Section 312C, that person shall—

- (a) within 21 days after the end of the month in which the deduction was made, pay to the Commissioner General an amount equal to the deduction; and
- (b) subject to Subsection (2), before the expiration of two months after the end of the financial year in which the deduction was made, furnish to the Commissioner General a statement with respect to the deduction, in a form authorized by the Commissioner General, signed by or on behalf of the person who made the deduction.

(2) The Commissioner General may by written notice—

- (a) allow further time for the furnishing of; or
- (b) waive the requirement to furnish,

a statement under Subsection (1)(b).

(3) A person, other than the State, who fails to comply with Subsection (1)(a) is guilty of an offence.

Penalty: ³⁴⁵A fine not exceeding K500.00 and not exceeding K5,000.00 or imprisonment for a period not exceeding six months.

(4) A person, other than the State, who fails to comply with Subsection (1)(b) is guilty of an offence.

Penalty: ³⁴⁶A fine of not less than K500.00 and not exceeding K5,000.00.

(5) Where an amount payable to the Commissioner General by a person under this section remains unpaid after the expiration of the period within which, by this section, it is required to be paid—

³⁴⁵ Section 312E Subsection (3) amended by No. 22 of 2004, s. 78.

³⁴⁶ Section 312E Subsection (4) amended by No. 22 of 2004, s. 78.

- (a) that amount continues to be payable by that person to the Commissioner General; and
- (b) an additional amount is, in addition to any other penalty to which that person may be liable, payable by that person to the Commissioner General at the rate of 20% per annum on the amount unpaid, computed from the expiration of that period.

(6) The Commissioner General may, in any case, for reasons that he thinks sufficient, remit any additional amount payable under Subsection (5) or any part of such an additional amount.

312F. LIABILITY OF PERSON WHO FAILS TO MAKE DEDUCTIONS, ETC.

(1) Where a person has failed to make a deduction of Prescribed Product (Withholding) Tax in accordance with Section 312C, that person is liable, in addition to any other penalty to which he may be liable, to pay the Commissioner General—

- (a) an amount equal to any unpaid Prescribed Product (Withholding) Tax payable in respect of that gross income; and
- (b) an amount equal to any unpaid additional tax payable under Section 185D(3) in respect of that Prescribed Product (Withholding) Tax.

(2) Where a person has paid to the Commissioner General an amount payable by virtue of Subsection (1)(a), that person may recover an amount from the person liable to pay the Prescribed Product (Withholding) Tax to which that first-mentioned amount relates.

(3) Where an amount payable under Subsection (1) has been paid to the Commissioner General, the person liable to pay the Prescribed Product (Withholding) Tax to which the amount relates is entitled to a credit equal to that amount.

(4) Where a person has paid to the Commissioner General an amount payable by virtue of Subsection (1)(b) and the additional tax or part of the additional tax to which the amount relates is remitted by the Commissioner General under Section 185D(4)—

- (a) any credit under Subsection (3) that relates to the amount shall be reduced by an amount equal to the additional tax that is remitted; and
- (b) the Commissioner General shall pay to the person who paid the amount to the Commissioner General an amount equal to the additional tax that is remitted.

312G. RECOVERY OF AMOUNTS BY COMMISSIONER GENERAL.

(1) An amount payable to the Commissioner General under this Division by a person is a debt due to the State and payable to the Commissioner General and—

- (a) that amount may be sued for and recovered in a court of competent jurisdiction by the Commissioner General suing in his official name; or

- (b) a court before which proceedings are taken against that person for an offence against this Division may order that person to pay that amount to the Commissioner General.

(2) The provisions of Section 333 apply in proceedings for the recovery of an amount payable to the Commissioner General under this Division in the same way as those provisions apply in proceedings for the recovery of a pecuniary penalty under this Act.

(3) The provisions of Section 339 apply to an order for the payment of a sum of money to the Commissioner General made under Subsection (1)(b) in the same way as they apply to an order for the payment of a sum of money to the Commissioner General made under Part VII.

312H. CREDITS IN RESPECT OF DEDUCTIONS FROM GROSS INCOME.

A person who is liable, under Section 185C to pay Prescribed Product (Withholding) Tax on gross income from which a deduction has been made, or purports to have been made, under Section 312C is entitled to a credit—

- (a) where the whole of the deduction has been borne by that person—of an amount equal to the deduction; or
- (b) where part only of the deduction has been borne by that person—of an amount equal to that part.

Division 5A.

Collection of Interest (Withholding) Tax.

312AA. OBJECT OF DIVISION 5A.

The object of this Division is to facilitate the collection of Interest (Withholding) Tax levied under Section 186 and this Division shall be construed and administered accordingly.

312AB. INTERPRETATION.

In this Division unless the contrary intention appears—

“**financial institution**” shall have the meaning assigned to it in Section 35(1);

“**person**” includes a company, a trust and a financial institution.

312AC. DEDUCTION FROM GROSS INCOME.

(1) Every person shall before crediting or paying interest to any resident person make a deduction from the gross interest income of an amount as prescribed.

(2) Every person shall at the time when interest is credited to the account of or paid to any non resident person make a deduction from the gross interest income of an amount as prescribed.

(3) A person, who does not make a deduction of Interest (Withholding) Tax as required by this section is guilty of an offence.

Penalty: ³⁴⁷A fine of not less than K500.00 and not exceeding K5,000.00.

312AD. EXEMPTIONS AND VARIATIONS.

The Commissioner General may, for the purpose of meeting the special circumstances of a case or of the cases included in a class of cases, by notice in writing to a person—

- (a) exempt that person from an obligation imposed on him by Section 312AC; or
- (b) vary the amount to be deducted under that section by that person from the gross interest income.

312AE. DEDUCTIONS TO BE FORWARDED TO THE COMMISSIONER GENERAL.

(1) Where a person has made a deduction of Interest (Withholding) Tax and that deduction was made, or purports to have been made, under Section 312AC, that person shall—

- (a) within 21 days after the end of the month in which the deduction was made—
 - (i) pay to the Commissioner General an amount equal to the deduction; and
 - (ii) furnish to the Commissioner General a remittance advice in the form authorized by the Commissioner General and signed by or on behalf of the person who made the deduction; and
- (b) subject to Subsection (2), before the expiration of two months after the end of the financial year in which the deduction was made, furnish to the Commissioner General a statement with respect to the deduction, in a form authorized by the Commissioner General, signed by or on behalf of the person who made the deduction.

(2) The Commissioner General may by written notice—

- (a) allow further time for the furnishing of; or
- (b) waive the requirement to furnish,

a statement under Subsection (1)(b).

(3) A person, who fails to comply with Subsection (1)(a) is guilty of an offence.

Penalty: ³⁴⁸A fine of not less than K500.00 and not exceeding K5,000.00 or imprisonment for a period not exceeding six months.

³⁴⁷ Section 312AC Subsection (3) amended by No. 22 of 2004, s. 79.

³⁴⁸ Section 312AE Subsection (3) amended by No. 22 of 2004, s. 80.

(4) A person, who fails to comply with Subsection (1)(b) is guilty of an offence.

Penalty: ³⁴⁹A fine of not less than K500.00 and not exceeding K5,000.00.

(5) Where an amount payable to the Commissioner General by a person under this section remains unpaid after the expiration of the period within which, by this section, it is required to be paid—

- (a) that amount continues to be payable by that person to the Commissioner General; and
- (b) an additional amount is, in addition to any other penalty to which that person may be liable, payable to the Commissioner General at the rate of 20% per annum on the amount unpaid, computed from the expiration of that period.

(6) The Commissioner General may, in any case, for reasons that he thinks sufficient, remit any additional amount payable under Subsection (5) or any part of such an additional amount.

312AF. LIABILITY OF PERSON FAILING TO MAKE DEDUCTION.

³⁵⁰(1) Where a person has failed to make a deduction of Interest (Withholding) Tax in accordance with Section 312AC, that person is liable, in addition to any other penalty to which he may be liable, to pay to the Commissioner General an amount equal to any unpaid Interest (Withholding) Tax payable in respect of gross interest income.

(2) Where a person has paid to the Commissioner General an amount payable by virtue of Subsection (1), that person may recover an amount from the person liable to pay the Interest (Withholding) Tax to which that first-mentioned amount relates.

312AG. RECOVERY OF AMOUNTS BY COMMISSIONER GENERAL.

(1) An amount payable to the Commissioner General under Division 5A by a person is a debt to the State and payable to the Commissioner General and—

- (a) that amount may be sued for and recovered in a court of competent jurisdiction by the Commissioner General suing in his official name; and
- (b) a court before which proceedings are taken against that person for an offence against this Division may order that person to pay that amount to the Commissioner General.

(2) The provisions of Section 333 apply in proceedings for the recovery of an amount payable to the Commissioner General under this Division in the same way as those provisions apply in proceedings for the recovery of a pecuniary penalty under this Act.

³⁴⁹ Section 312AE Subsection (4) amended by No. 22 of 2004, s. 80.

³⁵⁰ Section 312AF amended by *Income Tax (Budget Provisions 2000) Act 1999* (No 19 of 1999), s10.

(3) The provisions of Section 339 apply to an order for the payment of a sum of money to the Commissioner General made under Subsection (1)(b) in the same way as they apply to an order for the payment of a sum of money to the Commissioner General made under Part VII.

PART VII. – PENAL PROVISIONS AND PROSECUTIONS.**312. TAXATION PROSECUTION.**

In this Part, “**taxation prosecution**” means a proceeding instituted in the name of the Commissioner General, in pursuance of Section 323, for the recovery of a pecuniary penalty under this Act.

313. FAILURE TO FURNISH RETURNS OR INFORMATION, ETC.

(1) A person who fails duly to furnish any return or information or comply with any requirement of the Commissioner General as and when required by this Act or the regulations or by the Commissioner General is guilty of an offence.

Penalty: ³⁵¹A fine of not less than K500.00 and not exceeding K5,000.00 plus K50.00 for each day during which the failure continues.

(2) A prosecution for an offence against this section may be commenced at any time.

314. REFUSAL TO GIVE EVIDENCE.

A person who refuses or neglects duly to attend and give evidence when required by the Commissioner General or an officer duly authorized by him, or truly and fully to answer any questions put to him by, or to produce any book or paper required of him by, the Commissioner General or any such officer, is, unless just cause or excuse for the refusal or neglect is shown by him, guilty of an offence.

Penalty: ³⁵²A fine of not less than K500.00 and not exceeding K5,000.00 plus K50.00 for each day during which the refusal or neglect continues.

315. ORDER TO COMPLY WITH REQUIREMENT.

(1) Upon the conviction of a person for an offence against Section 313 or 314 or a Group Employer against Section 299(9) or Section 284, as the case may be, the court may order him within a time specified in the order to do the act that he has failed or refused or neglected to do, and a person who does not duly comply with such an order is guilty of an offence.

Penalty: ³⁵³A fine of not less than K500.00 and not exceeding K5,000.00 plus K50.00 for each day during which the failure, refusal or neglect continues.

(2) An order under this section may be made orally by the court to the defendant, or may be served in the manner prescribed.

³⁵¹ Section 313 Subsection (1) amended by No. 22 of 2004, s. 81.

³⁵² Section 314 Amended by No. 22 of 2004, s. 82.

³⁵³ Section 315 Subsection (1) amended by No. 22 of 2004, s. 83.

316. ADDITIONAL TAX IN CERTAIN CASES.

(1) Notwithstanding anything contained in Section 313, 314 or 315, a taxpayer who fails duly to furnish as and when required by this Act or the regulations, or by the Commissioner General, a return or any information in relation to a matter affecting either his liability to tax or the amount of the tax, is liable to pay as additional tax or penalty an amount equal to the tax assessable to him or the amount of K100.00 for each complete calendar month or part of a month calculated in respect of the period commencing on the last day that return or information was due to be furnished and ending on the day on which that return or information is furnished, whichever is the greater.

(2) A taxpayer who—

- (a) omits from his return any assessable income; or
- (b) fails to disclose income derived by way of salary or wages for the purposes of Section 46C; or
- (c) includes in his return as a deduction for expenditure incurred by him an amount in excess of the expenditure actually incurred by him; or
- (d) makes an application for a rebate under Section 214 which includes a deduction for expenditure incurred by him in excess of the expenditure actually incurred by him; or
- (da) is assessed under the provisions of Division III.15, dealing with the determination of the source of certain income; or
- (db) is assessed under the provisions of Section 361, dealing with contracts or arrangements to evade tax; or
- (dc) is assessed under any other provision of this Act which requires the Commissioner General to form an opinion or determine a taxable income other than that declared,

is liable to pay as additional tax or penalty either—

- (e) an amount equal to double the difference between the tax or salary or wages tax properly payable by him and the tax or salary or wages tax that would be payable if it were assessed or made subject to rebate on the basis of the return or application for rebate furnished by him, or the disclosure of income made by him; or
- (f) the amount of K100.00 for each complete calendar month or part of a calendar month, calculated in respect of the period commencing on the last day allowed for furnishing the return or application for rebate, as the case may be, and ending on the day on which the assessment or notice in respect of the omitted income, excessive deduction or rebate is made,

whichever is the greater.

(3) The Commissioner General may in any case, for reasons that he thinks sufficient, and either before or after making an assessment or notice, remit the additional tax or penalty or any part of that tax or penalty.

(4) If in any case in which a taxpayer is liable to pay additional tax or penalty under this section a taxation prosecution is instituted in respect of the same subject matter, the penalty awarded by such prosecution will reduce any additional tax or penalty otherwise determined by this section.

317. FALSE RETURNS OR STATEMENTS.

(1) A person who makes or delivers a return that is false in any particular, or makes a false answer whether orally or in writing to a question duly put to him by the Commissioner General or an officer duly authorized by him, is guilty of an offence.

Penalty: ³⁵⁴A fine of not less than K1,000.00 and not exceeding K50,000.00 and, in addition, the court may order the person to pay to the Commissioner General a sum not exceeding double the amount of income tax or dividend (withholding) tax that would have been avoided if the return or answer had been accepted as correct.

(2) In a prosecution for an offence under this section of a person who has not previously been convicted of an offence against this Act, it is a defence if the defendant proves—

- (a) that the return or answer to which the prosecution relates was prepared or made by him personally; and
- (b) that the false return or false answer was made through ignorance or inadvertence.

(3) A prosecution for an offence against this section may be commenced at any time.

318. FAILURE TO SIGN OR FALSE CERTIFICATE.

(1) A person required by this Act to sign an agent's certificate who fails to do so or who signs an agent's certificate that is false in any particular is guilty of an offence.

Penalty: ³⁵⁵Not less than K1,0000.00 and not exceeding K50,000.00.

(2) A prosecution for an offence against this section may be commenced at any time within six years after the commission of the offence.

³⁵⁴ Section 317 Subsection (1) amended by No. 22 of 2004, s. 84.

³⁵⁵ Section 318 Subsection (1) amended by No. 22 of 2004, s. 85.

319. FALSE DECLARATIONS.

A person who, in a declaration made under, or authorized or prescribed by, this Act or the regulations, knowingly and wilfully declares to any matter or thing that is false, shall be deemed to be guilty of wilful and corrupt perjury, and, upon conviction, is liable to imprisonment for a period not exceeding four years.

320. UNDERSTATING INCOME.

(1) A person who, or a company on whose behalf the public officer, or a director, servant or agent of the company, in any return knowingly and wilfully understates the amount of any income or makes a misstatement affecting the liability of any person to income tax or dividend (withholding) tax or the amount of income tax or dividend (withholding) tax is guilty of an offence.

Penalty: ³⁵⁶A fine not less than K1,000.00 and not exceeding K50,000.00 and, in addition, the court may order the person to pay to the Commissioner General a sum not exceeding double the amount of income tax or dividend (withholding) tax that would have been avoided if the statement in the return had been accepted as correct.

(2) A prosecution for an offence against this section may be commenced at any time within six years after the commission of the offence.

321. FRAUDULENT AVOIDANCE OF TAX.

(1) A person who, or a company on whose behalf the public officer, or a director, servant or agent of the company, by any wilful act, default or neglect, or by any fraud, art or contrivance whatever, avoids or attempts to avoid assessment or taxation (which includes salary or wages tax) is guilty of an offence.

Penalty: ³⁵⁷A fine of not less than K1,000.00 and not exceeding K50,000.00 and, in addition, the court may order the person to pay to the Commissioner General a sum not exceeding double the amount of tax or salary or wages tax that has been avoided or attempted to be avoided and imprisonment for a term not exceeding five years.

(2) A prosecution for an offence against this section may be commenced at any time within six years after the commission of the offence.

322. OBSTRUCTING OFFICERS.

A person who obstructs or hinders an officer acting in the discharge of his duty under this Act or the regulations is guilty of an offence.

Penalty: ³⁵⁸A fine of not less than K500.00 and not exceeding K5,000.00.

³⁵⁶ Section 320 Subsection (1) amended by No. 22 of 2004, s. 86.

³⁵⁷ Section 321 Subsection (1) amended by No. 22 of 2004, s. 87.

³⁵⁸ Section 322 Amended by No. 22 of 2004, s. 88.

323. TAXATION PROSECUTIONS.

(1) A proceeding for the recovery of a pecuniary penalty under this Act may be instituted in the name of the Commissioner General by action in the National Court.

(2) Where the penalty sought to be recovered does not exceed K1,000.00, or the excess is abandoned, the proceeding may be instituted in the name of the Commissioner General by information in a court of summary jurisdiction.

324. DEFENDANT TO HAVE RIGHT OF TRIAL IN NATIONAL COURT.

In a taxation prosecution instituted in a court of summary jurisdiction, where the penalty exceeds K400.00 and the excess is not abandoned, the defendant within seven days after service of process may elect in manner prescribed to have the case tried in the National Court, and, upon the defendant so electing, the prosecution shall stand removed to the National Court and shall be conducted as if it had been originally instituted in the National Court.

325. MODE OF TRIAL.

In a taxation prosecution in the National Court, the case shall be tried and the penalty, if any, adjudged by a judge of the Court.

326. APPEAL.

In a taxation prosecution in a court of summary jurisdiction, an appeal lies from a conviction or order of dismissal to such court and in such manner as is provided by the law of Papua New Guinea for appeals from convictions or orders of dismissal.

327. PROSECUTION IN ACCORDANCE WITH PRACTICE RULES.

A taxation prosecution in the National Court may be commenced, prosecuted and proceeded with in accordance with any rules of practice established by the Court for Crown suits in revenue matters or in accordance with the usual practice and procedure of the Court in civil cases or in accordance with the directions of the Court or a judge.

328. INFORMATION, ETC., TO BE VALID IF IN WORDS OF ACT.

All informations, summonses, convictions and warrants shall suffice if the offence is set forth as nearly as may be in the words of this Act.

329. NO OBJECTION FOR INFORMALITY.

(1) An objection shall not be taken or allowed to any information or summons for any alleged defect in the information or summons in substance or in form or for any variance between the information or summons and the evidence adduced at the hearing in support of the information or summons, and the court shall at all times

make any amendment necessary to determine the real question in dispute or which may appear desirable.

(2) If any such defect or variance appears to the court to be such that the defendant has been deceived or misled, it is lawful for the court, upon such terms as it thinks just, to adjourn the hearing of the case to a future day.

330. CONVICTION NOT TO BE QUASHED.

A conviction, warrant of commitment or other proceeding, matter or thing done or transacted in relation to the execution or carrying out of any taxation act shall not be held void, quashed or set aside by reason of any defect or want of form, and a party is not entitled to be discharged out of custody on account of that defect.

331. PLACE WHERE OFFENCE COMMITTED.

Any of the following offences, namely:—

- (a) failure duly to furnish any return or information;
- (b) making or delivering a return that is false in any particular, or making a false answer;
- (c) failure to comply with any requirement,

shall be deemed to have been committed—

- (d) at the place where the return or information was furnished, or should, in accordance with this Act, the regulations or a requirement of the Commissioner General, have been furnished, or where the answer was made, or where the requirement should have been complied with; or
- (e) at the usual or last known place of business or abode of the defendant,

and may be charged as having been committed at either of those places.

332. PROTECTION TO WITNESSES.

A witness on behalf of the Commissioner General in a taxation prosecution shall not be compelled to disclose the fact that he received any information or the nature of the information or the name of the person who gave the information, and an officer appearing as a witness shall not be compelled to produce any reports made or received by him confidentially in his official capacity or containing confidential information.

333. AVERMENT OF PROSECUTOR SUFFICIENT.

(1) In a taxation prosecution, an averment of the prosecutor or plaintiff contained in the information, complaint, declaration or claim is evidence of the matter averred.

(2) This section applies to any matter so averred although—

- (a) evidence in support or rebuttal of the matter averred or of any other matter is given; or
- (b) the matter averred is a mixed question of law and fact, but in that case the averment is evidence of the fact only.

(3) Any evidence given in support or rebuttal of a matter so averred shall be considered on its merits, and the credibility and probative value of that evidence shall be neither increased nor diminished by reason of this section.

(4) This section does not apply to—

- (a) an averment of the intent of the defendant; or
- (b) proceedings for an indictable offence or an offence directly punishable by imprisonment.

(5) This section does not lessen or affect any onus of proof otherwise falling on the defendant.

334. EVIDENCE OF AUTHORITY TO INSTITUTE PROCEEDINGS.

(1) Where a taxation prosecution has been instituted by an officer in the name of the Commissioner General, the prosecution shall, unless the contrary is proved, be deemed to have been instituted by the authority of the Commissioner General.

(2) The production of a telegram purporting to have been sent by the Commissioner General and purporting to authorize an officer to institute a taxation prosecution is sufficient evidence of the authority of the officer to institute the prosecution in the name of the Commissioner General.

335. APPEARANCE BY COMMISSIONER GENERAL.

(1) In an action, prosecution or other proceeding in any court by or against the Commissioner General, he may appear either personally or by a barrister or solicitor, or by an officer in the Public Service.

(2) The appearance of such an officer and his statement that he appears by authority of the Commissioner General are sufficient evidence of that authority.

336. MINIMUM PENALTIES.

(1) Subject to Subsection (2), a minimum penalty imposed by this Act is not liable to reduction under any power of mitigation that would, but for this section, be possessed by the court.

(2) Where, in proceedings to prosecute a person for an offence against this Act—

- (a) the Act specifies that an amount in excess of K50.00 shall be the minimum penalty in relation to that offence; and
- (b) prior to the matter being heard by a court, an application is made in writing by or on behalf of the person specifying that, pursuant to this

section, a penalty of an amount less than the minimum penalty should be imposed in relation to that prosecution for the offence; and

- (c) the court determines that exceptional circumstances apply which justify the imposition of a lesser penalty,

the court may impose a penalty of an amount not less than K50.00.

337. TREATMENT OF CONVICTED OFFENDERS.

(1) Where a pecuniary penalty is adjudged to be paid by a convicted person, the court shall—

- (a) commit the offender to a correctional institution until the penalty is paid; or
- (b) release the offender upon his giving security for the payment of the penalty; or
- (c) exercise for the enforcement and recovery of the penalty any power of distress or execution possessed by the court for the enforcement and recovery of penalties or money adjudged to be paid in any other case.

(2) Where the court makes an order committing the offender to a correctional institution under Subsection (1) the court may, at any time before the offender is imprisoned in pursuance of the order, allow the offender a specified time for payment of the penalty or allow him to pay the penalty by specified instalments and, in that case—

- (a) the order committing the offender to a correctional institution shall not be executed unless the offender fails to pay the penalty within that time or fails to pay any instalment at the time when it is payable, as the case may be; and
- (b) if the offender pays the penalty within that time or pays all the instalments, as the case may be—the order committing the offender to a correctional institution shall be deemed to have been discharged; and
- (c) if the offender is imprisoned in pursuance of the order but, before being so imprisoned, has paid part of the penalty—Section 338 shall apply in relation to him as if the amount of the penalty were that part of the penalty remaining unpaid immediately before his being so imprisoned.

338. RELEASE OF OFFENDERS.

(1) The officer-in-charge of a correctional institution to which a person has been committed for non-payment of a penalty under this Act shall discharge him—

- (a) on payment to the officer-in-charge of the penalty adjudged; or
- (b) on a certificate by the Commissioner General or an Assistant Commissioner that the penalty has been paid or released; or

- (c) if the penalty adjudged to be paid is not paid or released—according to the following table:—

Amount of Penalty	Period after commencement of imprisonment on the expiration of which defendant is to be discharged
Not more than K50.00	7 days.
More than K50.00 and not more than K100.00	14 days.
More than K100.00 and not more than K200.00	1 month.
More than K200.00 and not more than K400.00	2 months.
More than K400.00 and not more than K500.00	3 months.
More than K500.00 and not more than K1,000.00	6 months.
More than K1,000.00	1 year.

(2) Where a person is committed to a correctional institution for non-payment of more than one penalty—

- (a) his imprisonment for the period specified in Subsection (1) in respect of any one of those penalties does not relieve him from liability to imprisonment for the period so specified in respect of the amount of any other of those penalties; and
- (b) the last-mentioned period of imprisonment commences at the expiration of the first-mentioned period of imprisonment.

339. ENFORCEMENT OF ORDERS FOR PAYMENT.

(1) Where an order for the payment of a sum of money by a person to the Commissioner General is made under this Part by a court of summary jurisdiction, a certificate of that order in the prescribed form and containing the prescribed particulars (which certificate the clerk or other proper officer of the court is hereby required to grant) may, in the prescribed manner and subject to the prescribed conditions, be registered in any court having jurisdiction to entertain civil proceedings to the amount of the order.

(2) From the date of registration the certificate is a record of the court in which it is registered and has the same force and effect in all respects as a judgment of that

court and, subject to the prescribed conditions, the like proceedings (including proceedings in solvency) may be taken upon the certificate as if the order had been a judgment of that court in favour of the Commissioner General.

(3) The Commissioner General's costs of registration of the certificate and other proceedings under this section shall, subject to the prescribed conditions, be deemed to be payable under the certificate.

340. COSTS.

In all taxation prosecutions the court may award costs against any party, and the provisions of this Act relating to the recovery of penalties, except commitment to gaol, extend to the recovery of any costs adjudged to be paid.

341. PENALTIES NOT TO RELIEVE FROM TAX.

The adjudgment or payment of a penalty under this Act does not relieve a person from liability to assessment and payment of any income tax or dividend (withholding) tax for which he would otherwise be liable.

PART VIII. – REGISTRATION OF TAX AGENTS.

342. DEFINITIONS.

In this Part, unless the contrary intention appears–

“**application**” means an application to the Registrar in pursuance of this Part;

“**registered tax agent**” means a person or partnership who or which is registered as a tax agent in pursuance of this Part;

“**the Registrar**” means the Registrar of Tax Agents referred to in Section 343.

343. REGISTRAR OF TAX AGENTS.

For the purposes of this Part, there shall be a Registrar of Tax Agents.

344. REGISTRAR NOT TO BE SUED.

An action or suit shall not be brought or maintained against a person who is or has been the Registrar of Tax Agents for any non-feasance or misfeasance in connection with his duties.

345. SUMMONING OF WITNESSES, ETC.

The Registrar has such powers as are prescribed with respect to the taking of evidence, the administration of oaths or affirmations, the summoning of witnesses and the production of documents.

346. REGISTRATION OF TAX AGENTS.

(1) A person or partnership desiring to be registered as a tax agent of a certain class may make application to the Registrar for registration as an agent of that class.

(2) An application under this section shall be accompanied by a lodgment fee of–

(a) where the applicant is an individual–K50.00; and

(b) where the applicant is a partnership or company–K100.00,

which the Registrar shall pay to the Commissioner General.

(3) If the applicant satisfies the Registrar that–

(a) in the case of an individual–the applicant; or

(b) in the case of a partnership–a member of the partnership specified in the application; or

(c) in the case of a company–a person, specified in the application, employed by the company,

is a fit and proper person to prepare income tax returns and transact business on behalf of taxpayers of a kind permitted to be prepared or carried out by a person registered as a tax agent of a class in respect of which the application is made and that—

- (d) in the case of a partnership—every member of the partnership; or
- (e) in the case of a company—every director, and every manager or other administrative officer, of the company,

is over the age of 21 years at the date on which the application is made, and is of good fame, integrity and character, the Registrar shall register the applicant as a tax agent of that class.

(3A) For the purposes of this Part the classes of tax agents and their respective permitted functions are as follows:—

Class A—the preparation of tax returns declaring income from salaries and wages only, and the transaction of business relating to such returns.

Class B—the preparation of tax returns (other than partnership, trust and company returns) declaring income as for Class A registration and investment income, and the transaction of business relating to such returns.

Class C—the preparation of tax returns (other than partnership, trust and company returns) declaring income as for Class B registration and income from a business, and the transaction of business relating to such returns.

Class D—the preparation of tax returns declaring income as for Class C registration and the preparation of partnership or trust returns, and the transaction of business relating to such returns.

Class E-the preparation of tax returns of any kind declaring income of any kind, and the transaction of business relating to such returns.

(4) When a partnership or company is registered as a tax agent, the member or person referred to in Subsection 3(b) or (c) shall be registered by the Registrar as a nominee of the tax agent for the purposes of this Part.

(5) A partnership or a company may, either in an application for registration as a tax agent or, if it is already so registered, in an application made for the purpose, request the Registrar to register as additional or substituted nominees of the partnership or company for the purposes of this Part any other members of the partnership or persons employed by the company, and shall pay, in respect of each proposed nominee, a lodgment fee of K50.00, which the Registrar shall pay to the Commissioner General.

(6) If the Registrar is satisfied that a person in respect of whom a request is made under Subsection (5) is a fit and proper person to prepare income tax returns and transact income tax business of a kind permitted to be prepared or carried out by a person registered as a tax agent of a class in respect of which the application is made, he may register that person as an additional or substituted nominee of the tax agent for the purposes of this Part.

(7) Every partnership that is registered as a tax agent shall forthwith notify the Registrar of any change in the constitution of the partnership, and every company that is registered as a tax agent shall forthwith notify the Registrar if any person who is a nominee of the company for the purposes of this Part ceases to be employed by the company or if a person becomes a director, or a manager or other administrative officer, of the company.

Penalty: K100.00.

(8) A person shall cease to be a nominee of a partnership or company—

- (a) in the case of a partnership—if he ceases to be a member of the partnership; or
- (b) in the case of a company—if he ceases to be employed by the company; or
- (c) upon notification by the partnership or company to the Registrar that it no longer desires that person to be its nominee; or
- (d) if the Registrar serves upon the partnership or company a notice that in his opinion that person is no longer a fit and proper person to be a nominee of the partnership or company, as the case may be.

(9) Where—

- (a) an application under this section has not been granted or has been withdrawn; or

- (b) the registration of a person or a partnership as a tax agent, or as the nominee of a tax agent, has ceased,

in circumstances that, in the opinion of the Registrar, justify the repayment of the lodgment fee paid under Subsection (2) or (5), the Registrar shall notify the Commissioner General in writing accordingly, and the Commissioner General shall repay the lodgment fee.

347. ANNUAL NOTICE BY TAX AGENTS.

Where—

- (a) the Registrar has registered a person as a tax agent; and
- (b) that registration is in force on any first day of April after the registration; and
- (c) that person desires that the registration shall continue in force,

that person shall, within seven days after that first day of April, or within such further time as the Registrar allows—

- (d) notify the Registrar, in a form approved by the Registrar, that he desires to continue to be registered; and
- (e) furnish to the Registrar such particulars as are specified in the form; and
- (f) pay a renewal fee of—
 - (i) where the applicant is an individual—K10.00; and
 - (ii) where the applicant is a partnership or company—K20.00.

348. CANCELLATION OF REGISTRATION OF TAX AGENTS.

(1) Registration as a tax agent remains in force until cancelled in accordance with this Act.

(2) The Registrar may cancel the registration of a tax agent upon being satisfied that—

- (a) a return that has been prepared by or on behalf of the tax agent is false in any material particular, unless the tax agent establishes to the satisfaction of the Registrar that he had no knowledge of the falsity or that the falsity was due to his inadvertence; or
- (b) the tax agent—
 - (i) has neglected the business of a principal; or
 - (ii) has been guilty of misconduct as a tax agent; or
 - (iia) has prepared a tax return of a type or transacted business of a kind not permitted to be prepared or transacted by a tax agent of a class in respect of which he is registered; or

- (iii) is not a fit and proper person to remain registered; or
- (c) in the case of a partnership or company—a nominee of the tax agent is not a fit and proper person to be such a nominee, or that a person who has become a member of the partnership, or a director, or manager or other administrative officer, of the company is under the age of 21 years or is not of good fame, integrity and character.

(3) The Registrar shall cancel the registration of a tax agent if the tax agent fails to give notice, and furnish particulars, to the Registrar in accordance with Subsection (2).

(4) The Registrar shall cancel the registration of an individual as a tax agent upon his death, insolvency or his permanently ceasing to carry on business as a tax agent.

(5) The Registrar shall cancel the registration of a tax agent that is a partnership or a company—

- (a) if there is no nominee registered in respect of the tax agent; or
- (b) in the case of a company, if the company goes into liquidation or, in the case of a partnership, if any partner is adjudicated insolvent; or
- (c) if it permanently ceases to carry on business as a tax agent.

(6) Where the registration of a tax agent is cancelled, an appeal lies to the National Court and the decision of the National Court on the appeal is final and conclusive.

(7) The regulations may prescribe the practice and procedure in connection with appeals under Subsection (6) and may make provision for the suspension of the cancellation during any period before the appeal is finally disposed of.

(8) If an individual who is registered as a tax agent is adjudicated insolvent or permanently ceases to carry on business as a tax agent, he shall forthwith notify the Registrar of that fact.

Penalty: ³⁵⁹A fine of not less than K500.00 and not exceeding K5,000.00

(9) A registered tax agent that is a partnership or a company shall forthwith notify the Registrar of any event or matter specified in Subsection (5) that occurs in relation to the partnership or company.

Penalty: ³⁶⁰A fine of not less than K500.00 and not exceeding K5,000.00.

349. UNREGISTERED TAX AGENTS NOT TO CHARGE FEES.

(1) A person, other than a person exempted under this section, shall not demand or receive a fee for or in relation to the preparation of an income tax return or objection, or for or in relation to the transaction of any business on behalf of a

³⁵⁹ Section 348 Subsection (8) amended by No. 22 of 2004, s. 89.

³⁶⁰ Section 348 Subsection (9) amended by No. 22 of 2004, s. 89.

taxpayer in income tax matters, unless he is a registered tax agent of a class permitted to prepare that return or objection or transact that business.

Penalty: ³⁶¹A fine of not less than K500.00 and not exceeding K5,000.00.

(2) The Registrar may, in his discretion, exempt a person from the operation of this section upon being satisfied that the total income derived by that person as a tax agent during the period of 12 months immediately preceding the date of his application for such an exemption did not exceed K100.00.

(3) An exemption under this section may, in the discretion of the Registrar, be renewed every 12 months, and lapses at the expiration of 12 months from the date of the grant of the exemption or, if it has been renewed, of the last renewal.

(4) Subsection (1) does not apply to a solicitor or counsel acting in the course of his profession in the preparation of an objection, in any litigation or in any proceedings before the Review Tribunal, or so acting in an advisory capacity either in connection with the preparation of an income tax return or with any income tax matter.

(5) A person is not entitled to sue for, recover or set-off a fee that he is prohibited by this section from demanding.

(6) A prosecution for an offence against this section may be commenced at any time within six years after the commission of the offence.

350. NEGLIGENCE OF REGISTERED TAX AGENTS, ETC.

(1) If, through the negligence of a registered tax agent or of a person exempted under Section 349, a taxpayer becomes liable to pay a fine or other penalty or any additional tax, the registered tax agent, or the person, as the case may be, is liable to pay to the taxpayer the amount of that fine or other penalty or additional tax, and that amount may be sued for and recovered by the taxpayer in a court of competent jurisdiction.

(2) Nothing in this section exonerates the taxpayer from his liability.

351. PREPARATION OF RETURNS, ETC., ON BEHALF OF REGISTERED TAX AGENT.

(1) A registered tax agent or a person exempted under Section 349 shall not allow any person, not being his employee, a registered tax agent or, in the case of a partnership that is registered as a tax agent, a member of that partnership—

- (a) to prepare on his behalf, either directly or indirectly, his own or any other income tax return or objection; or
- (b) to conduct on his behalf, either directly or indirectly, any business of himself or any other person relating to any income tax return or income tax matter.

³⁶¹ Section 349 Subsection (1) amended by No. 22 of 2004, s. 90.

Penalty: ³⁶²A fine of not less than K500.00 and not exceeding K5,000.00.

(2) A partnership or company that is registered as a tax agent shall not allow any person to do anything specified in Subsection 1(a) or (b) except under the supervision and control of a nominee of the partnership or company.

Penalty: ³⁶³A fine of not less than K500.00 and not exceeding K5,000.00.

(3) Nothing in this section shall be construed as prohibiting the employment by a registered tax agent, or a person exempted under Section 349, or solicitor or counsel to act in the course of his profession in the preparation of any objection, in any litigation or in any proceedings before the Review Tribunal, or in an advisory capacity either in connection with the preparation of any such return or the conduct of any such business.

352. ADVERTISING, ETC., BY PERSONS OTHER THAN REGISTERED TAX AGENTS.

A person, not being a registered tax agent or a person exempted under Section 349, shall not, directly or indirectly—

- (a) describe himself as or represent himself to be a tax agent; or
- (b) advertise in any manner that income tax returns will be prepared by him or that any other matter in connection with income tax will be attended to by him.

Penalty: ³⁶⁴A fine of not less than K500.00 and not exceeding K5,000.00.

353. OFFENCES BY PARTNERSHIPS.

Where, under a provision of this Part, an obligation is imposed on a partnership to do, or refrain from doing, anything, every partner is, upon the failure of the partnership to comply with the obligation, unless he proves that he had no knowledge of the failure, guilty of an offence, and is liable to the penalty provided in respect of the obligation but not more than one partner shall be punished for one offence.

³⁶² Section 351 Subsection (1) amended by No. 22 of 2004, s. 91.

³⁶³ Section 351 Subsection (2) amended by No. 22 of 2004, s. 91.

³⁶⁴ Section 352 Amended by No. 22 of 2004, s. 92.

PART IX. – MISCELLANEOUS.***Division 1.******Public Officer of Company.*****354. PUBLIC OFFICER OF COMPANY.**

(1) A company carrying on business in Papua New Guinea, or deriving income in Papua New Guinea, shall at all times, unless exempted by the Commissioner General, be represented for the purposes of this Act by a public officer being a person residing in Papua New Guinea and duly appointed by the company or by its duly authorized agent or attorney.

(2) The following provisions apply with respect to every such company:–

- (a) The company shall appoint a public officer within three months after the company commences to carry on business or derive income in Papua New Guinea, or, if the company is carrying on business or deriving income in Papua New Guinea on the date of commencement of this Act, within three months after that date.
- (b) The company shall keep the office of the public officer constantly filled.
- (c) An appointment of a public officer shall be deemed not to have been duly made until after notice of the appointment in writing, specifying the name of the officer and an address for service upon him has been given to the Commissioner General.
- (d) If the company fails duly to appoint a public officer when and as often as such an appointment becomes necessary, it is guilty of an offence punishable upon conviction by a penalty not exceeding K20.00 for every day during which the failure continues.
- (e) Service of a document at the address for service, or on the public officer of the company, is sufficient service upon the company for all the purposes of this Act or the regulations, and, if at any time there is no public officer, then service upon any person acting or appearing to act in the business of the company is sufficient.
- (f) The public officer is answerable for the doing of all such things as are required to be done by the company under this Act or the regulations and, in case of default, is liable to the same penalties.
- (g) Everything done by the public officer that he is required to do in his representative capacity shall be deemed to have been done by the company and the absence or non-appointment of a public officer does not excuse the company from the necessity of complying, or from any penalty for failure to comply, with any of the provisions of this Act or the regulations, but the company is liable to the provisions of this Act as if there were no requirement to appoint a public officer.

- (h) A notice given to or requisition made upon the public officer shall be deemed to be given to or made upon the company.
- (i) Any proceedings under this Act taken against the public officer shall be deemed to have been taken against the company, and the company is liable jointly with the public officer for any penalty imposed upon him.
- (j) Notwithstanding anything contained in this section, and without in any way limiting, altering or transferring the liability of the public officer of a company, every notice, process or proceeding that, under this Act or the regulations, may be given to, served upon or taken against the company or its public officer may, if the Commissioner General thinks fit, be given to, served upon or taken against any director, secretary or other officer of the company or any attorney or agent of the company and that director, secretary, officer, attorney or agent has the same liability in respect of that notice, process or proceeding as the company or public officer would have had if it had been given to, served upon, or taken against the company or public officer.

Division 2.

Exchange Control-Taxation Certificates.

354A. INTERPRETATION.

In this Division unless the contrary intention appears—

“**Central Bank**” or “**Bank**” means the Central Bank of Papua New Guinea;

“**tax**” for the purposes of this Division includes income tax, additional taxes imposed by Sections 65H, 265, 275F, 299G or 316, dividend (withholding) tax, instalment deductions from salary or wages in accordance with Part VI.2, salary or wages tax under Part III.2B or Part VI.2A, and provisional tax imposed in accordance with Part VI.3A;

“**tax clearance certificate**” or “**certificate**” means a certificate issued under Section 354C.

354B. APPLICATION FOR ISSUE OF CERTIFICATE.

(1) Where—

- (a) a person proposes to do an act or thing the doing of which, without the authority of the Central Bank, is prohibited by regulations made under Section 97 or saved under Section 105 of the *Central Banking Act 2000*; and
- (b) by virtue of Section 81(1)(a) of that Act, the Bank is not permitted to grant that authority unless there is produced to the Bank, in respect of that act or thing, a certificate issued under Section 354C, or the Bank has, under Section 81(1)(b) of the *Central Banking Act 2000*, refused to

grant that authority unless there is produced to the Bank such a certificate,

the person may apply in writing to the Commissioner General for the issue of a tax clearance certificate under Section 354C in respect of that act or thing.

354C. ISSUE OF CERTIFICATES.

(1) Where—

- (a) application is made to the Commissioner General under Section 354B for the issue of a tax clearance certificate in respect of an act or thing proposed to be done by the applicant; and
- (b) the Commissioner General is not authorized by Section 354D to refuse to issue the certificate or, if he is so authorized, he is of the opinion that it is not necessary, for the purpose of protecting the revenue of the State to withhold the issue of the certificate,

then, subject to Subsection (2), the Commissioner General shall issue the certificate.

(2) The Commissioner General may, before issuing a certificate under Subsection (1), require the applicant, or any other person or persons, to give to the Commissioner General such undertaking or such undertakings in relation to the proposed act or thing as the Commissioner General considers necessary for the purpose of protecting the revenue of the State being an undertaking or undertakings which the Commissioner General is satisfied will be carried out.

(3) The Commissioner General may require any person who gives, or any persons who give, an undertaking for the purposes of Subsection (2) to agree to pay to the State in the event of a breach of the undertaking such amount as is specified in or is to be ascertained in accordance with, the undertaking, and, if a court is satisfied that a breach of the undertaking given for the purposes of Subsection (2) has occurred, the court may order the person, or all or any of those persons, as the case may be, to pay to the State as a debt due to the State such amount, not exceeding the amount so specified or to be ascertained, as the court determines to be appropriate having regard to all relevant matters, including the nature and extent of the breach, the circumstances in which the breach took place and the nature and extent of any benefit or advantage in relation to the application or operation of this Act which will be, or may reasonably be expected to be, received or obtained, or has been, or could reasonably have been expected to have been, received or obtained, by that person, by one or more of those persons, or by any other person, as a result or by virtue of the breach.

(4) A court may, for the purposes of Subsection (3), treat a person as a person who will receive or obtain or has received or obtained, as a result or by virtue of a breach of an undertaking, a benefit or advantage in relation to the application or operation of this Act, if the person has not become, or could not reasonably be expected to have become, or will not become, or may not reasonably be expected to become liable to pay tax or the liability of the person to pay tax has been, or could

reasonably be expected to have been, or will be, or may reasonably be expected to be reduced, by reason that—

- (a) the person has not, or could not reasonably be expected to have derived, or will not, or may not reasonably be expected to, derive income that the person would have, or could reasonably be expected to have derived, or will, or could reasonably be expected to, derive, if the breach had not taken place; or
- (b) the person has, or could reasonably be expected to have incurred, or will, or may reasonably be expected to, incur, a loss or outgoing that the person would not have, or could not reasonably be expected to have, incurred, or will not, or may not reasonably be expected to, incur, if the breach had not taken place,

but this subsection shall not be taken as limiting the generality of Subsection (3).

(5) The Commissioner General may institute a proceeding in any court, being a court having jurisdiction in proceedings for the recovery of debts up to an amount of not less than the amount that could be recovered in that proceeding, for the recovery on behalf of the State of a debt referred to in Subsection (3).

354D. GROUNDS ON WHICH ISSUE OF CERTIFICATES MAY BE REFUSED.

(1) Where application is made to the Commissioner General, under Section 354B for the issue of a tax clearance certificate in respect of an act or thing proposed to be done by the applicant, the Commissioner General may refuse to issue the certificate if the applicant does not satisfy the Commissioner General that the act or thing will not, or may not reasonably be expected to, involve or assist in, or be associated with, the avoidance or evasion, whether in Papua New Guinea or elsewhere, of Papua New Guinea tax by the applicant or by another person and, without limiting the generality of the foregoing, does not satisfy the Commissioner General that—

- (a) a person (whether or not the applicant), either alone or in association with another person and whether in Papua New Guinea or elsewhere, as a result or by virtue of the doing of the proposed act or thing or of an associated act or thing proposed to be done or done—
 - (i) will not, or may not reasonably be expected to, receive or obtain; or
 - (ii) has not, or could not reasonably be expected to have, received or obtained,
 - a benefit or advantage in relation to the application or operation of this Act and the act or thing, or the associated act or thing—
 - (iii) would not be done, or could not reasonably be expected to be done in the same form or in the same way; or

- (iv) would not have been done, or could not reasonably have been expected to have been done, or done in the same form or in the same way,

but for that benefit or advantage; and

- (b) as a result or by virtue of the doing of the proposed act or thing or an associated act or thing proposed to be done or done, an amount of Papua New Guinea tax that will become, or may reasonably be expected to become, or has become or could reasonably be expected to have become payable will not be, or may not reasonably be expected to be, or has or has not been, or could not reasonably be expected to have been, able to be collected.

(2) A person may, for the purposes of Subsection (1), be treated as a person who will receive or obtain or has received or obtained, as a result or by virtue of the doing of an act or thing, a benefit or advantage in relation to the application or operation of this Act, if the person has not become, or could not reasonably be expected to have become, or will not become, or may not reasonably be expected to become, liable to pay tax or the liability of the person to pay tax has been, or could reasonably be expected to have been, or will be, or may reasonably be expected to be, reduced, by reason that—

- (a) the person has not, or could not reasonably be expected to have derived, or will not, or may not reasonably be expected to, derive income that the person would have, or could reasonably be expected to, derive if the act or thing had not been, or were not, done; or
- (b) the person has, or could reasonably be expected to have, incurred, or will, or may reasonably be expected to, incur, a loss or outgoing that the person would not have, or could not reasonably be expected to incur, if that act or thing had not been, or were not, done,

but this subsection shall not be taken as limiting the generality of Subsection (1).

(3) For the purposes of this section—

- (a) the Commissioner General may have regard to arrangements, understandings and practices not having legal force in the same manner as if they had legal force; and
- (b) the fact that an act or thing is, forms part of or relates to an ordinary business or family dealing is irrelevant.

(4) Where the Commissioner General refuses to issue a tax clearance certificate, he shall cause to be served on the applicant for the issue of the certificate notice of the refusal.

354E. OBJECTIONS.

(1) Where an application is made under Section 354B for the issue of a tax clearance certificate and the application is refused, the applicant may, within 60 days

after service on him of notice of the refusal, post to or lodge with the Commissioner General an objection in writing against the refusal stating fully and in detail the grounds on which he relies.

(2) The Commissioner General shall consider the objection and may either disallow it or allow it.

(3) The Commissioner General shall cause to be served on the objector notice of his decision.

(4) A person who is dissatisfied with the decision of the Commissioner General on an objection by that person may, within 60 days after service on him of notice of that decision, request the Commissioner General in writing to refer the decision to the Review Tribunal for review.

354F. REFERENCES TO THE REVIEW TRIBUNALS AND APPEALS AND REFERENCES TO COURTS.

(1) Where a person has, in accordance with Section 354E(4) requested the Commissioner General to refer a decision to the Review Tribunal, the Commissioner General shall, if the person's request is accompanied by a fee of K20.00, refer the decision to the Review Tribunal as soon as is practicable after receipt of the request.

(2) For the purposes of this section—

- (a) reference to a Review Tribunal is a reference to the Review Tribunal constituted by virtue of Part V; and
- (b) the Review Tribunal has the same powers in relation to the decisions and determinations of the Commissioner General as those contained within Section 253(1).

(3) Upon a reference to a Review Tribunal—

- (a) the person who made the request is limited to the grounds stated in his objection; and
- (b) the burden of proving that the issue of a tax clearance certificate should not have been refused lies on that person.

(4) Upon the request of the Commissioner General or the person who requested the review, the Review Tribunal shall, when giving its decision, state in writing its findings of fact and its reasons in law for the decision.

(5) The Commissioner General or the person who requested a review by a Review Tribunal may, within 30 days after the date of the decision, appeal to the National Court from any decision of the Review Tribunal under this section which involves a question of law.

(6) If a tax clearance certificate is issued as a result of a reference to a Review Tribunal under Subsection (1) (whether or not there is an appeal or reference to the National Court under Subsection (5)), the fee paid in accordance with Subsection (1) in respect of the reference to the Review Tribunal shall be refunded to the person who requested the review.

354G. COMMISSIONER GENERAL MAY OBTAIN INFORMATION OR EVIDENCE.

For the purposes of this Division the powers of the Commissioner General, or an officer authorized by him in that behalf to gain access to and obtain information and evidence are as contained in Sections 365 and 366.

354H. OFFENCES.

(1) A person who—

- (a) fails or neglects to comply with a requirement of the Commissioner General as and when required under Section 354G; or
- (b) without just cause or excuse shown by him, refuses or neglects to attend and answer questions when required by the Commissioner General or an officer authorized by him, or to answer truly and fully any question put to him, or to produce a book, document or other paper required of him, by the Commissioner General or any such officer; or
- (c) makes in, or in connection with, an application under Section 354B, a statement that is false or misleading in a material particular, or makes a false or misleading answer whether orally or in writing, to a question put to him by the Commissioner General or an officer authorized by the Commissioner General,

is guilty of an offence.

Penalty: ³⁶⁵A fine of not less than K1,000.00 and not exceeding K50,000.00.

(2) Upon the conviction of a person for an offence against Subsection (1)(a) or (b), the court may in addition to imposing any penalty under Subsection (1), order him, within a time specified in the order, to do the act which he has failed, refused or neglected to do, and a person who does not comply with such an order is guilty of a further offence.

Penalty: ³⁶⁶A fine of not less than K1,000.00 and not exceeding K50,000.00.

(3) An order under Subsection (2) may be made orally by the court to the defendant, or may be in writing and served in such manner as is prescribed.

Division 2A.³⁶⁷

Certificates of Compliance.

354I. OBJECT.

³⁶⁸The object of this Division is to enable the Commissioner General to obtain information to ensure compliance by the taxpayer with any of the Acts administered by the Commissioner General.

³⁶⁵ Section 354H Subsection (1) amended by No. 22 of 2004, s. 93.

³⁶⁶ Section 354H Subsection (2) amended by No. 22 of 2004, s. 93.

³⁶⁷ Division IX.2A inserted by No 35 of 1984, s11; repealed and replaced by No 6 of 1986, s9.

354J. APPLICATION.

³⁶⁹Notwithstanding the provisions of Division VI.2, this Division shall apply to a business income payment made after 31 December 1992 where the payment is an eligible payment as defined in this Division.

354K. INTERPRETATION.

³⁷⁰In this Division, unless the contrary intention appears—

“certificate of compliance” means a certificate issued by the Commissioner General under this Division and includes an unexpired Nil Deduction Authority issued under Section 298;

“contract” means a contract, whether express or implied, whether or not in writing and whether or not enforceable, or intended to be enforceable, by legal proceedings;

“eligible payment” means a payment of a kind declared by the Regulations to be an eligible payment for the purposes of this Division and that is—

- (a) made, or is liable to be made under which, in whole or in part, involves the performance of work (whether or not by the person to whom the payment is made or is liable to be made) but does not include—
 - (i) a payment of salary or wages; or
 - (ii) a payment under a contract that is a prescribed contract for the purposes of Division III.14A; or
 - (iii) a payment of exempt income; or
 - (iv) a payment made to or by a trustee of the estate of a bankrupt or the liquidator of a company that is being wound up; and
- (b) made for the performance of a contract prescribed for the purpose of this Division;

“income reporting statement” means a statement by the paying authority on a form approved by Commissioner General containing details of payments to a person in respect of an eligible payment;

“payee” means a person who receives or is likely to receive an eligible payment;

“paying authority” means a person who makes, or is likely to make an eligible payment and—

- (a) is not a natural person; or

³⁶⁸ Section 354I repealed and replaced by No 6 of 1986, s9.

³⁶⁹ Section 354J repealed and replaced by No 6 of 1986, s9.

³⁷⁰ Section 354K repealed and replaced by No 6 of 1986, s9.

- (b) is a natural person and the payment is not wholly or principally of a private or domestic nature;

“paying authority registration” means a document in the form approved by the Commissioner General for the purposes of Section 354O;

“work” includes—

- (a) services; and
- (b) the provision of materials or goods in connection with the services; and
- (c) any services of a professional, technical, or artistic nature.

354L. POWER TO ISSUE CERTIFICATES.

³⁷¹(1) Subject to the requirements of this Division, the Commissioner General may, upon application by any person required to obtain a compliance certificate, issue a compliance certificate and such number of official copies as is deemed necessary, to such person in relation to a specified period.

(2) Subject to Subsection (3), the Commissioner General shall not issue a certificate of compliance to a person unless the Commissioner General is satisfied that the person—

- (a) maintains such accounting and taxation records which correctly record and explain the transactions and financial position of his business including a statement of income and expenditure over the relevant period and a statement of assets and liabilities; and
- (b) conducts all financial transactions relating to the business through a bank account or accounts that are separate from any private or domestic account; and
- (c) satisfactorily complies with his obligations relating to liability for taxation.

(3) Notwithstanding the provisions of Subsection (2), where the Commissioner General is of the opinion that a person applying for a compliance certificate, and having satisfied the requirements of Subsection (2), has assisted or has been involved in aiding another person to avoid the requirements of Subsection (2), he may refuse to issue a compliance certificate to such person.

(4) Where the Commissioner General having regard to—

- (a) the purposes of this Division; and
- (b) the special circumstances (if any) that exist or existed in relation to the person; and
- (c) such other matter as the Commissioner General considers relevant,

³⁷¹ Section 354L repealed and replaced by No 6 of 1986, s9.

is of the opinion that it would be unreasonable to refuse to issue a certificate of compliance to any person, he may issue such a person with a certificate of compliance.

(5) A compliance certificate issued under Subsection (1) shall remain in force until the holder is notified by the Commissioner General that his certificate has been cancelled.

354M.DUTY TO OBTAIN COMPLIANCE CERTIFICATE.

³⁷²(1) A person who—

- (a) proposes to enter into a contract for which he would be entitled to receive an eligible payment of K500.00 or more shall apply in writing to the Commissioner General for a certificate of compliance to be issued under this Division; and
- (b) is the holder of an unexpired certificate of compliance shall be deemed to have complied with the requirements of this Subsection.

(2) A person, who fails to comply with the requirements of Subsection (1)(a), is guilty of an offence.

Penalty: ³⁷³A fine of not less than K500.00 and not exceeding K5,000.00.

(3) Where the Commissioner General receives an application lodged under Subsection (1) and the Commissioner General is satisfied that the applicant has met the requirements of Section 354L(2), he may issue that person with a certificate of compliance.

(4) A person who has been issued a nil deduction authority under Section 289 shall be deemed to have complied with the requirements of Subsection (1) until the expiration of the nil deduction authority he holds.

(5) A person who has been issued a certificate, or is the holder of an unexpired nil deduction authority issued under Section 289, shall produce such certificate or nil deduction authority to the paying authority with whom he intends to enter into a contract.

(6) A person, who fails to comply with the requirements of Subsection (5), is guilty of an offence.

Penalty: ³⁷⁴A fine of not less than K500.00 and not exceeding K5,000.00.

354N. DUTIES OF A PAYING AUTHORITY.

³⁷⁵(1) A paying authority shall, prior to entering into a contract on which he will be liable to make an eligible payment of K500.00 or more, require the person

³⁷² Section 354M repealed and replaced by No 6 of 1986, s9.

³⁷³ Section 354M Subsection (2) amended by No. 22 of 2004, s. 94.

³⁷⁴ Section 354M Subsection (6) amended by No. 22 of 2004, s. 94.

³⁷⁵ Section 354N repealed and replaced by No 6 of 1986, s9.

with whom the contract is to be made to produce to him a certificate of compliance issued by the Commissioner General.

(2)³⁷⁶ [*Repealed.*]

(3) A paying authority shall, where he makes in relation to one contract an eligible payment of K500.00 or more, or in relation to one payee eligible payments for several contracts and the total amount paid exceeds K3,000.00 in any one year, furnish an annual income reporting statement containing the following:—

- (i) the amount of the payment or payments made during the year;
- (ii) the name and address of the payee or payees;
- (iii) the income tax file number of the payee or payees;
- (iv) the compliance certificate number or numbers of the payee or payees;
- (v) in relation to an eligible payment that exceeds K500.00, a signed declaration that prior to entering into the contract or contracts the payee had produced to him a certificate of compliance issued by the Commissioner General.

(4) A paying authority required to lodge an annual income reporting statement shall—

- (a) complete and lodge the income reporting statement required under Subsection (3) by 15 March in the succeeding year; and
- (b) lodge a duplicate of the income reporting statement together with the income tax return for the relevant year of income as required under Part IV.

(5) A paying authority, who fails to comply with the requirements of Subsections (3) and (4), is guilty of an offence.

Penalty: ³⁷⁷A fine of not less than K500.00 but not exceeding K5,000.00.

(6) A paying authority shall keep a register containing particulars of all eligible payments made and shall, when required to do so by the Commissioner General, produce the register for inspection.

(7) A paying authority, who fails to comply with the requirements of Subsection (6), is guilty of an offence.

Penalty: ³⁷⁸A fine of not less than K500.00 and not exceeding K5,000.00.

(8) A paying authority who makes a payment or payments not falling within the provisions of Subsection (3) shall by March in the succeeding year furnish an annual income reporting statement containing a signed declaration that no eligible payments were made exceeding K500.00 in relation to any one contract, and that the total amounts paid to any one payee did not exceed K3,000.00 in that year.

³⁷⁶ Section 354N(2) repealed by No 36 of 1994.

³⁷⁷ Section 354N Subsection (5) amended by No. 22 of 2004, s. 95.

³⁷⁸ Section 354N Subsection (7) amended by No. 22 of 2004, s. 95.

(9) A paying authority, who fails to comply with the requirements of Subsection (8) or makes a false declaration in an income reporting statement, is guilty of an offence.

Penalty: ³⁷⁹A fine of not less than K500.00 but not exceeding K5,000.00.

354O. REGISTRATION PAYING AUTHORITIES.

³⁸⁰(1) Subject to Subsection (2), a person who is a paying authority by virtue of the provisions of this Division shall, before 15 January or within 14 days after the person enters into a contract or becomes eligible to make an eligible payment, complete a registration form approved by the Commissioner General.

(2) A person who is registered as a paying authority under Section 277 shall be deemed to have complied with the requirements of Subsection (1) until the expiration of the registration he holds.

(3) A paying authority, who fails to comply with the requirements of Subsection (1), is guilty of an offence.

Penalty: ³⁸¹A fine of not less than K500.00 and not exceeding K5,000.00.

354P. VARIATION.

The Commissioner General may vary any of the requirements stated in Sections 354L, 354M and 354N for the purpose of meeting the special circumstances of any case or class of cases.

354Q. REVOCATION OF CERTIFICATES.

(1) The Commissioner General, may, at any time, revoke a compliance certificate.

(2) Where the Commissioner General revokes a compliance certificate, he shall notify the person to whom the certificate was issued of such cancellation and state the reason for cancellation.

(3) A person who is notified by the Commissioner General of a revocation effected under Subsection (1) shall, within 14 days after receiving notice of revocation, return to the Commissioner General the certificate including all official copies of the certificate in his possession.

(4) A person, who fails to comply with the requirements of Subsection (3), is guilty of an offence.

Penalty: ³⁸²A fine of not less than K500.00 and not exceeding K5,000.00.

³⁷⁹ Section 354N Subsection (9) amended by No. 22 of 2004, s. 95.

³⁸⁰ Section 354O repealed and replaced by No 6 of 1986, s9.

³⁸¹ Section 354O Subsection (3) amended by No. 22 of 2004, s. 96.

³⁸² Section 354Q Subsection (4) amended by No. 22 of 2004, s. 97.

354R. CANCELLATION OF PAYING AUTHORITY REGISTRATION.

(1) The Commissioner General may—

- (a) upon application in writing by a paying authority setting out his reasons for seeking a cancellation of his registration; or
- (b) for any other reason,

cancel the registration of a paying authority and the Commissioner General shall notify the paying authority of such cancellation.

(2) A cancellation under Subsection (1) shall take effect from the date specified in the notice of cancellation.

354S. NOTIFICATION AND REVIEW OF DECISIONS.

(1) Where the Commissioner General makes a decision on an application under Section 354M or revocation under Section 354Q, the Commissioner General shall give notice in writing of his decision to the applicant.

(2) Where a person has been notified of a decision by the Commissioner General made under this section, and is dissatisfied with that decision, the person may, within 60 days after service on the person of the notice of decision by the Commissioner General, lodge with the Commissioner General an objection in writing against the decision stating fully and in detail the grounds on which the person relies.

(3) The provisions of Division V.2 (other than Section 245) apply in relation to an objection made under Subsection (2) in a like manner as those provisions apply in relation to an objection against an assessment.

354T. OFFENCES.

A person who—

- (a) alters a certificate of compliance or produces to a paying authority a certificate of compliance or an official copy thereof which has been altered without the authority of the Commissioner General; or
- (b) without lawful excuse, has in his possession a forgery or colourable imitation of a certificate of compliance; or
- (c) falsely pretends to be the person named in a certificate of compliance; or
- (d) by the production of a document other than a certificate of compliance that is for the time being in force, causes a paying authority to contravene the provisions of Section 354N(1) or (3); or
- (e) makes, for the purposes of this Division or Regulations prescribing matters in relation to this Division, a declaration that is false or misleading in any particular,

is guilty of an offence.

Penalty: ³⁸³A fine of not less than K1,000.00 and not exceeding K50,000.00 or imprisonment for 12 months, or both.

354U. JOINDER OF CHARGES UNDER THIS DIVISION.

(1) Charges against the same person for any number of offences against this Division may be joined for any complaint if those charges are founded on the same facts or forms, or are part of, a series of offences of the same or similar character.

(2) Where more than one charge is included in the same complaint in pursuance of Subsection (1), particulars of each offence charged shall be set out in a separate paragraph.

(3) All charges so joined shall be tried together unless the court considers it just that any charge should be tried separately and makes an order to that effect.

(4) If a person is found guilty of more than one offence, the court may, if it thinks fit, impose one penalty in respect of all offences of which the person had been found guilty, but the penalty shall not exceed the sum of the maximum penalties that could have been imposed if penalties were imposed for each offence separately.

354V. POWER OF THE COMMISSIONER GENERAL TO OBTAIN INFORMATION.

Section 366 applies, for the purposes of this Division, as if the reference in Subsection (1)(b) of that section to a person's income or assessment were a reference to a matter relevant to the administration of this Division.

354W. DECLARATIONS.

Any form that is approved by the Commissioner General for the purposes of this Division may require a declaration to be made by the person using the form.

354X. TAXPAYER TO KEEP RECORDS.

(1) A compliance certificate issued under Section 354M and the income reporting statement required under Section 354N shall be retained for a period of seven years after the completion of the transactions, acts or operations to which they relate.

(2) A person, who fails to comply with the requirements of Subsection (1), is guilty of an offence.

Penalty: ³⁸⁴A fine of not less than K500.00 but not exceeding K5,000.00.

³⁸³ Section 354T Amended by No. 22 of 2004, s. 98.

³⁸⁴ Section 354X Subsection (2) amended by No. 22 of 2004, s. 99.

354Y. TRUSTEE.

A payment made by a natural person shall be taken not to be of a private or domestic nature if it is made by the person in his capacity as a trustee of a trust estate or as a member of a religious, charitable, social, cultural, recreational or other organisation or body.

354Z. SPECIAL PROVISIONS RELATING TO PARTNERSHIPS.

(1) Subject to this section, this Division applies in relation to the making and receipt of payments by a partnership as if that partnership were a person.

(2) Where, but for this subsection, an obligation would be imposed on a partnership by the operation of Subsection (1), the obligation may be discharged by any of the partners.

(3) Where, by virtue of the operation of Subsection (1), an amount payable under this Division by a partnership, the partners are jointly and severally liable to pay that amount.

(4) Where, by virtue of the operation of Subsection (1), an offence against this Division is deemed to have been committed by a partnership, that offence shall be deemed to have been committed by each of the partners.

354ZA. PROSECUTIONS.

A prosecution for an offence against any of the provisions of this section may be commenced at any time.

Division 3.

Miscellaneous.

355. AGENTS AND TRUSTEES.

With respect to every agent and with respect also to every trustee, the following provisions apply:—

- (a) He is answerable as taxpayer for the doing of all such things as are required to be done by virtue of this Act in respect of the income derived by him in his representative capacity, or derived by the principal by virtue of his agency, and for the payment of tax or salary or wages tax on that income.
- (b) He shall make the returns in respect of that income and be assessed on that income, but in his representative capacity only, and each return and assessment shall, except as otherwise provided by this Act, be separate and distinct from any other.
- (c) If he is a trustee of the estate of a deceased person, the returns shall be the same as far as practicable as the deceased person, if living, would have been liable to make.

- (d) He is, by force of this section, authorized and required to retain from time to time out of any money that comes to him in his representative capacity so much as is sufficient to pay the tax or salary or wages tax that is or will become due in respect of the income.
- (e) He is, by force of this section, made personally liable for the tax or salary or wages tax payable in respect of the income to the extent of any amount that he has retained, or should have retained, under Paragraph (d), but he is not otherwise personally liable for the tax or salary or wages tax.
- (f) He is, by force of this section, indemnified for all payments that he makes in pursuance of this Act or of any requirement of the Commissioner General.
- (g) Where, as one of two or more joint agents or trustees, he pays an amount for which they are jointly liable, the other or others are liable to pay him each his equal share of the amount so paid.
- (h) For the purpose of ensuring the payment of tax or salary or wages tax, the Commissioner General has the same remedies against attachable property of any kind vested in or under the control of management or in the possession of an agent or trustee as he would have against the property of any other taxpayer in respect of tax or salary or wages tax.

356. PERSON IN RECEIPT OR CONTROL OF MONEY FOR NON-RESIDENT.

(1) Subject to this Act, the following provisions apply with respect to every person having the receipt, control or disposal of money belonging to a non-resident who derives income from a source in Papua New Guinea or who is a shareholder, debenture holder or depositor in a company deriving income from a source in Papua New Guinea:—

- (a) He shall, when required by the Commissioner General, pay the tax or salary or wages tax due and payable by the non-resident.
- (b) He is, by force of this section, authorized and required to retain from time to time out of any money that comes to him on behalf of the non-resident so much as is sufficient to pay the tax or salary or wages tax that is or will become due by the non-resident.
- (c) He is, by force of this section, made personally liable for the tax or salary or wages tax payable by him on behalf of the non-resident to the extent of any amount that he has retained, or should have retained, under Paragraph (b), but he is not otherwise personally liable for the tax or salary or wages tax.
- (d) He is, by force of this section, indemnified for all payments that he makes in pursuance of this Act or of any requirement of the Commissioner General.

(2) A person who is liable to pay money to a non-resident shall be deemed to be a person having the control of money belonging to the non-resident, and all money due by him to the non-resident shall be deemed to be money that comes to him on behalf of the non-resident.

(3) Where the State, an authority of the State or a public authority constituted by or under an Act, a Provincial Government, a local government body, or a local level government body by whatever name known established by a provincial law has the receipt, control or disposal of money belonging to a non-resident, this section (other than Subsection (1)(c)) applies to and in relation to the State, authority of the State or public authority, Provincial Government, local government or local level government, as the case may be, in the same manner as it applies to and in relation to any other person.

357. PERSON PAYING ROYALTY TO NON-RESIDENT.

(1) The object of this section is to facilitate the collection of income tax from non-residents in relation to royalties derived by them, such tax being referred to in this section as “**royalty tax**”, and this section shall be construed and administered accordingly.

(2) Where a person pays, is liable to pay or credits a royalty to a non-resident the person shall deduct from the royalty—

- (a) where the recipient is an associated person—30% of the gross amount of the royalty; or
- (b) where the recipient is not an associated person—10% of the gross amount of the royalty; or
- (c) where Subsection (3) applies, the amount ascertained from the Commissioner General in accordance with that subsection.

(3) A person who is liable to pay money as or by way of royalty (being an amount that consists of or includes an amount of assessable income from mining operations or assessable income from petroleum operations) to a non-resident shall, before making any payment to or on behalf of that non-resident, furnish to the Commissioner General a statement of the amount of the royalty due to the non-resident and ascertain from the Commissioner General the amount, if any, to be retained in respect of tax due, or which may become due, by the non-resident.

(4)³⁸⁵ ³⁸⁶A person, other than the State, or an authority of the State, who does not make a deduction from a royalty as required by this section is guilty of an offence against this Act punishable upon conviction by a fine of not less than K500.00 and not exceeding K5,000.00.

(5) Where a person is convicted under Subsection (4), the Court may order the person to pay, in addition to any fine, an amount not exceeding the amount required to be deducted under Subsection (2).

³⁸⁵ Section 357 Subsection (4) amended by No. 22 of 2004, s. 100.

³⁸⁶ Section 357 Subsection (4) amended by No. 22 of 2004, s. 100.

(6) Where a person has contravened Subsection (2) by reason of having made a deduction at the rate referred to in Subsection (2)(b) and not the rate referred to in Subsection (2)(a), it shall be a defence if the person proves, on the balance of probabilities, that he did not know and could not reasonably have known that the recipient was an associated person.

(7) Where a person has made a deduction from a royalty and that deduction was made, or purports to have been made, under Subsection (2), that person shall, within 21 days after the end of the month in which the royalty was paid, become liable to be paid or was credited—

- (a) pay to the Commissioner General an amount equal to the deduction; and
- (b) furnish to the Commissioner General a statement in the form authorized by the Commissioner General signed by or on behalf of the person who made the deduction.

(8) A person making a payment in pursuance of this section shall be deemed to have been acting under the authority of the taxpayer and of all other persons concerned and is, by force of this subsection, indemnified in respect of that payment.

(9) Where an amount (in this subsection referred to as the “**principal amount**”) payable to the Commissioner General by a person by virtue of Subsection (7) remains unpaid after the end of the period within which it is required to be paid—

- (a) the principal amount continues to be payable by the person to the Commissioner General; and
- (b) the person is liable to pay to the Commissioner General by way of penalty an amount calculated at the rate of 20% per annum from the end of that period on so much of the principal amount as remains unpaid.

(10) The Commissioner General may, in any case, for reasons that he thinks sufficient, remit any penalty payable under Subsection (9), or any part of such a penalty.

(11) A person, other than the State, or an authority of the State, who fails to comply with Subsection (7)(a) is guilty of an offence.

Penalty: ³⁸⁷A fine of not less than K500.00 and not exceeding K5,000.00 or imprisonment for a period not exceeding six months, or where the person is a company, a fine of not less than K1,000.00 and not exceeding K50,000.00.

(12) A person, other than the State, or an authority of the State, who fails to comply with Subsection (7)(b) is guilty of an offence.

Penalty: A fine not exceeding K500.00.

³⁸⁷ Section 357 Subsection (11) amended by No. 22 of 2004, s. 100.

(13) Where in a fiscal year a non-resident who has derived or is about to derive income by way of royalties, seeks leave in writing to adopt a basis of annual assessment by virtue of Section 7 of the *Income Tax, Dividend (Withholding) Tax and Interest (Withholding) Tax Rates Act 1984*, the Commissioner General may so grant leave, provided that it is established to his satisfaction that the non-resident shall not default in either the lodgement of that return or in the payment of any tax due or which may become due in respect of the royalty income.

(14) For the purposes of Subsection (13), the Commissioner General may seek an undertaking in writing from a person who or which pays or is about to pay money as or by way of royalty to a non-resident, to the effect that should the non-resident default in respect of the provisions to Subsection (13), that person shall pay any tax unpaid by reason of that default.

(15) An amount payable to the Commissioner General under the provisions of this section is a debt due to the State and payable to the Commissioner General, and may be sued for and recovered in a court of competent jurisdiction by the Commissioner General suing in his official name.

(16) In an action against a person for the recovery of an amount payable to the Commissioner General under the provisions of this section a certificate in writing signed by the Commissioner General or an Assistant Commissioner certifying that—

- (a) the person named in the certificate paid, was liable to pay or credited a royalty to a non-resident; and
- (b) the sum specified in the certificate was, at the date of the certificate, due by that person to the State in respect of amounts payable to the Commissioner General under the provisions of this section,

is evidence of the matters stated in the certificate.

(17) A person who receives, is entitled to receive or is credited with a royalty is liable to pay by way of an instalment of royalty tax, an amount equal to the amount required to be deducted.

(18) An amount deducted and paid to the Commissioner General pursuant to Subsection (2) shall be deemed to be an instalment of royalty tax paid on behalf of a non-resident who received, was entitled to receive or was credited with the royalty.

(19) Without limiting the powers of the Commissioner General to raise or amend assessments where a person has derived royalty income to which this section applies during a year of income and the person has not lodged a return in relation to that income at or before the end of the next succeeding year of income, there shall be deemed to be an assessment of royalty tax equal to the sum of the amounts of instalments paid by or on behalf of the person.

(20) In any assessment in relation to a year of income in respect of royalty income to which this section applies, a person by or on whose behalf an instalment of royalty tax has been paid is entitled to a credit equal to the sum of the instalments so paid.

358. PAYMENT OF TAX BY BANKER.

Where any income of a person out of Papua New Guinea is paid into the account of that person with a banker, the Commissioner General may, by notice in writing to the banker, appoint him to be the person's agent in respect of the money so paid so long as the banker is indebted in respect of that money and, upon notice so being given to the banker, the banker shall be deemed to be that person's agent accordingly.

359. RECOVERY OF TAX PAID ON BEHALF OF ANOTHER PERSON.

A person who, in pursuance of this Act, pays any tax or salary or wages tax for or on behalf of any other person may recover the amount of that tax or salary or wages tax from that other person as a debt, together with the costs of recovery, in any court of competent jurisdiction, or may retain or deduct the amount of that tax or salary or wages tax out of any money in his hands belonging or payable to that other person.

360. CONTRIBUTION FROM JOINT TAXPAYERS.

Where two or more persons are jointly liable to pay tax or salary or wages tax, they are each liable for the whole tax or salary or wages tax, but any of them who has paid the tax or salary or wages tax in respect of any of the taxable income or income derived by way of salary or wages—

- (a) is entitled to receive by way of contribution from any other of those persons a sum bearing the same proportion to the tax or salary or wages tax as that other person's share of the taxable income or income derived by way of salary or wages bears to the whole taxable income or income derived by way of salary or wages; and
- (b) may—
 - (i) recover that sum from that other person in any court of competent jurisdiction; or
 - (ii) retain or deduct that sum out of any money in his hands belonging or payable to that other person.

361. CONTRACTS OR ARRANGEMENTS TO EVADE TAX.

(1) In this section—

“arrangement” means any contract, agreement, plan, or understanding (whether enforceable or unenforceable) including all steps and transactions by which it is carried into effect;

“liability” includes a potential or prospective liability in respect of future income or taxable gain;

“tax avoidance” includes—

- (a) directly or indirectly altering the incidence of any income tax, dividend (withholding) tax, specific gains tax or salary or wages tax;
- (b) directly or indirectly relieving any person from liability to pay any income tax, dividend (withholding) tax, specific gains tax or salary or wages tax or make any return required to be made under this Act;
- (c) directly or indirectly defeating, avoiding, evading, reducing or postponing any duty or liability imposed on any person by this Act; or
- (d) preventing the operation of this Act in any respect.

(2) Every arrangement made or entered into, whether before or after the commencement of Section 11 of the *Income Tax (Amendment No 3) Act 1978*, is absolutely void as against the Commissioner General for income tax, dividend (withholding) tax, specific gains tax or salary or wages tax purposes or in regard to any proceeding under this Act if and to the extent that, directly or indirectly—

- (a) its purpose or effect is tax avoidance; or
- (b) where it has two or more purposes or effects, one of its purposes or effects (not being a merely incidental purpose or effect) is tax avoidance, whether or not any other of its purposes or effects relate to, or are referable to, ordinary business or family dealings,

whether or not any person affected by that arrangement is a party to the arrangement.

(3) Where an arrangement is void by virtue of Subsection (2), the assessable income, the non-assessable income, taxable gains and the salary or wages income of any person affected by that arrangement shall, for the purposes of assessing that person's liability to income tax, dividend (withholding) tax, specific gains tax or salary or wages tax, be adjusted in such manner as the Commissioner General considers appropriate so as to counteract any tax advantage obtained by that person from or under that arrangement and, without limiting the generality of this subsection, the Commissioner General may have regard to such income as in his opinion—

- (a) that person would have, or might be expected to have, or would in all likelihood have, derived if that arrangement had not been made or entered into; or
- (b) that person would have derived if he had been entitled to the benefit of all income or taxable gain, or of such part thereof as the Commissioner General considers proper, derived by any other person as a result of that arrangement.

(4) Where any income is included in the salary or wages income, assessable income or, as the case may be, in the non-assessable income of any person pursuant to Subsection (3), then, for the purposes of this Act, that income shall be deemed to

have been derived by that person and shall be deemed not to have been derived by any other person.

(4A) Where an arrangement referred to in this section purports to structure an employee's pay package, and the purpose or one of the purposes or effect of such arrangement is to avoid the payment of salary or wages tax—

- (a) the employer, who is a party to such arrangement, in addition to any other penalty stipulated under this section, is liable to a fine of not less than K5,000.00 and not exceeding K50,000.00; and
- (b) the employee for whom the arrangement is made shall be assessable to tax on the full amount of the benefit without regard to the exempt amounts stipulated under Section 65E(1).

(5) Without limiting the generality of Subsections (1) to (4) (inclusive), but subject to Subsection (6) where in any year of income a person sells or otherwise disposes of any shares in a company under an arrangement (being an arrangement of a kind referred to in Subsection (2)) under which that person receives or is credited with, or there is dealt with on his behalf, any consideration (whether in money or in money's worth) for the sale or other disposal, being consideration the whole or, as the case may be, a part of which, in the opinion of the Commissioner General, represents or is equivalent to or is in substitution for any amount which, if that arrangement had not been made or entered into, that person—

- (a) would have derived or would derive; or
- (b) might be expected to have derived or to derive; or
- (c) in all likelihood would have derived or would derive,

as income by way of dividends or taxable gains in that or any subsequent year or years of income, whether in one sum in any of those years or otherwise, an amount equal to the value of that consideration or, as the case may be, of that part of that consideration, shall be deemed to be a dividend or a taxable gain paid by the company and derived by that person in the first-mentioned year of income.

(6) Subsection (5) shall not apply where specific gains tax has been paid in respect of a gain under Division III.14B where the calculation of the taxable gain is based upon the taxpayer's share of undistributed profits.

(7) A person who, with intent to defraud the State—

- (a) directly or indirectly alters the incidence of any income tax, dividend (withholding) tax, specific gains tax or salary or wages tax; or
- (b) directly or indirectly relieves any person from liability to pay any income tax, dividend (withholding) tax, specific gains tax or salary or wages tax or make any return required to be made under this Act; or
- (c) directly or indirectly defeats, avoids, evades, reduces or postpones any duty or liability imposed on any person by this Act,

is guilty of an offence.

Penalty: ³⁸⁸In the case of a natural person – A fine of not less than K1,000.00 and not exceeding K50,000.00 and a term of imprisonment not exceeding five years; and

In the case of a company – A fine of not less than K1,000.00 and not exceeding K50,000.00

(8) A prosecution for an offence against this section may be commenced at any time.

362. COVENANT BY MORTGAGOR TO PAY TAX.

(1) A covenant or stipulation in a mortgage that has or purports to have the purpose or effect of imposing on the mortgagor the obligation of paying tax on the interest to be paid under the mortgage—

- (a) if the mortgage was entered into on or before 31 January 1959—is not valid to impose on the mortgagor the obligation of paying tax to any greater amount than the amount (if any) that would have been payable by the mortgagor if his taxable income consisted solely of a sum equivalent to the amount of interest to be paid under the mortgage without taking into account any tax payable on that interest; and
- (b) if the mortgage was entered into after that date—is absolutely void.

(2) A covenant or stipulation in a mortgage, whether entered into before or after the commencement of this Act, that has or purports to have the purpose or effect of including in or adding to the interest payable, in any specified circumstances, by the mortgagor any amount in respect of tax payable by the mortgagee upon the interest to be paid under the mortgage is void to the extent only to which it has or purports to have that purpose or effect.

(3) Where, in a mortgage, provision is made for the reduction of the rate or amount of interest in the event of prompt payment of the interest or in any other circumstances, and for the rate or amount of that reduction to be diminished by or in proportion to any amount of tax payable by the mortgagee, the portion of the provision that provides for that diminution is void, and the reduction of the rate or amount of interest takes effect as if the portion of the provision that provides for that diminution had not been inserted.

(4) A provision in a mortgage by or under which it is provided that any tax payable by the mortgagee, or any portion of that tax, shall or may be taken into account for the purpose of fixing, measuring or calculating the rate of interest payable under the mortgage or any reduction or alteration of that rate is, to the extent to which it provides for tax to be so taken into account (but not otherwise), void, whether the provision is in the form of a covenant or agreement to pay interest, or a proviso or a stipulation for an alternative, substituted or reduced rate of interest instead of a higher rate payable by the mortgagor pursuant to such a covenant or agreement, or otherwise.

³⁸⁸ Section 361 Subsection (7) amended by No. 22 of 2004, s. 101.

(5) In this section—

“**mortgage**” includes any charge, lien or encumbrance to secure the repayment of money, and any collateral or supplementary agreement, whether in writing or otherwise, and whether or not it is one by which the terms of any mortgage are varied or supplemented, or the due date for the payment of money secured by mortgage is altered or an extension of time is granted;

“**tax**” means income tax or dividend (withholding) tax.

363. PERIODICAL PAYMENTS IN THE NATURE OF INCOME.

Where under any contract, agreement or arrangement made or entered into orally or in writing, either before or after the commencement of this Act, a person assigns, conveys, transfers or disposes of any property on terms and conditions that include the payment for the assignment, conveyance, transfer or disposal of the property by periodical payments that, in the opinion of the Commissioner General, are either wholly or in part really in the nature of income of that person, such of those payments as are derived in the year of income shall, to the extent to which they are in that opinion in the nature of income, be included in his assessable income.

364. TAXPAYER TO KEEP RECORDS.

(1) Subject to Subsections (2) and (3), a person carrying on a business shall keep in Papua New Guinea, in the English language, sufficient records of his income and expenditure to enable his assessable income and allowable deductions to be readily ascertained, and shall retain those records in Papua New Guinea for a period of at least seven years after the completion of the transactions, acts or operations to which they relate.

Penalty: ³⁸⁹A fine of not less than K500.00 and not exceeding K5,000.00.

(2) The Commissioner General may, by notice in writing and subject to such conditions as he thinks fit to impose, permit a person carrying on business to keep records referred to in Subsection (1) outside of Papua New Guinea, and that person, when so keeping those records, shall comply with the conditions specified in the notice.

Penalty: ³⁹⁰A fine of not less than K500.00 and not exceeding K5,000.00.

(3) This section does not require the preservation of any records—

- (a) in respect of which the Commissioner General has notified the taxpayer that their preservation is not required; or
- (b) of a company that has gone into liquidation and which has been finally dissolved.

³⁸⁹ Section 364 Subsection (1) amended by No. 22 of 2004, s. 102.

³⁹⁰ Section 364 Subsection (2) amended by No. 22 of 2004, s. 102.

(4) For the purposes of this section, a taxpayer shall be deemed to be keeping records in the English language if he keeps records stored in magnetic tapes or computer disks or other information or storage devices which are readily accessible and convertible into written form in the English language.

365. ACCESS, ETC., TO BOOKS, ETC.

(1) Subject to this section, the Commissioner General, or an officer authorized by him in that behalf, shall at all times have full and free access to all buildings, places, computers, books, documents, records, papers and other information storage devices for any of the purposes of this Act, and for that purpose may seize, retain and remove for inspection or make extracts from or copies of any such computer, book, documentary or paper records.

(2) An officer is not entitled to remain on or in any building or place under this section if, on being requested by the occupier of the building or place for proof of authority, the officer does not produce an authority in writing signed by the Commissioner General stating that the officer is authorized to exercise powers under this section.

(3) The occupier of a building or place entered or proposed to be entered by the Commissioner General, or by an officer under Subsection (1), shall provide the Commissioner General or the officer with all reasonable facilities and assistance for the effective exercise of powers under this section.

(4)³⁹¹ [*Repealed.*]

366. COMMISSIONER GENERAL MAY OBTAIN INFORMATION AND EVIDENCE.

(1) The Commissioner General may, by notice in writing, require a person, whether a taxpayer or not, including a person employed in the Public Service or by an authority constituted by or under a law of Papua New Guinea—

- (a) to furnish him with such information as he may require; and
- (b) to attend and give evidence before him or before any officer authorized by him in that behalf concerning his or any other person's income or assessment, and may require him to produce all books, documents and other papers in his custody or under his control relating to that income or assessment.

(2) The Commissioner General may require the information or evidence referred to in Subsection (1) to be given on oath, and verbally or in writing, and for that purpose he or the officer so authorized by him may administer on oath.

(3) The Regulations may prescribe scales of expenses to be allowed to persons required under this section to attend.

³⁹¹ Section 365(4) repealed by No 35 of 1998, s26.

367. HARDSHIP RELIEF.

(1) There shall be a Hardship Relief Board comprising of—

- (a) the Commissioner General; and
- (b) the Commissioner of Taxation; and
- (c) the Commissioner of Customs; and
- (d) the Secretary for Finance,

or of such substitutes for all or any of them as the Minister appoints from time to time.

(2) In any Board proceedings—

- (a) the Commissioner General or his substitute shall be the Chairman of the Board and in the case of a tied vote the Chairman shall have an additional casting vote; and
- (b) the Commissioner General or his substitute and any two of the other Board members or their respective substitutes shall constitute a quorum; and
- (c) the decision of the majority shall prevail.

(3) In any case where it is shown to the satisfaction of the Board that a taxpayer (being a natural person) is in such impecunious circumstances or is deceased and the exaction of the full amount of any tax (assessed or charged or imposed under this Act) will entail serious financial hardship on the taxpayer or the beneficiaries of the deceased taxpayer, the Board may release the taxpayer or the trustee of the estate of the deceased taxpayer, as the case may be, wholly or in part from tax liability.

(4) Where the amount of the tax liability does not exceed K1,000.00 all the powers conferred on the Board may be exercised by the Commissioner General and notwithstanding the other provisions of this section, the Board shall be deemed to consist of the Commissioner General.

368³⁹². [REPEALED.]

369. REGULATIONS.

The Head of State, acting on advice may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for giving effect to this Act and, in particular, prescribing penalties of not less than K40.00 and not exceeding K500.00 for any breach of the regulations.

³⁹² Section 368 repealed by No 36 of 1976.

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