

# CONSULTATION DRAFT

## INCOME TAX ACT

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**PAPUA NEW GUINEA**

A BILL

for

an ACT

entitled

***Income Tax Act 2020***

Being an Act to modernise and simplify the law relating to income tax.

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

**PART I. – PRELIMINARY****1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.****2. ACT BINDS THE STATE**

(1) Subject to subsection (2), this Act binds the State.

(2) This Act applies to the State subject to any modifications that may be made, from time to time, by Regulations.

**PART 2. – IMPOSITION OF TAX****3. INCOME TAX**

(1) Subject to this Act, income tax is imposed for each tax year at the rate or rates specified in Part 1 of Schedule 1 on a person who has taxable income for the year.

(2) The income tax imposed on a person for a tax year under subsection (1) is calculated by applying the rate or rates of tax applicable to the person under Part 1 of Schedule 1 to the taxable income of the taxpayer for the year.

(3) A tax credit allowed to a person for a tax year is offset against the person's income tax liability calculated under subsection (2) for the tax year.

(4) Where a person is allowed more than one tax credit for a tax year, the tax credits are applied in the following order –

- (a) the foreign tax credit allowed to the person under section 53 for the year; then
- (b) any refundable tax credit allowed to the person for the year.

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

(6) In this section, “refundable tax credit” means a tax credit allowed under section 4(7)(b), 5(7), 46(3), 120(8), or 141.

#### 4. SMALL BUSINESS TAX

(1) Subject to this Act, small business tax is imposed on an individual conducting business as a sole trader who satisfies all the following conditions -

- (a) the individual conducts the business solely in PNG;
- (b) the individual is not a registered person for the purposes of the *Goods and Services Tax Act 2003*;
- (c) the individual was not subject to income tax under section 3 for the previous tax year;
- (d) the total turnover of the individual for the previous tax year did not exceed the GST registration threshold specified in section 43 of the *Goods and Services Tax Act 2003*.

(2) In determining the total turnover of an individual for a tax year for the purposes of subsection (1)(d), the Commissioner General may have regard to the turnover of an associate or associates of the individual for the year.

(3) Where the total turnover of an individual subject to tax under this section for a tax year is less than the amount specified in Part 2 of Schedule 1 -

- (a) the individual is liable for small business tax annually; and
- (b) the amount of small business tax payable by the individual for a tax year is the amount specified in Part 1 of Schedule 1.

(4) Where the total turnover of an individual subject to tax under this section for a tax year is the amount specified in Part 2 of Schedule 1 or more -

- (a) the individual is liable for small business tax quarterly; and



(b) the amount of small business tax payable by the individual for a quarter is determined under Part 1 of Schedule 1.

(5) An individual subject to small business tax may elect for section 3 to apply to the individual for a tax year instead of this section.

(6) An individual must make an election under subsection (5) for a tax year, in the approved form, by the due date for furnishing the individual's income tax return for that year or by such later date as the Commissioner General may allow.

(7) Where an individual has made an election under subsection (6) for a tax year within the time specified in that subsection –

(a) the election applies from the commencement of the tax year to which the election relates and remains in force indefinitely or until the Commissioner General permits the individual to be subject to this section under subsection (10); and

(b) any small business tax paid by the individual during the tax year in which the election is made is allowed as a tax credit against the income tax liability of the individual for the year.

(8) Subject to subsection (9), an individual subject to income tax under section 3 for a tax year who satisfies subsection (1) may apply, in the approved form, to the Commissioner General for permission for the individual to be subject to the small business tax.

(9) An individual who has made an election under subsection (6) for section 3 to apply to the individual cannot make an application under subsection (8) within three years of the end of the first tax year in relation to which section 3 applies.

(10) The Commissioner General may approve an application under subsection (8) when satisfied that there is reasonable cause to do so and the approval applies from the date specified in the notice of approval.

(11) An approval under subsection (10) may be subject to such conditions as the Commissioner General may specify in the notice of approval.

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

(13) In this section –

“business” does not include professional services; and

“professional services” means medical, dental, legal, accounting, financial, managerial, engineering, architectural, consulting, or other similar services.

## 5. SALARY AND WAGES TAX

(1) Subject to this Act, salary and wages tax is imposed for each fortnight at the rate or rates specified in Part 1 of Schedule 1 on an employee who has received employment income that is PNG source income during the fortnight other than employment income that is exempt income.

(2) Section 3 applies to employment income that is foreign income derived by an employee who is a resident employee.

(3) The salary and wages tax imposed on an employee for a fortnight under subsection (1) is calculated by applying the rate or rates applicable to the employee under Part 1 of Schedule 1 to the gross amount of PNG source employment income received by the employee during the fortnight.

(4) A tax credit allowed to an employee under section 141(1) for tax withheld from employment income under section 131 during a fortnight is offset against the employee's salary and wages tax liability calculated under subsection (3) for the fortnight.

(5) The salary and wages tax payable by an employee in respect of PNG source employment income received by the employee during a fortnight is discharged if the tax has been withheld by the employer from the payment of employment income in accordance with section 131 and section 139(2)(b) does not apply to the employee.

(6) The salary and wages tax payable by an employee is a final tax on the employment income to which the tax applies of the employee for a tax year if the employee is not required to furnish an income tax return for the year under section 118.

(7) If subsection (6) does not apply to an employee, the employment income of the employee is subject to tax under section 3 with a tax credit allowed for any salary and wages tax paid by the employee.

(8) In this section, "fortnight" means the period of 2 weeks specified in the Regulations.

## **6. NON-RESIDENT TAX**

(1) Subject to this Act, non-resident tax is imposed at the rate specified in Part 1 of Schedule 1 on -

- (a) a non-resident person who has derived a dividend, interest, royalty, annuity, insurance premium, natural resource amount, or technical fee that is PNG source income;
- (b) a non-resident person with a permanent establishment in PNG that has derived a repatriated profit for a tax year as determined under section 56; or
- (c) a non-resident entertainer or group of non-resident entertainers who has derived an amount from the participation in a performance taking place in PNG.

- (2) The non-resident tax imposed on a non-resident person -
- (a) under subsection (1)(a), is calculated by applying the rate of tax specified in Part 1 of Schedule 1 to the gross amount of the dividend, interest, royalty, annuity, insurance premium, natural resource amount, or technical fee derived by the person;
  - (b) under subsection (1)(b), is calculated by applying the rate of tax specified in Part 1 of Schedule 1 to the repatriated profit of the PNG permanent establishment of the non-resident person calculated under section 56; or
  - (c) under subsection (1)(c), is calculated by applying the rate of tax specified in Part 1 of Schedule 1 to the gross amount derived from the performance by the non-resident entertainer or group of non-resident entertainers.
- (3) Where the amount, or part of the amount, payable for a performance by an entertainer, including as member of a group, is derived by an entity, this section applies to the gross amount derived by the entity as if the entity is an entertainer.
- (4) Subsection (1)(a) and (c) does not apply to the following -
- (a) an amount that is exempt income; or
  - (b) an amount that is attributable to a business conducted by the non-resident person through a permanent establishment of the person in PNG and, in that case, the amount is taxable under section 3.
- (5) For the purposes of this section –
- (a) the repatriated profit of a permanent establishment of a non-resident person for a tax year is derived by the non-resident person on the last day of the tax year to which the profit relates and the non-resident tax on the repatriated profit is payable on the date that the income tax for the year is payable by the non-resident person; or
  - (b) for any other amount taxable under this section, the amount is derived on the date that it is received by the non-resident person.
- (6) Non-resident tax is a final tax on the income on which it is imposed and, except when section 139(2)(b) applies, the liability of the non-resident person for the tax is discharged if the amount of the tax has been withheld from the payment of the income under section 134.
- (7) In this section, “insurance premium” includes a premium relating to reinsurance and any other amount payable in respect of the offshore placement of insurance;

## **7. INTERNATIONAL TRANSPORTATION INCOME TAX**

(1) Subject to this Act, international transportation income tax is imposed at the rate specified in Part 1 of Schedule 1 on a non-resident person operating a ship or aircraft in international traffic.

(2) The international transportation income tax imposed on a non-resident person under subsection (1) is calculated by applying the rate specified in Part 1 of Schedule 1 to the gross amount derived by the non-resident person for the carriage of passengers, livestock, mail, merchandise, or goods embarked or loaded in PNG and destined for a place outside PNG.

(3) This section does not apply to the following -

- (a) an amount that is exempt income;
- (b) an amount derived in respect of the following -
  - (i) a passenger who is in PNG solely as a result of being in transit between two places outside PNG;
  - (ii) the transshipment of livestock, mail, merchandise, or goods.

(4) International transportation income tax is a final tax on the income on which it is imposed and the liability of the non-resident person for the tax is discharged if the tax has been paid in accordance with section 121 or 122, as the case may be.

#### **8. CAPITAL GAINS TAX**

(1) Subject to this Act, capital gains tax is imposed at the rate specified in Part 1 of Schedule 1 on a person who has made a capital gain on the disposal of a taxable asset.

(2) The capital gains tax imposed on a person under subsection (1) is calculated by applying the rate specified in Part 1 of Schedule 1 to the amount of the capital gain reduced by any capital loss carried forward in accordance with section 68.

## PART 3. – INCOME TAX

### Division 1. – Taxable Income

#### **9. CALCULATION OF TAXABLE INCOME**

The taxable income of a person for a tax year is the total assessable income of the person for the year reduced by the total amount of deductions allowed to the person for the year.

### Division 2. – Assessable Income

**10. INCLUSIONS IN ASSESSABLE INCOME**

(1) Subject to this Act, the following amounts are included in the assessable income of a person for a tax year -

- (a) employment income, business income, and property income derived by the person during the year;
- (b) an amount expressly included under this Act in the assessable income of the person for the year; and
- (c) any income according to ordinary concepts derived by the person during the year not covered by the above paragraphs.

(2) For the avoidance of doubt, the assessable income of a person includes amounts derived by the person from an illegal act, including bribes, kickbacks, the proceeds of crime, or similar amounts.

(3) An amount is not included in the assessable income of a person where the amount is -

- (a) exempt income;
- (b) subject to non-resident tax or international transportation income tax;
- (c) employment income for which salary and wages tax is a final tax under section 5(5); or
- (d) subject to withholding tax as a final tax under section 142.

(4) The assessable income of -

- (a) a resident person includes income derived from all sources in and outside PNG; and
- (b) a non-resident person includes only PNG source income.

(5) Unless this Act provides otherwise, Division 6 of this Part applies in determining when an amount is derived by a person for the purposes of this Act.

**11. EMPLOYMENT INCOME**

(1) The following amounts are included in the employment income of an employee -

- (a) salary, wages, or other remuneration received by the employee from an employer, including leave pay, payment in lieu of leave, overtime pay, bonus, commission, or gratuity;
- (b) the value of any non-cash benefit provided to the employee by an employer as determined under Schedule 2;

- (c) the amount of any allowance received by the employee from an employer, including a cost of living, subsistence, rent, utilities, education, entertainment, meeting, or travel allowance except to the extent to which the allowance is expended by the employee in the performance of his or her duties of employment;
- (d) the amount of any expenditure incurred by the employee that is paid or reimbursed by an employer except to the extent that the expenditure was incurred by an employee on behalf of the employer in the performance of his or her duties of employment;
- (e) an amount included in the employment income of the employee under section 12;
- (f) a bonus, gratuity, retiring allowance, severance pay, redundancy payment, long service leave payment, or other similar amount received by the employee from an employer on retirement from, or termination of, employment, whether paid voluntarily or under an agreement or as a result of legal action; and
- (g) a pension, annuity, or supplement to a pension or annuity received by an employee from an employer or former employer in respect of past employment.

(2) A travel allowance comes within the exception in subsection (1)(c) or a reimbursement of travel expenses comes within the exception in subsection (1)(d) where the allowance or reimbursement is paid by an employer to an employee for accommodation, food, drink, or incidental expenses that the employee may incur, or has incurred, when travelling away from their home overnight in the course of performing their duties of employment.

(3) The Regulations may prescribe reasonable limits for the excluded amount under subsection (1)(c) or (d).

(4) For the purposes of this Act, an amount is treated as received by, or provided to, an employee regardless of whether it -

- (a) is received from or provided by the employer of the employee, an associate of the employer, or by a third party under an arrangement with the employer or an associate of the employer;
- (b) is received by, or provided to, the employee or an associate of the employee; or
- (c) relates to a past employment or a prospective employment.

(5) In this section, “provide”, in relation to a non-cash benefit, includes allow, confer, give, grant, transfer, or perform.

**12. EMPLOYEE SHARE SCHEME BENEFITS**

(1) The value of a right or option to acquire shares granted to an employee under an employee share scheme is not included in the employment income or assessable income of the employee.

(2) Subject to subsection (3), where an employee is allotted shares under an employee share scheme, including shares allotted as a result of the exercise of an option or right to acquire the shares, the fair market value of the shares at the date of allotment reduced by the employee's contribution for the shares is included in the employment income of the employee for the tax year in which the shares are allotted to the employee.

(3) Where shares allotted to an employee under an employee share scheme are subject to a restriction on the transfer of the shares –

- (a) the amount referred to in subsection (2) is included in the employment income of the employee on the earlier of –
  - (i) the date that the employee is able to freely transfer the shares; or
  - (ii) the date that the employee disposes of the shares; and
- (b) the amount included in the employment income of the employee is the fair market value of the shares at the time the employee is able to freely transfer the shares or disposes of the shares, as the case may be, reduced by the employee's contribution for the shares.

(4) For the purposes of this Act, where subsection (2) or (3) applies, the cost of the shares to the employee is the sum of the employee's contribution for the shares plus the amount included in employment income under this section.

(5) A gain derived on the disposal by an employee of a right or option to acquire shares under an employee share scheme is income included in the employment income of the employee for the tax year in which the disposal occurs.

(6) In this section –

“employee's contribution”, in relation to shares allotted to an employee under an employee share scheme, means the sum of the consideration, if any, given by the employee –

- (a) for the shares; and
- (b) for the grant of any right or option to acquire the shares; and

“employee share scheme” means an agreement or arrangement under which a company that is an employer may allot shares in the company to –

- (a) an employee of the company or an employee of a company that is an associate of the first-mentioned company; or

- (b) the trustee of a trust and under the trust deed the trustee may transfer the shares to an employee of the company or an employee of a company that is an associate of the first-mentioned company.

### 13. REDUNDANCY PAYMENTS

(1) The following amounts derived by an eligible employee during a tax year are taxed at the rate specified in Part 1 of Schedule 1 –

- (a) the concessional component of a redundancy payment paid under an approved redundancy scheme; or
- (b) a termination payment made pursuant to termination of employment under the *Rationalisation of the Public Service (Budget Provisions) Act 1995*.

(2) The concessional component of a redundancy payment made by an employer to an eligible employee is the lesser of –

- (a) the amount calculated under subsection (3); or
- (b) the amount specified in Part 2 of Schedule 1.

(3) The amount for the purposes of subsection (2)(a) is calculated according to the following formula –

$$A + (B \times C)$$

where –

- A** is the base amount specified in Part 2 of Schedule 1;
- B** is the service amount specified in Part 2 of Schedule 1; and
- C** is the number of completed years of service during which the eligible employee was employed by the same employer.

(4) In this section –

“approved redundancy scheme” means a scheme for the redundancy of employees approved by the Commissioner General in accordance with the Regulations;

“eligible employee” means an employee who satisfies the following conditions –

- (a) the employee is a resident individual;



- (b) the employee has received a redundancy payment under an approved redundancy scheme;
- (c) the termination of the employee's employment occurred before the earlier of –
  - (i) the day that the employee turned 65 years of age; or
  - (ii) if the employee's employment would have been terminated when he or she reached a particular age or completed a particular period of service, the day that he or she would reach that age or complete that period of service; and
- (d) the employee has not previously received an amount under subsection (1); and

“redundancy payment”, in relation to an employee, means –

- (a) so much of a payment made to the employee by an employer under an approved redundancy scheme that exceeds the amount that the employee could reasonably be expected to receive in consequence of a voluntary termination of his or her employment; and
- (b) the payment is made due to the employee's position becoming genuinely redundant and there was no arrangement between the employer and employee, or between the employer and another person, for the future employment of the employee.

#### **14. BUSINESS INCOME**

- (1) The following amounts are included in the business income of a person –
  - (a) the gross revenue derived by the person from the conduct of a business, including, but not limited to, the consideration for the disposal of trading stock and the fees derived from the provision of services;
  - (b) the income derived by the person from the investment of the capital of a business, including dividends, interest, royalties, and rents;
  - (c) the net foreign currency exchange gain of the person for a tax year calculated under Division 7 of this Part;
  - (d) the net gain derived by the person from –
    - (i) the conduct of a venture or concern in the nature of a trade;
    - (ii) the conduct of a profit-making undertaking or scheme; or

- (iii) the disposal of a business asset of the person being an asset held by the person on revenue account, other than trading stock to which paragraph (a) applies or an asset to which subparagraph (i) or (ii) applies;
- (e) any other income according to ordinary concepts derived by the person from the conduct of a business; and
- (f) any other amount derived by the person that is included in business income under this Act.

(2) For the purposes of subsection (1)(d)(i) and (ii) and subject to subsection (3), the net gain derived by a person from a venture or concern in the nature of trade, or a profit-making undertaking or scheme, is the amount by which the gross proceeds derived by the person from the venture, concern, undertaking, or scheme exceeds the expenditures or losses incurred by the person in conducting the venture, concern, undertaking, or scheme.

(3) An expenditure or loss is taken into account in calculating the net gain under subsection (2) only where the expenditure or loss is otherwise allowed as a deduction under this Act (ignoring section 20(1)(c)).

(4) The net gain arising on the disposal of an asset to which subsection (1)(d)(iii) applies is the amount by which the consideration for the disposal of the asset exceeds the cost of the asset at the time of disposal.

#### 15. PROPERTY INCOME

(1) The following amounts derived by a person are included in the property income of the person -

- (a) a dividend,
- (b) interest;
- (c) royalty;
- (d) rent;
- (e) pension or annuity; or
- (f) any other amount derived by the person from the provision, use, or exploitation of property.

(2) The property income of a person does not include an amount that is included in employment income or business income of the person.

#### 16. PURCHASED ANNUITIES

(1) Where an annuity was purchased by a person, the amount of each annuity payment included in the property income of the person or subject to non-resident tax is reduced by the capital component of the annuity payment.

(2) Subject to subsection (3), the capital component of an annuity payment is calculated according to the following formula –

$$(A-B)/C$$

where –

- A** is the undeducted purchase price of the annuity;
- B** is the residual capital value of the annuity; and
- C** is the relevant number in relation to the annuity.

(3) Where an annuity payment is derived by more than one person, the capital component of the annuity payment for a person deriving the annuity is calculated according to the following formula –

$$A \times B/C$$

where –

- A** is the amount ascertained under subsection (2);
- B** is the amount of the annuity payment derived by the person; and
- C** is the total amount of the annuity payment derived by all persons entitled to the annuity.

(4) In this section –

“annuity” includes a pension that was purchased from a life insurance company or other financial institution;

“life expectancy factor”, in relation to a person deriving an annuity, means the number of whole years of the life expectancy of the person as ascertained under prescribed life tables at the time the first payment of the annuity occurs;

“relevant number”, in relation to an annuity, means –

- (a) for an annuity payable for a number of years, that number of years;
- (b) for an annuity payable only during the lifetime of a person, the life expectancy factor of the person; or
- (c) in any other case, the number of years that the annuity is reasonably expected to be payable;

“residual capital value”, in relation to an annuity, means the capital amount payable on termination of the annuity; and

“undeducted purchase price”, in relation to an annuity, means so much of the purchase price of the annuity that has not been, and will not be, allowed as a deduction under this Act.

### Division 3. – Exempt Income

#### 17. EXEMPT INCOME

- (1) An amount is exempt income for the purposes of this Act where:
- (a) the amount is listed in Schedule 3; or
  - (b) the amount is otherwise treated as exempt income under a provision of this Act.

(2) The treatment of an amount as exempt income is limited to the person who has derived the amount (referred to as the “recipient”) and does not extend to any person receiving a payment from the recipient that has been made wholly or partly out of exempt income.

#### 18. TAX EXEMPTIONS AND CONCESSIONS IN OTHER LAWS

(1) A provision in any other law, whether enacted before or after this Act, specifying that an amount is exempt income or is subject to a reduced rate of tax has no legal effect unless also provided for in this Act.

(2) A provision in any other law, whether enacted before or after this Act, providing for concessional treatment of any expenditure for tax purposes has no legal effect unless also provided for in this Act.

### Division 4. – Allowable Deductions

#### 19. ALLOWABLE DEDUCTIONS

(1) Subject to this Act, a person is allowed a deduction for a tax year for the following amounts -

- (a) an expenditure or loss to the extent incurred by the person during the year in deriving amounts included in assessable income;
- (b) the cost of trading stock disposed of by the person during the year as determined under section 40;
- (c) the amount allowed as a deduction for depreciation of the person’s depreciable assets for the year as determined under Division 5;
- (d) subject to subsection (3), a loss incurred by a person during the year from –

- (i) the conduct a venture or concern in the nature of a trade;
  - (ii) the conduct of a profit making undertaking or scheme; or
  - (iii) the disposal of a business asset of the person that is held by the person on revenue account, other than trading stock to which paragraph (a) applies or an asset to which sub-paragraph (i) or (ii) applies; and
- (e) any other amount allowed as a deduction to the person under this Act for the year.

(2) A person is allowed a deduction for a loss under subsection (1)(d) only when the person has notified the Commissioner General, in writing, of the venture, concern, undertaking, or scheme, or acquisition of the asset.

(3) A notification under subsection (2) must be lodged with the Commissioner General –

- (a) for a venture or concern in the nature of trade, or a profit making undertaking or scheme, within 7 days of commencement of the venture, concern, undertaking, or scheme; or
- (b) for an asset held on revenue account, within 7 days of the acquisition of the asset.

(4) For the purposes of subsection (1)(d)(i) and (ii) and subject to subsection (5), the loss incurred by a person from the conduct of a venture or concern in the nature of trade, or from a profit making undertaking or scheme, is the amount by which the expenditures or losses incurred by the person in conducting the venture, concern, undertaking, or scheme exceed the gross proceeds derived by the person from the venture, concern, undertaking, or scheme.

(5) An expenditure or loss is taken into account in calculating a loss under subsection (4) only where the expenditure or loss is otherwise allowed as a deduction under this Act (ignoring section 20(1)(c)).

(6) The loss arising on the disposal of an asset to which subsection (1)(d)(iii) applies is the amount by which the cost of the asset at the time of disposal exceeds the consideration for the disposal.

(7) Unless this Act provides otherwise, Division 6 of this Part applies in determining when an expenditure or loss is incurred by a person for the purposes of this Act.

## **20. NON-DEDUCTIBLE EXPENDITURES AND LOSSES**

- (1) Subject to this Act, no deduction is allowed for -

- (a) an expenditure or loss to the extent to which it is of a domestic or private nature;
- (b) an expenditure or loss incurred by an employee in deriving employment income;
- (c) an expenditure or loss that is taken into account in calculating a net gain included in business income under section 14(1)(d) or a loss allowed as a deduction under section 19(1)(d);
- (d) a dividend or other distribution of profits, an amount of capital withdrawn, or a sum employed as capital;
- (e) an investment, expenditure, or loss that is capital or capital in nature except to the extent provided for under this Act;
- (f) an amount that a person has transferred, in its financial accounts, to a reserve or provision for expenditures or losses not yet incurred but expected to be incurred in a future tax year;
- (g) an expenditure or loss to the extent recoverable under a policy of insurance or a contract of indemnity, guarantee, or surety;
- (h) income tax, salary and wages tax, or capital gains tax paid or payable in PNG or a tax on income or gains paid or payable in a foreign country, and any penal or additional tax, penalty, or late payment interest payable in respect of such a tax liability;
- (i) a fine or penalty imposed for violation of any law or regulation in PNG or elsewhere;
- (j) an amount paid or payable to an associate other than an amount included in the assessable income of the associate, or, in respect of which, the associate is subject to salary and wages tax or non-resident tax;
- (k) a loss on disposal of a business asset to an associate;
- (l) a bribe, kickback, or other inducement paid or provided by a person to a public officer, including a foreign public officer, or other person, intended to influence the public officer or other person to act or to fail to act so as to obtain an improper benefit or advantage for the first-mentioned person or an associate of such person; or
- (m) an expenditure or loss incurred in the conduct of an illegal activity.

(2) Where a withholding agent is allowed a deduction for a payment from which the withholding agent is required to withhold tax under Part 9, the deduction is not allowed until the tax year in which the withheld tax has been paid to the Commissioner General.

(3) Where subsection (1)(k) applies, the associate acquiring the business asset takes over the written down value of the asset at the time of the disposal.

(4) In this section –

“public officer” includes -

- (a) a member or officer of the executive, judiciary, or legislature of a government;
- (b) an officer or employee of a government, a public authority, or an international organisation; or
- (c) a member of Parliament or a Minister of State in PNG or a foreign country; and

“government” means the Government, a Provincial Government, a Local-level Government, a foreign government, or a political subdivision of a foreign government.

## **21. ENTERTAINMENT EXPENDITURE**

(1) No deduction is allowed for expenditure incurred by a person on entertainment other than entertainment provided by an employer to an employee the cost of which is included in the employment income of the employee or is exempt income of the employee.

(2) In this section –

“entertainment” means the provision of -

- (a) food, drink, or recreation, other than –
  - (i) the provision of food or drink to the extent to which it is provided in respect of travel for employment or business;
  - (ii) the provision of food, drink, or recreation in an arm’s length transaction in the ordinary course of the person’s core business where that business involves providing food, drink, or recreation to customers or clients; or
- (b) accommodation or travel, in connection with, or to facilitate the provision of, food, drink, or recreation treated as entertainment expenditure under paragraph (a); and

“recreation” includes amusement, sport, or similar leisure-time pursuits, including when undertaken on a vehicle, vessel, or aircraft.

## **22. FEES FOR TAX AGENT SERVICES**

(1) A person is allowed a deduction for fees incurred by the person for tax agent services but only where the services are provided to the person by a registered tax agent.

(2) In this section, “registered tax agent” and “tax agent services” have the meanings in the *Tax Administration Act*.

### 23. CHARITABLE DONATIONS

(1) Subject to this section, a person is allowed a deduction for the amount of a cash donation made by the person during a tax year –

- (a) to a non-profit body; or
- (b) to the Government in response to an emergency call issued by the Government to –
  - (i) defend the sovereignty and integrity of the country;
  - (ii) to prevent or provide relief in relation to man-made or natural disasters or an epidemic; or
  - (iii) for any other similar cause.

(2) A deduction is allowed under subsection (1) only if the amount of the cash donation is not less than the amount specified in Part 2 of Schedule 1.

(3) The total deduction allowed to a person under subsection (1) for a tax year is limited to 10% of the total assessable income of the person for the year.

(4) No deduction is allowed under this section to reduce the employment income of an employee.

### 24. SCIENTIFIC RESEARCH EXPENDITURE

(1) A person is allowed a deduction for 100% of the scientific research expenditure to the extent incurred by the person during a tax year in deriving assessable income.

(2) In this section –

“scientific research” means experimental activities whose outcome cannot be known or determined in advance on the basis of current knowledge, information, or experience, but can be determined only by undertaking a systematic process of research based on the principles of established science;

“scientific research expenditure” means, in relation to a person, expenditure incurred by the person in undertaking scientific research for the purposes of developing the person’s business, including any contribution made by the person to a scientific research institution that is used by the institution in undertaking research for the purposes of developing the person’s business, but does not include -



- (a) expenditure incurred for the acquisition of a depreciable asset other than a depreciable asset that, by its nature, can be used only for the purpose of undertaking scientific research;
- (b) expenditure incurred for the acquisition of real property; or
- (c) expenditure incurred for the purpose of ascertaining the existence, location, extent, or quality of a natural deposit; and

“scientific research institution” means an association, institute, college, or university that undertakes scientific research.

## 25. NET LOSS CARRIED FORWARD

(1) Where the total amount of deductions allowed to a person for a tax year (other than a deduction allowed under this section) exceeds the total amount of assessable income of that person for that year, the amount of the excess is the person’s net loss for the year.

(2) Subject to this Act, where a person has a net loss for a tax year, the net loss is carried forward to the following tax year and the person is allowed a deduction for the net loss in calculating the person’s taxable income for the following year.

(3) Subject to subsection (4), where a net loss of a person for a tax year is not wholly deducted under subsection (2), the undeducted amount is carried forward to the next following tax year and the person is allowed a deduction for the undeducted amount of the net loss in calculating the person’s taxable income for that tax year, and so on until the net loss is fully deducted.

(4) A net loss is not to be carried forward for more than 7 tax years after the end of tax year in which the net loss was incurred.

(5) Where a person has a net loss carried forward under this section for more than one tax year, the net loss of the earliest tax year is to be deducted first.

(6) This section applies separately for business income included in assessable income and property income included in assessable income.

(7) A reference in this section to assessable income does not include employment income.

## Division 5. – Depreciation of Depreciable Assets

### 26. GENERAL PRINCIPLES OF DEPRECIATION

(1) A person is allowed a deduction for a tax year for the amount by which the person’s depreciable assets have declined in value during the year through use in deriving assessable income.

(2) Depreciable assets are classified into five classes as set out in paragraph (1) of Schedule 4 with depreciation rates applicable for each class as specified in that paragraph.

(3) Subject to subsection (4), a person must determine the amount of the depreciation deduction allowed under subsection (1) for all classes of asset on an individual asset basis using the straight-line method under section 27.

(4) A person may elect to determine the amount of the depreciation deduction allowed under subsection (1) for Class 1, 2, and 3 assets on a pooling basis using the diminishing value method under section 28.

(5) An election made under subsection (4) –

(a) applies to all Class 1, 2, and 3 depreciable assets of the person;

(b) must be made in accordance with the Regulations; and

(c) is irrevocable.

(6) Class 4 and 5 assets can be depreciated only on an individual asset basis using the straight-line method under section 27.

(7) A person is not allowed a depreciation deduction for the cost of a structural improvement until the construction of the structural improvement is complete.

(8) Subsection (7) applies even if the person uses the structural improvement, or part of the structural improvement, before completion of construction.

## **27. STRAIGHT-LINE DEPRECIATION**

(1) This section applies where, for the purposes of section 26(1), a person calculates the depreciation deduction for depreciable assets on an individual asset basis under the straight-line method.

(2) Subject to subsections (4) and (5), a person calculates the depreciation deduction allowed to the person for a tax year for a depreciable asset under the straight-line method by applying the depreciation rate applicable to the asset as specified in Schedule 4 against the cost of the asset.

(3) The total deductions allowed, or that would be allowed but for subsection (4), to a person in respect of a depreciable asset to which this section applies for the current tax year and all previous tax years must not exceed the cost of the asset.

(4) Where a person uses a depreciable asset to which this section applies partly to derive assessable income and partly for another use, the amount allowed as a deduction under section 26(1) is the proportion of the amount calculated under subsection (1) that relates to the derivation of assessable income.

(5) Where a person does not use a depreciable asset to which this section applies for the whole of a tax year to derive assessable income, the depreciation deduction for the year is calculated in accordance with the following formula -

$$A \times B/C$$

where -

- A** is the depreciation deduction calculated under subsection (1) after taking into account subsection (4);
- B** is the number of days in the tax year that the person used the depreciable asset to derive assessable income; and
- C** is the number of days in the tax year.

#### **28. DIMINISHING VALUE DEPRECIATION**

(1) This section applies where, for the purposes of section 26(1), a person calculates the depreciation deduction for depreciable assets on a pooling basis under the diminishing value method with Class 1, 2, and 3 assets treated as separate depreciation pools.

(2) A person calculates the depreciation deduction allowed to the person for a tax year for a depreciation pool by applying the depreciation rate applicable to the pool as specified in Schedule 4 against the written down value of the pool at the end of the year.

(3) The written down value of a depreciation pool at the end of a tax year is the written down value of the pool at the end of the previous tax year (after allowing for the deduction under this section for that year) –

(a) increased by –

- (i) 50% of the cost of depreciable assets added to the pool during the tax year; and
- (ii) 50% of the cost of depreciable assets added to the pool during the previous tax year; and

(b) decreased by the consideration for the disposal of depreciable assets in the pool during the tax year.

(4) If a depreciable asset to which this section applies is acquired by person for use partly to derive assessable income and partly for another use –

- (a) the cost of the asset to be included in the asset's depreciation pool is the proportion of the cost that relates to the use of the asset to derive assessable income; and
- (b) if the asset is subsequently disposed of, the written down value of the pool is reduced by the proportion referred to in paragraph (a) of the consideration received for the asset.

(5) Where the written down value of a depreciation pool of a person at the end of a tax year after taking account of the depreciation deduction allowed under subsection (2) is less than the amount specified in Part 2 of Schedule 1 -

- (a) a deduction is allowed for year for the undepreciated amount of the written down value of the pool; and
- (b) the written down value of the pool at the end of the year is zero.

(6) Where the written down value of a depreciation pool of a person at the end of a tax year is a negative amount, that amount is included in the assessable income of the person for the year, and the written down value of the pool at the end of the year is zero.

(7) If all the depreciable assets in a depreciation pool are disposed of by the end of a tax year –

- (a) a deduction is allowed for the amount of the written down value (if any) of the pool at the end of the year; and
- (b) the written down value of the pool at the end of the tax year is zero.

#### **29. DISPOSAL OF DEPRECIABLE ASSET**

(1) Where a person disposes of a depreciable asset to which section 27 applies during a tax year -

- (a) the person is not allowed a depreciation deduction for the tax year for the asset; and
- (b) subject to subsection (2), any gain on disposal of the asset is included in the assessable income of the person for the tax year and any loss on disposal is allowed as a deduction for the tax year.

(2) Where a depreciable asset to which this section applies has been used by the person partly in deriving assessable income and partly for another use, the amount of the gain or loss on disposal included in assessable income or allowed as a deduction under subsection (1) is the proportional part of the gain or loss that relates to the derivation of assessable income.

#### **30. REPAIRS AND IMPROVEMENTS**

(1) Subject to subsections (2) and (3), a person is allowed a deduction for a tax year for expenditure incurred on a repair or improvement made to a depreciable asset during a tax year.

(2) Where the asset to which subsection (1) applies is depreciated under section 27 –

- (a) the amount of the deduction allowed under subsection (1) is limited to 20% of the written down value of the asset at the end of the tax year; and

- (b) the amount of any excess under paragraph (a) is added to the written down value of the asset as at the end of the tax year.

(3) Where the asset to which subsection (1) applies is in a depreciation pool depreciated under section 28 -

- (a) the total deduction allowed under subsection (1) for all assets in the depreciation pool is limited to 20% of the written down value of the pool at the end of the tax year; and
- (b) the amount of any excess under paragraph (a) is added to the written down value of the depreciation pool as at the end of the tax year.

## Division 6. – Tax Accounting

### 31. ACCOUNTING YEAR

(1) The accounting year of a company is the period of 12 months ending on the date of the annual balance of the financial accounts of the company.

(2) A company cannot change its accounting year for tax purposes unless it obtains prior written approval from the Commissioner General and complies with any conditions that may be attached to the approval.

(3) The Commissioner General may, by notice in writing, revoke an approval under subsection (2) if the company fails to comply with any of the conditions attached to the approval.

(4) Where a company's accounting year for tax purposes changes under subsection (2) or (3) and the transitional period is 6 months or less, the transitional period is treated as part of the last full accounting year prior to the change.

(5) Where a company's accounting year for tax purposes changes under subsection (2) or (3) and the transitional period is more than 6 months, the transitional period is treated as a separate accounting year (referred to as the "transitional accounting year").

(6) Subject to subsection (7), where the accounting year of a company does not coincide with the fiscal year, the law applicable for the accounting year is the law applicable for the fiscal year that ends during the accounting year.

(7) Where a transitional accounting year is wholly within a fiscal year, the law applicable to the transitional accounting year is the law for that fiscal year.

(8) In this section, "transitional period" means the period between the end of the last full accounting year prior to the change and the date on which the new accounting year commences.

### 32. METHOD OF TAX ACCOUNTING

(1) An employer and an employee must account for employment income paid by the employer and received by the employee on a cash basis.

(2) Subject to subsection (2), the following persons must account for assessable income, and expenditures and losses, on an accrual basis –

- (a) a company;
- (b) a partnership; and
- (c) an individual registered for GST and accounting for GST on an invoice basis.

(3) A person to whom subsection (1) and (2) does not apply may account for assessable income, and expenditures and losses, on a cash or accrual basis, provided that the person must use the same basis for determining both the timing of the derivation of assessable income, and the timing of the incurring of expenditures and losses.

### **33. CASH-BASIS ACCOUNTING**

A person accounting for income tax on a cash basis –

- (a) derives an amount when it is received by the person; and
- (b) incurs expenditure when it is paid by the person.

### **34. ACCRUAL-BASIS ACCOUNTING**

(1) A person accounting for income tax on an accrual basis –

- (a) derives an amount when it is receivable by the person; and
- (b) incurs expenditure when it is payable by the person.

(2) For the purposes of subsection (1), an amount is receivable by a person at the time the person becomes entitled to receive the amount even when the time for discharge of the liability is postponed or the amount is payable by instalments.

### **35. INCOME TAX ACCOUNTING AND GST**

(1) The assessable income of a GST-registered person does not include –

- (a) any output tax received or receivable by the person on a taxable supply made by the person; or
- (b) any GST refunded by the Commissioner General to the person.

(2) A GST-registered person is not allowed a deduction for input tax paid or payable by the person on a taxable supply made to, or taxable import made by, the person to the extent that the person is allowed a deduction for the input tax under section 31 of the *Goods and Services Tax Act 2003*.

(3) The cost of an asset acquired by a GST-registered person does not include any input tax paid or payable in respect of the acquisition of the asset to the extent that the person is allowed a deduction for the input tax under section 31 of the *Goods and Services Tax Act 2003*.

(4) In this section –

- (a) “GST-registered person” means a person registered for goods and services tax under the *Goods and Services Tax Act 2003*;
- (b) “taxable import” means an import of goods subject to goods and services tax under the *Goods and Services Tax Act 2003*;
- (c) the terms “input tax”, “output tax”, and “taxable supply” have their meanings under the *Goods and Services Tax Act 2003*.

### **36. CHANGE IN TAX ACCOUNTING METHOD**

(1) If the circumstances of a person change resulting in the person’s method of accounting under this Act changing, the person must notify the Commissioner General in writing of the change within 28 days of the change occurring.

(2) Except when subsection (1) applies, a person may change their method of accounting under this Act only with the approval of the Commissioner General.

(3) A person may apply, in the approved form, to the Commissioner General for a change in the person’s method of accounting under this Act and the Commissioner General may, by notice in writing, approve the application but only when satisfied that the change is necessary to properly calculate the taxable income of the person.

(4) Approval for a person to change their method of accounting under this Act may be subject to such conditions as specified by the Commissioner General in the notice of approval.

(5) Where a person’s method of accounting changes under subsection (1) or (2), the person must make adjustments in the tax year of change to items of income, deduction, or credit, or to any other items affected by the change, so that no item is omitted and no item is taken into account more than once.

### **37. BAD DEBTS**

(1) A person is allowed a deduction for a tax year for a bad debt where all the following conditions are satisfied –

- (a) the amount of the debt –
  - (i) was previously included in the assessable income of the person;
  - or

- (ii) is money lent by the person in the normal course of carrying on a business of money lending to derive assessable income;
  - (b) the debt or part of the debt is written off in the person's financial accounts for the tax year in accordance with financial reporting standards; and
  - (c) the person has taken legal action to collect the debt but the debt is irrecoverable.
- (2) The amount of the deduction allowed to a person under this section for a tax year must not exceed the amount of the debt written off in the person's financial accounts for that year.
- (3) This section does not apply to a bank to which section 100 applies.

### **38. LONG-TERM CONTRACTS**

(1) A person undertaking a long-term contract must include in assessable income for each tax year of the contract the percentage of the estimated total taxable income of the person under the contract determined in accordance with the percentage of completion method under financial reporting standards.

(2) Subsection (3) applies where, at the end of the final tax year of a long-term contract –

- (a) a person has a final year loss in relation to the contract that the person is permitted to carry forward under section 25; and
- (b) the person is unable to do so for the reason that the person ceases to carry on business in PNG at the end of the contract.

(3) Where subsection (2) applies, the person may carry the final year loss back to the preceding tax year and the loss is allowed as a deduction in that year.

(4) Subject to subsection (5), where a person is not able to wholly deduct a final year loss carried back under subsection (2), the amount not deducted may be carried back to the next preceding tax year and applied as specified in subsection (2) in that year.

(5) A final year loss cannot be carried back for more than two tax years.

(6) A person has a final year loss under a long-term contract where both the following conditions are satisfied –

- (a) the total taxable income estimated to be made under the contract for the purposes of the percentage of completion method exceeds the actual total taxable income under the contract; and



(b) the amount of the excess under paragraph (a) exceeds the amount to be included in assessable income under subsection (1) for the tax year in which the contract was completed.

(7) The amount of a final year loss is the amount of the excess under subsection (6)(b).

(8) In this section, “long-term contract” means a construction or engineering contract that will take more than 12 months to complete.

### **39. FINANCE LEASE**

(1) This section applies where a person (referred to as the “lessor”) has leased a business asset to another person (referred to as the “lessee”) under a finance lease.

(2) Where this section applies, this Act applies to the lessor and lessee on the following basis -

(a) the lessee is treated as the owner of the business asset;

(b) the lessee is treated as having acquired the business asset at the commencement of the lease; and

(c) the lessor is treated as having made a loan to the lessee at the commencement of the lease and each lease payment is in part repayment of the principal under the loan and in part payment of interest.

(3) The cost to a lessee of a leased asset treated as owned by the lessee under subsection (2)(a) is –

(a) where the lessor and lessee are not associates and an amount is stated as the cost or value of the asset in the lease agreement, that amount; or

(b) in any other case, the fair market value of the asset at the commencement of the lease.

(4) The amount of the loan referred to in subsection (2)(c) is the amount determined under subsection (3) as the cost of the leased asset.

(5) The interest part of each payment made under the loan is calculated by reference to the interest rate implicit in the lease agreement.

(6) In this section, “finance lease” means any lease treated as a finance lease under financial reporting standards and is so accounted for by the lessor in its financial accounts.

### **40. TRADING STOCK**

(1) The amount that a person is allowed as a deduction for a tax year for the cost of trading stock disposed of by the person during the year is calculated according to the following formula -

$$(A + B) - C$$

where -

- A** is the person's opening value of trading stock for the year;
- B** is the cost of trading stock acquired by the person during the year; and
- C** is the person's closing value of trading stock for the year.

(2) The opening value of a person's trading stock for a tax year is –

- (a) the closing value of the person's trading stock for the previous tax year; or
- (b) if the person commenced business during the year, the cost of trading stock acquired by the person prior to the commencement of the business.

(3) The closing value of a person's trading stock for a tax year is the lower of cost or fair market value of the person's trading stock on hand at the end of the year.

(4) A person who is accounting for income tax on a cash basis calculates the cost of trading stock that they have manufactured or produced under either the direct-cost method or absorption-cost method.

(5) A person who is accounting for income tax on an accrual basis calculates the cost of trading stock manufactured or produced under the absorption-cost method.

(6) If particular items of trading stock are not readily identifiable, a person may account for that trading stock under the first-in-first out or weighted average method.

(7) For the purposes of this section, "absorption-cost method", "direct-cost method", "first-in-first-out method" and "weighted average method" have their meanings under financial reporting standards.

## Division 7. – Foreign Exchange Gains and Losses

### 41. NET FOREIGN CURRENCY EXCHANGE OR LOSS

(1) For the purposes of section 14(1)(c), the net foreign currency exchange gain of a resident person for a tax year is calculated according to the following formula -

$$A - B$$

where -

- A** is the total foreign currency exchange gains derived by the resident person during the tax year; and
- B** is the total foreign currency exchange losses incurred by the resident person during the tax year.

(2) For the purposes of section 14(1)(c), the net foreign currency exchange gain of a non-resident person for a tax year is calculated according to the following formula -

$$\mathbf{A - B}$$

where -

- A** is the total foreign currency exchange gains derived by the non-resident person in conducting business through a permanent establishment in PNG during the year; and
- B** is the total foreign currency exchange losses incurred by the non-resident person in conducting business through a permanent establishment in PNG during the tax year.

(3) A foreign currency exchange loss of a person is taken into account in calculating component '**B**' of the formula in subsection (1) or (2) for a tax year only where the person has substantiated the amount of the loss to the satisfaction of the Commissioner General.

(4) Where component '**B**' of the formula in subsection (1) or (2) for a person exceeds component '**A**' for a tax year, the amount of the excess is the net foreign currency exchange loss of the person for the year.

- (5) Where a person has a net foreign currency exchange loss for a tax year –
- (a) for a financial institution, the loss is allowed as a deduction for the tax year; or
- (b) for any other person, the loss is carried forward and treated as a foreign currency exchange loss incurred by the person in the next following tax year for the purposes of calculating the net foreign currency exchange gain or loss of the person for that year.

#### **42. FOREIGN CURRENCY EXCHANGE GAIN OR LOSS**

(1) A foreign currency exchange gain is a gain that is attributable to a currency exchange rate fluctuation derived by a person in respect of a foreign currency transaction.

(2) A foreign currency exchange loss is a loss that is attributable to a currency exchange rate fluctuation incurred by a person in respect of a foreign currency transaction.

(3) In determining whether a person has derived a foreign currency exchange gain or incurred a foreign currency exchange loss in respect of a foreign currency transaction, account must be taken of the position under a hedging contract entered into by the person or an associate in relation to the transaction.

(4) A person derives a foreign currency exchange gain or incurs a foreign currency exchange loss at the time that the gain or loss is realised.

(5) In this section –

“foreign currency transaction” means any of the following transactions entered into in the conduct of a business to derive assessable income –

- (a) a dealing in a foreign currency;
- (b) the issuing of, or obtaining a debt obligation, denominated in foreign currency;
- (c) any other dealing denominated in a foreign currency; and

“hedging contract” means a contract entered into by a person, or an associate of the person, for the purpose of eliminating or reducing the risk of adverse financial consequences that might result for the person under another contract from currency exchange rate fluctuations.

## Division 8. – Application of Income Tax to Persons

### *Subdivision 1. - Individuals*

#### **43. TAXATION OF INDIVIDUALS**

The taxable income of each individual is to be calculated separately.

### *Subdivision 2. – Partnerships*

#### **44. PRINCIPLES FOR THE TAXATION OF PARTNERSHIP INCOME**

(1) This Subdivision specifies how the income tax applies to amounts derived from, and expenditures and losses incurred in relation to, activities conducted by persons in partnership.

(2) A partnership is liable to furnish an income tax return in accordance with section 117(2), but the partners, and not the partnership, are liable to pay income tax in respect of the partnership’s activities as set out in this Subdivision.

(3) Any election, notice, or statement required to be furnished in relation to a partnership’s activities must be furnished by the partnership and binds all the partners.

(4) Where a partnership has a non-resident partner or partners, then, for the purposes of the *Tax Administration Act 2017*, each resident partner in the partnership is treated as a representative of each non-resident partner in the partnership.

(5) In this Subdivision –

“non-resident partner” means a partner who is not a resident partner: and

“resident partner” means a partner who is a resident person.

**45. CALCULATION OF PARTNERSHIP NET INCOME OR PARTNERSHIP LOSS**

(1) Subject to subsection (3), the net income of a partnership for a tax year is calculated according to the following formula –

$$\mathbf{A - B}$$

where –

**A** is the assessable income of the partnership for the year calculated as if the partnership were a resident person; and

**B** is the total amount of deductions allowed under this Act for expenditures or losses to the extent incurred by the partnership in deriving the assessable income referred to in component “**A**”, other than the deduction allowed under section 25.

(2) Subject to subsection (3), a partnership has a partnership loss for a tax year where, for the year, component “**B**” exceeds component “**A**” in the formula in subsection (1) and the amount of the excess is the amount of the partnership loss.

(3) For the purposes of calculating the net income or partnership loss of a partnership under this section, and despite section 6(6), the assessable income of the partnership includes amounts subject to non-resident tax.

**46. TAXATION OF PARTNERS**

(1) The assessable income for a tax year of a partner in a partnership that has a net income for the tax year includes –

(a) so much of the partner’s share of the net income of the partnership for the part of the year that the partner was a resident person; and

(b) so much of the partner’s share of the net income of the partnership for the part of the year that the partner was a non-resident person but only to the extent that the net income of the partnership for that period is attributable to PNG source income other than income subject to non-resident tax.

(2) The allowable deductions of a partner in a partnership that has a partnership loss for a tax year include –

(a) so much of the partner’s share of the partnership loss of the partnership for the part of the year that the partner was a resident person; and

(b) so much of the partner’s share of the partnership loss of the partnership for the part of the year that the partner was a non-resident person but

only to the extent that the partnership loss for that period is attributable to PNG source income other than income subject to non-resident tax.

(3) Where the assessable income of a resident partner under subsection (1)(a) includes the partner's share of income subject to non-resident tax, the resident partner is entitled to a tax credit for the partner's share of the non-resident tax paid in relation the income.

(4) Income derived, or expenditure or losses incurred, by a partnership retain their character as to geographic source and type of income, expenditure or loss, in the hands of the partners, and are allocated to the partners on a pro rata basis.

(5) Subject to subsection (6), a partner's share of the net income or a partnership loss is equal to the partner's percentage interest in the income of the partnership as set out in the partnership agreement.

(6) Where the allocation of income to the partners as set out in a partnership agreement does not reflect the contribution of the partners to the partnership's operations, or there is no written partnership agreement, a partner's share of the net income or partnership loss is equal to the partner's percentage interest in the capital of the partnership.

### ***Subdivision 3. – Trusts***

#### **47. PRINCIPLES FOR THE TAXATION OF TRUST INCOME**

(1) This Subdivision specifies how the income tax applies to amounts derived, and expenditures and losses incurred, through trusts.

(2) A trustee of a trust is not liable for income tax in respect of the income of the trust except as provided for in this Division.

(3) Any election, notice, or statement required to be furnished in relation to a trust's activities must be furnished by the trustee and binds the beneficiaries.

(4) The trustee of a trust is required to furnish an income tax return in accordance with section 117(3) in relation to the trust.

#### **48. TAXATION OF A BENEFICIARY OF A TRUST**

(1) An amount derived by a trustee of a trust during a tax year to which a beneficiary of the trust is entitled is treated as derived by the beneficiary in that year.

(2) If a beneficiary is treated as having derived an amount under subsection (1), the beneficiary is treated as having incurred any expenditure or loss incurred by the trustee to the extent to which it relates to the derivation of the amount to which subsection (1) applies.

(3) For the purposes of subsections (1) and (2) –

(a) an amount, or expenditure or loss, retains its character and geographic source in the hands of the beneficiary; and

- (b) an amount is treated as derived, and expenditures and losses are treated as incurred by the beneficiary at the time the amount was derived or incurred by the trustee.

(4) The assessable income of a resident beneficiary includes a distribution received by the beneficiary from a non-resident trust except to the extent that the distribution represents an amount derived by the trustee of the non-resident trust –

- (a) to which subsection (1) applies;
- (b) that has been taxed to the trustee under section 49; or
- (c) that would have been exempt income or not otherwise subject to income tax if derived by the resident beneficiary.

(5) In this section –

“distribution”, in relation to a resident beneficiary, includes the amount of a loan, payment for goods or services, the fair market value of an asset or service provided, or the amount of a debt obligation released by a non-resident trust in favour of the resident beneficiary of the trust to the extent that the transaction is, in substance, a distribution of income accumulated in the trust;

“entitled”, in relation to an amount, means a vested and indefeasible interest in the amount; and

“resident beneficiary”, in relation to a trust, means a beneficiary of the trust who is a resident person.

#### **49. TAXATION OF A TRUSTEE**

(1) The trustee of a trust is liable for income tax for a tax year at the rate or rates specified in Part 1 of Schedule 1 on the taxable trust income of the trust for the year.

(2) The income tax imposed on a trustee for a tax year under subsection (1) is calculated by applying the rate or rates of tax applicable to the trust under Part 1 of Schedule 1 to the taxable trust income of the trust for the year.

(3) The taxable trust income of a resident trust for a tax year is the total assessable income of the trust for the year calculated as if the trust is a taxpayer reduced by the sum of the following –

- (a) any part of that amount to which section 48(1) applies for the year; and
- (b) the total deductions allowed under this Act in respect of expenditures or losses incurred by the trust for the year, other than expenditures or losses that relate to amounts to which paragraph (a) applies.

(4) The taxable trust income of a non-resident trust for a tax year is the total assessable income of the trust for the year that is PNG source income calculated as if the trust is a taxpayer reduced by the sum of the following -

- (a) any part of that amount to which section 48(1) applies for the year; and
- (b) the total deductions allowed under this Act in respect of expenditures or losses incurred by the trust for the year that relate to the PNG source income of the trust, other than expenditures or losses that relate to amounts that to which paragraph (a) applies.

(5) Where a trustee has paid income tax on the taxable trust income of a trust under this section, that income is not taxed again to the beneficiary.

(6) The trustee of a trust is personally liable for an income tax liability under this section that is not satisfied out of the assets of the trust and, if there is more than one trustee of the trust, the trustees are jointly and severally liable.

#### *Subdivision 4. - Companies*

##### **50. TAXATION OF COMPANIES**

A company is liable for income tax separately from its shareholders.

##### **51. CARRY FORWARD OF LOSSES BY COMPANIES**

(1) Where there is a change in more than 50% of the underlying ownership and control of a company, any loss of the company for a tax year before the change is not allowed as a deduction in a tax year after the change unless both the following conditions are satisfied –

- (a) the company carries on the same business after the change that it carried on before the change until the earlier of –
  - (i) the loss has been fully deducted; or
  - (ii) the period for carrying the loss forward under this Act has expired;
- (b) the company does not engage in any new business or investment with the principal purpose of taking advantage of the loss so as to reduce the income tax payable on the amounts derived from the new business or investment.

(2) In this section, “loss” means –

- (a) a net loss carried forward under section 25;
- (b) a net foreign currency exchange loss carried forward under section 41(5)(b);



- (c) a foreign loss carried forward under section 55; or
- (d) an excess amount carried forward under section 88.

## 52. MUTUAL ASSOCIATIONS

- (1) A mutual association is treated as carrying on a business for the purposes of this Act.
- (2) Any dealings between a mutual association and its members are taken into account in determining the income tax liability of the association and the income tax or small business tax liability of the members.
- (3) An amount paid by a mutual association to a member for a business input supplied by the member to the association is -
  - (a) included in the business income of the member; and
  - (b) allowed as a deduction to the association.
- (4) An amount received by a mutual association from a member as customer is -
  - (a) included in the business income of the association; and
  - (b) allowed as a deduction to the member, but only when incurred by the member to derive assessable income.
- (5) A rebate, bonus, or similar amount paid by a mutual association to a member -
  - (a) is allowed as a deduction to the association; and
  - (b) is included in the business income of the member.
- (6) In this section, “mutual association” -
  - (a) means a body, association, or society that is organised and operated exclusively for the benefit of members; and
  - (b) includes a society registered under the *Co-operative Societies Act 1982* and a savings and loan society within the meaning under the *Savings and Loan Societies Act 2015*.

## Division 9. – International Tax

### 53. FOREIGN TAX CREDIT

- (1) This section applies where -
  - (a) a resident person has derived assessable foreign income; and

- (b) the resident person has paid foreign income tax in respect of the assessable foreign income.

(2) Where this section applies, the resident person is allowed a tax credit (referred to as a “foreign tax credit”) of an amount equal to the lesser of -

- (a) the foreign income tax paid; or
- (b) the PNG income tax payable in respect of the assessable foreign income.

(3) A foreign tax credit allowed under subsection (2) is applied to reduce the amount of income tax payable in respect of the taxable income of the resident person for the tax year in which the assessable foreign income is derived.

(4) For the purposes of subsection (2)(b), the PNG income tax payable in respect of the assessable foreign income derived by a resident person in a tax year is calculated by applying the average rate of PNG income tax applicable to the resident person for the year against the net foreign income of the resident person for the year.

(5) The foreign tax credit of a resident person for a tax year is calculated separately for assessable income that is foreign business income and assessable income that is foreign property income.

(6) Where subsection (5) applies, deductions are apportioned for the purposes of paragraph (b) of the definition of “net foreign income” in subsection (10) in accordance with section 64 on the basis that foreign business income and foreign property income are separate classes of income.

(7) A resident person is allowed a foreign tax credit under this section for foreign income tax only where -

- (a) the resident person has paid the foreign income tax within 2 years after the end of the tax year in which the foreign income was derived by the resident person or within such further time as the Commissioner General allows; and
- (b) the resident person has a receipt and any additional documentary evidence as required by the Commissioner General provided by the foreign tax authority that evidences the payment of the foreign income tax.

(8) The foreign tax credit that a resident person is allowed under this section for a tax year is a non-refundable credit and is applied before any other tax credits that the resident person is allowed for the year.

(9) Any unapplied foreign tax credit of a resident person for a tax year under this section is neither carried back to the preceding tax year nor carried forward to the following tax year.

(10) In this section and section 55 -

“assessable foreign income”, in relation to a resident person, means foreign income included in the assessable income of the resident person;

“average rate of PNG income tax”, in relation to a resident person for a tax year, means the PNG income tax payable by the resident person for the year, before the allowance of any tax credit under this Act, as a percentage of the taxable income of the resident person for the year;

“foreign business income” means business income that is foreign income;

“foreign income tax” means any tax on income or gains, including withholding tax, imposed by the government of a foreign country, or a political subdivision of a government of a foreign country, but does not include penalty, additional or penal tax, or interest payable in respect of such tax;

“foreign property income” means property income that is foreign income; and

“net foreign income”, in relation to a resident person for a tax year, means the total assessable foreign income of the resident person for the year reduced by any deductions allowed to the resident person under this Act for the year that -

- (a) relate exclusively to the derivation of the assessable foreign income; and
- (b) are apportioned to the derivation of assessable foreign income in accordance with section 64.

#### **54. INDIRECT FOREIGN TAX CREDIT**

(1) This section applies where all the following conditions are satisfied:

- (a) a company that is a resident of PNG (referred to as a “treaty resident company”) under a tax treaty entered into by PNG;
- (b) the treaty resident company has a participation interest in a company that is a resident of the other Contracting State to the treaty (referred to as a “foreign company”);
- (c) the foreign company has paid a dividend to the treaty resident company that is included in the taxable income of the treaty resident company; and
- (d) the tax treaty obliges PNG to allow the treaty resident company a credit (referred to as an “indirect credit”) for the company tax paid by the foreign company on the profits out of which the dividend has been paid.

(2) Where this section applies, the reference in section 53 to foreign income tax paid in relation to the dividend includes the corporate income tax paid by the foreign company on the profits out of which the dividend has been paid to the treaty resident company calculated according to the following formula -

$$A \times B / (C - A)$$

where:

- A** is the tax paid by the foreign company on the financial accounting profits of the foreign company out of which the dividend has been paid;
- B** is the amount of the dividend paid; and
- C** is the financial accounting profits out of which the dividend has been paid, being the most recently derived financial accounting profits of the foreign company that are available to support the payment of the dividend.

(3) In this section, “participation interest”, in relation to a foreign company, is the interest in the foreign company that qualifies for the indirect credit under the tax treaty.

#### **55. FOREIGN LOSSES**

(1) Subject to subsection (2), an amount that a resident person is allowed as a deduction under this Act in deriving assessable foreign income is deductible only against that income.

(2) Where a resident person has a foreign loss for a tax year, the amount of the loss is carried forward to the next following tax year and allowed as a deduction in that year against the resident person’s assessable foreign income for the following year.

(3) Where a resident person is not able to wholly deduct a foreign loss under subsection (2), the un-deducted amount is carried forward to the next following tax year and applied as specified in subsection (2) in that year, and so on until the loss is fully deducted, but a resident person cannot carry a foreign loss forward for more than 7 tax years after the end of year in which the loss was incurred.

(4) Where a resident person has a foreign loss carried forward under this section for more than one tax year, the foreign loss of the earliest tax year is to be deducted first.

(5) This section applies separately to the foreign business income and the foreign property income of a resident person.

(6) In this section, “foreign loss”, in relation to a resident person for a tax year, means the amount by which the deductible expenditures incurred by the resident person in deriving assessable foreign income exceeds the amount of that income for the year.

#### **56. REPATRIATED PROFIT OF PNG PERMANENT ESTABLISHMENT**

(1) The repatriated profit of a PNG permanent establishment of a non-resident company for a tax year is calculated in accordance with the following formula -

$$(A + (B - C)) - D$$

where -

- A** is the total cost of assets, net of liabilities, of the permanent establishment at the commencement of the tax year;
- B** is the net profit of the permanent establishment for the tax year calculated in accordance with financial reporting standards;
- C** is the income tax payable on the taxable income of the permanent establishment for the tax year; and
- D** is the total cost of assets, net of liabilities, of the permanent establishment at the end of the tax year.

(2) In calculating the repatriated profit of a permanent establishment for a tax year, the total cost of assets of the permanent establishment at the commencement of a tax year, is the total cost of assets at the end of the previous tax year.

#### **57. TAX ON RECHARGED TECHNICAL FEES OR ROYALTIES**

(1) This section applies where all the following conditions are satisfied -

- (a) a non-resident person (referred to as the “supplier”) supplies technical services, or leases out equipment, other than through a permanent establishment in PNG;
- (b) the services are supplied, or equipment leased, to a person (referred to as the “recipient”) who is -
  - (i) a resident person, other than in relation to a business conducted by the resident person through a permanent establishment outside PNG; or
  - (ii) a non-resident person conducting a business in PNG through a PNG permanent establishment;
- (c) the technical fee for the services or royalty for the leased equipment is paid to the supplier by a non-resident associate of the recipient;
- (d) the technical fee or royalty is recharged by the associate to the recipient.

(2) Where this section applies, this Act applies as if the non-resident associate is supplying the technical services or leased equipment to the recipient and the recharged amount is the technical fee for the services or royalty for the leased equipment, as the case may be.

(3) In this section, “technical services” means any services the remuneration for which is a technical fee.

#### **58. CROSS-BORDER TRANSFER PRICING**

(1) Where a party to a transaction that is not an arm’s length transaction is located in, and subject to income tax in, PNG and another party to the transaction is located outside PNG, any allocation, apportionment, or distribution of income, gains, deductions, losses, or tax credits must be made in accordance with the Regulations.

(2) Subject to subsection (3), for the purposes of this Act and the Regulations referred to in subsection (1) -

- (a) a permanent establishment is treated as a separate and distinct person (referred to as the “PE person”) from the person in respect of whom it is a permanent establishment (referred to as the “headquarters person”);
- (b) the PE person and the headquarters person are treated as associates and any dealing between the PE person and the headquarters person is treated as a non-arm’s length transaction; and
- (c) the PE person and the headquarters person are located where their activities are located.

(3) The Commissioner General may choose not to apply subsection (2) where the foreign country in which the headquarters person or PE person, as the case may be, is located does not apply the same rule as expressed in subsection (2).

(4) The Regulations shall provide for certain resident entities with foreign operations to furnish a country-by-country report to the Commissioner General for each fiscal year.

(5) In this section, “arm’s length transaction” means a transaction between independent persons who are dealing with each other at arm’s length.

#### **59. TAX TREATIES**

(1) The Treasurer may enter into a tax treaty with a foreign government or governments.

(2) Subject to subsection (3), where there is any conflict between the terms of a tax treaty having legal effect in PNG and this Act, the tax treaty prevails over the provisions of this Act.

(3) A tax treaty does not override subsection (4), section 58, or Part 7.

(4) Subject to subsection (5), when a tax treaty provides that PNG source income is exempt or excluded from tax, or the application of the tax treaty results in a reduction in the rate of PNG tax, the benefit of that exemption, exclusion, or reduction is not available to an entity that, for the purposes of the tax treaty, is a resident of the other contracting state

when 50% or more of the underlying ownership or control of that entity is held by an individual or individuals who are not residents of that other contracting state for the purposes of the tax treaty.

- (5) Subsection (4) does not apply where -
- (a) the resident of the other contracting state is an entity in relation to which the principal class of shares or other interest in the entity are regularly traded on a stock exchange in that other contracting state;
  - (b) the resident of the other contracting state is an entity carrying on an active business in that other contracting state through personnel and premises in that other Contracting State and the PNG source income derived by the entity is attributable to that business; or
  - (c) the tax treaty includes a limitation of benefits article or other provision preventing abuse of the treaty.

(6) In this section –

“active business” means any business other than –

- (a) operating as a holding company;
- (b) providing overall supervision or administration of a group of entities;
- (c) providing group financing (including cash pooling) or operating a centralised payments facility; or
- (d) making or managing investments, unless this activity is carried on by a bank, insurance company, or registered securities dealer in the ordinary course of its business; and

“principal class of shares or other interests”, in relation to an entity listed on a stock exchange, is the shares or other interest that represents the majority of the aggregated voting, dividend, and capital rights in the entity.

#### **60. USE OF TAX HAVENS**

(1) Where a resident person has a 50% or greater interest held, directly or indirectly, in a tax haven entity during a tax year, the assessable income of the resident person includes the amount calculated according to the following formula –

$$A \times B$$

where –

**A** is the percentage interest of the resident person in the tax haven entity; and

**B** is the total property income derived by the tax haven entity during the year, other than property income in respect of which the tax haven entity has been subject to income tax under section 3.

(2) In determining the percentage interest of a person in an entity –

(a) the amount of the interest is the higher of the person’s percentage interest in -

(i) the voting power in the entity;

(ii) the right to dividends or income entitlements payable by the entity; or

(iii) the right to capital in the entity; and

(b) account is taken of any direct or indirect interests in the entity held by an associate or associates of the person.

(3) A company is a tax haven entity for a tax year where the company or partnership -

(a) is incorporated, created, or formed in a tax haven; or

(b) has its central management and control in a tax haven at any time during the tax year.

(4) A trust is a tax haven entity for a tax year where the trust –

(a) is settled or established in a tax haven; or

(b) has its administration in a tax haven at any time during the tax year.

(5) Where an amount is included in the assessable income of a resident person under subsection (1) (referred to as the “attributed income”), the person is allowed a foreign tax credit under section 53 on the basis that the reference in section 53 to foreign income tax includes any foreign income tax or PNG income tax paid by the tax haven entity in respect of the attributed income.

(6) A dividend paid by a tax haven entity to a resident person is exempt income to the extent that it is paid out of attributed income.

(7) For the purposes of subsection (6), a dividend is treated as paid first out of attributed income.

(8) In this section, “tax haven” means a foreign country or part of a foreign country that -

(a) has a corporate tax rate below 10%;



- (b) either does not tax foreign income of residents or taxes foreign income of residents only if the income is remitted into the country; or
- (c) has laws providing for the secrecy of financial or corporate information that facilitate the concealment of the identity of the beneficial owner of any income or asset.

**61. THIN CAPITALISATION**

(1) Subject to subsection (2), where a foreign-controlled resident company, other than a financial institution, has an average debt to average equity ratio in excess of 2 to 1 for a tax year, a deduction is disallowed for the interest paid by the company during that year calculated in accordance with the following formula

$$A \times B/C$$

where -

- A** is the company's total amount of deductible interest expenditure for the year ignoring this section; and
- B** is the company's excess debt for the year; and
- C** is the company's average debt for the year.

(2) Subject to subsection (3), where the average debt to average equity ratio of a foreign-controlled resident company exceeds 2 to 1 for a tax year, subsection (1) does not apply if the amount of the average debt of the company for the year does not exceed the arm's length debt amount.

(3) Subsection (2) applies only where the non-resident person deriving the interest is entitled to the benefit of the non-discrimination Article in a tax treaty.

(4) This section applies to a non-resident company with a permanent establishment in PNG on the following basis -

- (a) the permanent establishment is treated as a foreign-controlled resident company; and
- (b) the average debt to average equity ratio of the permanent establishment is calculated by reference to -
  - (i) the debt obligations of the non-resident company attributable to the permanent establishment; and
  - (ii) the equity of the non-resident company attributable to the operations of the company conducted through the permanent establishment.

(5) In this section -

“arm’s length debt amount”, in relation to a foreign-controlled resident company, means the amount of debt that a financial institution not being an associate of the foreign-controlled resident company would be prepared to lend to the company in an arm’s length transaction having regard to all the circumstances of the company;

“average debt”, in relation to a foreign-controlled resident company for a tax year, is the amount calculated in accordance with the following formula -

$$A/B$$

where -

- A** is the sum of the amount of debt of the company at the end of each calendar month in the tax year; and
- B** is the number of calendar months in the year that the company conducted business in PNG;

“average equity”, in relation to a foreign-controlled resident company for a tax year, is the amount calculated in accordance with the following formula -

$$A/B$$

where -

- A** is the sum of the amount of equity of the company at the end of each calendar month in the tax year; and
- B** is the number of calendar months in the year that the company conducted business in PNG;

“debt”, in relation to a foreign-controlled resident company, means the debt obligations of the company as determined in accordance with financial reporting standards;

“debt obligation” does not include accounts payable;

“equity”, in relation to a foreign-controlled resident company, means the equity of the company as determined in accordance with financial reporting standards;

“excess debt”, in relation to a foreign-controlled resident company for a tax year, means the amount by which the company’s average debt for the year exceeds the maximum average debt allowed for the year calculated in accordance with the 2 to 1 ratio; and

“foreign-controlled resident company” means a resident company in which more than 50% of the membership interests in the company are held by a non-resident either alone or together with an associate or associates.

## **62. MANAGEMENT FEES**

- (1) This section applies where the following conditions are satisfied –
- (a) a resident person or PNG permanent establishment of a non-resident person (referred to as the “payer”) pays a management fee during a tax year;
  - (b) the management fee is paid to a non-resident person who is an associate of the payer; and
  - (c) apart from this section, the management fee is an allowable deduction of the payer under this Act for the tax year.

(2) Where this section applies, the deduction allowed to the payer for a tax year for such management fee must not exceed the higher of –

- (a) 2% of the total assessable income derived by the payer during the tax year; or
- (b) 2% of the total allowable deductions (ignoring the deduction for management fees) allowed to the payer for the tax year.

(3) In this section, “management fee” means an amount as consideration for the rendering of any managerial service, but does not include employment income.

## **Division 10. – Miscellaneous Income Tax Rules**

### **63. NON-CASH BENEFITS**

(1) In determining whether a non-cash benefit derived by a person is income included in the assessable income of the person, and the amount so included, any restriction on transfer of the benefit and the fact that the benefit is not otherwise convertible to cash are disregarded.

(2) Subject to subsection (3), where a person derives a non-cash benefit, the amount of the non-cash benefit that is included in the assessable income of the person is the fair market value of the benefit at the time that the benefit is derived determined without regard to any restriction on transfer.

(3) The valuation rules in Schedule 2 apply to a non-cash benefit that is included in the employment income of an employee under section 11(1)(b).

### **64. APPORTIONMENT OF EXPENDITURES OR LOSSES**

(1) This section applies to an expenditure or loss incurred by a person that relates to -

- (a) the derivation of more than one class of income; or
- (b) the derivation of a class of income and some other purpose.

(2) Where this section applies, the expenditure or loss is apportioned on any reasonable basis taking account of the relative nature and size of the activities or purposes to which the expenditure or loss relates.

(3) The following are separate classes of income -

- (a) employment income;
- (b) other income included in assessable income; and
- (c) exempt income.

#### **65. CESSATION OF ORIGIN OF INCOME**

(1) This section applies where -

- (a) an amount is derived by a person in a tax year from a business, activity, or investment that had ceased before the amount was derived; and
- (b) had the amount been derived by the person before the business, activity, or investment ceased it would have been included in the assessable income of the person.

(2) Where this section applies, this Act applies to the amount on the basis that the business, activity, or investment of the person had not ceased at the time the amount was derived.

#### **66. RECAPTURED DEDUCTIONS**

(1) This section applies where a person has been allowed a deduction for an expenditure or loss incurred, or bad debt written off, in a tax year in the calculation of the taxable income or net loss of the person for the year and in a subsequent tax year -

- (a) the person has received, in cash or in kind, an amount as a reimbursement or recovery of, or an indemnity for, the expenditure or loss, or debt; or
- (b) the person's obligation to pay the expenditure is remitted.

(2) Where this section applies, the amount received or remitted is -

- (a) included in the assessable income of the person for the tax year in which it is received or remitted; and

- (b) treated as income of the same character as the income to which the deduction related.

## PART 4. – CAPITAL GAINS

### 67. CAPITAL GAIN

(1) A person makes a capital gain on the disposal of a taxable asset where the consideration for the disposal of the asset exceeds the cost of the asset at the time of the disposal, and the capital gain is the amount of the excess.

(2) The amount of a capital gain made by a person on the disposal of a taxable asset is reduced by any part of the gain that is –

- (a) included in the assessable income of the person; or
- (b) is exempt income of the person.

(3) An amount to which section 81(5)(b) or 83(5)(b) applies is treated, for the purposes of this Act, as a capital gain derived on the disposal of a taxable asset.

### 68. CAPITAL LOSS

(1) Subject to subsections (2) and (3), a person makes a capital loss on the disposal of a taxable asset where the cost of the asset at the time of the disposal exceeds the consideration for the disposal, and the capital loss is the amount of the excess.

(2) The amount of a capital loss made by a person on the disposal of a taxable asset is reduced by any part of the loss that is allowed as a deduction to the person.

(3) Where, if instead of making a capital loss on disposal of a taxable asset, a person had made a capital gain, the amount of the capital loss is reduced to the extent that the gain would have been –

- (a) included in the assessable income of the person; or
- (b) exempt income of the person.

(4) Subject to subsections (5) and (6), a capital loss can be carried forward indefinitely for offset against capital gains on the disposal of taxable assets until the loss has been fully offset.

(5) A capital loss made by a person is offset against a capital gain of the person under subsection (4) only where the amount of the capital loss is substantiated to the satisfaction of the Commissioner General.

(6) Section 51 applies with the necessary changes made to the carry forward of a capital loss under subsection (4).

**69. TAXABLE ASSETS**

- (1) Subject to subsection (2), the following assets are taxable assets -
- (a) PNG real property;
  - (b) a membership interest in an entity where more than 50% of the value of the interest is derived, directly or indirectly, from PNG real property;
  - (c) an option or right to acquire an asset referred to in the preceding paragraphs.
- (2) The following assets are not taxable assets –
- (a) an exempt asset;
  - (b) trading stock and any gain or loss on disposal of trading stock is dealt with under the income tax;
  - (c) a depreciable asset and any gain or loss on disposal of a depreciable asset is dealt with under the income tax.

(3) The 50% threshold in subsection (1)(b) can be satisfied at any time in the period of 365 days immediately preceding the disposal of the membership interest.

**70. EXEMPT ASSETS AND GAINS**

- (1) The following assets are exempt assets –
- (a) the principal place of residence of an individual;
  - (b) an asset that is used by a person solely to derive exempt income.
- (2) A gain derived or loss incurred on the first commercialisation of customary land is not subject to tax or recognised as a loss or deduction under this Act.
- (3) For the purposes of subsection (1)(a) –
- (a) the principal place of residence of an individual is the residence where the individual mainly lives;
  - (b) an individual and his or her spouse can have only one principal place of residence; and
  - (c) the principal place of residence of an individual includes any form of residential accommodation, but does not include land that is adjacent to the residence.

(4) If an individual uses a building partly as a principal place of residence and partly for some other use, the capital gain or loss made on disposal of the building as the individual's principal place of residence is calculated according to the following formula –

$$A \times B/C$$

where –

- A** is the capital gain or loss on disposal of the building;
- B** is the floor space of the part of the building used as the individual's principal place of residence; and
- C** is the total floor space of the building.

(5) Subject to subsection (6), where a building is not used by an individual as his or her principal place of residence for the whole of the period of the individual's ownership of the building, the capital gain or loss made on disposal of the building as the individual's principal place of residence is calculated according to the following formula –

$$A \times B/C$$

where –

- A** is the capital gain or loss on disposal of the building;
- B** is the period of individual's ownership of the building for which the building was the individual's principal place of residence; and
- C** is the total period of the individual's ownership of the building.

(6) Subsection (5) does not apply where both the following applies –

- (a) the total period of the individual's ownership of the building exceeds 5 years; and
- (b) the total period of an individual's absence is less than 2 years.

(7) An asset that is an exempt asset of a person at the time of the person's death is treated as an exempt asset of the executor or beneficiary of the deceased's estate but only where the asset is disposed of by the executor or beneficiary within 6 months after the later of–

- (a) the grant of probate to the deceased's estate; or
- (b) the death of the deceased.

**71. ASSET**

In this Part, “asset” means –

- (a) trading stock, a depreciable asset, or any other resource of a business that has a measurable value and that is likely to give rise to future economic benefits;
- (b) a taxable asset; and
- (c) an exempt asset.

**72. JOINTLY OWNED ASSETS**

(1) For the purposes of this Act, where an asset is jointly owned by two or more persons (other than in partnership or under a trust), any income, gains, expenditures, and losses relating to the asset are apportioned among the owners in accordance with their respective interests in the asset.

(2) Where the interests of the owners of a jointly-owned asset cannot be ascertained, the owners of the asset are treated as having an equal interest in the asset.

**73. ACQUISITION**

(1) Subject to this Part, a person acquires an asset at the time that legal title to the asset passes to the person.

(2) Subject to this Part, a person acquires an asset that is a right at the time that the right is granted or provided to the person.

**74. DISPOSAL**

(1) Subject to this Part, a person disposes of an asset:

- (a) in the case of an asset that is a right, at the time that the right is cancelled, redeemed, expired, or surrendered; or
- (b) for any other asset, at the time the person has sold, exchanged, or otherwise transferred legal title to the asset, or the asset is destroyed.

(2) Where a person creates an asset in another person being an asset that did not previously exist, the first-mentioned person is treated as having made a disposal of the asset to the other person at the time the asset is created.

(3) Where an asset is transmitted by succession or under a will, the deceased is treated as having disposed of the asset at the time the asset is transmitted.

(4) A disposal includes the disposal of a part of an asset.



(5) The vesting of an asset of a person in an appointed person is not a disposal of the asset for the purposes of this Act, and any acts done in relation to the asset by the appointed person are treated as done by the person.

(6) In this section, “appointed person” has the meaning given to it in section 3 of the *Tax Administration Act 2017*, but does not include an executor of a deceased estate.

#### **75. SELF-DISPOSALS**

(1) The application by a person of a non-business asset to use as a business asset is, at the time that the asset is first used as a business asset, treated as:

- (a) a disposal of the non-business asset by the person; and
- (b) an acquisition of a business asset by the person.

(2) The application by a person of a business asset to a use as a non-business asset is, at the time that the asset is first used as a business asset, treated as:

- (a) a disposal of the business asset by the person; and
- (b) an acquisition of a non-business asset by the person.

(3) In this section, “non-business asset” means an asset that is not a business asset.

#### **76. COST**

(1) The cost of an asset is determined under this section unless the Act provides otherwise.

(2) The cost of an asset, other than an intangible asset, of a person is the sum of the following amounts -

- (a) the total consideration given by the person for the asset, including the fair market value of any consideration in kind determined at the time the asset is acquired and, where the asset is constructed, produced, or developed, the cost of construction, production, or development;
- (b) any incidental expenditure incurred by the person in acquiring and disposing of the asset;
- (c) any expenditure incurred by the person in installing the asset;
- (d) any expenditure incurred by the person to reconstruct or improve the asset with the purpose or effect of increasing the value of the asset; and
- (e) for real property, including a long-term lease, that is not a depreciable asset, interest on borrowings to acquire or improve the property, rates, land rent, land fees, and the costs of repair, maintenance, and insurance incurred by the person.

- (3) The cost of an intangible asset of a person is the sum of the following amounts -
- (a) total expenditure incurred by the person in acquiring, creating, improving, and renewing the intangible asset; and
  - (b) any incidental expenditure incurred by the person in acquiring and disposing of the intangible asset.
- (4) The cost of a business intangible of a person referred to in paragraph (e) or (f) of the definition of “business intangible” in section 143 is the amount of the expenditure.
- (5) The cost of an intangible asset of a person is not reduced by any impairment write down in relation to the asset made in the financial accounts of the person.
- (6) The cost of an asset of a person does not include:
- (a) any expenditure incurred by the person in relation to the asset that is allowed as a deduction to the person under this Act; or
  - (b) the amount of any grant, subsidy, rebate, or other financial assistance given to the person in respect of the acquisition of the asset, except to the extent to which the amount is included in the assessable income of the person.
- (7) Where the acquisition of an asset by a person constitutes -
- (a) the derivation of an amount included in assessable income of the person, the cost of the asset is the amount so included plus any amount paid by the person for the asset; or
  - (b) the derivation of exempt income of the person, the cost of the asset is the exempt amount plus any amount paid by the person for the asset.
- (8) The cost of an asset treated as acquired under section 75(1)(b) is the fair market value of the asset at the time that the asset is first used as a business asset.
- (9) The cost of an asset treated as acquired under section 75(2)(b) is the fair market value of the asset at the time that the asset is first used other than as a business asset.
- (10) In this section, “impairment write down”, in relation to an intangible asset of a person, means the write down of the value of the intangible in the financial accounts of the person because the fair market value of the asset is less than the cost of the asset.

#### **77. COST WHEN AN ASSET HAS BEEN DAMAGED**

- (1) Where an asset is damaged, the cost of the asset is reduced by any amount received for the damage under -
- (a) an insurance policy, indemnity, or other agreement;

- (b) a settlement; or
  - (c) a judicial decision.
- (2) Where subsection (1) applies and the amount received exceeds the cost of the asset—
- (a) the excess is –
    - (i) for a business asset, treated as business income derived at the time that the amount is received; or
    - (ii) for a taxable asset, treated as a capital gain derived at the time that the amount is received; and
  - (b) the cost of the asset is set at zero.

#### 78. SPLITTING OR MERGING OF ASSETS

(1) Where a person disposes of a part of an asset, the cost of the asset allocated to the part of the asset disposed of is calculated in accordance with the following formula -

$$A \times B / (B + C)$$

where -

- A** is the cost of the asset;
- B** is the consideration for the part of the asset disposed of; and
- C** is the fair market value of the retained part of the asset at the time of the disposal.

- (2) Where subsection (1) applies -
- (a) the retained part of the asset is treated as a separate asset; and
  - (b) the cost of the retained part of the asset is the balance of the cost remaining after taking account of the cost allocated under subsection (1) to the disposed part of the asset.
- (3) The following applies where a person merges two or more assets (referred to as the “original assets”) into a single asset (referred to as the “merged asset”) –
- (a) the original assets are treated as having been disposed of at the time of merger of the assets;
  - (b) no gain or loss is recognised in respect of the disposal of the original assets referred to in paragraph (a);

- (c) the person is treated as having acquired the merged asset at the time of merger of the assets; and
- (d) the cost of the merged asset is the total of the following amounts –
  - (i) the written down value of the merged assets at the time of merger of the assets; and
  - (ii) the costs incurred by the person in merging the original assets into the merged asset.

**79. COST OF LAND AND STRUCTURAL IMPROVEMENTS**

(1) Where a structural improvement to real property is a depreciable asset, the structural improvement and the land on which the structural improvement is located are treated as separate assets.

(2) Where the structural improvement and land are acquired for a single consideration, the consideration is apportioned on any reasonable basis as between the cost of the asset that is the structural improvement and the cost of the asset that is the land.

**80. WRITTEN DOWN VALUE**

(1) Subject to subsection (2), the written down value of an asset of a person is -

- (a) for a depreciable asset subject to depreciation on a straight-line basis under section 27, the cost of the asset reduced by depreciation deductions (if any) allowed in respect of the asset or that would have been allowed but for section 27(4); or
- (b) for any asset other than a depreciable asset, the cost of the asset.

(2) Where section 78 applies to an asset of a person, the written down value of -

- (a) the part of the asset disposed of by the person is the cost apportioned to that part of the asset under section 78 reduced by depreciation deductions (if any) allowed, or that would have been allowed but for section 27(4), that relate to the cost apportioned to that part of the asset; and
- (b) the part of the asset retained by the person is the cost apportioned to that part of the asset under section 78 reduced by depreciation deductions (if any) allowed, or that would have been allowed but for section 27(4), that relate to the cost apportioned to that part of the asset.

**81. CONSIDERATION**

(1) The consideration for the disposal of an asset is determined under this section unless the Act provides otherwise.

(2) Subject to this Act, the consideration for the disposal of an asset by a person is the total amount received or receivable by the person for the asset, including the fair market value of any consideration in kind determined at the time of disposal.

(3) Where an asset has been destroyed, the consideration for the disposal of the asset includes any compensation, indemnity, or damages received or receivable by the person as a result of the destruction of the asset, including amounts received or receivable under-

- (a) an insurance policy, indemnity, or other agreement;
- (b) a settlement; or
- (c) a judicial decision.

(4) Where two or more assets are disposed of by a person in a single transaction and the consideration for each asset is not separately specified, the total consideration is apportioned among the assets disposed of in proportion to their respective fair market values determined at the time of the disposal.

(5) Where a deposit paid to the owner of an asset is wholly or partly forfeited to the owner of the asset because a prospective sale or other disposal of the asset does not proceed, the owner of the asset is treated as having –

- (a) for a business asset, derived business income equal to the amount of the forfeited deposit; or
- (b) for a taxable asset, derived a capital gain equal to the amount of the forfeited deposit.

(6) The consideration for an asset that is treated as having been disposed of under section 75(1)(a) is the fair market value of the asset at the time that the asset is first used as a business asset.

(7) The consideration for an asset that is treated as having been disposed of under section 75(2)(a) is the fair market value of the asset at the time that the asset is first used other than as a business asset.

(8) Where a person is unable to provide documentary evidence of the consideration for the disposal of an asset by the person, the consideration is the fair market value of the asset at the time of the disposal.

## **82. DEALINGS IN OPTIONS**

(1) This section applies where a person (referred to as the “grantor”) grants an option to another person (referred to as the “grantee”) to acquire an asset.

(2) Where this section applies, the following applies to the grantor on the grant of an option –

- (a) the grantor is treated as having made a disposal of the option to the grantee at the time that the option is granted;
  - (b) the cost for the grantor for the option is limited to any non-deductible incidental costs incurred by the grantor in granting the option; and
  - (c) the consideration for the option is the amount received by the grantor for the option.
- (3) Where this section applies, the following applies to the grantee on the grant of an option –
- (a) the grantee is treated as having acquired the option at the time that the option is granted; and
  - (b) the cost for the grantee for the option is the consideration given for the option and any non-deductible incidental costs incurred by the grantee in relation to the grant of the option.
- (4) Where the grantee exercises the option –
- (a) the grantor's consideration for the asset transferred by the grantor on exercise of the option does not include the consideration given for the option but only where the grantor has been subject to tax on any income or capital gain made in respect of the grant of the option; and
  - (b) the cost for the grantee for the asset transferred on exercise of the option includes the amount specified in subsection (3)(b).
- (5) Where the option expires without being exercised by the grantee, the grantee makes a loss equal to the amount specified in subsection (3)(b).

### 83. DEFERRAL OF RECOGNITION OF GAIN OR LOSS

- (1) Subject to subsection (6), this section applies to the following -
- (a) a disposal of an asset between spouses or former spouses as part of a divorce settlement or under an agreement to live apart but only where the spouse or former spouse acquiring the asset will be subject to tax under this Act in respect of a subsequent disposal of the asset;
  - (b) a disposal of an asset by reason of the transmission of the asset on the death of a person to -
    - (i) the executor or administrator of the estate of the deceased person; or
    - (ii) a beneficiary of the estate but only where the beneficiary will be subject to tax under this Act in respect of a subsequent disposal of the asset;

- (c) a disposal of an asset (referred to as the “replaced asset”) by a person by reason of the destruction or compulsory acquisition, of the asset but only where the person reinvests the consideration for the disposal in an asset of a like kind (referred to as a “replacement asset”) within six months after the disposal or within such further time as the Commissioner General may allow; or
  - (d) a disposal of a depreciable asset (referred to as the “replaced asset”) by a person and the person acquires a depreciable asset of a like kind to be wholly used to derive assessable income (referred to as the “replacement asset”) within six months after the disposal or within such further time as the Commissioner General may allow.
- (2) Where subsection (1)(a) or (b) applies –
- (a) no gain or loss is taken to arise on the disposal of the asset for the person disposing of the asset; and
  - (b) the person acquiring the asset is treated as acquiring—
    - (i) an asset of the same character as the character of the asset to the person disposing of the asset; and
    - (ii) the asset for an amount equal to the written down value of the asset for the person disposing of the asset at the time of the disposal.
- (3) Where subsection (1)(c) or (d) applies and the cost of the replacement asset exceeds the consideration for the replaced asset, no gain or loss is taken to arise on the disposal of the replaced asset and the cost of the replacement asset for the person is the written down value of the replaced asset at the time of disposal increased by the amount of the excess.
- (4) Where subsection (1)(c) or (d) applies and the consideration for the replaced asset exceeds the cost of the replacement asset, no gain or loss is taken to arise on the disposal of the replaced asset and the cost of the replacement asset for the person is the written down value of the replaced asset at the time of disposal reduced by the amount of the excess but not below zero.
- (5) Any part of the excess referred to subsection (4) that is not used to reduce the written down value of the asset is:
- (a) for a business asset, included in the assessable income of the person in the tax year in which the replacement asset was acquired; or
  - (b) for a taxable asset, treated as a capital gain derived at the time that the replacement asset is acquired.

(6) This section does not apply to a depreciable asset subject to depreciation on a pooling basis under section 28.

#### 84. CORPORATE REORGANISATIONS

- (1) This section applies where the following conditions are satisfied -
- (a) a resident company (referred to as the “*transferor*”) disposes of an asset to another resident company (referred to as the “*transferee*”);
  - (b) the asset is not a depreciable asset of the person subject to depreciation on a pooling basis under section 28;
  - (c) the asset does not have a liability attaching to it that exceeds the written down value of the asset to the transferor;
  - (d) the transferee will be subject to income tax under this Act in respect of a subsequent disposal of the asset; and
  - (e) the transferor is a group company in relation to the transferee.
- (2) Where this section applies -
- (a) no gain or loss is taken to arise on the disposal of the asset for the transferor; and
  - (b) the transferee is treated as having acquired the asset for an amount equal to the transferor’s written down value for the asset as at the time of the disposal.
- (3) A company is a group company in relation to another company where -
- (a) either of the following applies –
    - (i) one company owns, directly or through one or more interposed entities, 95% of the issued shares in the other company; or
    - (ii) another company owns, directly or through one or more interposed entities, 95% of the issued shares in both companies; and
  - (b) the period of ownership under paragraph (a) is at least three years prior to the date of the disposal of the asset or the whole of the period of incorporation where that period is less than three years.
- (4) In this section, “company” means a body corporate.

#### 85. TRANSACTIONS WITH ASSOCIATES

Subject to section 58, where a person (referred to as the “*transferor*”) disposes of an asset to an associate (referred to as the “*transferee*”) –



- (a) the transferor is treated as having disposed of the asset for consideration equal to the fair market value of the asset at the time of the disposal; and
- (b) the transferee is treated as having acquired the asset for consideration equal to the amount determined under paragraph (a).

#### 86. ASSET REGISTRATION

(1) The Registrar of Titles must not register an instrument relating to the transfer of an asset under the Land Registration Act 1981, unless the transferor or transferee has furnished the Registrar of Titles with a certificate from the Commissioner General stating that –

- (a) the income tax or capital gains tax due on the transfer has been paid;
- (b) a satisfactory arrangement for payment of the tax has been made; or
- (c) no income tax or capital gains tax is payable in respect of the transfer.

(2) A title issued by the Registrar of Titles cannot be pleaded or given in evidence, except in criminal proceedings, where the Commissioner General has not provided the Registrar of Titles with a certificate under subsection (1).

## PART 6. – TAXATION OF SPECIFIC SECTORS

### Division 1. – Extractive Industries

#### 87. PART 6 INTERPRETATION

(1) In this Act, unless the context otherwise requires -

“development expenditure” means capital expenditure incurred by a licensee in undertaking development operations, including expenditure incurred by a licensee in acquiring an exploration or development right, an interest in an exploration or development right, or exploration or development information, but not including exploration expenditure or expenditure incurred in acquiring a depreciable asset within paragraph (a) of the definition in section 143;

“development information” means information relating to the extraction of minerals, or oil or gas, under a development right;

“development operations” means authorised activities undertaken by a licensee under a development right;

“development right” means –

- (a) a mining lease granted under section 38 of the *Mining Act*; or

- (b) a petroleum development licence issued under section 57 of the *Oil and Gas Act*;

“exploration expenditure” means expenditure incurred by a licensee in undertaking exploration operations, including expenditure incurred by a licensee in acquiring an exploration right, an interest in an exploration right, or exploration information from the Government or under a farm-out agreement, but not including expenditure incurred in acquiring a depreciable asset within paragraph (a) of the definition in section 143;

“exploration information” means information relating to the search for minerals, or petroleum or gas, under an exploration right;

“exploration operations” means authorised activities undertaken by a licensee under an exploration right;

“exploration right” means

- (a) an exploration licence granted under section 20 of the *Mining Act*;
- (b) a petroleum prospecting licence issued under section 23 of the *Oil and Gas Act*; or
- (c) a petroleum retention licence issued under section 40 of the *Oil and Gas Act*;

“farm-out agreement” means an agreement referred to in section 94(1);

“licence area” means the area covered by a resource right;

“licensee” means a person who has been granted a resource right;

“mining project” means operations under a mining right;

“mining right” means –

- (a) a mining lease granted under section 38 of the *Mining Act*; or
- (b) an exploration licence granted under section 20 of the *Mining Act*;

“petroleum project” means operations under a petroleum right;

“petroleum right” means –

- (a) a petroleum prospecting licence issued under section 23 of the *Oil and Gas Tax Act*;
- (b) a petroleum retention licence issued under section 40 of the *Oil and Gas Tax Act*; or

- (c) a petroleum development licence issued under section 57 of the *Oil and Gas Tax Act*;

“resource project” means a mining or petroleum project;

“resource right” means a mining or petroleum right;

“services” includes the leasing of equipment; and

“subcontractor” means a person supplying services to a licensee in relation to a resource project, other than a person supplying services as an employee.

- (2) In sections 85, and 92-96, a reference to a “resource project” –

(a) in relation to a mining lease of a licensee, includes the resource project for an exploration licence of the licensee provided the licence area for the mining lease is wholly within the licence area for the exploration licence; or

(b) in relation to a petroleum development licence of a licensee, includes the resource project for a petroleum prospecting licence or petroleum retention licence of the licensee provided the licence area for the petroleum development licence is wholly within the licence area for the petroleum prospecting licence or petroleum retention licence.

(3) Unless the context otherwise requires, any term that is used but not defined in this Act, but is defined in the *Mining Act* or *Oil and Gas Act*, as the case may be, has the meaning in that Act.

#### **88. RING FENCING OF RESOURCE PROJECTS**

(1) A deduction for any expenditure or loss incurred, wholly or partly, by a licensee in undertaking a resource project during a tax year is allowed only against the assessable income derived by the licensee from the project during the year.

(2) Where the total amount of deductions allowed under the Act to a licensee in respect of a resource project undertaken by the licensee during a tax year exceeds the total assessable income derived from the project for the year, the excess is carried forward and allowed as a deduction against amounts included in the assessable income of the licensee from the resource project in the next following tax year of the licensee.

(3) An amount that is not deducted under subsection (2) is carried forward to the next following tax year of the licensee and allowed as a deduction in accordance with subsection (2) in that year and so on until the amount has been fully deducted or all operations of the licensee under the resource project cease.

(4) Where a licensee has an excess carried forward under subsection (2) for a resource project for more than one tax year, the excess of the earliest tax year is allowed as a deduction first.

- (5) Subsection (6) applies where all the following conditions are satisfied –
- (a) a licensee has permanently ceased all operations in under a resource project;
  - (b) the licensee's right to undertake the resource project has expired or been terminated; and
  - (c) the licensee has a loss under subsection (2) in relation to the resource project.

(6) Where the conditions in subsection (5) are satisfied, the licensee may elect, by notice in writing to the Commissioner General, to treat the loss as a loss to which subsection (2) applies in relation to a different resource project undertaken by the licensee.

(7) A licensee must lodge a notice of an election under subsection (6) with the Commissioner General by the due date for the furnishing of licensee's income tax return for the tax year in which the loss arose or within such further time as the Commissioner General may allow by notice in writing.

#### **89. INDIRECT TRANSFER OF A RESOURCE RIGHT**

(1) A licensee must notify the Commissioner General, in writing, of a change of 10% or more in the underlying ownership and control of a licensee within 14 days of the change occurring or within such further time as the Commissioner General may allow.

(2) Subject to subsection (3), if the person disposing of the interest to which the notice under subsection (1) relates is a non-resident, the licensee is liable, as agent of the non-resident, for any tax payable under this Act by the non-resident in respect of the disposal.

(3) Subsection (2) does not apply where the disposal is by way of a trade in shares on a stock exchange.

(4) A licensee liable as agent for a non-resident under subsection (2) must furnish an income tax return and pay the tax due in respect of the disposal of the interest by the non-resident within 28 days after the date of the disposal or within such further time as the Commissioner General may allow.

(5) The tax paid by a licensee on behalf of the non-resident in accordance with subsection (2) is credited against the income tax liability of the non-resident under this Act.

(6) For the purposes of this Act, a gain on disposal of an interest in an entity to which a notice under subsection (1) relates is business income.

#### **90. TAXATION OF LICENSEES AND SUBCONTRACTORS**

(1) A licensee and a subcontractor are liable to tax in accordance with this Act, but subject to the modifications in this Division.

(2) If there is any inconsistency in the taxation of a licensee or subcontractor as between this Division and the other provisions in this Act, this Division prevails.

- (3) The rate of income tax applicable to a licensee is 30%.
- (4) The rate of non-resident tax on -
  - (a) a technical fee paid by a licensee to a non-resident subcontractor without a permanent establishment in PNG is 15%; or
  - (b) a royalty paid by a licensee to a non-resident subcontractor without a permanent establishment in PNG for the lease of any machinery or equipment used in a resource project is 10%.

(5) The Regulations may provide for a limitation on the interest rate giving rise to deductible interest expenditure under a loan made by an associate to a licensee.

#### **91. DEDUCTION FOR EXPLORATION EXPENDITURE**

(1) For the purposes of Division 5 of Part 3, exploration expenditure is a business intangible with a depreciation rate of 100%.

(2) The following applies to plant or machinery acquired by a licensee solely and exclusively for the purposes of undertaking exploration operations, and which is being used for that purpose:

- (a) for such plant and machinery depreciated on an individual asset basis under the straight-line method under section 27, the depreciation rate is 100%; or
- (b) for such plant and machinery depreciated on a pooling basis under the diminishing value method under section 28, such plant or machinery constitutes a separate depreciation pool with a depreciation rate of 100%.

#### **92. DEDUCTION FOR DEVELOPMENT EXPENDITURE**

(1) For the purposes of Division 5 of Part 3, development expenditure is a business intangible with an effective life equal to the percentage determined by dividing 100 by the expected period of years of the development operations in the licence area to which the expenditure relates.

- (2) A depreciable asset used in development operations is depreciated as follows –
  - (a) for a depreciable asset with an effective life of less than 10 years, the asset is depreciated using a pooling system on a diminishing value basis under section 28 at a depreciation rate of 25%; or
  - (b) for any other depreciable asset, the asset is depreciated on an individual asset basis using the straight-line method under section 27 at a depreciation rate of 10%.

(3) The depreciable assets to which subsection (2)(a) applies form a separate depreciation pool for the purposes of section 28.

(4) If, in relation to a licence area, a licensee incurs expenditure on a depreciable asset for use in development operations before the commencement of commercial production, this Act applies on the basis that the expenditure was incurred at the time of commencement of commercial production.

(5) The amount of the deduction under subsection (2)(b) for a depreciable asset for the tax year in which the commencement of commercial production occurs is calculated according to the following formula:

$$A \times B/C$$

where -

- A** is the amount of the expenditure incurred before the commencement of commercial production;
- B** is the number of days in the period beginning on the date of commencement of commercial production and ending on the last day of the tax year in which commercial production commenced; and
- C** is the number of days in the tax year in which commercial production commenced.

(6) If a licensee disposes of an interest in a development right (other than under a farm-out agreement), any gain arising on the disposal is reduced by any development expenditure incurred by the licensee to which subsection (1) applies that is not included in the cost of the development right, and has not been deducted or recouped by the licensee at the time of the disposal.

(7) In this section, “commencement of commercial production” means the first day of the first period of 30 consecutive days during which the average level of production on the 25 highest production days in the 30-day period reaches a level considered to be commercial production as determined by the [sector ministry].

### **93. CONTRIBUTIONS TO A DECOMMISSIONING FUND**

(1) A contribution by a licensee to a decommissioning fund made in accordance with the terms of a resource right granted to the licensee is allowed as a deduction in the tax year in which the contribution was made.

(2) The deduction under subsection (1) for contributions made to a decommissioning fund –

- (a) are allowed from the date that the contributions are required to be made under the terms of the resource right but not earlier than 10 years before the expected end of the resources project;

- (b) the deductible amount of the contribution must not exceed the amount of the required contribution under the resource right; and
- (c) the determination of the required contributions to be made under the resource right must take account of the expected accumulation of the interest income derived on the balance of the fund.

(3) Subject to subsection (4), expenditure incurred by a licensee in carrying out remedial work to a licence area as required under a resource right granted to the licensee is allowed as a deduction in the tax year in which the expenditure is incurred.

(4) A deduction is not allowed under subsection (3) to the extent that the remedial work is paid for, directly or indirectly, from money made available out of the licensee's decommissioning fund.

(5) Amounts accumulated in a decommissioning fund or withdrawn from a decommissioning fund to pay for remedial work as required under a resource right are exempt income.

(6) The contributions to a decommissioning fund, and the interest income derived on investment of those contributions, must remain in the fund until used in undertaking remedial work to the licence area to which the fund relates.

(7) If contrary to subsection (6), an amount is withdrawn from a decommissioning fund of a licensee other than to pay for remedial work as required under a resource right, the amount withdrawn is included in the assessable income of the licensee for the tax year in which the amount was withdrawn and the licensee is liable for a penalty equal to [10%] of the amount included in assessable income.

(8) Any surplus in a decommissioning fund of a licensee at the time of completion of the resource project to which the fund relates that is returned to the licensee is included in the assessable income of the licensee for the tax year in which the operations are completed.

(9) Subsections (7) and (8) do not apply to any withdrawal or surplus that is not paid out of, or does not constitute, interest or deductible contributions to the decommissioning fund and, for this purpose, amounts paid out of a decommissioning fund are treated as paid first out of interest and deductible contributions.

(10) In this section, "decommissioning fund" means a fund or account required to be established under a resource right to provide for the future payment of remedial work to the licence area covered by the resource right and is managed jointly by the [sector ministry] and the licensee.

#### **94. FARM-OUT ARRANGEMENTS**

- (1) This section applies where the following conditions are satisfied -
  - (a) a licensee (referred to as the "transferor") has entered into an agreement with a person (referred to as the "transferee") for the transfer of a part of the transferor's interest in a resource right; and

- (b) the consideration given by the transferee for the transferred interest wholly or partly includes the transferee undertaking some or all of the transferor's work commitments in respect of the interest in the right retained by the transferor.
- (2) Where this section applies -
- (a) the value of any work undertaken by the transferee in relation to the part of the interest retained by the transferor is not included in -
    - (i) the consideration received by the transferor for the transferred interest; or
    - (ii) the assessable income of the transferor; and
  - (b) the following applies to any amount in money received or receivable by the transferor for the transferred interest -
    - (i) section 66(2) applies to the amount in money on the basis that it is a recovery by the transferor of any deductions allowed for expenditure incurred by the transferor in respect of the transferred interest; and
    - (ii) if the amount in money exceeds the amount of deducted expenditure to which section 66(2) applies, the excess is treated as consideration received for the transferred interest.

#### **95. ADDITIONAL PROFITS TAX**

(1) Additional profits tax or APT is imposed for each tax year at the rate specified in Part 1 of Schedule 1 on a licensee who has a positive amount of accumulated net project receipts for a resource project for the year.

(2) The APT imposed on a licensee for a resource project for a tax year under subsection (1) is calculated by applying the rate of tax referred to in subsection (1) to the positive amount of accumulated net project receipts for a resource project for the year.

(3) The APT imposed under subsection (1) is in addition to the income tax payable by the licensee on the taxable income of the licensee for the resource project for the year.

(4) The Regulations may provide for transitional rules for the application of the APT to existing resource projects.

#### **96. ACCUMULATED NET PROJECT RECEIPTS**

(1) The accumulated net project receipts of a licensee for a resource project for a tax year is calculated according to the following formula –

$$(A \times B) + C$$



where –

- A** is the accumulated net project receipts of the licensee for the project at the end of the previous tax year;
- B** is 113%; and
- C** is the net project receipts of the licensee for the project for the current tax year.

(2) If a licensee pays APT for a resource project for a tax year, the amount of the accumulated net project receipts of the licensee for the project at the end of the year is zero.

**97. NET PROJECT RECEIPTS**

(1) The net project receipts of a licensee for a resource project for a tax year is the gross project receipts for the project for the year reduced by the total deductible project expenditure of the licensee for the project for the year.

(2) The net project receipts of a licensee for a resource project for a tax year can be a negative amount.

**98. GROSS PROJECT RECEIPTS**

(1) The gross project receipts of a licensee for a resource project for a tax year is the total of the following amounts –

- (a) the total assessable income derived by the licensee from the resource project for the year, other than a gain on disposal of a business asset or business intangible;
- (b) the consideration derived by the licensee for the disposal of a business asset or business intangible during the year used in the resource project, but only if the expenditure incurred in acquiring the asset was deducted in calculating the net project receipts of the resource project; and
- (c) any amount that is a reimbursement or recovery of, or indemnity for, any expenditure previously deducted in calculating the net project receipts of the licensee for the project for any tax year, other than an amount included in paragraph (a).

(2) If an amount referred to in subsection (1) is attributable to a resource project of the licensee and to some other activity (including another resource project of the licensee), only that part of the amount that relates to the first-mentioned resource project is included in gross project receipts of the licensee for that project.

**99. DEDUCTIBLE PROJECT EXPENDITURE**

(1) The total deductible project expenditure of a licensee for a resource project for a tax year is the total of the following amounts –

- (a) the total expenditure incurred by the licensee for the project for the year that is deductible in calculating the taxable income of the licensee for the project for the year including exploration expenditure, but excluding the following –
  - (i) depreciation deductions; and
  - (ii) interest, finance charges, and hedging costs;
- (b) capital expenditure incurred by the licensee in acquiring a business asset or business intangible during the year for use in the resource project; and
- (c) any income tax payable by the licensee in respect of the taxable income of the licensee for the resource project for the year.

(2) If an amount referred to in subsection (1) is attributable to a resource project of the licensee and to some other activity (including another resource project), only that part of the amount that relates to the first-mentioned resource project is included in deductible project expenditure of the licensee for that project.

## Division 2. – Banking and Insurance

### 100. LOAN LOSS PROVISIONING BY BANKS

A bank is allowed a deduction for a tax year for an amount equal to 75% of the addition to the loan loss provision of the bank for the year provided it is calculated in accordance with international financial reporting standards.

### 101. PROVISION FOR UNEXPIRED RISKS OF A GENERAL INSURANCE COMPANY

(1) A company carrying on a general insurance business is allowed a deduction for a tax year for the balance of the company's provision for unexpired risks as at the end of the tax year.

(2) The amount of the deduction allowed under subsection (1) must not exceed the amount required [prudential requirements].

(3) A company carrying on a general insurance business for a tax year must include in the assessable income of the company for the tax year the amount allowed as a deduction to the company under subsection (1) in the prior tax year.

(4) In this section, “general insurance business” has the meaning in the *Insurance Act* 1995.

### 102. TAXATION OF LIFE INSURANCE COMPANIES

(1) A company carrying on a life insurance business (referred to as a “life company”) is allowed a deduction for a tax year for the following amounts –

- (a) the amount of the initial reserves established in the financial accounts of the company for new life policies issued during the year, but the amount of the deduction allowed must not exceed the amount required for the initial reserve [under prudential requirements]; and
  - (b) the amount of the annual additions made in the financial accounts of the company during the year to life policy reserves, but the amount of the deduction allowed must not exceed the amount required for the annual addition to the reserve [under prudential requirements].
- (2) Where, during a tax year, a life company cancels a life policy issued by the company, the amount of the deducted reserves in relation to the cancelled policy is included in the assessable income of the company for the year.
- (3) Where a life company makes claim pay-outs under life policies during a tax year –
- (a) if the total amount of claim pay-outs made during the year is less than the total amount of deducted reserves in relation to those claim pay-outs, the excess is included in assessable income of the company for the year; or
  - (b) if the total amount of claim pay-outs made during the year is less than the total amount of deducted reserves in relation to those claim pay-outs, the company is allowed a deduction for year for the amount of the excess.
- (4) In this section –
- “life insurance business” has the meaning given to it in section 6(1)(a) and (b) of the *Life Insurance Act 2001*; and
- “life policy” has the meaning given to it in section 4(1)(a) and (b) of the *Life Insurance Act 2001*.

### Division 3. – Superannuation

#### 103. EMPLOYER CONTRIBUTIONS TO A SUPERANNUATION FUND

- (1) Subject to subsections (2) and (3), an employer is allowed a deduction for the amount of a contribution paid by the employer in a tax year to an approved fund for the benefit of an employee.
- (2) The total amount allowed as a deduction under subsection (1) for a tax year for contributions made to an approved fund for the benefit of an employee is limited to 15% of the taxed employment income of the employee for the tax year.
- (3) No deduction is allowed under subsection (1) for a contribution made by an employer for the benefit of an employee where the amount of the contribution is deducted by

the employer from the employment income paid by the employer to the employee or that is otherwise recovered by the employer from the employee.

(4) An employer is not allowed a deduction for a contribution made to a non-approved fund.

(5) A contribution made by an employer to an approved or non-approved fund for the benefit of an employee is not included in the assessable income of the employee.

(6) In this Division –

“approved fund” means a superannuation fund approved by the Commissioner General in accordance with the Regulations;

“non-approved fund” means a superannuation fund that is not an approved fund; and

“superannuation fund” has the meaning given to it in the *Superannuation (General Provisions) Act 2000*.

#### **104. TAXATION OF A SUPERANNUATION FUND**

(1) An approved fund is liable for income tax on its taxable income for a tax year at the rate specified in Part 1 of Schedule 1.

(2) A non-approved fund is liable for income tax on its taxable income for a tax year at the rate specified in Part 1 of Schedule 1.

(3) The income tax imposed on an approved or non-approved fund for a tax year under subsection (1) or (2), as the case may be, is calculated by applying the rate of tax applicable to the fund under Part 1 of Schedule 1 to the taxable income of the fund for the year.

(4) A contribution made to an approved or non-approved fund is exempt income of the fund.

#### **105. TAXATION OF PAY-OUTS BY SUPERANNUATION FUND**

(1) A lump sum paid by an approved fund to a member of the fund, or a dependent of a member of the fund, is liable to tax as follows –

(a) any part of the pay-out that represents taxed contributions made to the fund is exempt income; and

(b) the part of a pay-out not covered by paragraph (a) is taxed at the rate specified in Part 1 of Schedule 1.

(2) A lump sum or pension paid by a non-approved fund to a member of the fund, or a dependent of a member of the fund, is exempt income.

(3) In this section, “taxed contribution”, in relation to an approved fund, means a contribution made to the fund to the extent that a deduction has not been allowed for the contribution under section 103.

#### Division 4. – Primary Production

##### 106. VALUATION OF LIVESTOCK ACQUIRED BY NATURAL INCREASE

(1) Subject to subsection (2), the cost of an animal that a person carrying on a primary production business holds as livestock that was acquired by the person through natural increase is the prescribed amount for the animal for the tax year in which the person acquired the animal.

(2) A person carrying on a primary production business may elect to treat the actual cost to the person of an animal referred to in subsection (1) as the cost of the animal.

(3) A person must make an election under subsection (2) in the approved form and the election must be lodged with the Commissioner General before the due date for furnishing the person’s income tax return for the tax year in which the person acquired the animal or such later date as the Commissioner General may allow by notice in writing to the person.

(4) If there is no prescribed amount for an animal held by a person carrying on a primary production business, the cost of the animal is the actual cost to the person of the animal.

(5) Where subsection (1) applies to a person carrying on a primary production business, the person is not allowed a deduction for the actual cost of livestock acquired by natural increase.

##### 107. INVOLUNTARY DISPOSALS OF LIVESTOCK BY INCOME TAXPAYER

(1) This section applies where an individual carrying on a primary production business –

- (a) disposes of livestock during a tax year as a result of any of the following –
  - (i) the loss or destruction of pastures or fodder due to fire, drought, or flood and the Commissioner General is satisfied that the individual will use the consideration for the disposal to acquire replacement livestock;
  - (ii) the livestock is destroyed under PNG law providing for the control or eradication of a disease or the livestock dies from such a disease;
  - (iii) land of the individual on which the livestock is pastured is compulsorily acquired or resumed under a PNG law; or

(iv) the taking of a lease of the individual's land by the State for the eradication of cattle tick;

(b) apart from this section, the consideration for the disposal of the livestock would be included in the assessable income of the individual; and

(c) the individual has a profit on disposal of the trading stock.

(2) Where this section applies, the individual may elect to include 20% of the profit on disposal of the livestock in the individual's assessable income for the tax year in which the livestock was disposed and 20% in the individual's assessable income for each of the following four tax years.

(3) An election under subsection (2) must be made in the approved form and lodged by the individual with the Commissioner General before the due date for furnishing the individual's income tax return for the tax year in which the individual disposed of the livestock or such later date as the Commissioner General may allow by notice in writing to the individual.

(4) Where an individual has made an election under subsection (2) –

(a) the consideration for the disposal of the trading stock is not included in the individual's assessable income; and

(b) the individual is not allowed a deduction for the value of livestock in the tax year of disposal.

(5) Where an individual who has made an election under subsection (2) ceases to be a taxpayer because of death, winding up, permanent departure from PNG, or other reason, the individual must include the untaxed amount of the individual's profit in the individual's assessable income for the tax year in which the individual ceased to be a taxpayer.

(6) In this section and section 108 –

“disposal”, in relation to livestock, includes the death of the livestock; and

“profit”, in relation to the disposal of livestock to which this section applies, means the consideration for the disposal of the livestock reduced by the total of the following amounts –

(a) for livestock held at the commencement of the tax year in which the livestock was disposed, the closing value of the livestock for trading stock purposes at the end of the previous tax year as determined under section 40; and

(b) for livestock acquired during the tax year, the cost of the livestock, including as determined under section 106 for livestock acquired by natural increase.

**108. INVOLUNTARY DISPOSALS OF LIVESTOCK BY SMALL BUSINESS TAXPAYER**

(1) This section applies if a small business taxpayer carrying on a primary production business –

- (a) disposes of livestock during a quarter as a result of any of the events specified in section 107(1)(a); and
- (b) apart from this section, the consideration for the disposal of the livestock would be included in the turnover of the small business taxpayer.

(2) Where this section applies, the small business taxpayer may elect to include 20% of the consideration on disposal of the livestock in the person's turnover for the tax year in which the livestock was disposed and 20% in the person's turnover for each of the following four tax years.

(3) A small business taxpayer liable to small business tax under section 4(4) who has made an election under subsection (2) is required to include 5% of the consideration for the disposal in the turnover of the person for the quarter in which the livestock was disposed and 5% of the consideration in each of the following 19 quarters.

(4) An election under subsection (2) must be made in the approved form and lodged by the small business taxpayer with the Commissioner General before the due date for furnishing the taxpayer's small business tax return for the quarter in which the taxpayer disposed of the livestock or such later date as the Commissioner General may allow by notice in writing to the person.

(5) Where a small business taxpayer who has made an election under subsection (2) ceases to be a taxpayer because of death, winding up, permanent departure from PNG, or other reason, the small business taxpayer must include the untaxed amount of the consideration for the disposal in the turnover of the person for the quarter in which the person ceased to be a small business taxpayer.

**109. PRIMARY PRODUCTION EXPENDITURE**

(1) A person conducting a primary production business on land in PNG is allowed a deduction as determined under subsection (2) for expenditure incurred by the person during a tax year on any of the following:

- (a) the eradication or extermination of animal or vegetable pests from the land;
- (b) the destruction and removal of timber, scrub, or undergrowth indigenous to the land;
- (c) the destruction of weed or plant growth detrimental to the land;
- (d) the preparation of the land for agriculture;
- (e) ploughing and grassing the land for grazing purposes;

- (f) the draining of swamp or low-lying lands to improve the agricultural or grazing value of the land;
  - (g) the prevention or combating of soil erosion on the land, other than by the erection of fences;
  - (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 a primary production business on the land;
  - (i) the construction of levee banks or similar improvements;
  - (j) the construction on the land of roads, including bridges, culverts, or similar works forming part of a road;
  - (k) the planting of the land with trees, including the purchase of seed, seedlings, cuttings, and similar material;
  - (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 employment income exceeding the amount specified in Part 2 of Schedule 1.
- (2) The deduction allowed under this section is –
- (a) where the expenditure referred to in subsection (1) is for the acquisition of a depreciable asset, the depreciation rate for the purposes of Division 5 of Part 3 is 100%;
  - (b) for any other expenditure, 100% of the amount of the expenditure.

## Division 5. – Timber Operations

### 110. COST OF FELLED TREES AS TRADING STOCK

(1) Subject to subsection (2), a person conducting the business of timber operations is allowed a deduction under subsection (4) for a tax year for the capital cost of acquiring land that is carrying trees and either of the following applies –

- (a) the person felled some or all of the trees during the tax year for sale or for use by the person in manufacture to derive assessable income; or



- (b) another person felled some or all of the trees during the tax year under a right that the first-mentioned person granted to the other person in consideration for a royalty paid to the first-mentioned person.

(2) Subsection (1) applies only if the agreement for the sale of the land specifies the number of trees on the land and the part of the consideration that relates to those trees.

(3) A person conducting the business of timber operations is allowed a deduction under subsection (4) for a tax year for the cost of acquiring a right to fell trees and either of the following applies –

- (a) the person felled some or all of the trees during the tax year for sale or for use by the person in manufacture to derive assessable income; or
- (b) another person felled some or all of the trees during the tax year under a right that the first-mentioned person granted to the other person in consideration for a royalty paid to the first-mentioned person.

(4) A person to whom subsection (1) and (3) applies can deduct in a tax year so much of the capital cost of the land or right, as the case may be, that is attributable to the felled trees during the year.

## Division 6. – Tax Concessions

### 111. TAX CONCESSIONS

A person is entitled to a tax concession as specified in the Sixth Schedule.

## PART 7. – ANTI-AVOIDANCE

### 112. INCOME SPLITTING

(1) This section applies where a person attempts to split income with an associate for the purpose, or purposes that include the purpose, of lowering the total income tax payable on the income –

- (a) by the person transferring income, or the right to income, directly or indirectly, to the associate;
- (b) by the person transferring or donating property, including money, directly or indirectly, to the associate with the result that the associate receives or enjoys the income from that property or from the investment of the money;
- (c) by the person making a payment to the associate for services provided by the associate in excess of the fair market value of the services or where the person has no economic need for the services; or

(d) by any other means.

(2) Where this section applies, the Commissioner General may adjust the taxable income and tax credits of both persons to prevent any reduction in tax payable as a result of the splitting of income.

(3) In determining whether a person has attempted to split income, the Commissioner General must consider the value, if any, given by the associate for the transfer.

### 113. TAX AVOIDANCE SCHEMES

(1) This section applies where the Commissioner General is satisfied that -

- (a) a scheme has been entered into or carried out;
- (b) a person has obtained a tax benefit in connection with the scheme; and
- (c) having regard to the substance of the scheme, it would be concluded that a person, or one of the persons, who entered into or carried out the scheme, did so for the sole or dominant purpose of enabling the person to obtain the tax benefit referred to in paragraph (b).

(2) Despite anything in this Act, when this section applies, the Commissioner General may determine the tax liability of a person who obtained a tax benefit, and of any other person related to the scheme, as if the scheme had not been entered into or carried out or in such manner as in the circumstances the Commissioner General considers appropriate for the prevention or reduction of the tax benefit.

(3) Where the Commissioner General makes a determination under subsection (2), the Commissioner General shall serve a notice of a tax assessment (including an amended assessment) on any person whose tax liability is adjusted as a result of the determination so as to give effect to the determination.

(4) Where a tax assessment under subsection (3) is an amended assessment, the notice of the amended assessment must be served within the time limit specified in section 18 of the *Tax Administration Act 2017*.

(5) In this section-

“scheme” includes:

- (a) an agreement, arrangement, promise, or undertaking, whether express or implied and whether or not enforceable by legal proceedings; or
- (b) any plan, proposal, course of action, or course of conduct; and

“tax benefit” means:

- (a) a reduction in a liability of a person to pay tax;

- (b) a postponement of a liability of a person to pay tax; or
- (c) any other avoidance of a liability of a person to pay tax.

**114. COUNTERING ARRANGEMENTS TO CONVERT AN EMPLOYEE INTO AN INDEPENDENT CONTRACTOR**

(1) Subject to subsection (2), an independent contractor providing a service or services to a client is treated as an employee of the client unless all the following conditions are satisfied:

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

(2) Despite subsection (1), the Commissioner General may decide to treat an individual as an independent contractor if satisfied that the individual is in substantial compliance with the factors specified in subsection (1).

(3) If an independent contractor is treated as an employee of the client under this section for the purposes of the Act, the amounts paid by the client to the contractor are treated as employment income and the client is responsible to withhold tax under section 131 from the payments made.

## PART 8. – GENERAL PROCEDURAL RULES

**115. APPLICATION OF THE TAX ADMINISTRATION ACT**

The *Tax Administration Act 2017* applies for the purposes of the administration of this Act but subject to this Part and Part 9.

## Division 1. – Income Tax Procedural Rules

### 116. INCOME TAX RECORD-KEEPING

(1) An income taxpayer must keep such accounts, documents, and records as are necessary to enable the calculation of the income tax (including a nil amount) payable by, or the net loss of, the taxpayer for a tax year.

(2) An income taxpayer is disallowed a deduction where the taxpayer is unable, without reasonable excuse, to produce documentary evidence relating to the circumstances giving rise to the claim for the deduction.

(3) An expenditure incurred by an income taxpayer is not included in the cost of an asset of the taxpayer, or taken into account in the calculation of a net gain or loss of the taxpayer from the conduct of a venture or concern in the nature of trade or a profit making undertaking or scheme, where the taxpayer is unable, without reasonable excuse, to produce documentary evidence relating to the circumstances giving rise to the inclusion of the amount in the cost of the asset or the taking into account of the amount in the calculation of a net gain or loss.

(4) An income taxpayer must maintain evidence that any income derived by the taxpayer is exempt income.

(5) The Regulations may specify the records that must be maintained by an income taxpayer.

### 117. FURNISHING OF INCOME TAX RETURNS

(1) Subject to section 118, an income taxpayer must furnish an income tax return for a tax year with the Commissioner General within 3 months after the end of the tax year.

(2) A partnership must furnish an income tax return for a tax year with the Commissioner General within 3 months after the end of the tax year.

(3) A trustee of a trust must furnish an income tax return for the trust with the Commissioner General within 3 months after the end of the tax year.

### 118. INCOME TAX RETURN NOT REQUIRED

(1) The following persons are not required to furnish an income tax return for a tax year –

- (a) subject to subsection (2), an individual, where the only assessable income derived by the individual during the tax year consists solely of employment income from which amounts have been withheld under section 131;

- (b) an individual who has no income tax payable for the tax year because the taxable income of that individual is below the tax-free threshold for the income tax as specified in Part 1 of Schedule 1;
- (c) a non-resident person whose only PNG source income is subject to non-resident tax; or
- (d) a person specified in the Regulations as not required to furnish an income tax return.

(2) Where an individual is not required to furnish an income tax return under subsection (1)(a) for a tax year and the individual's salary and wages tax liability for the year exceeds the amount withheld from that individual's employment income for the year, the Commissioner General may serve the individual with a notice of a tax assessment for the additional tax payable.

(3) Any additional tax payable by a taxpayer under subsection (2) is due on the date for payment specified in the notice of the tax assessment.

(4) The Commissioner General may serve a notice of assessment under subsection (2) –

- (a) in the case of fraud or wilful neglect, at any time; or
- (b) in any other case, within 2 years after the end of the tax year to which the assessment relates.

#### **119. PAYMENT OF INCOME TAX**

The income tax payable by an income taxpayer for a tax year is due on the date that the income tax return for the year is due to be furnished with the Commissioner General.

#### **120. PROVISIONAL INCOME TAX**

(1) Subject to subsection (2), an income taxpayer is liable to pay three instalments of provisional tax for a tax year by the last day of the month following the end of the 3<sup>rd</sup>, 6<sup>th</sup>, and 9<sup>th</sup> months of the year.

(2) This section does not apply for a tax year to an income taxpayer where –

- (a) the taxpayer's assessed liability for the previous tax year after taking account of tax credits under section 142 is less than the amount specified in the Regulations; or
- (b) the income taxpayer is an individual and the taxable income of an individual for the tax year is reasonably expected to be below the tax-free threshold for the income tax specified in Part 1 of Schedule 1.

(3) Subject to subsections (4) and (5), the amount of each instalment of an income taxpayer for a tax year is calculated according to the following formula:

$$\frac{1}{3} \times (\mathbf{A} - \mathbf{B})$$

where -

**A** is the taxpayer's assessed income tax liability for the preceding tax year, including under a self-assessment, after reduction of any foreign tax credit allowed to the taxpayer for that year and multiplied by the uplift factor specified in the Regulations; and

**B** is so much of **A** that was paid by amounts withheld under Part 9.

(4) Subject to subsection (5), where an income taxpayer did not have an income tax liability for the previous tax year, the amount of each instalment under subsection (3) is 2% of the taxpayer's total assessable income for the instalment period to which the instalment relates other than assessable income subject to withholding tax.

(5) An income taxpayer may apply to the Commissioner General, in the approved form, for a variation in the amount of each instalment of provisional tax payable by the taxpayer for the current tax year where the taxpayer has reasonable grounds for believing that

(a) the income tax payable for the current tax year will be less than that payable for the previous tax year; or

(b) the taxpayer will have a nil income tax liability or a net loss for the current tax year.

(6) An application by an income taxpayer under subsection (5) for a tax year must

(a) be made by the due date for the taxpayer's first provisional tax payment for the tax year or such later date as the Commissioner General may allow; and

(b) where subsection (5)(a) applies, include an estimate of the taxpayer's income tax liability for the current tax year.

(7) Where the Commissioner General grants an application under subsection (5), the amount of each instalment (including a nil amount) is to be based on the income taxpayer's estimated income tax liability for the current year.

(8) Each instalment of income tax paid by an income taxpayer for a tax year is allowed as a tax credit against the income tax liability of the taxpayer for the year and any excess credit is applied in accordance with section 51 the *Tax Administration Act 2017*.

(9) In this section, "instalment period", in relation to an income taxpayer for a tax year, means the period of three months ending on the last day of the third, sixth, ninth, or twelfth months of the taxpayer's tax year.

**121. COLLECTION OF INTERNATIONAL TRANSPORTATION INCOME TAX FROM NON-RESIDENT SHIP OWNERS OR CHARTERERS**

(1) Subject to subsection (2), before the grant of a clearance for a ship owned or chartered by a non-resident person for departure from PNG, the captain or chief commanding officer of the ship, or the shipping agent in PNG for the non-resident person, must -

- (a) furnish the Commissioner General with an international transportation income tax return showing the gross amount derived from the carriage of passengers, livestock, mail, merchandise, or goods embarked or loaded in PNG in respect of the ship and the international transportation income tax payable in relation to that amount; and
- (b) pay the non-resident international transportation income tax due in respect of the ship at the time that the return is furnished.

(2) The Commissioner General may, by notice in writing, allow a non-resident owner or charterer of a ship to furnish an international transportation income tax return and pay international transportation income tax within 28 days after departure of the ship from PNG provided the non-resident owner or charterer of the ship has made satisfactory arrangements for payment of any international transportation income tax due in respect of the ship.

(3) A ship operated by a non-resident owner or charterer is to be provided with a certificate of clearance under [relevant legislation] only where –

- (a) the international transportation income tax due in respect of the ship has been paid or subsection (2) applies in relation to the ship; or
- (b) no international transportation income tax is payable in respect of the ship.

(4) This section does not relieve the non-resident owner or charterer of the ship from liability to pay any international transportation income tax due that is not paid by the captain or chief commanding officer of the ship, or the owner or charterer's shipping agent in PNG.

(5) The captain, chief commanding officer, or shipping agent in PNG to whom subsection (1) applies is treated as the representative of the non-resident owner or charterer of the ship for the purposes of the *Tax Administration Act 2017*.

**122. COLLECTION OF INTERNATIONAL TRANSPORTATION INCOME TAX FROM NON-RESIDENT AIRCRAFT OWNERS OR CHARTERERS**

(1) Subject to subsections (2), before the grant of a clearance for an aircraft owned or chartered by a non-resident person for departure from PNG, the pilot of the aircraft or the agent in PNG for the non-resident person must -

- (a) furnish an international transportation income tax return with the Commissioner General showing the gross amount derived from the carriage of passengers, livestock, mail, merchandise, or goods

embarked or loaded in PNG in respect of the aircraft and the international transportation income tax payable in relation to that amount; and

- (b) pay the non-resident international transportation income tax due in respect of the aircraft at the time that the return is furnished.

(2) On application in writing by the non-resident owner or charterer of an aircraft that regularly flies to PNG, the Commissioner General may allow the owner or charterer to furnish international transportation income tax returns and pay international transportation income tax quarterly.

(3) Where subsection (2) applies, the due date for furnishing an international transportation income tax return for a quarter and paying the tax due under the return is the last day of the month following the end of the quarter.

(4) An aircraft operated by a non-resident owner or charterer is to be provided with a certificate of clearance under [relevant legislation] only where –

- (a) the international transportation income tax due in respect of the aircraft has been paid or subsection (2) applies in relation to the aircraft; or
- (b) no international transportation income tax is payable in respect of the aircraft.

(5) Where subsection (1) applies, this section does not relieve the non-resident owner or charterer of the aircraft from liability to pay any international transportation income tax due that is not paid by the pilot of the aircraft or the owner or charterer's agent in PNG.

(6) The pilot or agent in PNG to whom subsection (1) applies is treated as the representative of the non-resident owner or charterer of the aircraft for the purposes of the *Tax Administration Act 2017*.

## Division 2. – Small Business Tax Procedural Rules

### 123. SMALL BUSINESS TAX RECORD-KEEPING

- (1) A small business taxpayer must keep the following records -
  - (a) a record of sales, including cash and credit sales;
  - (b) where the taxpayer employs employees, a record of the employment income paid to employees;
  - (c) quarterly inventory records; and
  - (d) a bank account maintained solely for business purposes unless exempted by the Commissioner General.



(2) The records referred to in subsection (1)(a), (b), and (c) must be retained for 3 years after the end of the quarter to which they relate.

(3) A small business taxpayer must maintain evidence for the period specified in subsection (2) that any income derived by the taxpayer is exempt income.

(4) The Regulations may specify the records that must be maintained by a small business taxpayer.

#### **124. FURNISHING OF SMALL BUSINESS TAX RETURNS**

(1) A small business taxpayer to whom section 4(3) applies is not required to furnish a small business tax return.

(2) A small business taxpayer to whom section 4(4) applies must furnish a small business tax return for a quarter with the Commissioner General within 15 days after the end of the quarter.

#### **125. PAYMENT OF SMALL BUSINESS TAX**

(1) The small business tax payable by a small business taxpayer to whom section 4(3) applies for a tax year is due on the last day of the sixth month of the tax year.

(2) The small business tax payable by a small business taxpayer to whom section 4(4) applies for a quarter is due on the date that the small business tax return for the quarter is due.

### **Division 3. – Capital Gains Tax Procedural Rules**

#### **126. CAPITAL GAINS TAX RECORD-KEEPING**

(1) A person must keep records –

- (a) relating to the acquisition and disposal of taxable assets;
- (b) relating to the calculation of a capital gain or capital loss on disposal of a taxable asset; and
- (c) evidencing that an asset is an exempt asset.

(2) The Commissioner General may disallow the inclusion of an amount of expenditure in the cost of a taxable asset of a person where the person is unable, without reasonable excuse, to produce a receipt or other record of the expenditure.

#### **127. FURNISHING OF CAPITAL GAINS TAX RETURNS**

A person disposing of a taxable asset must furnish a capital gains tax return in relation to the disposal with the Commissioner General –

- (a) where the transfer document is required to be stamped under the Stamp Duties Act, by the earlier of –

- (i) the due date for stamping; or
  - (ii) 21 days after the date of disposal of the asset; or
- (b) in any other case, within 21 days after the date of disposal of the asset.

#### **128. PAYMENT OF CAPITAL GAINS TAX**

The capital gains tax payable by a person in respect of the disposal of a taxable asset is due on the due date for furnishing the taxpayer's capital gains tax return in respect of the disposal.

### **Division 4. – Additional Profits Tax Procedural Rules**

#### **129. ADDITIONAL PROFITS TAX RETURN AND PAYMENT**

(1) A licensee must furnish an additional profits tax return for a tax year with the Commissioner General by the same date as the licensee's income tax return is due for that year.

(2) The additional profits tax payable by a licensee for a tax year is payable at the same time as the licensee's income tax is due for the year.

#### **130. PROVISIONAL TAX PAYMENTS OF ADDITIONAL PROFITS TAX**

(1) A licensee liable for additional profits tax for a resource project for a tax year is liable to pay three instalments of the tax on the same days that the provisional tax payments payable by the licensee for that year under section 120 are due.

(2) The amount of each instalment is one-third of the licensee's liability for additional profits tax for the resource project for the preceding tax year.

(3) A licensee is not liable for instalments of additional profits tax for a resource project for a tax year if the licensee did not have an additional profits tax liability in the previous tax year.

(4) Section 120(5), (6), (7), and (8) apply to instalments of additional profits tax with the necessary changes made.

## **PART 9. – WITHHOLDING TAX**

#### **131. WITHHOLDING OF TAX FROM EMPLOYMENT INCOME AND SUPERANNUATION PAYMENTS**

(1) Subject to subsection (2), an employer must withhold tax from the gross amount of employment income paid to an employee as prescribed in the Regulations.

(2) Subsection (1) does not apply to an amount included in employment income under section 11(1)(e).

(3) For the purposes of this section, the value of non-cash benefits determined under Schedule 3 provided by an employer to an employee is included in employment income for the fortnight in which the benefit is provided to the employee.

(4) The obligation of an employer to withhold tax under subsection (1) -

(a) is not reduced or extinguished because the employer has a right, or is otherwise obliged, to withhold any other amount from a payment of employment income; and

(b) applies despite any law that provides that the employment income of an employee is not to be reduced or subject to attachment.

(5) An approved or non-approved fund must withhold tax from a payment made by the fund to a member of the fund, or a dependant of a member, as prescribed in the Regulations.

#### **132. WITHHOLDING OF TAX FROM PRESCRIBED ROYALTY PAYMENTS**

(1) A person who makes a payment under a prescribed royalty to a customary landowner must withhold tax from the gross amount of the payment at the rate specified in Part 1 of Schedule 1.

(2) In this section –

“customary land owner” means the traditional owner or owners of customary land in relation to which activities giving rise to a prescribed royalty payment are undertaken; and

“prescribed royalty” means an amount paid to, or on behalf of, a customary land owner that –

(a) arises out of any of the following activities –

(i) activities, including incidental or ancillary activities, undertaken under a resource project;

(ii) fishing operations, including incidental or ancillary activities relating to fishing operations;

(iii) timber operations, including incidental or ancillary activities relating to timber operations; and

(b) is payable by reason of the activity being performed on, or in the vicinity of, customary land or waters adjacent to customary land.

#### **133. WITHHOLDING OF TAX FROM DIVIDEND AND INTEREST PAYMENTS TO RESIDENTS**

(1) Subject to subsection (3), a resident company that pays a dividend to a resident individual must withhold tax from the gross amount of the dividend at the rate specified in Part 1 of Schedule 1.

(2) A resident company or a permanent establishment in PNG of a non-resident person that pays interest to a resident individual must withhold tax from the gross amount of the interest at the rate prescribed in Part 1 of Schedule 1.

(3) A non-profit body, or a company or trust that was formerly a non-profit body, that pays a dividend out of income that is exempt income under clause (1) of Part 4 of Schedule 3 to a resident person must withhold tax from the gross amount of the dividend at the rate specified in Schedule 1 for the dividend.

#### **134. WITHHOLDING OF TAX FROM PAYMENTS TO NON-RESIDENTS**

(1) Subject to subsection (2), a resident person or a permanent establishment in PNG of a non-resident person making a payment of income that is subject to non-resident tax under section 6(1)(a) or (c) must withhold tax from the gross amount paid at the non-resident tax rate specified in Part 1 of Schedule 1 for the income.

(2) A non-profit body, or a company that was formerly a non-profit body, that pays a dividend out of income that is exempt income under clause (1) of Part 4 of Schedule 3 to a non-resident person must withhold an amount from the gross amount of the dividend paid at the rate specified in Part 1 of Schedule 1 for the dividend.

(3) Subject to subsection (4), where the person disposing of a taxable asset is a non-resident person (referred to as the “*transferor*”), the person acquiring the asset (referred to as the “*transferee*”) must withhold tax at 10% from the gross amount of the consideration given for the asset.

(4) The transferor or transferee may apply to the Commissioner General, in the approved form, for a variation in the rate of withholding tax under subsection (3) and the Commissioner General may, by notice in writing, vary the rate of withholding tax to such other rate (including a zero rate) as notified, in writing, to the transferee.

#### **135. NO WITHHOLDING FROM EXEMPT INCOME**

A withholding agent is not liable to withhold tax from withholding income that is exempt income of the recipient.

#### **136. TIME OF WITHHOLDING**

A withholding agent required to withhold tax from withholding income paid by the agent must withhold the tax at the earlier of the time the withholding income is -

- (a) applied on behalf of the recipient of the income either at the instruction of the recipient or under any law;
- (b) reinvested, accumulated, or capitalised for the benefit of the recipient;
- (c) credited to an account for the benefit of the recipient; or

- (d) actually paid or otherwise made available to the recipient.

**137. WITHHOLDING TAX RECORDS**

A withholding agent must keep records of the following -

- (a) the amount of withholding income paid by the agent; and
- (b) the amount of tax withheld by the agent from each payment of withholding income.

**138. WITHHOLDING TAX CERTIFICATE**

(1) A withholding agent who has withheld tax from withholding income under this Part must, by the due date of payment of withholding tax under section 139, furnish the recipient of the withholding income with a withholding tax certificate, in the approved form, showing the amount of the payment made and the tax withheld from the payment.

(2) The Regulations may require a withholding agent to provide an annual withholding tax statement to a recipient of withholding income paid by the withholding agent.

**139. PAYMENT OF WITHHOLDING TAX TO COMMISSIONER GENERAL**

(1) A withholding agent must file a withholding tax return and pay the tax withheld to the Commissioner General within 21 days after the end of the month in which the withholding income was paid.

(2) Subject to subsection (3), the Commissioner General may recover withholding tax from either the withholding agent or the recipient of the withholding income where the withholding agent -

- (a) fails to withhold the tax as required under this Part; or
- (b) having withheld the tax, fails to pay the withheld tax to the Commissioner General as required under subsection (1).

(3) The Commissioner General may recover withholding tax from the recipient of the withholding income under subsection (2)(b) only where the recipient is a party to an arrangement under which the withheld tax is not paid to the Commissioner General.

(4) A withholding agent who pays withholding tax to the Commissioner General in the circumstances referred to in subsection (2)(a) is entitled to recover the tax from the recipient of the withholding income.

(5) Despite the recovery of withholding tax from the recipient of the withholding income under subsection (2), a withholding agent who failed to withhold the tax continues to be liable for the following -

- (a) any legal action in relation to the failure; and

- (b) the imposition of late payment interest and penalty in respect of the failure.

**140. ANNUAL WITHHOLDING TAX STATEMENT**

(1) A withholding agent must furnish an annual withholding tax statement for a fiscal year with the Commissioner General within 3 months after the end of the year.

(2) An annual withholding tax return is treated as a tax return for the purposes of the *Tax Administration Act*.

**141. CREDIT FOR WITHHOLDING TAX**

(1) Except when section 142 applies, a taxpayer deriving withholding income during a tax year from which tax has been withheld under this Part is allowed a tax credit for the withheld tax against the income tax liability of the taxpayer for the year and any excess credit is applied in accordance with section 51 of the *Tax Administration Act 2017*.

(2) A non-resident person receiving consideration for the disposal of a taxable asset from which tax has been withheld under section 134(3) is allowed a credit for the withheld tax against the capital gains tax liability of the non-resident in respect of the disposal and any excess credit is applied in accordance with section 51 of the *Tax Administration Act 2017*.

**142. WITHHOLDING TAX AS A FINAL TAX**

(1) This section applies to tax withheld from withholding income under –

- (a) section 131(1) where, under section 118(1), the employee is not required to furnish an income tax return other than when section 118(2) applies;
- (b) section 132;
- (c) section 133(1);
- (d) section 123(3); and
- (e) section 134(1) and (2).

(2) Where this section applies, the tax withheld from withholding income specified in subsection (1) is a final tax on the income and the income is not included in the assessable income of the recipient of the income.

## PART 10. – INTERPRETATION OF TERMS

**143. INTERPRETATION**

- (1) In this Act, unless the contrary intention appears –
- “acquisition”, in relation to an asset, has the meaning given to it in section 73;
- “amount” includes an amount-in-kind;
- “approved form” has the meaning given to it in the *Tax Administration Act 2017*;
- “assessable income” has the meaning given to it in section 10;
- “asset” has the meaning given to it in section 71;
- “associate” has the meaning given to it in the *Tax Administration Act 2017*;
- “bank” has the meaning given to it in the *Banks and Financial Institutions Act 2000*;
- “business” includes -
- (a) any profession, trade, manufacture, or commercial activity conducted for profit, but not including an employment;
  - (b) the carrying on or carrying out of a profit-making undertaking or scheme, including any venture or concern in the nature of trade; or
  - (c) any activity of a body corporate, statutory corporation, or partnership;
- “business asset” means an asset, whether revenue or capital in nature, which is used in the conduct of a business wholly or partly to derive assessable income;
- “business income” has the meaning given to it in section 14;
- “business intangible” means any of the following used in a business -
- (a) a copyright, patent, design or model, plan, secret formula or process, trademark, or other like property or right that has a limited useful life and is used wholly or partly to derive assessable income;
  - (b) a customer list, distribution channel, or unique name, symbol or picture, or other marketing intangible that has a limited useful life and is used wholly or partly to derive assessable income;
  - (c) contractual rights (including arising as a result of a prepayment of expenses) with a limited term, but which exceeds 1 year, used wholly or partly to derive assessable income;
  - (d) a long-term lease of real property where the property is used wholly or partly to derive assessable income;

- (e) an expenditure incurred wholly or partly to derive assessable income that provides an advantage or benefit for a period of more than 1 year, other than expenditure incurred to acquire any tangible personal or real property, or an intangible asset;
- (f) preliminary expenditure; or
- (g) anything treated as a business intangible for the purposes of this Act;

“capital gains tax” means capital gains tax imposed under section 8;

“company” means –

- (a) a body corporate, statutory corporation, or unincorporated body of persons that is incorporated or formed in PNG or elsewhere, but does not include a partnership; or
- (b) a body established under a foreign law that has legal characteristics fundamentally similar to that of a body corporate or statutory corporation incorporated or formed in PNG;

“Commissioner General” means the Commissioner General of the Internal Revenue Commission appointed under the *Internal Revenue Commission Act 2014*, and includes any person acting in that capacity;

“consideration”, in relation to an asset, has the meaning given to it in section 81;

“cost”, in relation to an asset, has the meaning given to it in section 76;

“debt obligation” means an obligation to make a payment of money to another person, including accounts payable and the obligations arising under promissory notes, bills of exchange, and bonds;

“depreciable asset” means –

- (a) tangible personal property or a structural improvement to real property used in a business that -
  - (i) has an ascertainable useful life exceeding 1 year;
  - (ii) is likely to lose value as a result of normal wear and tear, or obsolescence; and
  - (iii) is used wholly or partly to derive assessable income; or
- (b) a business intangible;

“disposal” has the meaning given to it in section 74;



“dividend” means -

- (a) a distribution of profits by a company to a shareholder;
- (b) an amount returned by a company to a shareholder in respect of a share in the company on a partial reduction in the capital of the company to the extent that the amount returned exceeds the amount by which the nominal value of the share was reduced;
- (c) an amount returned by a company to a shareholder on redemption or cancellation of a share in the company, including on liquidation of a company, to the extent that the amount returned exceeds the nominal value of the share;
- (d) an amount paid by a company to a shareholder on a reconstruction, reorganisation, or amalgamation of the company in respect of a share in the company to the extent that the amount paid exceeds the nominal value of the share before the reconstruction, reorganisation, or amalgamation;
- (e) the amount of any loan, payment for an asset or services, value of any asset or services provided, or any debt obligation released, by a company to, or in favour of, a shareholder or an associate of a shareholder, to the extent that the transaction is, in substance, a distribution of profits; or
- (f) a distribution to a beneficiary made by a non-profit body or former non-profit body that is a trust;

“distribution”, in relation to a trust, has the meaning in section 48(5);

“employee” means an individual engaged in employment;

“employer” means a person who engages or remunerates an employee;

“employment” means the relationship under which an individual is engaged, whether on a permanent or temporary basis, to perform services under the direction and control of another person, and includes the following -

- (a) the performance of services by an individual under a contract where the payments made under the contract are substantially for the labour of the individual;
- (b) a directorship or other office in the management of a company;
- (c) a position entitling the holder to a fixed or ascertainable remuneration; or
- (d) the holding of, or acting in, any public office;

“employment income” has the meaning given to it in section 11;

“entertainer” includes a sportsperson;

“entity” means a partnership, trust, or company;

“fair market value” has the meaning given to it in section 144;

“financial institution” means a licensed financial institution under the ***Banks and Financial Institutions Act 2000***;

“financial reporting standards” means –

- (a) for an entity preparing their financial accounts in accordance with International Financial Reporting Standards, those standards as may be modified by this Act or Regulations; or
- (b) for any other person, International Financial Reporting Standards or other accounting standards that are generally accepted in PNG as may be modified by this Act or Regulations;

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

“fishing operations” means the following activities undertaken in the course of conducting a business –

- (a) operations relating to the taking or catching of fish, turtles, dugong, crustacea, or shellfish, but not whales;
- (b) pearling operations;
- (c) oyster farming; or
- (d) any activity within the definition of “fishing” in section 2 of the ***Fisheries Management Act 1998***;

“foreign asset” means-

- (a) immovable property located outside PNG;
- (b) a membership interest in an entity that is a non-resident person; or
- (c) an option or right to acquire an asset referred to in paragraph (a) or (b);

“foreign income” means any income to the extent that it is not PNG source income;

“group, in relation to an entertainer, includes a sporting team;

“income tax” means income tax imposed under section 3;

“income taxpayer” means a person liable for income tax under this Act, and includes a person who has a nil taxable income or a net loss for a tax year;

“independent contractor” means an individual engaged to perform services under an agreement by which the individual retains substantial authority to determine and control the manner in which the services are to be performed;

“intangible asset” means –

- (a) property or a right referred to in paragraphs (a), (b), (c), or (d) of the definition of “business intangible”; or
- (b) goodwill;

“interest” means -

- (a) an amount, whether described as interest, discount, premium, or otherwise, whether periodical or a lump sum, as consideration for the use of money or being given time to pay;
- (b) an amount, however described, that is functionally equivalent to an amount referred to in paragraph (a); or
- (c) an amount payable under a finance lease that is treated as interest as a result of the operation of section 39;
- (d) a commitment, guarantee, service, or similar fee payable in respect of a debt or other instrument or agreement giving rise to interest under paragraphs (a), (b), or (c);

“international agreement” has the meaning given to it in the *Tax Administration Act 2017*;

“international organisation” means an organisation to which the *International Organisations Privileges and Immunities Act 1975* applies;

“international traffic” in relation to a ship or aircraft, means any operation of the ship or aircraft except as between two places in PNG;

“international transportation income tax” means international transportation income tax imposed under section 7;

“livestock” does not include beasts of burden or working beasts;

“member”, in relation to an entity, means a person with a membership interest in the entity;

“membership interest”, in relation to an entity, means –

- (a) a share in the company;
- (b) an interest in a partnership;
- (c) an interest or unit in a trust; or
- (d) any other ownership interest in the entity;

“natural resource amount” means -

- (a) an amount (including a premium or like amount) as consideration for the right to take a living or non-living resource from the land or sea; or
- (b) an amount calculated in whole or part by reference to the quantity or value of a living or non-living resource taken from the land or sea;

“net loss” means a net loss under section 25;

“non-cash benefit” means any benefit that is not in cash;

“non-profit body” means a company or trust that is approved by the Commissioner General under section 145 as a non-profit body;

“non-resident entertainer” means an entertainer who is a non-resident person;

“non-resident person” means a person who is not a resident person;

“non-resident tax” means non-resident tax imposed under section 6;

“non-resident trust” means a trust that is not a resident trust;

“Papua New Guinea” or “PNG” means the Independent State of Papua New Guinea as defined in the Constitution, and includes the exclusive economic zone;

“performance”, in relation to an entertainer or group of entertainers, includes a sporting event;

“permanent establishment” has the meaning given to it in section 146;

“person” means an individual, entity, the Government, a Provincial Government, Local-level Government, foreign government, political subdivision of a foreign government, or international organisation;

“PNG asset” means -

- (a) PNG real property;
- (b) a membership interest in an entity, if, at any time during the 365 days preceding the disposal of the interest, more than 50% of the value of

the interest is derived, directly or indirectly through one or more interposed entities, from PNG real property held by the entity;

- (c) a membership interest in a resident company, resident partnership, or resident trust; or
- (d) an option over, or right to acquire, an asset referred to in paragraphs (a) to (c);

“PNG real property” means –

- (a) real property located in PNG;
- (b) a tenement granted under the *Mining Act* or *Oil and Gas Act*, or any similar right granted under a law of PNG or an agreement entered into by the Government;
- (c) a right granted under a law of PNG, or an agreement entered into by the Government, for the taking of a living or non-living resource from the land or sea; or
- (d) information relating to operations under a tenement or right referred to in paragraph (b);

“PNG source income” has the meaning given to it in section 147;

“preliminary expenditure” means expenditure incurred by a person before the commencement of a business, where the only income to be derived by the person from the conduct of the business is assessable income, other than expenditure incurred to acquire tangible personal or real property, or a business intangible within paragraphs (a) – (e) of the definition of “business intangible”;

“primary production business” means the business of –

- (a) cultivating land to produce crops or flowers, but not timber operations;
- (b) maintaining animals for the purposes of selling them or selling their bodily produce;
- (c) conducting fishing operations; or
- (d) manufacturing of dairy produce by the person who produced the raw material used in that manufacture;

“property income” has the meaning given to it in section 15;

“quarter” means the period of three months ending on 30<sup>th</sup> June, 30<sup>th</sup> September, 31<sup>st</sup> December, and 31<sup>st</sup> March;

“received”, in relation to a person, includes -

- (a) applied on behalf of the person either at the instruction of the person or under any law;
- (b) reinvested, accumulated, or capitalised for the benefit of the person;
- (c) credited to an account or carried to a reserve or a fund for the benefit of the person; or
- (d) otherwise made available to the person;

“rent” means -

- (a) any consideration, including a premium, fine, or like amount, for the grant of a lease of, or licence or easement over, real property;
- (b) the fair market value of any improvement to land or a building made by the lessee under an agreement for the use or occupation of, or the right to use or occupy the land or building, or by virtue of the cessation of such right; or
- (c) an amount paid by the lessee in lieu of undertaking an improvement referred to in paragraph (b);

“resident company” has the meaning given to it in section 148(6);

“resident individual” has the meaning given to it in section 148(2);

“resident person” has the meaning given to it in section 148(1);

“resident trust” has the meaning in section 148(8);

“royalty” means a periodic or lump sum amount as consideration for -

- (a) the use of, or the right to use any copyright of literary, artistic, or scientific work, including cinematography films, and films and tapes for radio, television, or internet broadcasting;
- (b) the use of or right to use, or receipt of or right to receive, visual images or sounds, or both, transmitted by satellite, cable, optic fibre, or similar technology in connection with television, radio, or internet broadcasting;
- (c) the use of, or the right to use any patent, invention, trademark, design or model, plan, secret formula or process, or other like property or right;
- (d) the use or, or right to use, software;

- (e) the use of, or the right to use any information concerning industrial, commercial, or scientific experience;
- (f) the use of, or the right to use any industrial, commercial, or scientific equipment; or
- (g) the supply of assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, property or a right referred to in paragraphs (a) to (f);

“salary and wages tax” means the salary and wages tax imposed under section 5;

“share”, in relation to a company, includes any ownership interest in the company;

“shareholder”, in relation to a company, means a person who has a share in the company;

“small business tax” means small business tax imposed under section 4;

“small business taxpayer” means a taxpayer liable for small business tax;

“spouse”, in relation to an individual, means another individual of the opposite gender who –

- (a) is married to the first-mentioned individual;
- (b) although not married to the first-mentioned individual, is living with that individual in a marriage-like relationship;

“structural improvement”, in relation to real property, includes a building, road, driveway, car park, pipeline, bridge, tunnel, airport runway, canal, dock, wharf, retaining wall, fence, power lines, water or sewerage pipes, septic tank, drainage, landscaping, or dam;

“tax” means tax imposed under this Act, including withholding tax and provisional income tax;

“tax credit” means a tax credit allowed to a taxpayer under this Act;

“tax treaty” has the meaning given to it in the *Tax Administration Act 2017*;

“tax year” -

- (a) means -
  - (i) for a company, the accounting year of the company determined under section 31; or

(ii) for any other person, the fiscal year; and

(b) includes a transitional accounting year of a company under section 31(5);

“taxable asset” has the meaning given to it in section 69;

“taxable income” has the meaning given to it in section 9;

“taxpayer” -

(a) means a person liable for tax under this Act; and

(b) includes a person who has a nil taxable income or a net loss for a tax year;

“technical fee” means a fee for managerial, administrative, technical, professional, or consultancy services, including a fee for the supply of administrative, technical, managerial, or other personnel, but does not include employment income;

“timber operation” means –

(a) the planting or tending of trees for felling;

(b) the felling of standing timber;

(c) the removal of felled timber; or

(d) the milling or other processing of felled timber;

“trading stock” means -

(a) anything produced, manufactured, purchased, or otherwise acquired for the purposes of manufacture, production, sale, or exchange to derive assessable income;

(b) any raw materials or consumables used in a manufacturing or production process referred to in paragraph (a); or

(c) livestock of a primary production business conducted to derive assessable income;

“trust” has the meaning in the *Trusts and Executors Act* 1961 and includes an arrangement entered into outside PNG that has legal characteristics substantially similar to those of a trust settled or created in PNG;

“turnover”, in relation to an individual conducting a business, means the business income received by the individual that is included in the assessable income of the person without deduction of expenditures or losses;



“underlying ownership and control”, in relation to an entity, means a membership interest in the entity held, directly or indirectly through an interposed entity or entities, by an individual or by a person not ultimately owned by individuals;

“use”, in relation to an asset, includes available for use or held;

“withholding agent” means a person who is required to withhold tax under Part 9 from a payment made by the person;

“withholding income” means income from which a withholding agent is required to withhold tax under Part 9; and

“written down value”, in relation to an asset, has the meaning given to it in section 80.

(2) Unless this Act provides otherwise, a reference in this Act to a period of days is a reference to a consecutive period of days.

(3) For the purposes of this Act, a dividend paid by a non-profit body or a former non-profit body is treated as paid first out of exempt income under clause (1)(a) of Part 4 of Schedule 3.

#### **144. FAIR MARKET VALUE**

(1) The fair market value of an asset, property, service, or benefit at a particular time is the value of the asset, property, service, or benefit in the ordinary open market at that time.

(2) Where it is not possible to determine the fair market value of an asset, property, service, or benefit at a particular time under subsection (1), the fair market value is the consideration that a similar asset, property, service, or benefit would fetch in the ordinary open market at that time, adjusted to take account of the differences between the similar asset, property, service, or benefit and the actual asset, property, service, or benefit.

(3) For the purposes of subsection (2), an asset, property, service, or benefit is similar to another asset, property, service, or benefit, as the case may be, where it is the same as, or closely resembles, the other asset, property, service, or benefit in character, quality, quantity, functionality, materials, and reputation.

(4) Where the fair market value of an asset, property, service, or benefit cannot be determined under subsection (1) or (2), the fair market value is the amount determined by the Commissioner General provided the valuation is consistent with generally accepted valuation principles.

(5) This section is subject to section 58.

#### **145. NON-PROFIT BODY**

(1) A company or irrevocable trust is a non-profit body where all the following conditions are satisfied –

- (a) the company or trust is established solely –
  - (i) to provide relief to those suffering from poverty, distress, or the effects of a natural disaster;
  - (ii) for the advancement of education, religion, or amateur sport; or
  - (iii) for any other purpose as prescribed in the Regulations;
- (b) no part of the income, funds, or assets of the company or trust are used, or are available for use, for the private benefit of a member of the company, or settlor or beneficiary of the trust;
- (c) the company or trust keeps books of account;
- (d) the Commissioner General has approved, in accordance with the procedure in the Regulations, that the company or trust is a non-profit body and the approval is currently in force.

(2) A company or irrevocable trust may apply to the Commissioner General, in the approved form, for approval as a non-profit body.

(3) The Commissioner General must approve an application by a company or irrevocable trust as a non-profit body if the conditions in subsection (1)(a), (b), and (c) are satisfied.

(4) The approval of a company or trust as a non-profit body takes effect from the date specified in the notice of approval and remains in force until the earlier of –

- (a) the date that the company or trust ceases to satisfy the conditions in subsection (1); or
- (b) the date the approval lapses as set out in the notice of approval.

(5) A company or trust whose approval has lapsed in accordance with subsection (4)(b) may reapply under subsection (2) for approval as a non-profit body.

(6) A company or trust must immediately inform the Commissioner General, by notice in writing, when it no longer satisfies the conditions for approval as a non-profit body in subsection (1)(a) or (b).

(7) In this section, “sport” means a sport in which humans are the sole participants.

#### **146. PERMANENT ESTABLISHMENT**

(1) Subject to this section, a “permanent establishment” is a fixed place of business through which the business of a person is wholly or partly conducted.

(2) The following are treated as a permanent establishment for the purposes of this Act -

- (a) a place of management, branch, office, factory, warehouse, or workshop, but not including an office that has representation of a person's business as its sole activity;
- (b) a mine site, oil or gas well, quarry, or other place of exploration for, or exploitation of, natural resources, including an installation, boat, or ship that provides a base for the exploration or exploitation of natural resources;
- (c) the furnishing of services, including consultancy services, by a person, including through employees or other personnel engaged by the person for such purpose, but only where activities of that nature continue for the same or a connected project of the person, or an associate of the person, for a period or periods aggregating more than 12 months; or
- (d) a place where a person has, is using, or is installing substantial machinery or equipment.

(3) Subject to subsection (4), a building site, or a construction, assembly, or installation project, or a supervisory activity connected with such site or project, is a permanent establishment only where the site, project, or activity continues for more than 90 days.

(4) Where a person operates a building site, or conducts a project or activity referred to subsection (3), any connected activity conducted by an associate of the person is added to the period of time during which the first-mentioned person has operated the building site or construction activities for the purpose of determining whether the 90-day period is exceeded.

(5) Despite subsections (1) and (2), where a person (referred to as the "agent") acts on behalf of another person (referred to as the "principal"), the agent is a permanent establishment of the principal when the agent -

- (a) regularly negotiates or signs contracts on behalf of the principal, whether the contracts are concluded in the name of the principal or the agent; or
- (b) maintains a stock of goods from which the agent regularly delivers goods on behalf of the principal.

#### **147. PNG SOURCE INCOME**

(1) Employment income is PNG source income -

- (a) to the extent that it is derived by an employee in respect of an employment exercised in PNG, wherever the income is paid; or

- (b) when it is paid to an employee by, or on behalf of, the Government or a political subdivision of the Government, wherever the employment is exercised.

(2) Business income derived by a resident person is PNG source income except to the extent that it is attributable to a business conducted by the resident through a permanent establishment located outside PNG.

(3) Business income derived by a non-resident person is PNG source income to the extent that it is attributable to -

- (a) a business conducted by the non-resident person through a permanent establishment located in PNG; or
- (b) sales in PNG made by the non-resident person of goods or merchandise of the same or similar kind as those sold by the non-resident person through a permanent establishment located in PNG; or
- (c) any other business activity conducted by the non-resident person in PNG of the same or similar kind as that conducted by the non-resident person through a permanent establishment located in PNG.

(4) Despite subsections (1), (2), and (3), the following are PNG source income -

- (a) a dividend paid by a resident company or a non-profit body or a former non-profit body that is a resident trust;
- (b) rent derived from the lease of PNG real property;
- (c) a gain arising from the disposal of an asset by a resident person except where the asset is a foreign asset;
- (d) a gain arising from the disposal of a PNG asset by a non-resident person;
- (e) an insurance premium relating to the insurance or reinsurance of a risk in PNG;
- (f) income derived, directly or indirectly, from a performance by an entertainer or group of entertainers in PNG;
- (g) a natural resource amount when it relates to the taking of minerals, petroleum, or other living or non-living resource from the land in, or territorial waters or exclusive economic zone of, PNG; or
- (h) interest, a royalty, annuity, pension, or technical fee -
  - (i) paid by a resident person, other than as an expenditure of a business conducted by the resident through a permanent establishment located outside PNG; or

- (ii) paid by a non-resident person as an expenditure of a business conducted by the non-resident through a permanent establishment located in PNG.

**148. RESIDENT PERSON**

- (1) The following persons are a resident person -
  - (a) a resident individual, resident company, resident partnership, or resident trust;
  - (b) the Government, a Provincial Government, or Local-level Government.
- (2) Subject to subsections (4) and (5), an individual is a resident individual for a tax year where the individual -
  - (a) resides in PNG at any time during the year;
  - (b) has his or her domicile in PNG during the year unless the individual has a permanent home outside PNG for the year;
  - (c) is physically present in PNG for a period of, or periods amounting in aggregate to, 183 days in any 12-month period that commences or ends during the year; or
  - (d) is citizen of PNG who is an employee of the Government posted abroad.
- (3) For the purposes of subsection (2)(c) -
  - (a) an individual is treated as physically present in PNG during any period that he or she is temporarily absent from PNG for business, employment, recreation, or a similar purpose; and
  - (b) presence in PNG for any part of a day is counted as a whole day.
- (4) An individual who is a resident individual under subsection (2) for a tax year (the “current tax year”), but who was not a resident individual for the preceding tax year is treated as a resident individual in the current tax year only for the period commencing on the first day on which the individual was physically present in PNG.
- (5) An individual who is a resident individual under subsection (2) for the current tax year but who is not a resident individual for the following tax year is treated as a resident individual in the current tax year only for the period ending on the last day on which the individual was physically present in PNG.
- (6) A company is a resident company for a tax year when the company -

- (a) is incorporated, created, or formed in PNG; or
  - (b) has its central management and control in PNG at any time during the year.
- (7) A partnership is a resident partnership for a tax year when the partnership -
- (a) is formed in PNG; or
  - (b) has its central management and control in PNG at any time during the year.
- (8) A trust is a resident trust for a tax year when the trust -
- (a) was settled or established in PNG;
  - (b) is the estate of a deceased resident individual; or
  - (c) is administered in PNG at any time during the year.

**149. CURRENCY TRANSLATION**

(1) Subject to subsection (4), an amount taken into account under this Act must be expressed in Kina.

(2) Subject to subsections (3) and (4), if an amount is in a currency other than Kina, the amount must be translated to Kina at the Bank of PNG exchange rate applying between the foreign currency and Kina on the date the amount is taken into account for the purposes of this Act.

(3) With the prior written permission of the Commissioner General, amounts taken into account in calculating the business income and deductions relating to such income of a taxpayer for a tax year may be translated to Kina at the Bank of PNG average exchange rate for the tax year between the foreign currency and Kina.

(4) Subject to subsection (5), if a person predominantly derives business income and incurs expenditure in a currency other than Kina (referred to as the “functional currency”), the person may, with the written permission of the Commissioner General, take amounts into account under this Act in the functional currency.

(5) A person can be granted permission to use a functional currency under subsection (4) only if the person keeps its financial accounts in the functional currency.

(6) If a person who has permission to use a functional currency under subsection (4) derives an amount or incurs an expenditure that is not in the functional currency, the amount or expenditure must be translated to the functional currency based on the translation rate used in the taxpayer’s financial accounts.

(7) If a person has permission to use a functional currency for the purposes of this Act for a tax year, the person must calculate the tax payable under this Act for the year in the functional currency and either –

- (a) translate the functional currency amount to Kina as specified in subsection (3); or
- (b) with the permission of the Commissioner General, pay the tax due in the functional currency.

## PART 11. – FINAL PROVISIONS

### 150. REGULATIONS

(1) The Regulations may provide for –

- (a) matters required to be prescribed under this Act;
- (b) the amendment of the Part 2 of Schedule 1, and Schedules 2 and 4 to the Act; and
- (c) the proper and efficient administration of this Act.

(2) Regulations made under subsection (1) may prescribe penalties for the contravention of the regulations.

### 151. REPEAL

The following Acts are hereby repealed –

- (a) *Income Tax Act 1959*
- (b) *Income Tax (Rates) Act 1975*
- (c) *Income Tax (Salary and Wages Tax) (Rates) Act 1979;*
- (d) *Income Tax, Dividend (Withholding) Tax and Interest (Withholding) Tax Rates Act 1984.*

### 152. TRANSITIONAL AND SAVING

(1) The Acts repealed under section 151 continue to apply to tax years prior to the tax year in which this Act comes into force.

(2) A reference in this Act to a previous tax year includes, where the context requires, a reference to a tax year under the repealed Act.

(3) The amount of a deduction that a person is allowed under section 26 in respect of the cost of a business intangible acquired by a person in a tax year before the Act tax year

that Act first applied to the person and the cost was not deductible under the repealed Act is calculated on the assumption that section 26 had always applied to the business intangible.

(4) If a business intangible referred to in subsection (3) is disposed of after the commencement date, section 29 applies to the proportional part of any gain or loss on disposal that relates to the use of the intangible to derive assessable income after the commencement date.

(5) A reference in section 66 to a previously deducted expenditure, loss, or bad debt includes a reference to expenditure, loss, or bad debt deducted under the repealed Act.

(6) The tax year of a company under the repealed Act continues to apply unless the Commissioner General decides otherwise by notice in writing to the taxpayer.

(7) Section 4(1)(c) is ignored in determining whether the small business tax applies to an individual for the first fiscal year after commencement date.

(8) The cost of a taxable asset acquired by a taxpayer before the CGT commencement date is –

- (a) at the election of the taxpayer, the cost of the asset determined under Part 5; or
- (b) where paragraph (a) does not apply, the fair market value of the asset at the CGT commencement date.

(9) An election under subsection (8)(a) –

- (a) must be filed with the Commissioner General by the due date for filing the capital gains tax return in relation to the disposal of the asset; and
- (b) is effective only where the Commissioner General is satisfied that the taxpayer has substantiated the cost of the asset.

(10) Section 155H of the *Income Tax Act 1959* continues to apply for the transition period.

(11) Transitional arrangements for extractive industries projects in place before the commencement date are specified in Schedule 6.

(12) Regulations made under section 150(1) may contain provisions of a saving or transitional nature consequent upon the making of this Act.

(13) Regulations referred to in subsection (9) may provide that rules of a transitional nature that are made within six months after the commencement date of this Act take effect from the commencement date.

(14) In this section –

“CGT commencement date” means the date specified in section 153(2);



“commencement date” means the date specified in section 153(1);

“repealed Act” means the *Income Tax Act 1959* repealed under section 151;  
and

“transition period” is the period of 12 months commencing on the commencement date.

**153. COMMENCEMENT AND APPLICATION OF ACT**

(1) Subject to subsection (2), this Act commences on 1 January 2021 and applies to tax years commencing on or after that date.

(2) Section 8, Part 4, and Division 3 of Part 8 commence on the date specified by the Treasurer by notice in the Gazette.

**SCHEDULE 1.**

**TAX RATES AND SPECIFIED AMOUNTS**

**PART 1**

**TAX RATES AND TAX AMOUNTS**

(1) The rates of income tax applicable to a resident individual are -

<b>Taxable Income K</b>	<b>Rate of Tax</b>
0 – 12,500	0%
12,501 – 20,000	22%
20,001 – 33,000	30%
33,001 – 70,000	35%
70,001 – 250,000	40%
Over 250,000	42%

(2) The rates of income tax applicable to a non-resident individual are -

<b>Taxable Income K</b>	<b>Rate of Tax</b>
0 – 20,000	22%
20,001 – 33,000	30%
33,001 – 70,000	35%
70,001 – 250,000	40%
Over 250,000	42%

(3) The rates of salary and wages tax are -

(4) The rate of income tax applicable to a company is.....30%

(5) The rate of income tax applicable to a trust -

(a) for a trust that is a deceased estate and during the first 3 years of administration of the estate, the rates of tax specified in clause 1 for a deceased resident individual and clause 2 for a deceased non-resident individual; or

(b) where paragraph (a) does not apply to the trust.....42%

(6) The small business tax amount under section 4(3) is.....K400

(7) The small business tax payable under section 4(4) for a quarter is K100 plus 4% of turnover for the quarter above K12,500

(8) The rates of non-resident tax are -

(a) for an insurance premium.....3%

- (b) for a royalty or an amount paid to a non-resident entertainer or group of entertainers .....10%
  - (c) for interest, a technical fee, annuity, or natural resource amount.....15%
  - (d) for a dividend paid by a non-profit body or a former non-profit body out of income that is exempt income under clause (1) of Part 4 of Schedule 3....30%
  - (e) for any other dividend or the repatriated profits of a PNG permanent establishment of a non-resident person.....15%
- (9) The rate of tax applicable to the concessional component of a redundancy payment.....2%
- (10) The rate of income tax applicable to an approved fund is.....25%
- (11) The rate of income tax applicable to a non-approved fund is .....30%
- (12) The rate of tax on a pay-out by an approved fund referred to in section 105(1)(b) is –
- (a) for a pay-out made to a dependent of a deceased member of the fund.....2%
  - (b) for any other pay-out –
    - (i) where the period of service exceeds 15 years.....2%
    - (ii) where the period of service exceeds 9 years but does not exceed 15 years.....8%
    - (iii) where the period of service exceeds 5 years but does not exceed 9 years.....15%
    - (iv) where the period of service does not exceed 5 years.....rates specified in clause 1 or 2
- (13) The rate of international transportation income tax is.....2.4%
- (14) The rate of withholding tax under section 132 is.....5%
- (15) The rate of withholding tax under section 133(1) is.....15%
- (16) The rate of withholding tax under section 133(2) is.....15%
- (17) The rate of withholding tax under section 133(3) is.....30%
- (18) The rate of capital gains tax is.....15%
- (19) The rate of additional profits tax is.....30%.

**PART 2**  
**SPECIFIED AMOUNTS**

- (1) The amount specified for the purposes of section 4(3) and (4) is PGK50,000.
- (2) The amount specified for the purposes of section 13(2)(b) is [ ].
- (3) The base amount for the purposes of section 13(3) is [ ].
- (4) The service amount for the purposes of section 13(3) is [ ].
- (5) The amount specified for the purposes of section 23(2) is PGK50.
- (6) The amount specified for the purposes of section 27(5) is PGK 1,000
- (7) The amount specified for the purposes of section 109(1)(m) is [ ].

**SCHEDULE 2.**

**VALUATION OF EMPLOYEE NON-CASH BENEFITS**

**1. Value of non-cash benefit**

- (1) The value of a non-cash benefit included in the employment income of an employee under section 11(1)(b) is determined in accordance with this Schedule.
- (2) The value of a non-cash benefit is included in the employment income of an employee for the fortnight in which the benefit is provided to the employee.

**2. Debt waiver benefit**

- (1) The waiver by an employer of the obligation of an employee to pay or repay an amount owing by the employee to the employer is a debt waiver benefit.
- (2) The value of a debt waiver benefit is the amount of the debt waived.
- (3) A debt waiver benefit is provided by an employer to an employee at the time that the debt is waived.

**3. Housing benefit**

- (1) Accommodation or housing provided by an employer to an employee is a housing benefit.
- (2) The value of a housing benefit provided by an employer to an employee for a fortnight is the amount prescribed in the Regulations.

**4. Discounted interest loan benefit**

- (1) Subject to sub-clause (3), a loan provided by an employer to an employee is a discounted interest loan benefit where the interest rate under the loan is less than the market lending rate.
- (2) The value of a discounted interest loan benefit for a fortnight is calculated according to the following formula –

$$A - B$$

where

**A** is interest that would have been paid by the employee on the loan for the fortnight if the loan had been made at the market lending rate for the fortnight; and

**B** is the interest, if any, actually paid by the employee on the loan for the fortnight.

- (3) Sub-clause (1) does not apply to the extent that the loan funds are used by the employee to derive amounts included in the employee's assessable income.

- (4) In this clause, “market lending rate”, in relation to a fortnight, means the average commercial bank lending rate for the quarter in which the fortnight occurs as published by the Bank of Papua New Guinea.

**5. Motor vehicle benefit**

- (1) A motor vehicle provided by an employer to an employee wholly or partly for the private use of the employee is a motor vehicle benefit.
- (2) Subject to sub-clauses (3) and (4), the value of a motor vehicle benefit for a fortnight is the amount calculated in accordance with the following formula -

$$(A \times 10\%) / 26$$

where -

- A** is the cost to the employer of acquiring the motor vehicle or, where the vehicle is leased by the employer, the fair market value of the vehicle at the commencement of the lease.
- (3) The value of a motor vehicle benefit calculated under sub-clause (2) is reduced by the following -
- (a) any payment made by the employee for the use of the motor vehicle or for maintenance and running expenses;
  - (b) the proportion of the use of the vehicle by the employee in the conduct of employment; and
  - (c) the proportion of the fortnight that the vehicle was not provided to the employee for private use.
- (4) A reference in this clause to a motor vehicle being provided to an employee for private use includes a motor vehicle that is made available to an employee for private use even when the employee did not actually use the vehicle for a private use on a particular day.
- (5) In this clause, “motor vehicle” means a vehicle designed to carry a load of less than 1 tonne and fewer than 9 passengers.

**6. Discounted goods or services benefit**

- (1) The transfer of property or provision of services by an employer to an employee is a discounted goods or services benefit.
- (2) Subject to sub-clause (3), the value of a discounted goods or services benefit is -
- (a) where the employer supplies the same goods or services to customers in the ordinary course of business, 75% of the normal selling price of the goods or services; or

- (b) in any other case, the cost to the employer of acquiring the goods or expenditure incurred by the employer in providing the services.
- (3) The value of a discounted goods or services benefit determined under sub-clause (2) is reduced by any payment made by the employee to the employer for the goods or services.
- (4) For the purposes of sub-clause (2)(a), where the discounted goods or services benefit is the provision of free or subsidised air travel by an employer that is an airline operator, the normal selling price is the lowest economy fare for the flight provided by the employer.
- (5) A discounted goods or services benefit is provided to an employee in the fortnight that the goods are transferred to the employee or the services provided to the employee.
- (6) In this clause, “services” includes the use of property or the making available of any facility.

**7. Private expenditure benefit**

- (1) The payment of expenditure by an employer is a private expenditure benefit to the extent that the expenditure gives rise to a private benefit to an employee, but not including expenditure paid by an employer that is a non-cash benefit of an employee under another clause of this Schedule, other than clause 8(1).
- (2) The value of a private expenditure benefit is the amount of the expenditure treated as a private expenditure benefit under subclause (1).
- (3) A private expenditure benefit is provided to an employee in the fortnight that the expenditure is paid by the employer.

**8. Residual benefit**

- (1) A non-cash benefit provided by an employer to an employee that is not covered by another clause in this Schedule is a residual benefit.
- (2) The value of a residual benefit is the fair market value of the benefit determined at the time it is provided, as reduced by any payment made by the employee to the employer for the benefit.

## SCHEDULE 3.

## EXEMPT INCOME

## PART 1. – GOVERNMENT, FOREIGN GOVERNMENTS, AND INTERNATIONAL ORGANISATIONS

- (1) The following are exempt income –
- (a) the income of the State arising from the performance of normal Government functions;
  - (b) the income of the Bank of PNG;
  - (c) the income of a Provincial Government or Local-level Government received pursuant to the *Organic Law on Provincial Governments and Local-level Government*, other than business income;
  - (d) the income of the government of a foreign country or foreign territory to the extent provided for under an international agreement;
  - (e) the income of an international organisation to the extent provided for under the *International Organisations Privileges and Immunities Act 1975*.

## PART 2. – INDIVIDUALS

- (1) The following are exempt income –
- (a) maintenance or child support payments;
  - (b) a scholarship awarded to an individual for full-time study at a university, college, or other tertiary educational institution;
  - (c) the income of an individual to the extent provided for under the *International Organisations Privileges and Immunities Act 1975* or the *Diplomatic and Consular Privileges and Immunities Act 1975*;
  - (d) The value of the following benefits provided by an employer to an employee -
    - (i) a benefit the value of which does not exceed the amount prescribed in the Regulations;
    - (ii) a meal or refreshment provided in a canteen, cafeteria, or dining room operated by, or on behalf of, the employer solely for the benefit of employees and that is available to all non-casual employees on equal terms;



- (iii) one annual leave fare paid or reimbursed to the employee for the employee and his or her dependents to travel from the employee's place of employment to the employee's place of origin or recruitment;
  - (iv) additional leave fares for travel within PNG paid or reimbursed to an employee employed solely 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*;
  - (v) additional leave fares paid or reimbursed to an employee where the Commissioner General is satisfied that the additional leave fares are justified having regard to remoteness or hardship as a result of the employee being located in a remote area away from urban centres;
  - (vi) a reimbursement paid to an employee by an employer for, or the discharge by an employer of, medical insurance premiums of the employee, but only if this benefit is available to all non-casual employees on equal terms;
  - (vii) an allowance or reimbursement paid to an employee by an employer for, or the discharge by an employer of, the annual fees payable to a school, college, or approved tertiary institution for the purposes of educating a student child of the employee, but only if this benefit is available to all non-casual employees on equal terms; and
  - (viii) a benefit for which the employer is denied a deduction under this Act for the cost of providing the benefit.
- (e) foreign employment income, including a pension related to foreign employment, derived by a resident individual, but only where the income is subject to tax in the country of employment;
- (f) the income derived by a non-resident individual, other than an entertainer, from the rendering of services in PNG as an employee where all the following conditions are satisfied –
- (i) the individual is in PNG for a period of, or periods amounting in aggregate to, no more than 90 days in a tax year;
  - (ii) the income is subject to tax in the individual's country of residence;
  - (iii) the individual is remunerated by a non-resident person other than where the remuneration is an expenditure of a permanent establishment of the non-resident in PNG.
- (g) a pension, benefit, or lump sum payment paid to a Member of Parliament or a former Member under the *Parliamentary Members Retirement Benefits Act 1979*;

- (h) The PNG source employment income received by an individual enlisted or appointed to the naval, military, or air force of a government of a foreign country as a member of those forces to the extent that the income is not paid, given, or granted by PNG or Australia.
- (2) If the Commissioner General is satisfied that a non-cash benefit has been provided in two or more parts for the purpose of taking advantage of clause (1)(d)(i), the non-cash benefit is an exempt under clause (1)(d)(i) only if the total value of all parts provided does not exceed the prescribed amount.
- (3) In this Part –
- “approved tertiary institution” means a tertiary institution approved in accordance with the Regulations;
- “foreign employment income” means employment income that is foreign income; and
- “subject to tax” means subject to a tax that is substantially similar in nature to the salary and wages tax, or income tax, imposed under this Act.

### **PART 3. – DIVIDENDS AND INTEREST**

- (1) The following are exempt income –
- (a) Subject to clause (2), a dividend paid by a resident company to another resident company.
- (b) The first K200 for a tax year of interest derived by a resident individual from a financial institution.
- (c) Interest paid by a resident company to a non-resident person in respect of debentures issued by the resident company provided that all the following conditions are satisfied that –
- (i) the company issued the debentures outside PNG;
- (ii) the debentures are denominated in a currency other than Kina;
- (iii) the debentures were issued with a view to public subscription or other wide distribution;
- (iv) the company issued the debentures for the purpose of raising funds for use by the company in a business carried on in PNG;
- (v) the interest is paid outside PNG.
- (2) Subclause (1)(a) does not apply to a dividend that is paid by a non-profit body or former non-profit body out of income that is exempt income under clause (1)(a) of Part 4 of this Schedule.

**PART 4. – SOCIAL POLICY EXEMPTIONS**

- (1) The following are exempt income -
- (a) income derived by a non-profit body, other than business income that is not directly related to the core function of the body;

**PART 5. – SECTOR EXEMPTIONS AND TECHNICAL ASSISTANCE**

- (1) The following are exempt income –
- (a) the business income derived by a non-resident person from fishing operations in PNG's territorial waters where the State receives or is entitled to receive payments from the non-resident person in relation to the fishing operations in accordance with an international agreement;
- (b) the employment income of an employee of a non-resident person carrying on fishing operations to which paragraph (a) applies;
- (c) royalties paid by a non-resident person for the charter of a vessel for fishing operations to which paragraph (a) applies, but only if the international agreement provides for such charter;
- (d) The income of a non-resident person operating a ship or airline in international traffic but only if an equivalent exemption from income tax is granted to PNG resident persons by the country in which the non-resident person is resident;
- (e) the income derived by a person to the extent provided for under an agreement entered into with the Government where the following conditions are satisfied:
- (i) the agreement is for the provision of financial, technical, humanitarian, or administrative assistance to the Government;
- (ii) the exemption is provided for in the agreement at the time the Government entered into the agreement;
- (iii) the Treasurer has confirmed the exemption by notice in writing to the person benefiting from the exemption; and
- (iv) the name of the person benefitting from the exemption is included in a notice published in the Gazette within thirty days after the Treasurer has confirmed the exemption.

**SCHEDULE 4.****DEPRECIATION RATES**

- (1) Subject to clause (2), the rates of depreciation applicable to depreciable assets are set out in the following table –

<b>Class</b>	<b>Depreciable Asset</b>	<b>Straight-line Rate</b>	<b>Diminishing Value Rate</b>
1	Motor vehicles; buses and minibuses with a seating capacity of less than 30 passengers; goods vehicles with a load capacity of less than 7 tonnes; computers and data handling equipment; and construction and earthmoving equipment	25%	40%
2	Buses with a seating capacity of 30 or more passengers; goods vehicles designed to carry or pull loads of 7 or more tonnes; specialised trucks; tractors; trailers and trailer-mounted containers; and plant and machinery used in manufacturing, mining, forestry, or farming operations	20%	30%
3	Vessels, barges, tugs, and similar water transportation equipment; aircraft; office furniture, fixtures, and equipment; and any depreciable asset not included in another Category (other than a business intangible)	12.5%	20%

4	Structural improvement	5%	-
5	Business intangibles	Rate determined under clause (3)	-

- (2) The rate of depreciation applicable to a depreciable asset that has a cost of less than K1,000 is 100%.
- (3) The straight-line rates of depreciation applicable to business intangibles are -
- (a) for preliminary expenditure, 25%;
  - (b) for a business intangible with a useful life of more than 10 years, other than a business intangible referred to in paragraph (a) or (c) of this clause, 10%;
  - (c) for a long-term lease, is 100% divided by the term of the lease remaining at the date of acquisition; and
  - (d) for any other business intangible, 100% divided by the useful life of the intangible.

**SCHEDULE 5.****TAX CONCESSIONS****1. Initial Allowance**

- (1) A person who places an item of eligible property into service for the first time during a tax year is allowed a deduction (referred to as an “initial allowance”) for that year equal to 20% of the cost of the property.
- (2) The cost of an item of eligible property to which subsection (1) applies is reduced by the amount of the initial allowance deduction in respect of the property allowed under that subsection for the purposes of calculating the depreciation deduction under section 27, or the amount of the addition to the depreciation pool under section 28, for the property, as the case may be.
- (3) The initial allowance deducted under subsection (1) for an item of eligible property is treated as a depreciation deduction for the purposes of calculating the written down value of the property.
- (4) In this section –

“eligible property” means plant or machinery used solely in manufacturing to produce assessable income; and

“manufacturing” does not include an assembly operation, or a resource project.

**2. Accelerated Depreciation****3. Infrastructure Tax Credit**

**SCHEDULE 6.**

**TRANSITIONAL ARRANGEMENTS FOR EXTRACTIVE INDUSTRIES PROJECTS**