

2021 Budget Tax Legislative Amendments Explanatory Statement

Disclaimer:

This Explanatory Statement represents the IRC's interpretation of the legislative changes. It is issued to merely inform staff and taxpayers about the 2021 Budget amendments. Taxpayers are advised to seek independent professional tax advice regarding the application of these legislative changes to their individual circumstances.

A certified copy of *Income Tax (2021 Budget) (Amendment) Act No.37 of 2020* is attached for ease of reference.

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Income Tax (2021 Budget) (Amendment) Act No.37 of 2020

ARRANGEMENT OF SECTIONS

1. INTERPRETATION (AMENDMENT OF SECTION 4).

The definitions of the terms “quarter”, “small business tax” and “small business taxpayer” are included in the Interpretation section of the *Income Tax Act 1959* (ITA) to clarify and amplify the true intent of the introduction of the small business tax regime:

- Quarter is the period of three months ending 31 March, 30 June, 30 September and 31 December;
- Small business tax is that which is imposed under section 11C of the *Income Tax Act 1959* (ITA); and
- Small business taxpayer is an individual who is liable for small business tax.

Furthermore, the definition of the term “salary or wages” is broadened to include any payments made by a person, either a company or an individual, to an independent contractor for the provision of services as specified under the new section 65K of the ITA. This particular amendment is an anti-avoidance measure to ensure that taxpayers do not abuse the SBT regime in order to avoid paying their fair share of taxes.

These amendments are not effective at the time of publishing of this Explanatory Note. They will come into operation in accordance with a notice in the National Gazette, which is expected in April 2021.

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

The provision imposing income tax now includes subparagraph 4 which excludes the application of section 11 of the ITA to business income that is derived by a small business taxpayer.

This amendment is not effective at the time of publishing of this Explanatory Statement. It will come into operation in accordance with a notice in the National Gazette, which is expected in April 2021.

3. CLARIFICATIONS TO SBT PRE-REQUISITES (NEW SECTION 11C)

The new section 11C of the ITA imposes the small business tax (SBT) regime. An individual will have to pay small business tax if he meets all of the following conditions:

- conducts business solely in PNG;
- is not a registered person for the purposes of *Goods and Services Tax Act 2003*;
- is not subject to income tax under section 11 of the ITA in the previous fiscal year;
- total turnover in the previous fiscal year must not have exceeded the GST registration threshold of K250, 000.00.

The Commissioner General, when considering the total turnover of an individual pursuant to item (d) above, has the option of taking into account the turnover of associates of the individual.

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Where the total turnover of an individual is less than K60, 000.00, that individual will be liable for small business tax at a flat rate of K250.00.

Where total turnover in a fiscal year exceeds K60, 000.00 but is less than K250, 000.00, that individual will be liable to pay small business tax quarterly. The amount to be paid is as follows:

K62.50 + 2% of the turnover for a particular quarter that is above K15, 000.00

Furthermore, this new amendment gives an existing registered taxpayer the choice to:

- opt into the SBT regime if he meets all the conditions outlined above; or
- opt out of the SBT regime. Note however, that this option can be taken only if the taxpayer has been operating as a SBT taxpayer for three (3) years.

In both instances above, an individual must show to the Commissioner General that he has been complying with his filing obligations during the period he was registered in either the SBT or the income tax regime.

Such an election to either opt into or out of the SBT regime must be made to the Commissioner General in the approved form and in accordance with the due date at which the individual must submit his income tax return. The Commissioner General may give another due date, apart from that imposed by the ITA; such a consideration will depend on a case by case basis. The relevant SBT forms will be made available before April 2021.

This amendment is not effective at the time of publishing of this Explanatory Note. It will come into operation in accordance with a notice in the National Gazette, which is expected in April 2021.

4. INTERPRETATION (AMENDMENT OF SECTION 65D)

For clarity, the term independent contractor is now defined and means an individual who is engaged as a contractor. This new definition correlates with the insertion of the new section 65K of the ITA, which is discussed in paragraph 5 below.

This amendment is not effective at the time of publishing of this Explanatory Note. It will come into operation in accordance with a notice in the National Gazette, which is expected in April 2021.

5. COUNTERING ARRANGEMENTS TO CONVERT AN EMPLOYEE INTO AN INDEPENDENT CONTRACTOR (NEW SECTION 65K)

With the introduction of the SBT regime comes the risk of taxpayers who are engaged in an employee-employer relationship converting such a relationship into an independent contractor arrangement. This will result in the taxpayer taking advantage of the concessional tax rates in the SBT regime thus avoiding to pay the higher salary & wages tax rates that would be legally attributable to his income.

Such an arrangement would be deemed as an anti-avoidance measure pursuant to the new Section 65, unless the taxpayer can prove to the Commissioner General that any of the conditions outlined in the new provision exists. The taxpayer who holds himself out as an independent contractor must prove that:

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

This section protects against this risk to revenue as the SBT regime does not apply to salary or wage earners or to consultants nor professionals.

This amendment is not effective at the time of publishing of this Explanatory Note. It will come into operation in accordance with a notice in the National Gazette, which is expected in April 2021.

6. LOSS RULE TRANSITION (AMENDMENT OF SECTION 101)

The tax loss carry forward period is reduced to 7 years for all taxpayers.

Pursuant to this amendment, carry forward losses will be administered as follows:

- the 7 year limit takes effect from the 2019 fiscal year onwards;
- all carry forward losses for 20 years from 2006 onwards will be limited to 7 years from 1 Jan 2019 and the balance will lapse;
- periods prior to 2006 will not be affected as they will lapse within the 7 year time limit

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

This amendment obligates a project developer who is liable to PRWT to pay PRWT directly to the IRC within 21 days after the end of the month in which PRWT was paid to or on behalf of customary landowner. Project developers who are liable to pay PRWT to customary landowners as of 1 January 2021 are required to deduct and remit the same amounts to the IRC.

Effective from 01st January 2021.

8. PROCEDURAL RULES FOR SMALL BUSINESS TAX (NEW SECTION 223A)

This new section sets out the procedural rules for the small business tax regime. These include:

➤ Tax period and tax return filing due dates

The tax period for a small business taxpayer, who makes an annual turnover of less than K60, 000.00 is the fiscal year. These taxpayers are to furnish tax returns within 28 days after the end of the fiscal year. For those taxpayers whose annual turnover falls within the range of K60, 000 – K250, 000, the tax period is a quarter. These taxpayers must furnish tax returns within 28 days after the end of the quarter.

Small business taxpayers must pay the SBT on the date that the SBT tax return is due.

➤ Record keeping rules

The records to be kept by the small business taxpayer are now specified. These include:

- a) a record of both cash and credit sales; and
- b) a record of employment income paid to employees;
- c) and any other record required by the Commissioner General.

These records must be kept for three (3) years from the end of the tax period to which they relate.

➤ Requirement for bank account

It is mandatory that a person liable for SBT must have a bank account, unless they are exempted by the Commissioner General. The burden of proof is on the small business taxpayer to prove that he has derived exempt income.

This amendment is not effective at the time of publishing of this Explanatory Note. It will come into operation in accordance with a notice in the National Gazette, which is expected in April 2021.

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

The fixed instalment dates of April 30, July 31 and October 31 for the payment of provisional tax were replaced in the 2020 Budget with references to number of days from the beginning of the fiscal year. To ensure there was no clash with the 31 March due date for resource companies to provide estimates of their taxable income, whilst still catering for taxpayers with substituted accounting periods, new references of 120, 210 and 300 days were inserted. Effectively, there remains consistency with the familiar April, July and October deadlines for all other taxpayers.

For example, where a taxpayer has a substituted accounting period ending 31 March 2021, the provisional tax due dates will be as follows:

1st instalment – 31st July 2021

2nd instalment – 31st Oct 2021

3rd instalment – 31 Jan 2022

Effective retrospectively from 01st January 2020.

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10. PAYMENT OF APT (AMENDMENT OF SECTION 311AQ)

Similar to the provisional tax amendments, this amendment is made to align the due dates, for resource companies who have a substituted accounting period to provide their estimates of taxable income, together with the due dates for payment of advance payment tax (APT). All payments shall be made from the end of the preceding year of tax or a year of tax which has been approved pursuant to section 12A of the *Income Tax Act 1959* (ITA)

Effective retrospectively from 01st January 2020.

Authorized By:

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SAM KOIM, OBE, LLB(HONS)
Commissioner General

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No. 37 of 2020.

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

Certified on : 14 JAN 2021



No. 37 of 2020.

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

ARRANGEMENT OF SECTIONS.

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

“11C. IMPOSITION OF SMALL BUSINESS TAX.”

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

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

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

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

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

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

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



AN ACT

entitled

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

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

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

- (a) in respect of Sections 1, 2, 3, 4, 5 and 9 - in accordance with a notice in the National Gazette by the Head of State, acting with and in accordance with, the advice of the Minister for Treasury; and
- (b) in respect of Section 6 - retrospective to 1 January 2019; and
- (c) in respect of Sections 7, 8, 10 and 11 - retrospective to 1 January 2020.

1. INTERPRETATION (AMENDMENT OF SECTION 4).

Section 4 of the Principal Act is amended -

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

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

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

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

3. NEW SECTION 11C.

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

“11C. IMPOSITION OF SMALL BUSINESS TAX.

(1) In this section -

“business” does not include professional services;

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

“turnover”, in relation to an individual conducting a business, means the assessable income received by the individual from the conduct of the business without deduction of expenditures or losses.

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

- (a) the individual conducts the business solely in Papua New Guinea; and
- (b) the individual is not a registered person for the purposes of the *Goods and Services Tax Act 2003*; and
- (c) the individual was not subject to income tax under Section 11 for the previous fiscal year; and
- (d) the total turnover of the individual for the previous fiscal year did not exceed the goods and services tax registration threshold specified in Section 43 of the *Goods and Services Tax Act 2003*.

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

(4) If the annual total turnover of an individual subject to tax under this section is less than K60,000.00 -

- (a) the individual is liable for small business tax annually; and
- (b) the amount of small business tax payable by the individual for a fiscal year is K250.00.

(5) If the annual total turnover of an individual subject to tax under this section is K60,000.00 or more -

- (a) the individual is liable for small business tax quarterly; and
- (b) the amount of small business tax payable by the individual for a quarter is the sum of the following amounts:
- (c) K62.50; and
- (d) 2 percent of the turnover of the person for the quarter above K15,000.00.

(6) An individual who is subject to small business tax may elect for Section 11 to apply to the individual for a fiscal year instead of this section.

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

(8) Where an individual has made an election under Subsection (7) for a fiscal year within the time specified in that subsection -

- (a) the election applies from the commencement of the fiscal year to which the election relates and remains in force indefinitely or until the Commissioner General permits the person to be subject to this section under Subsection (11); and
- (b) any small business tax paid by the individual during the fiscal year is allowed as a tax credit against the income tax liability of the individual for the year.

(9) Subject to Subsection (10), an individual subject to income tax under Section 11 for a fiscal year who satisfies Subsection (2) may apply, in the approved form, to the Commissioner General for permission for the individual to be subject to the small business tax.

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

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

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

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

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

4. INTERPRETATION (AMENDMENT OF SECTION 65D).

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

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

5. NEW SECTION 65K.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. NEW SECTION 223A.

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

“223A. PROCEDURAL RULES FOR SMALL BUSINESS TAX.

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

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

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

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

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

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- (4) A small business taxpayer shall retain evidence that any income derived by the taxpayer is exempt income.
- (5) A small business taxpayer shall retain the records referred to in Subsection (2) for three years after the end of the tax period to which they relate.
- (6) A small business taxpayer shall furnish a small business tax return -
 - (a) for a small business taxpayer to whom Section 11C(4) applies, within 28 days after the end of the fiscal year;
 - (b) for a small business taxpayer to whom Section 11C(5) applies, within 28 days after the end of the quarter.
- (7) The small business tax payable by a small business taxpayer for a tax period shall be payable on the date that the small business tax return for the period is due.”.

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

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

- “(1) Where the Commissioner General has determined the company provisional tax for a year of tax, or a year of tax approved under Section 12A of this Act, he shall issue a notice setting out the amount of tax payable and this shall be paid in three installments, due and payable as follows:
- (a) first installment due 120 days from the end of the preceding year of tax or a year of tax as approved under Section 12A of this Act; and
 - (b) second installment due 210 days from the end of the preceding year of tax or a year of tax as approved under Section 12A of this Act; and
 - (c) third installment due 300 days from the end of the preceding year of tax or a year of tax as approved under Section 12A of this Act.”.

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

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

- “(1) An amount determined by the Commissioner General to be the estimated taxable income liable to tax under this division shall be taxed at the rates declared by the *Income Tax and Dividend (Withholding) Tax Rates Act* (Chapter 111) and shall be payable in three instalments as follows:
- (a) first installment due 120 days from the end of the preceding year of tax or a year of tax as approved under Section 12A of this Act; and
 - (b) second installment due 210 days from the end of the preceding year of tax or a year of tax as approved under Section 12A of this Act; and
 - (c) third installment due 300 days from the end of the preceding year of tax or a year of tax as approved under Section 12A of this Act.”.

Income Tax (2021 Budget)(Amendment)

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



Clerk of the National Parliament.

14 JAN 2021

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



Acting Speaker of the National Parliament.

14 JAN 2021