

No. 17 of 2012.

Income Tax (2013 Budget) (Amendment) Act 2012.

Certified on : **30 JAN 2013**



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ARRANGEMENT OF SECTIONS.

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2. Amendment of Assessments (Amendment of Section 232).
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“68AF. RESTRICTION ON THE INTEREST DEDUCTION.”.

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No. of 2012.

An Act

entitled

Income Tax (2013 Budget) (Amendment) Act 2012,

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

MADE by the National Parliament in respect of Sections 1-3 is deemed to operate for all returns lodged after 1 January 2013, which relate to an income year commencing on or after 1 January 2012 and in respect of Sections 4-7 deemed to operate from 1 January 2013.

1. INTERPRETATION (AMENDMENT OF SECTION 4).

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

- (a) repealing and replacing the definition of “assessment” with the following new definition:

“assessment” means the ascertainment of the amount of taxable income (or that there is no taxable income) and of the tax payable on that taxable income (or that no tax is payable), but (for the avoidance of doubt) does not include the ascertainment of -

- (a) losses carried forward to future income years under Section 101; and
- (b) allowable Exploration Expenditure carried forward to future income years under Division 10; and
- (c) allowable Capital Expenditure carried forward to future income years under Division 10; or
- (d) residual Capital Expenditure carried forward to future income years under Division 11;” and

- (b) inserting the following definition after the definition of “debenture” as follows:

“debt” means indebtedness of the taxpayer, as it would have been shown in a balance sheet prepared in accordance with the standards published by the International Accounting Standards Committee drawn up as at the date at which the relevant calculation is being made, including -

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

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- (b) all guarantees or other obligations which are the economic equivalent of a guarantee, including any obligation to purchase, to provide funds for payment, to supply funds to or otherwise to invest in any other entity in respect of the indebtedness of any other entity for borrowed money or arising out of any credit facility or financial accommodation for the deferred purchase price of property or services (other than trade accounts payable arising in the ordinary course of business and on terms requiring payment in full within no more than 90 days); and
- (c) all indebtedness or other obligations of any other entity for borrowed money or arising out of any credit facility or financial accommodation for the deferred purchase price of property or services (other than trade accounts payable arising in the ordinary course of business and on terms requiring payment in full within no more than 90 days) secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any lien upon property (including, without limitation, accounts receivable and contract rights) owned by the taxpayer or one of its subsidiaries, whether or not the taxpayer or any of its subsidiaries has assumed or become liable for the payment of such indebtedness of obligations; and
- (d) all obligations of the taxpayer in respect of Finance Leases (being the aggregate of the present value, determined in accordance with generally accepted financial practice, of the rental that will fall due thereunder and the specified residual value (if any)); and

- (c) by inserting a new definition after “entertainment allowance” as follows:

“equity” in relation to a company, means shareholders’ funds which shall include, without limiting the generality of the term issued capital and accumulated income as they would have been shown if a balance sheet, prepared in accordance with the standards published by the International Accounting Standards Committee, had been drawn up at the date at which the relevant calculation is being made;”.

- (d) by inserting a new definition after “income tax” as follows:

“interest” includes an amount:

- (a) that is in the nature of interest; or
- (b) that represents the time value of money in relation to the cost of a debt; or
- (c) to the extent that it could reasonably be regarded as having been converted into a form that is in substitution for interest; or
- (d) of a lease payment under a finance lease which could reasonably be regarded as representing an interest component as if the item had been purchased under a conventional loan agreement and each payment under that agreement represented a payment of both principal and interest; or

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- (e) of a discount in relation to a security to the extent that the discount could reasonably be regarded as representing the time value of money; or
 - (f) of a discount on the entering into of a contract in which payment is to be made more than 90 days prior to when the provision of goods or services or any other form of performance under that contract could reasonably be envisaged to be provided, to the extent that the discount could reasonably be regarded as representing the time value of money; or
 - (g) to the extent that it could reasonably be regarded as having been received in exchange for interest in connection with a washing arrangement; or
 - (h) which would be classified as interest or in the nature of interest if it were disclosed in financial statements prepared in accordance with the standards published by the International Accounting Standards Committee”; and
- (e) by inserting a new definition after “salary or wage tax” as follows:

“security” means -

- (a) stock, a bond, debenture, certificate of entitlement, bill of exchange, promissory note or other security; or
- (b) a deposit with a bank or financial institution; or
- (c) a secured or unsecured loan; or
- (d) any other contract, whether or not in writing, under which a person is liable to pay an amount or amounts, whether or not the liability is secured”; and

- (f) by inserting a new definition after “unit trust” as follows:

“washing arrangement” means an arrangement under which title to a security, (or an obligation under a security) is transferred to another party shortly before an interest payment is received (or is expected to be made) where a reasonable person would view a significant purpose of the arrangement being either to reduce the amount of withholding tax payable by a person, or to affect the restriction on the deductibility of interest under Sections 68AF or 155H;”.

2. AMENDMENT OF ASSESSMENTS (AMENDMENT OF SECTION 232).

Section 232 of the Principal Act is amended -

- (a) in Subsection (2)(b) after the comma, by inserting the following:

“or in the case of an assessment under which no tax is payable within six years of the date of issue of the assessment”; and

- (b) in Subsection 3(b) after the words “payable under that assessment” by inserting the following:

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“or in the case of an assessment under which no tax is payable within three years of the date of issue of the assessment”; and

- (c) in Subsection (6) after the words “payable under that assessment” inserting the following:

“or in the case of an assessment under which no tax is payable within three years of the date of issue of the assessment”; and

- (d) after Subsection (10) by inserting the following new subsections:

“(11) If the Commissioner General has commenced an examination of the affairs of a taxpayer in relation to an assessment and the Commissioner General has not completed the examination before the end of the amendment period (or that period as extended) the amendment period may be extended as follows:

- (a) if the Commissioner General, before the end of the amendment period (or that period as extended), requests the taxpayer to consent to extending the amendment period, then the taxpayer may, by notice in writing, consent to extending the amendment period to a specified date; or
- (b) if the Commissioner General, before the end of the amendment period (or that period as extended), applies to the National Court for an order extending the amendment period, then the Court may order an extension of the amendment period to a specified date if it is satisfied that it was not reasonably practicable; or
- (c) it was inappropriate, for the Commissioner to complete the examination within the amendment period (or that period as extended) and in determining whether to extend the amendment period, the Court should consider -
 - (i) the complexity of the issues under examination; and
 - (ii) any difficulty in obtaining records relating to the issues under examination; and
 - (iii) any action taken by the Commissioner General; and
 - (iv) any action taken by the taxpayer; and
 - (v) any failure of the taxpayer to take action that would have been reasonable for the taxpayer to take.

“(12) The amendment period for an assessment may be extended more than once under Subsection (11).” .

3. OBJECTIONS (AMENDMENT OF SECTION 245).

Section 245 of the Principal Act is amended by inserting the following new subsection after Subsection (1):

- “(1A) A taxpayer cannot object under Subsection (1) against an assessment ascertaining that -

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- (a) the taxpayer has no taxable income; or
- (b) the taxpayer has an amount of taxable income and no tax is payable, unless the taxpayer is seeking an increase in the taxpayer's liability.”.

4. NEW SECTION 68AF.

The Principal Act is amended by inserting the following new section after Section 68E:

“68AF. RESTRICTION ON THE INTEREST DEDUCTION.

(1) This section applies only to a company, but does not apply to a financial institution as defined in Section 35(1) nor to a taxpayer to whom Section 155H applies.

(2) Where a taxpayer has borrowed money for the purposes of deriving assessable income from a person who is, in the opinion of the Commissioner General, at arms length, the amount of interest and other fees and charges incurred in each year of income on the money borrowed by the taxpayer shall, subject to Subsection (4), be an allowable deduction under Section 68 for the taxpayer's assessable income.

(3) Where a taxpayer has borrowed money for the purpose of deriving assessable income from a person who is, in the opinion of the Commissioner General, not at arms length -

- (a) the Commissioner General may determine, after consultation with the Bank of Papua New Guinea -
 - (i) the market rate of interest; and
 - (ii) the fees and charges that in his opinion are reasonable, on a borrowing by the taxpayer; and
- (b) any amount -
 - (i) of interest incurred on the money borrowed by the taxpayer in excess of the market rate of interest determined under Paragraph (a)(i); or
 - (ii) of expenditure on the borrowing in excess of the fees and charges determined under Paragraph (a)(ii), shall not be an allowable deduction under Sections 68 or 89, as the case maybe.

(4) Notwithstanding any other provisions of this Act where at anytime during a year of income, debt of a taxpayer exceeds 200% of equity, the deduction allowable to the taxpayer for interest incurred during that period shall be limited to an amount ascertained in accordance with the formula:-

$$\frac{TI \times 2E}{D}$$

Where -

TI = total interest incurred by the taxpayer during that period; and

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D= debt of the taxpayer; and
E= equity of the taxpayer.

(5) To the extent interest is incurred in excess of the amount allowable pursuant to Subsection (4), any adjustment shall be limited to amounts paid to non-resident persons.

(6) In determining whether a taxpayer is a non-resident for the purposes of Subsection (5), the terms of any relevant Double Tax Agreement in force in Papua New Guinea under the ***Income Tax (International Agreements) Act 1987*** shall be taken into account.”.

5. LIABILITY TO INTEREST (WITHHOLDING) TAX (AMENDMENT OF SECTION 186).

The Principal Act is amended by inserting after Subsection (6) the following new subsection:

“(7) Where, apart from this subsection, a person would be liable to withhold and/or pay tax under both Division 13 and Division 14A (after the terms of any relevant Double Tax Agreement in force in Papua New Guinea under the ***Income Tax (International Agreements) Act 1987*** has been taken into account), then Division 14A shall take precedence, and that income shall be subject to tax only once.”.

6. CONCESSIONAL TREATMENT OF APPROVED REDUNDANCY PAYMENTS (AMENDMENT OF SECTION 46CA).

Section 46CA of the Principal Act is amended in Subsection (1) in the definition of “eligible taxpayer” by repealing the numbers and letters “46CA(5)” in Paragraph (c)(iii) and replacing it with “46CA(4)”.

7. DEDUCTION FOR GIFTS TO CHARITABLE BODIES (AMENDMENT OF SECTION 69E).

Section 69E of the Principal Act is amended in Subsection (1) by -

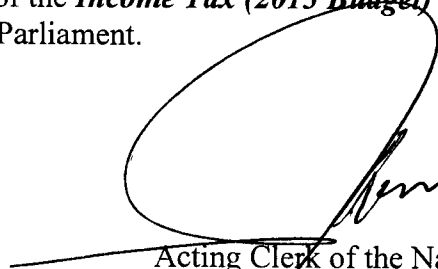
- (a) repealing the words “other than money”; and
- (b) inserting after the words “Commissioner General” the following words,

numbers letters and mark:

“ in accordance with Section 25A of this Act.”.

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I hereby certify that the above is a fair print of the ***Income Tax (2013 Budget) (Amendment) Act 2012***, which has been made by the National Parliament.



Acting Clerk of the National Parliament.

30 JAN 2013

I hereby certify that the ***Income Tax (2013 Budget) (Amendment) Act 2012*** was made by the National Parliament on 27 November 2012.



Speaker of the National Parliament.

0 JAN 2013