

No. 47 of 2016.

Income Tax (2017 Budget)(Amendment) Act 2016.

Certified on: 22 DEC 2016



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ARRANGEMENT OF SECTIONS.

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“6. ADMINISTRATION OF THIS ACT.”

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3. Exemption of Institutions (Repeal of Section 22A).
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7. Exemption of Pensions, etc., (Amendment of Section 29).
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12. Double Deduction of Exploration Expenditure (Repeal of Section 156E).
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14. Accumulated value of net profit receipts (Amendment of Section 159B).
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16. Related corporations (Amendment of Section 159D).
17. Liability to Dividend (Withholding) Tax (Amendment of Section 189B).
18. Payment of Dividend (Withholding) Tax (Amendment of Section 189C).
19. Certain income not included in Assessable Income (Repeal of Section 189D).
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21. Foreign Contractors (Amendment of Division III.14A).
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23. Collection of Tax in respect of certain payments of Business Income and Royalty Payments (Amendment of Division VI.2.).
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26. Application for issue of Certificate (Amendment of Section 354B).



No. of 2016.

AN ACT

entitled

Income Tax (2017 Budget)(Amendment) Act 2016,

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 Section 1 - on 18 September 2014; and
- (b) in respect of the remainder of the Act - on 1 January 2017.

1. NEW SECTION 6.

Part II of the Principal Act is amended by inserting the following new section:

“6. ADMINISTRATION OF THIS ACT.

(1) The Commissioner General of the Internal Revenue Commission appointed under the ***Internal Revenue Commission Act 2014***, shall have general administration over this Act.

(2) Subject to this Act and the ***Internal Revenue Commission Act 2014***, the Commissioner General shall not be subject to the direction and control of any person.”.

2. OFFICERS TO OBSERVE SECRECY (AMENDMENT OF SECTION 9).

Section 9 of the Principal Act is amended in Subsection (4) as follows:

- (a) by repealing Paragraph (d); and
- (b) in Paragraph (e), by repealing the word and figures “61 or 61A” and replacing them with the following word and figures:

“80 and 81”.

3. EXEMPTION OF INSTITUTIONS (REPEAL OF SECTION 22A).

Section 22A of the Principal Act is repealed.

4. EXEMPTION FOR 2015 PACIFIC GAMES (REPEAL OF SECTION 22B.)

Section 22B of the Principal Act is repealed.

5. EXEMPTION OF THE DISCIPLINED FORCES INSTITUTIONAL HOUSING PROJECT (REPEAL OF SECTION 23).

Section 23 of the Principal Act is repealed.

6. EXEMPTION OF BODIES INVOLVED IN PROVIDING AID TO THE VICTIMS OF THE MANAM ISLAND VOLCANIC DISASTER AND THE ASIAN TSUNAMI DISASTER (REPEAL OF SECTION 25B).

Section 25B of the Principal Act is repealed.

7. **EXEMPTION OF PENSIONS, ETC., (AMENDMENT OF SECTION 29).**
Section 29 of the Principal Act is amended in Subsection (1) by repealing Paragraphs (a) to (j).
8. **EXEMPTION OF CERTAIN INTEREST INCOME (AMENDMENT OF SECTION 35).**
Section 35 of the Principal Act is amended in Subsection (2) by repealing Paragraph (e).
9. **EXEMPTION OF INCOME FROM SALE OF SHARES ON PORT MORESBY STOCK EXCHANGE (REPEAL OF SECTION 36B).**
Section 36B of the Principal Act is repealed.
10. **EXEMPTION OF INCOME OF PERSONS ASSISTING IN DEFENCE OF AUSTRALIA OR PAPUA NEW GUINEA (REPEAL OF SECTION 38).**
Section 38 of the Principal Act is repealed.
11. **EXEMPTION OF CERTAIN DIVIDENDS (AMENDMENT OF SECTION 42).**
Section 42 of the Principal Act is amended by repealing Subsection (3).
12. **DOUBLE DEDUCTION OF EXPLORATION EXPENDITURE (REPEAL OF SECTION 156E).**
Section 156E of the Principal Act is repealed.
13. **INTERPRETATION (AMENDMENT OF SECTION 159A).**
Section 159A of the Principal Act is amended -
 - (a) in Subsection (1) -
 - (i) by repealing the definitions of “accumulation rate X”, “accumulation rate Y”, “calculation X” and “calculation Y” and inserting the following new definition:

““accumulation rate” means the rate of 15% per annum;” and
 - (ii) in the definition of “project deductions” -
 - (A) by repealing “; and” appearing in Paragraph (l) and inserting a fullstop; and
 - (B) by repealing Paragraph (m); and
 - (b) by repealing Subsection (5).
14. **ACCUMULATED VALUE OF NET PROFIT RECEIPTS (AMENDMENT OF SECTION 159B).**
Section 159B of the Principal Act is amended -
 - (a) in Paragraph (b) of Subsection (1) -
 - (i) by repealing the following letters and words appearing after the word “following”:

“there shall be two calculations, herein referred to as calculation X, using accumulation rate X and calculation Y, using accumulation rate Y, yielding two amounts calculated separately”; and
 - (ii) by repealing the following letters and words in the definition of “R” in the formula:

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“X; or the accumulation rate Y; as the case may be”; and

- (b) by repealing Subsection (3) and replacing it with the following new subsection:

“(3) Where an amount of additional profits tax is paid or payable by a taxpayer in respect of a year of income in relation to a resource project, the amount of the accumulated value of net project receipts of the taxpayer in respect of the resource project at the end of the year of income shall be deemed to be zero.”.

15. LIABILITY FOR ADDITIONAL PROFITS TAX (AMENDMENT OF SECTION 159C).

Section 159C of the Principal Act is amended by repealing Subsections (1) and (2) and replacing them with the following new subsections:

“(1) A taxpayer who derives an amount of taxable additional profits from a resource project in a year of income is liable to pay additional profits tax on that amount at the rate of 30%.

(2) Tax payable by a taxpayer in accordance with this section is in addition to any other tax payable by the taxpayer under this Act.”.

16. RELATED CORPORATIONS (AMENDMENT OF SECTION 159D).

Section 159D of the Principal Act is amended in Subsection (1) by repealing the words “under calculation X and calculation Y” appearing after the word “tax”.

17. LIABILITY TO DIVIDEND (WITHHOLDING) TAX (AMENDMENT OF SECTION 189B).

Section 189B of the Principal Act is amended by repealing Subsections (1), (2), (3) and (4) and replacing them with the following new subsection:

“Where a resident company pays or credits a dividend, or an amount that is deemed to be a dividend by virtue of this Act, to:

- (a) a resident individual; or
- (b) a resident trust estate; or
- (c) a non-resident person,

the company making the payment or crediting the dividend in the account, is liable to withhold and pay tax upon that amount at the rate prescribed by Section 10 of the *Income Tax, Dividend (Withholding) Tax and Interest (Withholding) Tax Rates Act 1984*.”.

18. PAYMENT OF DIVIDEND (WITHHOLDING) TAX (AMENDMENT OF SECTION 189C).

Section 189C of the Principal Act is amended by repealing Subsection (3) and replacing it with the following new subsection:

“(3) Subject to Subsection (4), if any dividend (withholding) tax remains unpaid at the expiration of the time when it became due and payable, additional tax is due and payable at the rate of 20% per annum on the amount unpaid, computed from the expiration of that period.”.

19. CERTAIN INCOME NOT INCLUDED IN ASSESSABLE INCOME (REPEAL OF SECTION 189D).

Section 189D of the Principal Act is repealed.

- 20. REFUND OF DIVIDEND (WITHHOLDING) TAX (REPEAL OF SECTION 189E).**
Section 189E of the Principal Act is repealed.

- 21. FOREIGN CONTRACTORS (AMENDMENT OF DIVISION III.14A).**

Division III.14A of the Principal Act is amended by repealing Sections 196C, 196D, 196E and 196F and replacing them with the following new sections:

“196C. LIABILITY TO FOREIGN CONTRACTORS (WITHHOLDING) TAX.

A foreign contractor who derives income from a prescribed contract is liable to pay tax on that income at the rate prescribed by Section 6A of the *Income Tax, Dividend (Withholding) Tax and Interest (Withholding) Tax Rates Act 1984*.

196D. LIABILITY OF AGENT.

(1) A person carrying on business in Papua New Guinea who has entered into a prescribed contract with a foreign contractor is deemed, for all purposes of this Act, to be the agent of the foreign contractor, and shall provide the Commissioner General with a copy of the signed contract or written notification of an agreement within 14 days of the signing.

(2) A person who fails to provide a copy of the signed contract, in contravention of Subsection (1), is guilty of an offence.

Penalty: The amount of the tax that is, or becomes payable in respect of that income by the foreign contractor for whom the person paying or transferring the income is deemed to be the agent, and in addition, a fine of not less than K500.00 and not exceeding K5,000.00.

(3) Where income derived from a prescribed contract is paid or credited to a foreign contractor, the person making the payment or crediting the income in the account is liable to deduct and pay tax upon that income at the prescribed rate.

(4) A person, who does not make a deduction from a prescribed contract payment as required by Subsection (3) or has deducted less than the amount required to be deducted, is guilty of an offence.

Penalty: A fine of not less than K500.00 and not exceeding K5,000.00.

(5) Where a person is convicted under Subsection (4), the Court may order the person to pay, in addition to any fine, an amount not exceeding the amount required to be deducted under Subsection (3).

(6) Where a person who was required to make a deduction under Subsection (3) has failed to make that deduction, he is liable, in addition to any penalty for which he may be liable, to pay to the Commissioner General the amount that he has failed to deduct and the Commissioner General may sue for and recover that amount in any Court of competent jurisdiction, or the Court before which any proceedings for an offence are taken may order the person to pay that amount to the Commissioner General.

196E. PAYMENT OF FOREIGN CONTRACTORS (WITHHOLDING) TAX.

(1) Where a person has made a deduction from a prescribed contract payment and the deduction was made or purports to have been made under Section 196D(3), that person shall, within 21 days after the end of the month in which the prescribed contract payment was paid, become liable to be paid or was credited:

- (a) pay to the Commissioner General an amount equal to the deduction made; and
- (b) furnish to the Commissioner General a remittance advice in the form authorised by the Commissioner General signed by or on behalf of the person who made the deduction.

(2) Foreign Contractor (Withholding) Tax, when it becomes due and payable, is a debt due to the State and payable to the Commissioner General.

(3) Any unpaid Foreign Contractor (Withholding) Tax payable under this Division may be sued for and recovered in a court of competent jurisdiction by the Commissioner General suing in his official name.

(4) Where an amount (in this subsection referred to as the “principal amount”) payable to the Commissioner General by a person by virtue of Subsection (1) remains unpaid after the end of the period within which it is required to be paid -

- (a) the principal amount continues to be payable by that person to the Commissioner General; and
- (b) that person is liable to pay to the Commissioner General by way of penalty an amount calculated at the rate of 20% per annum from the end of that period on so much of the principal amount as remains unpaid.

(5) The Commissioner General may, in any case, for reasons that he thinks sufficient, remit any penalty under Subsection (4), or any part of such a penalty.

(6) A person, other than the State or an authority of the State, who fails to comply with Subsection (1)(a) is guilty of an offence.

Penalty: In the case of a natural person, a fine not less than K500.00 and not exceeding K5,000.00 or imprisonment for a period not exceeding six months, and in the case of a body corporate, a fine not less than K1,000.00 and not exceeding K50,000.00.

(7) A person, other than the State or an authority of the State, who fails to comply with Subsection (1)(b) is guilty of an offence.

Penalty: A fine not less than K500.00 and not exceeding K5,000.00.

(8) The ascertainment of the amount of any Foreign Contractor (Withholding) Tax, shall not be deemed to be an assessment within the meaning of any of the provisions of this Act.

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(9) The Commissioner General may serve on a person, by post or otherwise, a notice in which is specified:

- (a) the amount of any Foreign Contractor (Withholding) Tax that the Commissioner General has ascertained is payable by that person; and
- (b) the date on which the tax became due and payable.

(10) The production of a notice served under Subsection (9) or of a document under the hand of the Commissioner General purporting to be a copy of such a notice, is evidence that the amount of Foreign Contractor (Withholding) Tax specified in the notice or document, became due and payable by the person named in the notice and on the date so specified in the notice.

(11) A person making a payment in pursuance of this section shall be deemed to have been acting under the authority of the taxpayer and of all other persons concerned and is, by force of this subsection, indemnified in respect of that payment.”.

22. NEW DIVISION III.16A.

Part III of the Principal Act is amended by inserting, after Division 16, the following new Division:

“Division 16A. - Country By Country Reporting.”

201A. INTERPRETATION.

For purposes of this Act, unless the contrary intention appears -

“Consolidated Financial Statements” means the financial statements of an MNE Group in which the assets, liabilities, income, expenses and cash flows of the Ultimate Parent Entity and the Constituent Entities are presented as those of a single economic entity;

“Constituent Entity” means -

- (a) any separate business unit of an MNE Group that is included in the Consolidated Financial Statements of the MNE Group for financial reporting purposes, or would be so included if equity interests in such business unit of an MNE Group were traded on a public securities exchange; and
- (b) any such business unit that is excluded from the MNE Group’s Consolidated Financial Statements solely on size or materiality grounds; and
- (c) any permanent establishment of any separate business unit of the MNE Group included in (i) or (ii) above provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting or internal management control purposes;

“Excluded MNE Group” means, with respect to any Fiscal Year of the Group, a Group having total consolidated group revenue of less than 2 million kina as of January 2015 during the Fiscal Year immediately preceding the Reporting Fiscal Year as reflected in its Consolidated Financial Statements for such preceding Fiscal Year;

“Fiscal Year” means an annual accounting period with respect to which the Ultimate Parent Entity of the MNE Group prepares its financial statements;

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“Group” means a collection of enterprises related through ownership or control such that it is either required to prepare Consolidated Financial Statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange;

“International Agreement” shall mean the Multilateral Convention for Mutual Administrative Assistance in Tax Matters, any bilateral or multilateral Tax Convention, or any Tax Information Exchange Agreement to which Papua New Guinea is a party, and that by its terms provides legal authority for the exchange of tax information between jurisdictions, including automatic exchange of such information;

“MNE” means a multinational enterprise;

“MNE Group” means any Group that -

(a) includes two or more enterprises the tax residence for which is in different jurisdictions, or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction; and

(b) is not an Excluded MNE Group;

“Qualifying Competent Authority Agreement” means an agreement -

(a) that is between authorised representatives of those jurisdictions that are parties to an International Agreement; and

(b) that requires the automatic exchange of country-by-country reports between the party jurisdictions;

“Reporting Entity” means the Constituent Entity that is required to file a country-by-country report conforming to the requirements in Article 4 in its jurisdiction of tax residence on behalf of the MNE Group. The Reporting Entity may be the Ultimate Parent Entity, the Surrogate Parent Entity, or any entity described in Section 199(2);

“Reporting Fiscal Year” means that Fiscal Year the financial and operational results of which are reflected in the country-by-country report defined in Section 201;

“Surrogate Parent Entity” means one Constituent Entity of the MNE Group that has been appointed by such MNE Group, as a sole substitute for the Ultimate Parent Entity, to file the country-by-country report in that Constituent Entity’s jurisdiction of tax residence, on behalf of such MNE Group, when one or more of the conditions set out in Section 199(2)(ii) applies;

“Systemic Failure” with respect to a jurisdiction means that a jurisdiction has a Qualifying Competent Authority Agreement in effect with Papua New Guinea, but has suspended automatic exchange (for reasons other than those that are in accordance with the terms of that Agreement) or otherwise persistently failed to automatically provide to Papua New Guinea country-by-country reports in its possession of MNE Groups that have Constituent Entities in Papua New Guinea.

“Ultimate Parent Entity” means a Constituent Entity of an MNE Group that meets the following criteria:

(a) it owns directly or indirectly a sufficient interest in one or more other Constituent Entities of such MNE Group such that it is required to prepare Consolidated Financial Statements under accounting principles generally applied in its jurisdiction of tax residence, or would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence; and

- (b) there is no other Constituent Entity of such MNE Group that owns directly or indirectly an interest described in (i) above in the first mentioned Constituent Entity;

201B. FILING OBLIGATION.

(1) Each Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Papua New Guinea shall file a country-by-country report conforming to the requirements of Section 201 with the Commissioner General with respect to its Reporting Fiscal Year on or before the date specified in Section 201A.

(2) A Constituent Entity which is not the Ultimate Parent Entity of an MNE Group shall file a country-by-country report conforming to the requirements of Section 201 with the Commissioner General with respect to the Reporting Fiscal Year of an MNE Group of which it is a Constituent Entity, on or before the date specified in Section 201A, if the following criteria are satisfied:

- (a) the entity is resident for tax purposes in Papua New Guinea; and
- (b) one of the following conditions applies:
 - (i) the Ultimate Parent Entity of the MNE Group is not obligated to file a country-by-country report in its jurisdiction of tax residence; or
 - (ii) the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which Papua New Guinea is a party but does not have a Qualifying Competent Authority Agreement in effect to which Papua New Guinea is a party by the time specified in Section 201A for filing the country-by-country report for the Reporting Fiscal Year; or
 - (iii) there has been a Systemic Failure of the jurisdiction of tax residence of the Ultimate Parent Entity that has been notified by the Commissioner General to the Constituent Entity resident for tax purposes in Papua New Guinea.

(3) Where there are more than one Constituent Entities of the same MNE Group that are resident for tax purposes in Papua New Guinea and one or more of the conditions set out in Paragraph (b)(ii) above apply, the MNE Group may designate one of such Constituent Entities to file the country-by-country report conforming to the requirements of Section 201 with the Commissioner General with respect to any Reporting Fiscal Year on or before the date specified in Section 201A and to notify the Commissioner General that the filing is intended to satisfy the filing requirement of all the Constituent Entities of such MNE Group that are resident for tax purposes in Papua New Guinea.

(4) Notwithstanding the provisions of Subsection (2), when one or more of the conditions set out in Subsection (2)(b) apply, an entity described in Subsection (2) shall not be required to file a country-by-country report with the Commissioner General with respect to any Reporting Fiscal Year if the MNE Group of which it is a Constituent Entity has made available a country-by-country report conforming to the requirements of Section 201 with respect to such Fiscal Year through a Surrogate Parent Entity that files that country-by-country report with the tax authority of its jurisdiction of tax residence on or before the date specified in Section 201A and that satisfies the following conditions:

- (a) the jurisdiction of tax residence of the Surrogate Parent Entity requires filing of country-by-country reports conforming to the requirements of Section 201; and

- (b) the jurisdiction of tax residence of the Surrogate Parent Entity has a Qualifying Competent Authority Agreement in effect to which Papua New Guinea is a party by the time specified in Section 201A for filing the country-by-country report for the Reporting Fiscal Year; and
- (c) the jurisdiction of tax residence of the Surrogate Parent Entity has not notified the Commissioner General of a Systemic Failure; and
- (d) the jurisdiction of tax residence of the Surrogate Parent Entity has been notified in accordance with Section 200(1) by the Constituent Entity resident for tax purposes in its jurisdiction that it is the Surrogate Parent Entity; and
- (e) a notification has been provided to the Commissioner General in accordance with Section 200(2).

201C. NOTIFICATION.

(1) Any Constituent Entity of an MNE Group that is resident for tax purposes in Papua New Guinea shall notify the Commissioner General whether it is the Ultimate Parent Entity or the Surrogate Parent Entity, no later than the last day of the Reporting Fiscal Year of such MNE Group.

(2) Where a Constituent Entity of an MNE Group that is resident for tax purposes in Papua New Guinea is not the Ultimate Parent Entity nor the Surrogate Parent Entity, it shall notify the Commissioner General of the identity and tax residence of the Reporting Entity, no later than the last day of the Reporting Fiscal Year of such MNE Group.

201D. COUNTRY-BY-COUNTRY REPORT.

(1) For purposes of this Act, a country-by-country report with respect to an MNE Group is a report containing:

- (a) Aggregate information relating to the amount of revenue, profit (loss) before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees and tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the MNE Group operates;
- (b) An identification of each Constituent Entity of the MNE Group setting out the jurisdiction of tax residence of such Constituent Entity, and where different from such jurisdiction of tax residence, the jurisdiction under the laws of which such Constituent Entity is organised, and the nature of the main business activity or activities of such Constituent Entity.

(2) The country-by-country report shall be filed in a form identical to and applying the definitions and instructions contained in the standard template set out at Annex III of Chapter V of the OECD Transfer Pricing Guidelines as modified from time to time and Annex III of title of the final report on BEPS Action 13.

201E. TIME FOR FILING.

The country-by-country report required under this Division shall be filed no later than 12 months after the last day of the Reporting Fiscal Year of the MNE Group.

201F. USE AND CONFIDENTIALITY OF COUNTRY-BY-COUNTRY REPORT INFORMATION.

(1) The Commissioner General shall use the country-by-country report for purposes of assessing high-level transfer pricing risks and other base erosion and profit shifting related risks in Papua New Guinea, including assessing the risk of non-compliance by members of the MNE Group with applicable transfer pricing rules, and where appropriate for economic and statistical analysis. Transfer pricing adjustments by the Commissioner General will not be based on the country-by-country report.

(2) The Commissioner General shall preserve the confidentiality of the information contained in the country-by-country report at least to the same extent that would apply if such information were provided to it under the provisions of the **Multilateral Convention on Mutual Administrative Assistance in Tax Matters.**”.

23. COLLECTION OF TAX IN RESPECT OF CERTAIN PAYMENTS OF BUSINESS INCOME AND ROYALTY PAYMENTS (AMENDMENT OF DIVISION VI.2).

Division VI.2 of the Principal Act is amended in the heading by repealing the following words:

“and royalty payments”.

24. CERTIFICATE OF EXEMPTION (AMENDMENT OF SECTION 299F).

Section 299F of the Principal Act is amended in Subsection (2) by repealing the word “employer” first appearing and replacing it with the following word:

“employee”.

25. COLLECTION OF DIVIDEND (WITHHOLDING) TAX (REPEAL OF DIVISION VI.4).

Division VI.4 of the Principal Act is repealed.

26. APPLICATION FOR ISSUE OF CERTIFICATE (AMENDMENT OF SECTION 354B).

Section 354B of the Principal Act is amended in Paragraph (a) by repealing the figure “81” and replacing it with the following figure:

“80”.

I hereby certify that the above is a fair print of the *Income Tax (2017 Budget)(Amendment) Act 2016* which has been made by the National Parliament.

Acting Clerk of the National Parliament.

22 DEC 2016

I hereby certify that the *Income Tax (2017 Budget)(Amendment) Act 2016* was made by the National Parliament on 8 November 2016.

Speaker of the National Parliament.

22 DEC 2016