

No. **28** of 2017.

Tax Administration Act 2017.

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ARRANGEMENT OF SECTIONS.

PART I. - PRELIMINARY.

1. Compliance with constitutional requirements.
2. Interpretation.
 - “advance assessment”
 - “amended assessment”
 - “appointed person”
 - “approved form”
 - “associate”
 - “authorised officer”
 - “Chairperson”
 - “Commission”
 - “Commissioner General”
 - “company”
 - “controlling member”
 - “default assessment”
 - “Departure Tax Act”
 - “furnish”
 - “Gaming Control Act”
 - “Goods and Service Tax Act”
 - “Government”
 - “GST”
 - “GST tax return”
 - “income tax”
 - “Income Tax Act”
 - “income tax return”
 - “international agreement”
 - “international organisation”
 - “IRC officer”
 - “late payment interest”
 - “late payment penalty”
 - “loss”
 - “member”
 - “membership interest”
 - “Minister”
 - “mutual administrative assistance agreement”
 - “objection decision”
 - “Papua New Guinea competent authority”
 - “partnership”
 - “penalty assessment”

“person”
“police officer”
“records”
“Registrar”
“representative”
“reviewable decision”
“secondary liability”
“self-assessment”
“self-assessment return”
“self-assessment taxpayer”
“tax”
“tax assessment”
“tax avoidance provision”
“tax decision”
“tax law”
“tax period”
“tax recovery costs”
“tax return”
“Tax Review Tribunal”
“tax treaty”
“taxpayer”
“taxpayer identification number” or “TIN”
“unpaid tax”
“withholding agent”
“withholding tax”.

3. Act binds the State.

PART II. - TAXPAYERS.

Division 1. - Taxpayer identification numbers.

4. Application for a taxpayer identification number.
5. Issue of a taxpayer identification number.
6. One stop shop tax registration.
7. Notification of changes.
8. Use of a taxpayer identification number.
9. Cancellation of a taxpayer identification number.

Division 2. - Taxpayer representative.

10. Liabilities and obligations of representatives.

PART III. - RECORDS.

11. Record-keeping.

PART IV. - TAX RETURNS.

12. Furnishing of a tax return.
13. Advance tax return.
14. Extension of time to furnish a tax return.

PART V. - TAX ASSESSMENTS.

15. Self-assessment.
16. Default assessment.
17. Advance assessment.
18. Amendment of tax assessment.
19. Application for an amendment to a self-assessment.

PART VI. - DECISIONS OF THE COMMISSIONER GENERAL.

20. Statement of findings and reasons.
21. Finality of tax and reviewable decisions.
22. Judicial notice of signatures.

PART VII. - OBJECTIONS AND APPEALS.

23. Proceedings under this part.
24. Notice of objection to tax decision.
25. Making an objection decision.
26. Review of objection decision by the Tax Review Tribunal.
27. Appeal to National Court.
28. Decision of Court.
29. Test case procedure.
30. Payment of disputed tax.
31. Implementation of decision.
32. General provisions relating to objections and appeals.

PART VIII. - COLLECTION AND RECOVERY.

Division 1. - Payment of tax.

33. Tax is a debt due to the State.
34. Secondary liabilities and tax recovery costs.
35. Extension of time to pay tax.
36. Priority of tax.
37. Indemnity.
38. Security.

Division 2. - Interest.

39. Late payment interest.

Division 3. - Recovery of Unpaid Tax.

40. Judgment debt procedure for recovery of unpaid tax.
41. Tax a charge on property.
42. Recovery of unpaid tax from third party.
43. Transferred tax liabilities.
44. Appointed person.
45. Liability for tax payable by a company.
46. Seizure and forfeiture of goods.
47. Administrative distress proceedings.
48. Temporary closure of business premises.
49. Preservation of assets.
50. Taxpayer leaving Papua New Guinea indefinitely.

PART IX. - REFUNDS AND RELIEF FROM TAX.

51. Application of tax credits.
52. Refund of overpaid tax.
53. Refund of overpaid goods and services tax.
54. Recovery of erroneously paid refund.
55. Release of tax liability in case of hardship.
56. Power of Commissioner General in respect of small amounts.

PART X. - INFORMATION COLLECTION.

57. Confirmation of information.
58. Power to enter and search.
59. Administrative summons.
60. Audit of taxpayer's tax affairs.
61. Implementation of mutual administrative assistance agreements.

PART XI. - TAX CLEARANCE.

62. Tax clearance certificates.
63. Other advice provided by the Internal Revenue Commission.

PART XII. - COMMUNICATIONS, FORMS AND NOTICES.

64. Official languages.
65. Forms and notices, authentication of documents.
66. Furnishing documents in the approved form.
67. Furnishing of documents.
68. Due date for furnishing documents and paying tax.
69. Service of notices.
70. Electronic tax returns, notices and other documents.
71. Documents duly furnished.
72. Validity of tax and reviewable decisions.
73. Rectification of mistakes.

PART XIII. - ADMINISTRATION.

Division 1. - Administration of the tax laws.

74. Commissioner General.
75. Confidentiality.
76. Exchange of information.

Division 2. - Tax Review Tribunal.

77. Establishment of Tax Review Tribunal.
78. Appointment of members of the Tax Review Tribunal.
79. Review of reviewable decisions.
80. Hearings by Tax Review Tribunal.
81. Decision of Tax Review Tribunal.
82. Administration of Tax Review Tribunal.
83. Finances and reporting.

Division 3. - Registration of Tax Agents.

84. Registrar of Tax Agents.
85. Application for Tax Agent registration.
86. Registration of Tax Agents.
87. Annual renewal of registration of Tax Agents.
88. Cancellation of Tax Agent registration.
89. Unregistered persons not to charge fees.

PART XIV. - ADMINISTRATIVE PENALTIES AND TAX OFFENCES.

Division 1. - Application of Part XIV.

90. General provisions relating to administrative penalties and offences.

Division 2. - Administrative penalties.

91. Penalties relating to taxpayer identification numbers.
92. Penalty for failure to maintain records.
93. Late filing penalty.
94. Late payment penalty.
95. Tax shortfall penalty.
96. False or misleading statement penalty.
97. Tax avoidance penalty.
98. Penalty for underestimated provisional tax.
99. Goods and Services Tax penalties.
100. Miscellaneous penalties.
101. General provisions relating to administrative penalties.

Division 3. - Taxation offences.

102. Offences relating to taxpayer identification number.
103. Offence for failure to maintain records.
104. Offence for failure to furnish tax return or other document.
105. Offences relating to recovery of unpaid tax.
106. Offences relating to investigation powers.
107. Fraudulent records, statements or documents.
108. Obstruction of Internal Revenue Commission officer.
109. Offences relating to Tax Agents.
110. Offences relating to Internal Revenue Commission officers.
111. Goods and Services Tax offences.
112. Offences relating to the Tax Review Tribunal.
113. Offence for aiding or abetting a taxation offence.
114. Offences by companies, partnerships, agents or employees.
115. Sanctions for offences.
116. Limitation of action.

PART XV. - FINAL PROVISIONS.

117. Regulations.
118. Transitional.

**SCHEDULE 1.
SCHEDULE 2.
SCHEDULE 3.**



No. **28** of 2017.

AN ACT

entitled

Tax Administration Act 2017.

Being an Act to modernise, simplify and harmonise the law relating to the administration of tax and to ensure the efficient collection of tax and for related purposes,

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.

(1) For the purposes of Section 41 of the ***Organic Law on Provincial Governments and Local-level Governments***, it is declared that this law relates to a matter of national interest.

(2) This Act, to the extent that it regulates or restricts the exercise of one or more of the following rights or freedoms referred to in Subdivision III.3.C (***qualified rights***) of the ***Constitution***, namely -

- (a) the right to freedom of arbitrary search and entry conferred by Section 44; and
- (b) the right of freedom of expression conferred by Section 46; and
- (c) the right of freedom of employment conferred by Section 48; and
- (d) the right to privacy conferred by Section 49; and
- (e) the right to freedom of information conferred by Section 51; and
- (f) the right to freedom of movement conferred by Section 52; and
- (g) the right to freedom from unjust deprivation of property conferred by Section 53; and
- (h) the equality of citizens conferred by Section 55,

is a law that is made for the purpose of giving effect to the public interest in the public welfare.

2. INTERPRETATION.

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

“advance assessment” means an advance assessment made by the Commissioner General under Section 17;

“amended assessment” means an amended assessment made by the Commissioner General under Section 18;

“appointed person”, in relation to a taxpayer, means a person who is an appointed person of the taxpayer under Section 44;

“approved form” means -

- (a) for a tax return, application notice, statement or other document to be furnished with the Commissioner General, the form specified by the Commissioner General for the particular tax return, application, notice, statement or other document; or

Tax Administration

- (b) for an application, notice or other document to be filed with the Tax Review Tribunal, the form specified by the Chairperson for the particular application, notice or other document; or
 - (c) for an application to be filed with the Registrar of Tax Agents, the form specified by the Registrar for the application; or
 - (d) if no form is specified by the Commissioner General, Chairperson, or Registrar, as the case may be, a document that contains the information required under the tax law, or by the Commissioner General, Chairperson, or Registrar, as the case may be, for the particular form;
- “associate”, in relation to a person, means another person who acts or is likely to act in accordance with the wishes of the person as a result of any connection between the persons or common ownership or control, and the first-mentioned person is treated as an associate of the second-mentioned person;
- “authorised officer”, in relation to the exercise of a particular power under this Act, means an IRC officer specifically authorised, in writing, by the Commissioner General to exercise the power;
- “Chairperson” means the Chairperson of the Tax Review Tribunal appointed under this Act;
- “Commission” means the Internal Revenue Commission established under the *Internal Revenue Commission Act 2014*;
- “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;
- “company” means a body of persons incorporate or unincorporate, whether incorporated or otherwise created in Papua New Guinea or elsewhere, but does not include a partnership;
- “controlling member”, in relation to a company, means a member who beneficially holds, either alone or together with an associate or associates -
- (a) 50 percent or more of the voting rights attaching to membership interests in the company; or
 - (b) 50 percent or more of the rights to dividends attaching to membership interests in the company; or
 - (c) 50 percent or more of the rights to a return of capital attaching to membership interests in the company;
- “default assessment” means a default assessment made by the Commissioner General under Section 16;
- “Departure Tax Act” means the *Departure Tax Act 1980*, as amended, from time to time;
- “furnish”, in relation to a tax return or other document, includes file, make, send, transmit or lodge;
- “Gaming Control Act” means the *Gaming Control Act 2007*, as amended, from time to time;
- “Goods and Services Tax Act” means the *Goods and Services Tax Act 2003*, as amended, from time to time;
- “Government” means the Government of the Independent State of Papua New Guinea;
- “GST” means goods and services tax imposed under the *Goods and Services Tax Act 2003*;
- “GST tax return” means a tax return required to be furnished under the *Goods and Services Tax Act 2003*;
- “income tax” means income tax imposed under the *Income Tax Act 1959*;

Tax Administration

- “Income Tax Act” means the *Income Tax Act 1959*, as amended, from time to time;
- “income tax return” means a tax return required to be furnished under the *Income Tax Act 1959*;
- “international agreement” means an agreement between the Government of Papua New Guinea and a foreign government or governments;
- “international organisation” means an international organisation to which the *International Organisation (Privileges and Immunities) Act 1975* applies;
- “IRC officer” means an officer within the meaning in the *Internal Revenue Commission Act 2014*;
- “late payment interest” means interest imposed under Section 39;
- “late payment penalty” means late payment penalty imposed under Section 94;
- “loss” means a loss for a year of assessment under the *Income Tax Act 1959*;
- “member”, in relation to a company, means a shareholder or any other person who has a membership interest in the company;
- “membership interest”, in relation to a company, means a share or other ownership interest in the company;
- “Minister” means the Minister with ministerial responsibility for the Commission;
- “mutual administrative assistance agreement” means a tax information exchange agreement or other international agreement for mutual administrative assistance in relation to taxation matters;
- “objection decision” means the decision referred to in Section 25(1);
- “Papua New Guinea competent authority”, in relation to a tax treaty or mutual administrative assistance agreement, means the person designated under the treaty or agreement as the competent authority for Papua New Guinea or their delegate;
- “partnership” means the relationship that subsists between persons carrying on a business in common with a view to profit;
- “penalty assessment” means a penalty assessment made by the Commissioner General under Section 101;
- “person” includes an individual, company, partnership, body of persons, trust, the Government, a foreign government, political subdivision of the Government or a foreign government or international organisation;
- “police officer” means an officer of the Royal Papua New Guinea Constabulary;
- “records” include -
- (a) a book of account, document, paper, register, bank statement, receipt, invoice, contract or agreement or Customs entry; or
 - (b) any information or data stored on an electronic data storage device;
- “Registrar” means the office of the Registrar of Tax Agents;
- “representative”, in relation to a person, means the representative of the person under Section 10(1);
- “reviewable decision” means -
- (a) a decision made, or treated as having been made, by the Commissioner General on an application by a taxpayer for an amendment to a self-assessment under Section 19; or
 - (b) an objection decision; or
 - (c) a decision by the Commissioner General relating to tax clearance certificates or Tax Agent registration;
- “secondary liability” means a liability of a person that another person is personally liable that is designated as a secondary liability for the purposes of this Act;

Tax Administration

- “self-assessment” means an assessment treated as having been made by a self-assessment taxpayer under Section 15;
- “self-assessment return” means a tax return listed in Part II of the Schedule 1;
- “self-assessment taxpayer” means a taxpayer required to furnish a self-assessment return;
- “tax” means a tax, levy, duty, penalty, or late payment interest imposed under a tax law, and includes -
- (a) withholding tax; and
 - (b) provisional tax or instalments of tax payable under the *Income Tax Act 1959*;
- “tax assessment” means a self-assessment, default assessment, advance assessment, amended assessment, penalty assessment, or any other assessment of tax made or treated as having been made under a tax law;
- “tax avoidance provision” means -
- (a) Section 361 of the *Income Tax Act 1959*; and
 - (b) Section 108 of the *Goods and Services Tax Act 2003*;
- “tax decision” means -
- (a) a tax assessment, other than a self-assessment; or
 - (b) the determination of the amount of a secondary liability or tax recovery costs owing by a person; or
 - (c) in relation to this Act, the *Income Tax Act 1959* or the *Goods and Services Tax Act 2003*, a decision on any matter left to the discretion, judgment, direction, opinion, approval, consent, satisfaction, or determination of the Commissioner General, other than -
 - (i) a decision of the Commissioner General forming part of the process of making, or leading up to the making of, a tax assessment, and such decision is treated as part of the tax assessment; or
 - (ii) a reviewable decision;
 - (iii) a decision of the Commissioner General under Section 46, 47, 48, 49, 50, 58, or 59;
- “tax laws” means a law listed in the Schedule 2;
- “tax period”, in relation to a tax, means the period for which the tax is reported to the Commissioner General and includes -
- (a) for withholding tax, the period to which the deduction or withholding relates; or
 - (b) for instalments of tax or provisional tax, the period to which the instalment or provisional tax relates;
- “tax recovery costs” means the following -
- (a) the costs of recovering unpaid tax referred to in Section 33; and
 - (b) the costs of seizure proceedings under Section 46; and
 - (c) the costs of administrative distress proceedings under Section 47;
- “tax return” means a document listed in Part I of the Schedule 1;
- “Tax Review Tribunal” means the Tax Review Tribunal established under Section 77;
- “tax treaty” means an international agreement relating to the avoidance of double taxation and the prevention of fiscal evasion;
- “taxpayer” means a person who is liable for tax under a tax law and includes -
- (a) for the income tax, a person who has a loss or a nil taxable income for a year of assessment; or
 - (b) for the GST, a registered person;

Tax Administration

“taxpayer identification number” or “TIN” means a taxpayer identification number issued to a person under Section 5;

“unpaid tax” means tax that has not been paid on or before the due date or, if the Commissioner General has extended the due date under Section 35, on or before the extended due date;

“withholding agent” means a person required to deduct or withhold an amount from a payment under the *Income Tax Act 1959*;

“withholding tax” means an amount required to be deducted or withheld from a payment under the *Income Tax Act 1959*.

(2) Subject to Subsection (3), two persons are “associates” for the purposes of this Act if the relationship between the persons is such that one person may reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of the other person, or both persons may reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of a third person.

(3) Two persons are not associates solely by reason of the fact that one person is the employee or client of the other, or both persons are employees or clients of a third person.

(4) Without limiting the generality of Subsection (2), two persons are associates when -

- (a) one person is a spouse or relative of the other person within the ordinary meaning in Papua New Guinea, except when the Director is satisfied that neither person may reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of the other; or
- (b) one person participates, directly or indirectly, in the management, control, or capital of the other person; or
- (c) the same person participates, directly or indirectly, in the management, control, or capital of both persons; or
- (d) one person is a trust and the other person benefits under the trust through the exercise of a power of appointment or otherwise.

(5) For the purposes of Subsection (4), a person participates, directly or indirectly, in the management, control, or capital of the other person when -

- (a) the first-mentioned person either alone or together with an associate or associates under another application of Subsection (2) controls either directly or through one or more interposed persons -
 - (i) 50 percent or more of the voting power in the second-mentioned person; or
 - (ii) 50 percent or more of the right to dividends or income entitlements payable by the second-mentioned person; or
 - (iii) 50 percent or more of the right to capital in the second-mentioned person; or
- (b) the first-mentioned person has the practical ability to control the business decisions of the second-mentioned person.

(6) Unless this Act provides otherwise, a reference in this Act to a period of days is a reference to a consecutive period of days.

(7) When this Act applies in respect of a tax law, any term not defined in this Act has the meaning that it has for the purposes of the tax law.

Tax Administration

(8) Unless the contrary intention appears, this Act does not derogate, limit, or override any powers or functions expressly provided for in a tax law.

(9) This Act is a "revenue law" for the purposes of the Internal Revenue Commission Act.

3. ACT BINDS THE STATE.

This Act binds the State.

PART II. - TAXPAYERS.

Division 1. - Taxpayer identification numbers.

4. APPLICATION FOR A TAXPAYER IDENTIFICATION NUMBER.

(1) Subject to Subsection (2), a person who commences an activity that may result in the person being liable for tax under a tax law must apply to the Commissioner General for a TIN unless the person has already been issued with a TIN that is still in force.

(2) Subsection (1) does not apply to a non-resident if the only tax that non-resident is liable for is income tax collected by withholding as a final tax under the *Income Tax Act 1959* unless Subsection (5) applies to the non-resident.

(3) A person to whom Subsection (1) does not apply but who requires a TIN for the purposes of a purpose specified in Schedule 3 may apply to the Commissioner General for a TIN.

(4) An application for a TIN must be -

(a) lodged in the approved form; and

(b) accompanied by evidence of the person's identity as required by the Commissioner General; and

(c) in the case of an application under Subsection (1), lodged within 21 days of commencing the activity referred in Subsection (1) or within such further time as the Commissioner General may allow.

(5) Subject to Section 6, the obligation of a person to apply for a TIN under Subsection (1) is in addition to an obligation or option of the person to apply for registration for the purposes of a particular tax under another tax law.

(6) In this section, "non-resident" has the meaning in the *Income Tax Act 1959*.

5. ISSUE OF A TAXPAYER IDENTIFICATION NUMBER.

(1) If the Commissioner General is satisfied that an applicant for a TIN is required to apply for a TIN and that the applicant's identity is established, the Commissioner General must issue a TIN to the applicant by serving the applicant with written notice of the TIN.

(2) Each TIN issued by the Commissioner General must be unique and a person can have only one TIN at any time.

(3) The Commissioner General must refuse an application for a TIN if -

(a) the Commissioner General is not satisfied as to the applicant's true identity; or

(b) the applicant has already been issued with a TIN that is still in force.

Tax Administration

(4) The Commissioner General must serve the applicant with written notice of the decision to refuse an application for a TIN within 14 days of receiving the application.

(5) The Commissioner General may, on his or her own motion, issue a TIN to a person required to apply for a TIN but who has failed to do so within the time specified in Section 4.

6. ONE STOP SHOP TAX REGISTRATION.

(1) The Commissioner General must use the information provided by an applicant for a TIN for the registration of the applicant as required or permitted under a tax law for the purposes of a particular tax without the person being required to lodge any additional application forms.

(2) Notwithstanding Subsection (1), the Commissioner General may request an applicant to provide any further information necessary to complete the registration of the person as required or permitted under a tax law.

7. NOTIFICATION OF CHANGES.

(1) A taxpayer must notify the Commissioner General, in writing, of a change in any of the following within 28 days of the change occurring:

- (a) the person's name, physical or postal address, constitution, or principal activity; or
- (b) the person's banking details; or
- (c) the person's electronic address used for communication with the Commissioner General; or
- (d) such other details as the Commissioner General may require by public notice.

(2) A notification of changes made by a taxpayer under Subsection (1) is treated as satisfying any obligation to notify the same changes in relation to a registration of the person for the purposes of a particular tax under another tax law.

8. USE OF A TAXPAYER IDENTIFICATION NUMBER.

(1) A person must -

- (a) state their TIN in any tax return, notice, or other document lodged with the Commissioner General or used for the purposes of a tax law; and
- (b) supply their TIN to a withholding agent in respect of payments made by the withholding agent to the taxpayer used for the purposes of any tax law; and
- (c) supply their TIN to a financial institution when opening an account with the institution; and
- (d) supply their TIN to a government department or public authority as required by the authority.

(2) A TIN is personal to the person to whom it has been issued and, subject to Subsection (3), must not be used by another person.

(3) The TIN of a taxpayer may be used by the representative or registered tax agent of the taxpayer when -

- (a) the taxpayer has given written permission to the representative or registered tax agent to use the TIN; and
- (b) the representative or registered tax agent uses the TIN only in respect of the tax affairs of the taxpayer.

9. CANCELLATION OF A TAXPAYER IDENTIFICATION NUMBER.

- (1) A person who ceases to be liable for tax under all the tax laws must apply to the Commissioner General, in the approved form, for cancellation of the person's TIN.
- (2) An application under Subsection (1) must be lodged -
 - (a) in the approved form; and
 - (b) with the Commissioner General within seven days of the date on which the person ceased to be liable for tax under all the tax laws or within such further time as the Commissioner General may allow.
- (3) The Commissioner General must, by notice in writing, cancel a TIN if satisfied that -
 - (a) the person is no longer liable for tax under all the tax laws; or
 - (b) the TIN has been issued to the person under an identity that is not the person's true identity; or
 - (c) the person has already been issued with a TIN that is still in force.
- (4) The Commissioner General may, at any time, by notice in writing, cancel the TIN issued to a taxpayer and issue the taxpayer with a new TIN.
- (5) The cancellation of a person's TIN under this section does not affect any obligation of the person arising under a tax law before cancellation of the TIN.

Division 2. - Taxpayer representative.

10. LIABILITIES AND OBLIGATIONS OF REPRESENTATIVES.

- (1) In this section, "representative", in relation to a person, means an individual responsible for accounting for the receipt or payment of monies or funds in Papua New Guinea on behalf of the person, or who has control of the assets of the person in Papua New Guinea, and includes the following -
 - (a) for a company, the chief executive officer, public officer, managing director, company secretary or a director of the company; or
 - (b) for a partnership, a partner in the partnership; or
 - (c) for a trust, a trustee of the trust; or
 - (d) for a taxpayer referred to in Section 44, the appointed person in relation to the taxpayer under that section; or
 - (e) for a person outside Papua New Guinea, an individual who acts or purports to act in Papua New Guinea for that person or who controls that person's affairs in Papua New Guinea, including any manager of the business of that person in Papua New Guinea; or
 - (f) for any person, an individual that the Commissioner General has, by notice in writing to the individual, declared to be a representative of the person for the purposes of the tax laws.
- (2) Every representative of a taxpayer is responsible for performing any obligations imposed by a tax law on the taxpayer, including the furnishing of tax returns and payment of tax.
- (3) If there are two or more representatives of a taxpayer, the obligations referred to in Subsection (2) apply jointly and severally to the representatives but may be discharged by any of them.
- (4) Any act done by a representative of a taxpayer on behalf of the taxpayer in accordance with Subsection (2) is treated as having been done by the taxpayer.

Tax Administration

(5) Except as otherwise provided by a tax law and subject to Subsection (6), any tax that, by virtue of Subsection (2), is payable by a representative of a taxpayer is recoverable from the representative only to the extent of any monies or assets of the person that are in the possession or under the control of the representative.

(6) Subject to Subsection (7), a representative is personally liable for the payment of any tax due by the representative in that capacity when, while the amount remains unpaid, the representative -

- (a) alienates, charges, or disposes of any monies received or accrued in respect of which the tax is payable; or
- (b) disposes of or parts with any monies or assets belonging to the taxpayer that are in the possession of the representative or which come to the representative after the tax is payable, if such tax could legally have been paid from or out of such monies or the funds arising from the disposal of such assets.

(7) A representative is not personally liable for tax under Subsection (6) if -

- (a) the monies, including arising from the disposal of an asset, were paid by the representative on behalf of the taxpayer and the representative established that the amount paid has a legal priority over the tax payable by the taxpayer; or
- (b) at the time the monies were paid or asset disposed of, the representative had no knowledge, and could not reasonably be expected to know, of the taxpayer's tax liability.

(8) The personal liability of a representative of a taxpayer under Subsection (6) is a secondary liability for the purposes of this Act.

(9) Nothing in this section relieves a taxpayer from performing any obligation imposed on the taxpayer under a tax law that the representative of the taxpayer has failed to perform.

PART III. - RECORDS.

11. RECORD-KEEPING.

(1) In this section, "sales register machine" means a cash register machine or a point of sale machine.

(2) A taxpayer must, for the purposes of a tax law, maintain such records as may be required under the tax law and the records must be -

- (a) maintained in English; and
- (b) maintained in Papua New Guinea; and
- (c) maintained in a manner so as to enable the taxpayer's tax liability to be readily ascertainable; and
- (d) subject to Subsection (3), retained for seven years after the end of the tax period to which they relate or such lesser period as may be specified in the tax law requiring the keeping of the records.

(3) If, at the end of the period referred to in Subsection (2)(d), the taxpayer has records that -

- (a) relate to a tax assessment for which the amendment period specified in Section 18 has not ended, the taxpayer must retain the records until the end of the amendment period; or

Tax Administration

- (b) relate to a loss for a year of assessment that has not been fully offset, the taxpayer must retain the records until the end of the year of assessment in which the loss has been fully offset or the carry forward period for the loss expires; or
- (c) are necessary for a tax audit by the Commissioner General, or a proceeding before the Tax Review Tribunal or a Court, commenced before the end of the period referred to in Subsection (2)(d), the taxpayer must retain the records until the audit and all proceedings have been completed.

(4) If records referred to Subsection (2) are not in English, the Commissioner General may, by notice in writing, require the taxpayer to provide, at the taxpayer's expense, a translation into English on or before the date specified in the notice by a translator approved by the Commissioner General.

(5) For the avoidance of doubt, a reference in a tax law to accounts, documents or records includes all source and underlying documents relating to transactions entered into by the taxpayer, including invoices, purchase orders, delivery dockets, receipts, contracts and customs documentation.

- (6) The Commissioner General may provide instructions for the following -
 - (a) the obligatory use by taxpayers or classes of taxpayers of sales register machines; and
 - (b) the conditions for the use of sales register machines; and
 - (c) the information required to be included on a receipt produced by a sales register machine.

PART IV. - TAX RETURNS.

12. FURNISHING OF A TAX RETURN.

(1) A taxpayer required to furnish a tax return under a tax law must furnish the tax return in the approved form.

(2) The approved form may combine the tax return for two or more taxes on a single form.

(3) If a taxpayer has failed to furnish a tax return as required under a tax law, the Commissioner General may, by notice in writing, require the taxpayer or the taxpayer's representative to furnish the tax return by the date set out in the notice.

(4) Subject to Subsection (5), if the Commissioner General is not satisfied with a tax return furnished by a taxpayer, the Commissioner General may, by notice in writing, require the taxpayer to -

- (a) furnish a further or more detailed tax return on or before the due date set out in the notice; or
- (b) provide any further information as specified in the notice on or before the due date set out in the notice.

(5) Subsection (4)(a) does not apply when the tax return already furnished by the taxpayer is a self-assessment return furnished in the approved form.

Tax Administration

(6) A notice served on a taxpayer under Subsection (3) or (4) does not change the date for payment of any tax due (referred to as the "original due date") under the tax return as specified in the tax law under which the return is required to be furnished, and late payment interest and late payment penalty remain payable from the original due date.

(7) The Commissioner General may provide instructions for the signing and certification of returns by taxpayers, representatives and registered tax agents.

13. ADVANCE TAX RETURN.

(1) This section applies if, during a tax period, a taxpayer -

- (a) has died; or
- (b) has become bankrupt, wound-up or gone into liquidation; or
- (c) is about to leave Papua New Guinea indefinitely; or
- (d) has ceased, or is about to cease, the conduct of any activity in Papua New Guinea; or
- (e) on a reasonable belief of the Commissioner General, will not furnish a tax return for the tax period on or before the due date.

(2) When this section applies to a taxpayer for a tax period, the Commissioner General may, by notice in writing and at any time during the tax period, require -

- (a) the taxpayer or the taxpayer's representative to furnish a tax return (referred to as an "advance return") for the tax period on or before the date specified in the notice being a date that may be before the date that the return for the tax period would otherwise be due; and
- (b) pay any tax due under the advance return on or before the due date for furnishing the advance return.

(3) When a taxpayer is subject to more than one tax, a notice under Subsection (2) may apply to each tax.

(4) Nothing in this section relieves a taxpayer who has furnished an advance return from the requirement to furnish a tax return for the whole of the tax period to which the advance return relates.

(5) A tax return furnished by a taxpayer for the whole of a tax period as required under Subsection (5) is not a self-assessment return but rather provides the Commissioner General with information for the making of an amended assessment under Section 18 for the tax period to which the return relates.

14. EXTENSION OF TIME TO FURNISH A TAX RETURN.

(1) A taxpayer may apply, in writing, to the Commissioner General for an extension of time to furnish a tax return.

(2) An application under Subsection (1) must be made before the due date for furnishing the tax return.

(3) If a taxpayer has made an application for an extension of time in accordance with Subsections (1) and (2), the Commissioner General may, upon satisfaction that there is reasonable cause, extend the period within which the taxpayer is to furnish the tax return to which the application relates.

Tax Administration

(4) The due date for a taxpayer to file a tax return can be extended under Subsection (3) only once.

(5) The Commissioner General must serve a taxpayer with notice of a decision on an application made by the taxpayer under Subsection (1) for an extension of time to furnish a tax return.

(6) An extension of time granted under this section does not change the date for payment of any tax due (referred to as the "original due date") under the tax return as specified in the tax law under which the return is required to be furnished and late payment interest remains payable from the original due date.

(7) The Commissioner General may, on his own motion, grant taxpayers generally, or a class of taxpayers, an extension of time to furnish a tax return and the extended due date applies for all purposes of the Act, including the payment of tax.

PART V. - TAX ASSESSMENTS.

15. SELF-ASSESSMENT.

(1) A self-assessment taxpayer who has furnished a self-assessment tax return in the approved form for a tax period is treated, for all purposes of this Act, as having made an assessment of the amount of tax payable (including a nil amount) for the tax period to which the tax return relates being that amount as set out in the tax return.

(2) When a self-assessment taxpayer has furnished an income tax return in the approved form for a year of assessment and the taxpayer has a loss for the year, the taxpayer is treated, for all purposes of this Act, as having made an assessment of the amount of the loss being that amount as set out in the return.

(3) When a registered person has furnished a GST return in the approved form for a taxable period and the person has an excess of deductible amounts under Section 31 of the *Goods and Services Tax Act 2003* for the taxable period, the person is treated, for all purposes of this Act, as having made an assessment of the amount of the excess for the period being that amount as set out in the return.

(4) A tax return in the approved form completed and furnished electronically by a taxpayer is a self-assessment return despite either or both the following applying -

- (a) the form included pre-filled information provided by the Commissioner General; and
- (b) the calculation of the tax payable or any other amount is made electronically as information is inserted into the form.

16. DEFAULT ASSESSMENT.

(1) If a taxpayer has failed to furnish a tax return for a tax period on or before the due date, the Commissioner General may, based on the best of his judgment, make an assessment (referred to as a "default assessment") -

- (a) in the case of a loss for a year of assessment, the amount of the loss for the year; or
- (b) in the case of an excess of deductible amounts under Section 31 of the *Goods and Services Tax Act 2003* for the taxable period, the amount of the excess for the period; or

Tax Administration

(c) in any other case, the tax payable (including a nil amount) by the taxpayer for the tax period.

(2) The Commissioner General -

(a) may make a default assessment only in relation to a tax collected by assessment; or

(b) may make a default assessment at any time; or

(c) must serve a taxpayer assessed under Subsection (1) with notice, in writing, of the default assessment specifying the matter.

(3) The service of notice of a default assessment under this section does not change the due date (referred to as the "original due date") for payment of the tax due for the tax period to which the assessment relates as determined under the tax law imposing the tax, and late payment penalty and late payment interest remain payable based on the original due date.

(4) Nothing in this section relieves a taxpayer from being required to furnish the tax return for the tax period to which a default assessment served under this section relates.

(5) A tax return furnished by a taxpayer for a tax period after a notice of a default assessment has been served on the taxpayer for the period is not a self-assessment return.

17. ADVANCE ASSESSMENT.

(1) Subject to Subsection (2), the Commissioner General may, based on the information available and to the best of his judgment, make an assessment (referred to as an "advance assessment") of the tax payable by a taxpayer for a tax period in the circumstances specified in Section 13 or 49.

(2) The Commissioner General -

(a) may make an advance assessment before the date on which the taxpayer's tax return for the period is due; and

(b) may make an advance assessment only in relation to a tax collected by assessment and only if the taxpayer has not furnished a self-assessment return for the tax period to which the assessment relates; and

(c) must make an advance assessment in accordance with the law in force at the date the advance assessment was made; and

(d) must serve a taxpayer assessed under Subsection (1) with notice, in writing, of the advance assessment specifying the matters required by the Regulations.

(3) An advance assessment may be amended under Section 18 so that the taxpayer is assessed in respect of the whole of the tax period to which the advance assessment relates.

(4) Nothing in this section relieves a taxpayer from the requirement to furnish the tax return for the tax period to which an advance assessment served under this section relates.

(5) A tax return furnished by a taxpayer for a tax period after notice of an advance assessment has been served on the taxpayer for the period is not a self-assessment return.

18. AMENDMENT OF TAX ASSESSMENT.

(1) Subject to this section, the Commissioner General may amend a taxpayer's tax assessment (referred to as the "original assessment") for a tax period by making such alterations or additions, based on information available and to the best of his judgment, to the original assessment to ensure that -

Tax Administration

- (a) in the case of a loss for a year of assessment, the taxpayer is assessed in respect of the correct amount of the loss for the year; or
- (b) in the case of an excess of deductible amounts under Section 31 of the ***Goods and Services Tax Act 2003*** for a taxable period, the taxpayer is assessed in respect of the correct amount of the excess for the period; or
- (c) in any other case, the taxpayer is assessed in respect of the correct amount of tax payable (including a nil amount) for the tax period.

(2) Subject to Subsection (3), the Commissioner General may amend a tax assessment under Subsection (1) -

- (a) in the case of fraud or willful neglect by, or on behalf of, the taxpayer, at any time; or
- (b) in any other case and subject to a tax law providing otherwise, within four years -
 - (i) for a self-assessment, from the date that the self-assessment taxpayer furnished the self-assessment return to which the self-assessment relates; or
 - (ii) for any other tax assessment, the date the Commissioner General served the taxpayer with notice of the tax assessment.

(3) Subject to Subsection (4), if the Commissioner General has served notice of an amended assessment on a taxpayer under Subsection (1), the Commissioner General may further amend the original assessment to which the amended assessment relates within the later of -

- (a) the period specified in Subsection (2)(b); or
- (b) one year after the Commissioner General served notice of the amended assessment on the taxpayer.

(4) If Subsection (3)(b) applies, the Commissioner General is limited to amending the alterations and additions made in the amended assessment to the original assessment.

(5) The Commissioner General must serve a taxpayer with notice, in writing, of an amended assessment under Subsection (1) or (3) specifying the matters required by the Regulations.

(6) If a taxpayer's assessed tax liability is reduced under an amended assessment giving rise to a refund due to the taxpayer, the Commissioner General must apply the amount of the refund in accordance with Section 52(5).

(7) The service of a notice of an amended assessment under this section does not change the due date (referred to as the "original due date") for payment of the tax payable for the tax period to which the amended assessment relates as determined under the tax law imposing the tax, and late payment penalty and late payment interest remain payable based on the original due date.

19. APPLICATION FOR AN AMENDMENT TO A SELF-ASSESSMENT.

(1) A taxpayer who has filed a self-assessment return may apply to the Commissioner General for an amendment to be made to the self-assessment.

(2) An application under Subsection (1) must -

- (a) state the amendments that the taxpayer believes are required to correct the self-assessment and the reasons for the amendments; and

Tax Administration

(b) be filed with the Commissioner General within the period specified in Section 18(2)(b)(i) or such other period specified under a tax law.

(3) When an application has been made under Subsection (1), the Commissioner General may make a decision to amend the self-assessment or refuse the application.

(4) If the Commissioner General makes a decision to amend the self-assessment -
(a) the amended assessment must be made in accordance with Section 18(1); and
(b) notice of the amended assessment must be served on the taxpayer in accordance with Section 18(5).

(5) If the Commissioner General makes a decision to refuse an application under Subsection (1), the Commissioner General must serve the taxpayer with written notice of the decision.

(6) A taxpayer may elect, by notice in writing to the Commissioner General, to treat the Commissioner General as having made a decision to refuse an application made by the taxpayer under Subsection (1) if the Commissioner General has failed to notify the taxpayer of the decision on the application within 60 days of the application being filed with the Commissioner General.

(7) For the purposes of Section 79(2)(b), the period for filing an application for review of a decision treated as having been made under Subsection (6) commences on the date on which the taxpayer files the notice of election under Subsection (6).

PART VI. - DECISIONS OF THE COMMISSIONER GENERAL.

20. STATEMENT OF FINDINGS AND REASONS.

(1) When the Commissioner General refuses an application made by a person under a tax law, the notice of refusal must include a statement of findings and reasons for the refusal.

(2) If the Commissioner General has failed to provide a person with a statement of findings and reasons as required under Subsection (1), the person may, by notice in writing to the Commissioner General within 14 days of being served with the notice of the refusal, request the Commissioner General to provide a statement of findings and reasons.

(3) If a person has filed a notice of request with the Commissioner General under Subsection (2), the time for challenging the decision to which the request relates does not commence until the date on which the Commissioner General serves the person with the statement of findings and reasons.

21. FINALITY OF TAX AND REVIEWABLE DECISIONS.

(1) Except in proceedings under Part VII -
(a) a tax decision is final and conclusive and cannot be disputed in the Tax Review Tribunal or a Court, or in any other proceedings on any ground whatsoever; and
(b) the production of a notice of a tax assessment or a document under the hand of the Commissioner General purporting to be a copy of a notice of a tax assessment is conclusive evidence of the making of the assessment and that the amount and particulars of the assessment are correct; and
(c) in the case of a self-assessment, the production of the original self-assessment return or a document under the hand of the Commissioner General purporting to be a copy of the return is conclusive evidence of the contents of the return.

Tax Administration

(2) When the Commissioner General serves a notice of a tax assessment on a taxpayer electronically, the reference in Subsection (1)(b) to a copy of the notice of assessment includes a document certified by the Commissioner General identifying the tax assessment and specifying the details of the electronic transmission of the assessment.

(3) When a taxpayer has filed a self-assessment return electronically, the reference in Subsection (1)(c) to a copy of the return includes a document certified by the Commissioner General identifying the return and specifying the details of the electronic transmission of the return.

(4) A reviewable decision is final and conclusive, and can be disputed only by applying, under Section 79, to the Tax Review Tribunal for review of the decision.

22. JUDICIAL NOTICE OF SIGNATURES.

All courts and all persons having by law or consent of the parties authority to hear, receive and examine evidence must take judicial notice of the signature of every person who is or has been the Commissioner General or an IRC officer if the signature is attached or appended to an official document.

PART VII. - OBJECTIONS AND APPEALS.

23. PROCEEDINGS UNDER THIS PART.

The following are a proceeding under this part -

- (a) the consideration of a notice of objection; and
- (b) a review of an objection decision by the Tax Review Tribunal; and
- (c) an appeal to the National Court.

24. NOTICE OF OBJECTION TO TAX DECISION.

(1) A person dissatisfied with a tax decision (referred to in this part as the "appellant") may lodge a notice of objection, in the approved form, to the decision with the Commissioner General within 60 days of service of the notice of the decision.

(2) If the tax decision to which a notice of objection relates is an amended assessment, the taxpayer's right to object to the amended tax assessment is limited to the alterations and additions made in it to the original tax assessment.

(3) A notice of objection to a tax decision is validly lodged only when the following conditions are satisfied -

- (a) the notice of objection states precisely the grounds of the appellant's objection to the tax decision, the amendments that the appellant considers are required to correct the decision, and the reasons for making those amendments; and
- (b) when the notice of objection relates to a tax assessment -
 - (i) the appellant has furnished the tax return for the tax period covered by the tax assessment; and
 - (ii) the appellant has paid, or made an arrangement satisfactory to the Commissioner General for payment of, the tax due under the tax assessment that is not disputed by the appellant in the notice of objection; and

Tax Administration

- (iii) in accordance with Section 30, the appellant has paid, or made an arrangement satisfactory to the Commissioner General for payment of, the whole or part of the tax due under the tax assessment that is disputed in the notice of objection.

(4) If the Commissioner General considers that a notice of objection has not been validly lodged, the Commissioner General must immediately serve written notice on the appellant stating the following -

- (a) the reasons why the notice of objection has not been validly lodged; and
- (b) that the notice of objection will lapse unless the appellant lodges a valid notice of objection by the later of -
 - (i) 60 days from the date of service of the notice of the tax decision to which the objection relates; or
 - (ii) 14 days from the date of service of the notice under this subsection.

(5) The Commissioner General must serve a notice, in writing, on an appellant when a notice of objection lodged by the appellant has lapsed.

(6) A person may apply, in writing, to the Commissioner General for an extension of time to lodge a notice of objection to a tax decision.

(7) The Commissioner General may grant an application under Subsection (6) if he is satisfied that -

- (a) owing to reasonable cause, the appellant was prevented from lodging the notice of objection within the time specified in Subsection (1); and
- (b) there was no unreasonable delay by the appellant in lodging the notice of objection.

(8) The Commissioner General must serve the applicant under Subsection (6) with notice, in writing, of the decision on the application.

25. MAKING AN OBJECTION DECISION.

(1) The Commissioner General must consider a notice of objection that has been validly lodged under Section 24 and make a decision to allow the objection in whole or part, or disallow the objection.

(2) The Commissioner General must serve the appellant with notice, in writing, of the objection decision and take all steps necessary to give effect to the decision, including, in the case of an objection to a tax assessment, the making of an amended assessment.

(3) A notice of an objection decision must include a statement of the Commissioner General's findings on the material facts and the reasons for the decision.

(4) If the Commissioner General has failed to provide an appellant with a statement of findings and reasons as required under Subsection (3), the appellant may, by notice in writing to the Commissioner General within seven days of being served with the notice of the objection decision, request the Commissioner General to provide a statement of findings and reasons.

Tax Administration

(5) If an appellant has lodged a notice of request with the Commissioner General under Subsection (4) -

- (a) the Commissioner General must provide the appellant with a statement of findings and reasons within seven days after the appellant lodged the notice of request; and
- (b) the period under Section 79(2)(b) for the appellant to lodge an application for review of the objection decision with the Tax Review Tribunal does not commence until the date on which the appellant has received the statement of findings and reasons.

(6) If an appellant has not been served with notice of an objection decision within six months of the date that the notice of objection was lodged, the appellant may elect, by notice in writing to the Commissioner General, to treat the Commissioner General as having made a decision to disallow the objection.

(7) When an appellant has made an election under Subsection (6) to treat the Commissioner General as having made a decision to disallow an objection, the period under Section 79(2)(b) for the appellant to lodge a notice of appeal against the decision with the Tax Review Tribunal commences on the date that the appellant lodged the notice of election under Subsection (6) with the Commissioner General.

26. REVIEW OF OBJECTION DECISION BY THE TAX REVIEW TRIBUNAL.

A person dissatisfied with an objection decision may make an application to the Tax Review Tribunal in accordance with Section 79 for review of the decision.

27. APPEAL TO NATIONAL COURT.

(1) A party to a proceeding before the Tax Review Tribunal who is dissatisfied with the decision of the Tax Review Tribunal may appeal the decision to the National Court.

(2) A person appealing under Subsection (1) must file a notice of appeal, in accordance with the National Court Rules, with the Registrar of the National Court within 28 days after being notified of the decision of the Tax Review Tribunal, or within such further time as the National Court may allow.

(3) An appeal to the National Court may be made on a question of law only, and the notice of the appeal must state the question or questions of law that will be raised on the appeal.

(4) The party appealing to the National Court must serve a copy of the notice of appeal on the other party to the proceeding appearing before the Tax Review Tribunal.

28. DECISION OF COURT.

(1) When an appeal to a Court relates to a reviewable decision concerning a tax assessment, the Court may make an order to -

- (a) confirm, reduce, increase or set aside the tax assessment; or
- (b) remit the tax assessment to the Tax Review Tribunal or Commissioner General for reconsideration in accordance with the directions of the Court.

(2) When an appeal relates to any other reviewable decision, the Court may make an order to affirm, vary or set aside the decision.

29. TEST CASE PROCEDURE.

(1) If the Commissioner General considers that the determination of a notice of objection, whether on a question of law or on both a question of fact and a question of law, is likely to be determinative of all or a substantial number of the issues involved in one or more other notices of objections lodged or likely to be lodged, the Commissioner General may designate the notice of objection as a test case (referred to as a "test case objection") and notify the person objecting accordingly.

(2) The Commissioner General may state a test case objection for the opinion of the National Court without the need for the consent of the person objecting or leave of the National Court.

(3) The Commissioner General may, in relation to a notice of objection, at any time after it has been lodged and before it has been determined by the Tax Review Tribunal, notify the person objecting, in writing, that the notice of objection will be stayed by reason of the taking of a test case under Subsection (2) on a similar objection if the Commissioner General considers that the test case is likely to be determinative of all or a substantial number of the issues in the objection proposed to be stayed.

(4) A written notification under Subsection (3) has the effect of staying the notice of objection referred to in the notice until the determination of the test case.

(5) A person receiving a notice under Subsection (3) may notify the Commissioner General, in writing, that the notice of objection should be determined despite the stating of the test case objection for the opinion of the National Court.

(6) Within 14 days of receipt of a notice under Subsection (5), the Commissioner General may apply to the National Court, by originating application, for an order that the notice of objection be stayed pending the determination of the test case objection.

(7) The Commissioner General must serve a copy of the notice of application under Subsection (6) on the person who notified the Commissioner General under Subsection (5).

(8) If a notice of objection has been stayed, the Commissioner General, the person objecting, or both of them may apply, at any time, to the National Court for an order that the objection ceased to be stayed.

(9) A stay under Subsection (4) lapses on the expiry of 14 days following the day on which any of the following occurs -

- (a) if the person objecting has issued a notice under Subsection (5) and the Commissioner General has not within the 14-day period specified in Subsection (6) made an application under that subsection, the expiry of the 14-day period specified in Subsection (6); or
- (b) the making by the National Court of an order dismissing an application by the Commissioner General under Subsection (6); or
- (c) if an application has been made under Subsection (8), the making by the National Court of an order that the notice of objection cease to be stayed; or
- (d) the determination of the test case that caused the notice of objection to be stayed by the expiration of all rights of appeal.

Tax Administration

(10) For the purposes of this Act -

- (a) for so long as a notice of objection is stayed under this section, any time limits or periods specified in this Act (other than under Subsections (5) to (9) inclusive) or under the tax law to which the notice of objection relates in relation to proceedings on the objection do not apply; and
- (b) when a stay lapses under Subsection (9), any time limits or periods referred to in Paragraph (a) are treated as if they were extended by the period commencing on the date of the Commissioner General's written notice under Subsection (3) and ending on the day on which the stay lapsed.

30. PAYMENT OF DISPUTED TAX.

(1) Subject to Subsection (2), if a proceeding under this part relates to a tax assessment, the tax due under the assessment is payable despite the proceeding.

(2) Prior to making an application to a Review Tribunal or filing an appeal in the National Court, a dissatisfied taxpayer shall pay, into a trust account to be administered by the Commissioner General -

- (a) 50 percent of the full amount of any tax due and payable on the assessment, the subject of the decision with which the taxpayer is dissatisfied; and
- (b) any additional tax which has accrued, pursuant to Section 262 of the *Income Tax Act 1959* on the tax due and payable on the assessment, the subject of the decision with which the taxpayer is dissatisfied, and which has not been remitted pursuant to Subsection 262(2) of the *Income Tax Act 1959* prior to the making of the application or filing of the appeal by the dissatisfied taxpayer.

(3) Notwithstanding Subsection (2)(a), the Commissioner General may demand payment of the full amount of any tax due and payable on the assessment including any additional tax under Subsection (2)(b), where the Commissioner General is satisfied that the taxpayer has taken, or will take, steps to frustrate the recovery of the tax due and payable, including the dissipation of the taxpayer's assets.

(4) An application made or appeal filed by a dissatisfied taxpayer prior to the payment of any tax or additional tax under Subsections (2) and (3), is invalid and shall render the assessment of the Commissioner General undisputed and final.

31. IMPLEMENTATION OF DECISION.

(1) The Commissioner General must take such action, including amending any tax assessment, as is necessary to give effect to -

- (a) a final decision of the Tax Review Tribunal; or
- (b) a final decision of the National Court.

(2) A decision of the Tax Revenue Tribunal is final if no notice of appeal is filed with the Registrar of the National Court.

(3) A decision of the National Court is final if it is not pursued further in accordance with the court rules.

(4) The time limit for amending a tax assessment in Section 18 does not apply to an amendment to give effect to a decision of the Tax Review Tribunal or the National Court.

32. GENERAL PROVISIONS RELATING TO OBJECTIONS AND APPEALS.

- (1) In a proceeding under this part -
- (a) in the case of a tax decision that is a tax assessment, the burden is on the taxpayer to prove that the assessment is incorrect; or
 - (b) in the case of any other tax decision or reviewable decision, the burden is on the person challenging the decision to prove that the decision should not have been made or should have been made differently.

(2) In an application by a person to the Tax Review Tribunal or an appeal by a person to the National Court in relation to an objection decision, the person is limited to the grounds stated in the notice of objection to which the objection decision relates.

PART VIII. - COLLECTION AND RECOVERY.

Division 1. - Payment of tax.

33. TAX IS A DEBT DUE TO THE STATE.

(1) The tax payable by a taxpayer under a tax law is a debt due to the State and is payable to the Commissioner General in the prescribed manner and at the prescribed place.

(2) If a taxpayer fails to pay tax by the due date, the taxpayer is liable for any costs incurred by the Commissioner General in taking action to recover the unpaid tax.

34. SECONDARY LIABILITIES AND TAX RECOVERY COSTS.

(1) The Commissioner General may serve a person liable for a secondary liability or tax recovery costs with notice of the amount of the liability payable by the person and the due date for payment.

(2) An amount of a secondary liability paid by a person is credited against the primary tax liability to which the secondary liability relates.

- (3) A reference in Parts VII, VIII, IX, X, Sections 10, 51(1)(b), 52(5)(b) and 94 -
- (a) to "tax" includes a secondary liability and tax recovery costs; and
 - (b) to "unpaid tax" includes an amount specified in Paragraph (a) that is not paid by the due date; and
 - (c) to "taxpayer" includes a person liable for an amount specified in Paragraph (a).

35. EXTENSION OF TIME TO PAY TAX.

(1) A taxpayer may apply, in writing, to the Commissioner General for an extension of time to pay tax due under a tax law.

(2) An application under Subsection (1) must be made on or before the original due date on which the tax is due for payment.

(3) If a taxpayer had made an application for an extension of time in accordance with Subsections (1) and (2), the Commissioner General may, having regard to the circumstances of the case -

- (a) grant the taxpayer an extension of time for payment of the tax due; or
- (b) require the taxpayer to pay the tax due in such instalments as the Commissioner General may determine.

Tax Administration

(4) The Commissioner General must serve the taxpayer with written notice of a decision on an application under Subsection (1).

(5) If a taxpayer permitted to pay tax by instalments defaults in the payment of any instalment, the whole balance of the tax due, at the time of default, is immediately payable unless the Commissioner General has entered into another instalment payment arrangement with the taxpayer.

(6) A taxpayer granted an extension of time to pay tax or permission to pay tax due by instalments is still liability for late payment interest arising from the original date the tax was due for payment.

(7) The Commissioner General may, on his own motion, grant taxpayers generally, or a class of taxpayers, an extension of time to pay tax and the extended due date applies for all purposes of the Act.

(8) In this section, "tax" does not include late payment of interest.

36. PRIORITY OF TAX.

(1) This section applies to the following amounts -

- (a) withholding tax; and
- (b) GST; and
- (c) an amount that a person is required to pay to the Commissioner General under a noticed served on the person under Section 42.

(2) Notwithstanding any other enactment, a person owing, holding, receiving or withholding an amount to which this section applies -

- (a) holds the amount in trust for the State; and
- (b) the amount cannot be subject to attachment in respect of any debt or liability of the person.

(3) In the event of the liquidation or bankruptcy of a person owing, holding, receiving, or withholding an amount to which this section applies and notwithstanding any other enactment, the amount -

- (a) does not form part of the person's estate in liquidation or bankruptcy; and
- (b) must be paid to the Commissioner General before any distribution of property is made.

(4) Notwithstanding any other enactment, withholding tax is -

- (a) a first charge on the payment from which the amount is withheld; and
- (b) withheld prior to any other deduction that the person may be required to make from the payment under an order of any court or any law.

37. INDEMNITY.

(1) This section applies to the following -

- (a) a withholding agent who has withheld an amount from withholding income and paid the amount to the Commissioner General; and
- (b) a representative who has paid an amount to the Commissioner General pursuant to Section 10(1); and
- (c) a person who has paid an amount to the Commissioner General pursuant to a Section 42 notice; and

Tax Administration

- (d) an appointed person who has paid an amount to the Commissioner General pursuant to Section 44; and
- (e) a financial institution that has complied with a notice under Section 49.

(2) A person to whom this section applies is indemnified against any claim by the taxpayer relating to the amount paid by the person to the Commissioner General or in compliance with Section 49.

38. SECURITY.

(1) The Commissioner General may require, by notice in writing, a taxpayer to give security if there is reason to believe that -

- (a) the taxpayer intends to carry on the business in Papua New Guinea for a limited period only; or
- (b) for any other reason, the taxpayer may not pay tax when it becomes due.

(2) The Commissioner General may require security to be provided -

- (a) by a bond; or
- (b) by an unconditional bank guarantee; or
- (c) in any other form as the Commissioner General determines, including by way of a mortgage over the taxpayer's property but subject to any pre-existing mortgage over the property.

(3) A taxpayer is liable to provide security only if the Commissioner General serves the taxpayer with a notice, in writing, setting out the following -

- (a) the reason why the taxpayer is being required to provide security; and
- (b) the amount of the security required; and
- (c) the manner in which the security is to be provided; and
- (d) the due date for providing the security.

(4) If a taxpayer fails to comply with a notice under Subsection (3), the Commissioner General may recover the amount of the security under Division 3 of this part on the basis that the unpaid security is unpaid tax.

(5) The *Personal Properties Securities Act 2011* does not apply to security provided under this section.

Division 2. - Interest.

39. LATE PAYMENT INTEREST.

(1) In this section -

“Central Bank” has the meaning in the *Central Banking Act 2000*;

“prescribed rate” means the Central Bank rediscount rate as at the commencement of the first day of the period for which interest is calculated under Subsection (2) increased by five percent points;

“tax” does not include interest imposed under this section.

(2) A taxpayer who fails to pay tax on or before the due date for payment is liable for late payment interest at the prescribed rate on the amount of the unpaid tax calculated from the date the tax becomes payable to the date the payment is made.

Tax Administration

(3) Late payment interest paid by a taxpayer under Subsection (2) is to be applied in accordance with Section 52(5) to the extent that the principal amount to which the interest relates is subsequently found not to have been payable.

(4) Late payment interest payable by a taxpayer in respect of withholding tax or a secondary liability is borne personally by the taxpayer and is not recoverable from any other person.

(5) Late payment interest is computed as simple interest and calculated on a daily basis.

(6) The Commissioner General may serve a taxpayer with notice of the amount of late payment interest payable by the taxpayer and the due date for payment.

(7) A notice of the amount of late payment interest payable by a person may be included in any other notice, including a notice of a tax assessment, served by the Commissioner General on the person.

(8) When -

- (a) the Commissioner General notifies a taxpayer in writing of the taxpayer's outstanding tax liability under a tax law (including in a tax assessment); and
- (b) the taxpayer pays the balance notified in full within the time specified in the notification (including late payment interest payable up to the date of the notification),

late payment interest does not accrue for the period between the date of notification and the date of payment.

(9) Interest payable under this section is in addition to any late payment penalty imposed under Section 94 in respect of the late payment of tax.

Division 3. - Recovery of unpaid tax.

40. JUDGMENT DEBT PROCEDURE FOR RECOVERY OF UNPAID TAX.

(1) Any unpaid tax may be sued for and recovered in any court of competent jurisdiction by the Commissioner General suing in his official capacity.

(2) In any suit under Subsection (1), the production of a certificate signed by the Commissioner General stating the name and address of the taxpayer and the amount of tax due is sufficient evidence of the debt for the Court to give judgment with full costs of suit against the taxpayer.

(3) A suit under Subsection (1) for recovery of unpaid tax must be brought within seven years from the date that the tax became payable.

41. TAX A CHARGE ON PROPERTY.

(1) Unpaid tax is a charge upon the property, real or personal of the taxpayer.

(2) A charge created by this section is subject to all mortgages, charges or encumbrances over the property of the taxpayer existing when the charge was created but has priority over all other mortgages, charges or encumbrances.

Tax Administration

(3) When this section applies to real property, the Commissioner General may file a memorandum describing the property so charged and the amount of tax payable with the Registrar of Titles.

(4) If the Commissioner General has filed a memorandum with the Registrar of Titles under Subsection (3), the Registrar, must register the charge without fee against the title of the property charged.

(5) A charge registered under Subsection (4) must not be removed from the Registrar of Titles until the Commissioner General advises the Registrar of Titles that the tax to which the charge relates has been paid.

(6) If any unpaid tax is, by virtue of Subsection (1), a charge on the property of the taxpayer, the Commissioner General may apply by petition to the National Court for the enforcement of the charge and the Court may order -

- (a) the sale of the property or any part of the property; or
- (b) the appointment of a receiver of the rents, profits or income from the property, and that the proceeds of sale or the rents, profits or income is used to pay the tax due and any costs of the Commissioner General in enforcing the charge.

(7) If the amount of tax to which a charge registered under Subsection (4) relates is paid, the Commissioner General must immediately serve notice on the Registrar of Titles requesting the removal of the charge from the real property of the taxpayer and the Registrar must, without fee, remove the charge.

(8) The *Personal Properties Securities Act 2011* does not apply to a charge of property created by this section.

42. RECOVERY OF UNPAID TAX FROM THIRD PARTY.

(1) In this section, "payer", in relation to a taxpayer, means a person who -

- (a) owes or may subsequently owe money to the taxpayer; or
- (b) holds or may subsequently hold money, for or on account of, the taxpayer; or
- (c) holds money on account of some other person for payment to the taxpayer; or
- (d) has authority from some other person to pay money to the taxpayer.

(2) This section applies if a taxpayer is, or will become liable, to pay tax and -

- (a) the taxpayer has not paid the tax on or before the due date for payment; or
- (b) the Commissioner General has reasonable grounds to believe that the taxpayer will not pay the tax on or before the due date for payment.

(3) If this section applies, the Commissioner General may, by notice in writing, require a payer in relation to the taxpayer to pay the amount specified in the notice to the Commissioner General on or before the date specified in the notice.

(4) The following apply to a notice under Subsection (3) -

- (a) the amount specified in the notice as payable by the payer must not exceed the amount of the taxpayer's unpaid tax or the amount that the Commissioner General believes that the taxpayer will not pay on or before the due date; and
- (b) subject to Subsection (5), the amount specified in the notice as payable by the payer must not exceed the amount that the payer owes or may owe to, or holds or may hold for, the taxpayer; and

Tax Administration

- (c) the date for payment by the payer specified in the notice must not be before the date that the amount owed by the payer to the taxpayer becomes due to the taxpayer or held on the taxpayer's behalf; and
- (d) the notice remains in force until the payer pays the amount specified in the notice or the Commissioner General revokes the notice; and
- (e) the notice may specify amounts of tax owing or that may become owing by the taxpayer under more than one tax law.

(5) If a notice served under Subsection (4) requires a payer to deduct amounts from a pension, salary, wages or other remuneration payable at fixed intervals to the taxpayer, the amount required to be deducted by the payer from each payment must not exceed 20 percent of the gross amount of each payment of a pension, salary, wages or other remuneration (after payment of income tax).

(6) A payer who claims to be unable to comply, in whole or part, with a notice under Subsection (3) by reason of lack of moneys owing to, or held for the taxpayer, the person must notify the Commissioner General, in writing, setting out the reasons for the person's inability to comply.

(7) If a notice is served on the Commissioner General under Subsection (6), the Commissioner General must, by notice in writing -

- (a) accept the notification and cancel or amend the notice issued under Subsection (3); or
- (b) reject the notification providing the payer with reasons for the rejection.

(8) A payer who has filed a notice with the Commissioner General under Subsection (6) must not deal with any monies owing to, or held on behalf of, the taxpayer before being served with a notice under Subsection (7).

(9) The Commissioner General must, by notice in writing to the payer, revoke or amend a notice served under Subsection (3) if the taxpayer has paid the whole or part of the tax due or has made an arrangement satisfactory to the Commissioner General for payment of the tax.

(10) The Commissioner General must serve the taxpayer with a copy of a notice served on a payer under this section.

(11) A payer who, without reasonable cause, fails to comply with a notice under this section is personally liable for the amount specified in the notice that is unpaid and the personal liability is a secondary liability for the purposes of this Act.

43. TRANSFERRED TAX LIABILITIES.

- (1) This section applies when all the following conditions are satisfied -
 - (a) a taxpayer (referred to as the "transferor") has a tax liability in relation to a business carried on by the transferor; and
 - (b) the transferor has transferred all or some of the assets of the business to an associate (referred to as the "transferee"); and
 - (c) the transfer was entered into with the purpose, or purposes that include the purpose, or the effect, of rendering the transferor unable to satisfy the tax liability.

(2) When this section applies, the transferee is personally liable for the unpaid tax liability (referred to as the "transferred liability") of the transferor in relation to the business but only to the extent of the value of the assets transferred.

(3) The personal liability of the transferee under Subsection (2) is a secondary liability for the purposes of this Act.

(4) Subsection (2) does not preclude the Commissioner General from recovering the whole or part of the transferred tax liability from the transferor.

44. APPOINTED PERSON.

(1) This section applies to the following persons referred to as an "appointed person" -

- (a) an administrator, executor, receiver, trustee-in-bankruptcy, liquidator, or other person appointed to manage, administer, liquidate, or wind up the affairs of a taxpayer, including a deceased taxpayer; or
- (b) a mortgagee that has taken possession of mortgaged property in Papua New Guinea belonging to a taxpayer.

(2) An appointed person must notify the Commissioner General of -

- (a) the appointment referred to in Subsection (1)(a), within 14 days of the date of appointment; or
- (b) the taking possession of the property referred to in Subsection (1)(b) within 14 days of the date of taking possession of the property.

(3) The Commissioner General must notify the appointed person, in writing, of the amount of any tax that is or will become payable by the taxpayer whose assets are in the possession or under the control of the appointed person, and such notice must be served on the appointed person within two months of the Commissioner General being served with a notice under Subsection (2).

(4) An appointed person must not, without the leave of the Commissioner General, dispose of any asset of the taxpayer until both the following conditions are satisfied -

- (a) the appointed person has furnished all outstanding tax returns of the taxpayer, including an advance return if required by the Commissioner General under Section 13; and
- (b) the appointed person has been notified under Subsection (3) or the two month notification period specified in Subsection (3) has passed and no notice has been served by the Commissioner General on the appointed person.

(5) Subject to Subsection (6), an appointed person -

- (a) must set aside, out of the assets available for the payment of tax due by the taxpayer, assets to the value of the amount notified under Subsection (3), or the whole of the assets if their value is less than the amount notified; and
- (b) is, to the extent of the value of the assets required to be set aside, personally liable for the tax due by the taxpayer and the personal liability is a secondary liability for the purposes of this Act.

(6) Nothing in Subsection (5) prevents an appointed person from paying the following amounts in priority to the tax notified under Subsection (3) -

- (a) a debt that has priority, in law or equity, over the tax notified under Subsection (3); and

Tax Administration

- (b) the expenses properly incurred by the appointed person in such capacity, including the appointed person's remuneration.

(7) If two or more persons are appointed persons in respect of a taxpayer, the obligations and liabilities under this section apply jointly and severally to the appointed persons but may be discharged by any of them.

(8) For the purposes of this section and the definition of "representative" in Section 10(1), a person ceases to be an appointed person in relation to a taxpayer -

- (a) when Subsection (2)(a) applies, on the date that the person ceases to hold the position mentioned in Subsection (2)(a); or
- (b) when Subsection (2)(b) applies, on the date that the person ceases to have possession of the property referred to in Subsection (2)(b).

(9) In this section, the reference to a "taxpayer" includes a deceased taxpayer.

45. LIABILITY FOR TAX PAYABLE BY A COMPANY.

(1) In this section -

"arrangement" means any contract, agreement, plan or understanding whether express or implied and whether or not enforceable in legal proceedings;

"director", in relation to a company, means a person occupying the position of director of the company.

(2) Subject to Subsection (4), if an arrangement has been entered into with the purpose, or purposes that include the purpose, or the effect, of rendering a company unable to satisfy a current or future tax liability under a tax law, every person who was a director or controlling member of the company at the time the arrangement is entered into is jointly and severally liable for the tax liability of the company.

(3) The liability of a director or controlling member under Subsection (2) is a secondary liability for the purposes of this Act.

(4) A director of a company is not liable under this section for the tax liability of the company if the director can establish that he or she received no financial or other benefit from the arrangement and -

- (a) the director has, on becoming aware of the arrangement, formally recorded with the company his or her dissent and notified the Commissioner General, in writing, of the arrangement; or
- (b) the director satisfies the Commissioner General that, at the time the arrangement was entered into -
 - (i) the director was not involved in the executive management of the company; and
 - (ii) the director had no knowledge of, and could not reasonably have been expected to know of the arrangement.

(5) Subject to Section 18(2), to give effect to this section after a company has been liquidated or otherwise ceased to exist, the Commissioner General may make or amend an assessment of the tax liability of the company as if the company had not been liquidated or ceased to exist and serve notice of the assessment on any person to whom Subsection (2) applies.

(6) Nothing in Section 10 limits the liability of a person under this section.

46. SEIZURE AND FORFEITURE OF GOODS.

(1) The Commissioner General may enter any premises or place and seize any goods in respect of which the Commissioner General has reasonable grounds to believe that GST that is, or will become payable in respect of the supply of those goods has not been, or will not be, paid.

(2) The Commissioner General may request a police officer to be present when a seizure of goods is being executed.

(3) Goods seized under this section must be stored in a place approved by the Commissioner General for the storage of seized goods.

(4) Immediately after the seizure of the goods, the Commissioner General must obtain a written statement from the owner of the goods or the person who had custody or control of the goods at the time of seizure stating the quantity and quality of the goods.

(5) If goods have been seized under Subsection (1), the Commissioner General must, within two working days, serve on the owner of the goods or the person who had custody or control of the goods immediately before the seizure, a notice in writing -

- (a) identifying the goods; and
- (b) stating that the goods have been seized under this section and the reason for seizure; and
- (c) setting out the terms for release of the goods; and
- (d) stating that the goods will be forfeited if not claimed within the detention period specified in the notice.

(6) For the purposes of Subsection (5)(d), the detention period is -

- (a) for perishable goods, such period as the Commissioner General considers reasonable having regard to the condition of the goods; or
- (b) for any other goods, a period of not less than 21 days after the seizure of the goods.

(7) The Commissioner General is not required to serve a notice under Subsection (5) if, after making reasonable enquiries, the Commissioner General does not have sufficient information to identify the person on whom the notice should be served.

(8) If Subsection (7) applies, the Commissioner General may serve a notice under Subsection (5) on any person claiming the goods, provided the person has given the Commissioner General sufficient information to enable the notice to be served.

(9) A person that has been served with a notice under Subsection (5) claims goods that have been seized under Subsection (1) by paying, or making an arrangement that is acceptable to the Commissioner General for payment of, the GST payable, or that may become payable, in respect of the supply of the goods.

(10) The Commissioner General may authorise the delivery of goods seized under Subsection (1) to a person who has claimed the goods in accordance with Subsection (9).

(11) Seized goods that have not been claimed within the detention period specified in Subsection (6) are treated as forfeited to the Commissioner General at the end of the detention period and the Commissioner General may sell the goods by public auction in such other manner as the Commissioner General may determine and apply the proceeds of sale in the following order -

- (a) first towards the cost of taking, keeping and selling the forfeited goods as determined by the Commissioner General; and
- (b) then in payment of any GST and any penalty and late payment interest that is, or will become, payable in respect of the supply of the goods.

(12) Nothing in this section precludes the Commissioner General from proceeding under Section 40 if the proceeds of disposal are not sufficient to meet the amounts referred to in Subsection (11)(a) and (b).

(13) Only the Commissioner General or an authorised officer is permitted to exercise powers under this section.

(14) The Commissioner General, authorised officer, or police officer is not liable for any damage resulting from an exercise of power under this section provided the Commissioner General, authorised officer, or police officer has acted in good faith and in accordance with the terms of the section.

47. ADMINISTRATIVE DISTRESS PROCEEDINGS.

(1) In this section, “personal property” includes money.

(2) The Commissioner General may recover unpaid tax owing by a taxpayer by distress proceedings against the personal property of the taxpayer by issuing a notice (referred to as a “distress notice”), in writing, specifying the following -

- (a) the name of the taxpayer; and
- (b) the property against which the distress proceedings are to be executed, including the location of the property; and
- (c) the tax liability to which the distress proceedings relate.

(3) A copy of a distress notice must be served on the taxpayer.

(4) Subject to Section 36(2), does not apply to personal property if there is a prior secured interest over the property that has priority, in law or equity, over the tax specified in the distress notice.

(5) For the purposes of executing distress under a distress notice, the Commissioner General may -

- (a) at any time, enter any premises described in the distress notice; and
- (b) may require a police officer to be present while distress is being executed.

(6) Any property distrained under this section must be -

- (a) identified by the pasting or hanging of a piece of ribbon or cloth in a conspicuous place on the property with a notice attached stating

“PROPERTY IMPOUNDED FOR NOT COMPLYING WITH TAX OBLIGATIONS BY ORDER OF THE COMMISSIONER GENERAL OF THE INTERNAL REVENUE COMMISSION UNDER SECTION 47 OF THE *TAX ADMINISTRATION ACT 2017*”; and

- (b) detained for the period specified in this subsection either at the premises where the distress was executed or at any other secure location approved by the Commissioner General, at the cost of the taxpayer.

Tax Administration

(7) If the taxpayer does not pay the tax liability specified in the distress notice, together with the costs of the distress, within the detention period under Subsection (6)(b), the Commissioner General may -

- (a) in the case of goods, sell the goods by public auction; or
- (b) in the case of negotiable instruments, sell the instrument through a broker at the prevailing market rate; or
- (c) in the case of money (including foreign currency), deposit the money with the Central Bank.

(8) If the tax liability specified in a distress notice is paid before the property is dealt with under Subsection (7), the property must be immediately released to the taxpayer.

(9) The Commissioner General must apply the proceeds of sale or deposit of monies under Subsection (7) as follows:

- (a) first towards the cost of taking, keeping and selling the property distrained as determined by the Commissioner General; and
- (b) then towards payment of the unpaid tax liability of the taxpayer as specified in the distress notice; and
- (c) then towards payment of any other unpaid tax liability of the taxpayer; and
- (d) then the remainder of the proceeds, if any, must be paid to the taxpayer within 45 days of the sale or deposit under Subsection (6).

(10) Nothing in this section precludes the Commissioner General from proceeding under Section 41 with respect to the balance owed by the taxpayer if the proceeds of the sale or deposit are insufficient to meet the tax due and the costs of the distress proceedings.

(11) Only the Commissioner General or an authorised officer is permitted to exercise powers under this section.

(12) The Commissioner General, authorised officer, or police officer is not liable for any damage resulting from an exercise of power under this section provided the Commissioner General, authorised officer, or police officer acted in good faith and in accordance with the terms of the section.

48. TEMPORARY CLOSURE OF BUSINESS PREMISES.

(1) This section applies to a taxpayer when the following conditions are satisfied:

- (a) the taxpayer has failed -
 - (i) to furnish a GST return or a statement required to be furnished under Section 299G(4)(a) of the *Income Tax Act 1959* (referred to as a “salary and wages withholding statement”) on or before the due date; or
 - (ii) to pay GST or tax withheld from salary or wages (referred to as “salary and wages withholding tax”) on or before the due date; and
- (b) the taxpayer has regularly failed to furnish such a return or statement, or pay GST or tax withheld from salary or wages on or before the due date.

(2) When this section applies, the Commissioner General may notify the taxpayer, in writing, of the intention to close down part or the whole of the taxpayer’s business premises for a temporary period not exceeding 14 days unless, within a period of seven days after the date of service of the notice, the taxpayer -

- (a) furnishes all outstanding GST returns and salary and wages withholding statements; and

Tax Administration

(b) pays all outstanding GST, salary and wages withholding tax, and any penalty and late payment interest payable in respect of the unpaid tax.

(3) If a taxpayer fails to comply with a notice under Subsection (2), the Commissioner General may serve the taxpayer with a notice (referred to as a "closure notice") to close down part or the whole of the business premises of that person for a period not exceeding 14 days.

(4) The Commissioner General may, at any time, enter any premises described in a closure notice issued under Subsection (3) for the purposes of executing the closure notice and may require a police officer to be present while the closure notice is being executed.

(5) The Commissioner General or authorised officer must affix in a conspicuous place on the front of the business premises closed down, a notice in the following words:

"CLOSED TEMPORARILY FOR NOT COMPLYING WITH TAX
OBLIGATIONS BY ORDER OF THE COMMISSIONER GENERAL OF THE
INTERNAL REVENUE COMMISSION UNDER SECTION 48 OF THE **TAX
ADMINISTRATION ACT 2017**".

(6) If the return or statement referred to in a closure notice is furnished or GST or withholding tax referred to a closure notice is paid, as the case may be, within the period of closure, the Commissioner General or authorised officer must immediately cancel the notice served under Subsection (3) and arrange for removal of the notice referred to in Subsection (5).

(7) Only the Commissioner General or an authorised officer is permitted to exercise the powers in this section.

(8) The Commissioner General, authorised officer, or police officer is not liable for any damage resulting from an exercise of power under this section provided the Commissioner General, authorised officer, or police officer acted in good faith and in accordance with this section.

49. PRESERVATION OF ASSETS.

(1) This section applies when the Commissioner General has reasonable cause to believe that -

- (a) a taxpayer will not pay the full amount of tax owing when due; and
- (b) the taxpayer has taken, or will take, steps to frustrate the recovery of the tax, including the dissipation of the taxpayer's assets.

(2) When this section applies, the Commissioner General may serve a notice (referred to as a "preservation notice") on a financial institution requiring the financial institution, for a period not exceeding 14 days as set in the notice, to -

- (a) block^a the accounts of the taxpayer; and
- (b) freeze access to any cash, valuables, precious metals or other assets of the taxpayer in a safe deposit box held by the financial institution; and
- (c) provide information relating to the taxpayer's accounts or the contents of the taxpayer's safe deposit box.

(3) A preservation notice served on a financial institution must specify the name and last known address of the taxpayer to which the notice applies.

Tax Administration

(4) When a preservation notice has been served on a financial institution, the Commissioner General may make an assessment, including an advance assessment, of the tax payable by the taxpayer for the current and any prior tax period.

(5) A financial institution that, without reasonable cause, fails to comply with a preservation notice served on the financial institution is personally liable for the tax liability of the taxpayer to the extent of the accounts and assets held by the financial institution.

(6) The personal liability of a financial institution under Subsection (5) is a secondary liability for the purposes of this Act.

(7) Only the Commissioner General or an authorised officer is permitted to exercise powers under this section.

50. TAXPAYER LEAVING PAPUA NEW GUINEA INDEFINITELY.

(1) This section applies if the Commissioner General has reasonable grounds to believe that an individual may leave Papua New Guinea indefinitely when -

- (a) the individual has an unpaid tax liability or the individual will become liable for tax after leaving Papua New Guinea; or
- (b) a company in which the individual is a controlling member has an unpaid tax liability or the company will become liable for tax after the individual leaves Papua New Guinea.

(2) When this section applies, the Commissioner General may -

- (a) issue a certificate containing particulars of the tax liability referred to in Subsection (1) to the Chief Migration Officer and request that the Chief Migration Officer prevent the individual from leaving Papua New Guinea unless the individual produces a tax clearance certificate covering the departure; and
- (b) issue an order to the owner or charterer, or an agent or other representative of the owner or charterer in Papua New Guinea, of a ship or aircraft preventing the issue of an authority for the individual to travel from Papua New Guinea unless the individual produces a tax clearance certificate covering the departure.

(3) The Commissioner General must serve a copy of a certificate or order issued under Subsection (2) on the individual named in the certificate or order if it is practicable to do so.

(4) Upon application by an individual about to leave Papua New Guinea, the Commissioner General must issue a tax clearance certificate stating that the Commissioner General has no objection to the departure of the individual from Papua New Guinea if -

- (a) the tax liability specified in the certificate issued under Subsection (2)(a) has been paid in full; or
- (b) an arrangement satisfactory to the Commissioner General is entered into for payment of the tax liability specified in the certificate issued under Subsection (2)(a).

(5) A person who, in contravention of Subsection (2)(b), permits an individual to travel on a ship or aircraft is personally liable to pay the tax due or that will become due by the individual and the personal liability is a secondary liability for the purposes of this Act.

Tax Administration

(6) If a ship or aircraft has taken on board passengers who have presented tax clearance certificates issued under Subsection (4), the owner or charterer, or an agent or representative of the owner or charterer in Papua New Guinea, must, by the end of the first working day after the ship or aircraft has departed from Papua New Guinea, or as soon as practicable thereafter, lodge with the Commissioner General -

- (a) the certificates presented by passengers; and
- (b) a list showing the name, last known address in Papua New Guinea, and place of destination of every person (other than crew members or staff of the ship or aircraft) taken on board the ship or aircraft.

(7) This section does not apply to travel by a member of the Defence Force who is certified by a person authorised by the Minister for Defence to be travelling in the course of duty as such member.

PART IX. - REFUNDS AND RELIEF FROM TAX:

51. APPLICATION OF TAX CREDITS.

(1) In this section, "refundable tax credit" means a tax credit allowed under -

- (a) the *Income Tax Act 1959*; or
- (b) under Section 34(2) of this Act.

(2) If the total amount of refundable tax credits allowed to a taxpayer for a tax year exceeds the income tax liability of the taxpayer for the year, the Commissioner General must apply the excess in the following order -

- (a) first to pay any unpaid tax (other than withholding tax) owing by the taxpayer under the tax law to which the tax credits relate; and
- (b) then to pay any unpaid tax (other than withholding tax) owing by the taxpayer under any other tax law; and
- (c) subject to Subsections (3) and (4), then refund the remainder, if any, to the taxpayer within 45 days of the date that the taxpayer filed the tax return for the tax period to which the tax credits relate.

(3) With the written agreement of the taxpayer, an amount referred to in Subsection (2)(c) may be carried forward for the payment of any future tax liability of the taxpayer under any tax law.

(4) If, at the time that an amount is to be refunded to a taxpayer under Subsection (2)(c) the taxpayer has failed to furnish a tax return for a tax period, the Commissioner General may withhold payment of the refund until the taxpayer has furnished all outstanding tax returns.

(5) A refund of tax under this section may be made without further appropriation than this section.

52. REFUND OF OVERPAID TAX.

(1) If a taxpayer believes that they have overpaid tax under a tax law, the taxpayer may apply, in writing, to the Commissioner General for a refund of the overpaid tax.

(2) This section applies only when a refund of overpaid tax does not require the Commissioner General to make an amended assessment.

(3) An application for a refund under Subsection (1) must be:

- (a) in the approved form; and
- (b) accompanied by documentary evidence of the overpayment of tax; and
- (c) lodged within three years of the date on which the tax was paid.

Tax Administration

(4) The Commissioner General must serve the taxpayer with notice in writing of the decision on an application for a refund within 60 days of the application being lodged with the Commissioner General.

(5) If a taxpayer has made an application for a refund in accordance with Subsections (1) and (3) and the Commissioner General is satisfied that the taxpayer is entitled to a refund of overpaid tax under a tax law, the Commissioner General must apply the amount of the refund in the following order -

- (a) first to pay any unpaid tax (other than withholding tax) owing by the taxpayer under the tax law; and
- (b) then to pay any unpaid tax (other than withholding tax) owing by the taxpayer under any other tax law; and
- (c) subject to Subsections (6) and (7), then refund the remainder, if any, to the taxpayer within 14 days of the date that the Commissioner General served the taxpayer with notice under Subsection (4).

(6) With the written agreement of the taxpayer, an amount referred to in Subsection (5)(c) may be carried forward for the payment of any future tax liability of the taxpayer under any tax law.

(7) If, at the time that an amount is to be refunded to a taxpayer under Subsection (5)(c) a taxpayer has failed to furnish a tax return for a tax period, the Commissioner General may withhold payment of the refund until the taxpayer has furnished all outstanding tax returns.

(8) This section is subject to Section 53, which applies to a refund of GST.

(9) A refund of tax under this section may be made without further appropriation than this section.

53. REFUND OF OVERPAID GOOD AND SERVICES TAX.

(1) Subject to Subsection (4), if the Commissioner General is satisfied that a GST registered person has a negative amount for a taxable period under the *Goods and Services Act 2003*, including as a result of a change in accounting basis, the negative amount is to be applied as follows -

- (a) the negative amount is carried forward and allowed as a deduction against output tax in the next following taxable period and any part of the negative amount not deducted in that period is carried forward to the next following taxable period and allowed as a deduction against the output tax in that period; and
- (b) any amount of the negative amount not deducted under Paragraph (a) is, upon application by the GST registered person, to be applied in accordance with Section 52(5)(b) and (c).

(2) An application under Subsection (1)(b) must be furnished with the Commissioner General in the approved form and within 28 days of the end of the carry forward period in Subsection (1)(a) or within such further time as the Commissioner General may allow.

(3) If a GST registered person has a negative amount for more than one taxable period, the negative amount for the earliest taxable period is allowed as a deduction first.

(4) If a negative amount of a GST registered person referred to in Subsection (1) is a regular feature of the registered person's taxable activity, the Commissioner General must, upon application by the registered person, refund the negative amount within 28 days after the person has lodged the refund application.

(5) An application under Subsection (4) must be furnished with the Commissioner General in the approved form and within 60 days after the end of the taxable period to which the negative amount relates or within such further time as the Commissioner General may allow.

(6) Subject to Subsection (7), if a GST registered person has overpaid GST in circumstances other than specified in Subsection (1), the person may apply for a refund of the overpaid GST in accordance with Section 52.

(7) If an overpayment of GST referred to in Subsection (6) relates to a supply made by a GST registered person to an unregistered person, an application for a refund may be made only if the GST registered person has refunded the overpaid GST to the unregistered person.

54. RECOVERY OF ERRONEOUSLY PAID REFUND.

(1) When a refund has been erroneously paid to a taxpayer under this part, the taxpayer is liable to repay the amount of the erroneous refund by the date specified in a notice of demand served on the taxpayer by the Commissioner General.

(2) If a refund has been erroneously paid due to an error made by the taxpayer in claiming the refund, the taxpayer may be liable to pay late payment interest calculated for the period commencing on the date that the refund was erroneously paid and ending on the date that the refund was repaid.

(3) An amount owing by a taxpayer under Subsection (1) that is not paid on or before the due date specified in the notice of demand is treated as unpaid tax of the taxpayer for the purposes of Part VIII and Sections 10 and 94.

55. RELEASE OF TAX LIABILITY IN CASE OF HARDSHIP.

(1) In this section -

“accountable officer” means the accountable officer of the Ministry responsible for the Commission under the *Public Finances (Management) Act 1995*;

“Finance Departmental Head” has the meaning under the *Public Finances (Management) Act 1995*;

“tax” does not include withholding tax and goods and services tax that has been collected by the taxpayer;

“taxpayer” means a taxpayer who is an individual.

(2) Subject to Subsection (3), the Commissioner General, in consultation with the Departmental Head, may release a taxpayer or the representative of a deceased taxpayer, in whole or part, from the payment of a tax liability under a tax law by the taxpayer or the representative of a deceased taxpayer if satisfied that -

(a) the payment of the full amount of tax owing by the taxpayer will cause serious financial hardship to the taxpayer; or

(b) owing to the death of the taxpayer, the payment of the full amount of tax owing by the deceased taxpayer will cause serious financial hardship to the dependents of the deceased taxpayer.

(3) If the amount of the tax liability to which Subsection (1) applies exceeds the amount prescribed in the Regulations, the tax liability can be released only by decision of the Minister.

(4) If a decision of the Minister or Commissioner General under this section to release a taxpayer or the representative of a deceased taxpayer from the payment of a tax liability was based on fraudulent or misleading information, the released tax liability is to be reinstated.

- (5) The accountable officer must -
 - (a) maintain a record of the amount of each tax liability released under this section together with the reasons for the release; and
 - (b) notify the Accountant General of the record of tax liabilities released on a quarterly basis.

56. POWER OF COMMISSIONER GENERAL IN RESPECT OF SMALL AMOUNTS.

Notwithstanding anything in any tax law, the Commissioner General may refrain from issuing a notice of a tax assessment, or collecting or refunding tax if the balance payable (including after allowance of a tax credit for provisional or withholding tax paid under the *Income Tax Act 1959*, or input tax under the *Goods and Services Tax Act 2003* does not exceed K5.00.

PART X. - INFORMATION COLLECTION.

57. CONFIRMATION OF INFORMATION.

(1) The Commissioner General may serve a notice, in writing, on a person requiring the person to confirm the correctness of any information specified in the notice by the date specified in the notice.

(2) A person who is served with a notice under Subsection (1) may, by notice in writing to the Commissioner General -

- (a) confirm the correctness of the information; or
- (b) correct or clarify the information; or
- (c) deny the correctness of the information.

(3) The response of a person under Subsection (2) to a notice served under Subsection (1) is treated for all purposes under the tax laws as information provided to the Commissioner General by the person.

(4) If a person served with a notice under Subsection (1) fails to respond to the notice within the time specified in the notice or such further time as the Commissioner General may allow, the information specified in the notice is treated for all purposes of the tax laws as information provided to the Commissioner General by the person.

(5) When Subsection (4) applies, the person may correct the information within two years from the date of service of the notice and the corrected information is treated for all purposes under the tax laws as information provided to the Commissioner General by the person.

58. POWER TO ENTER AND SEARCH.

(1) In this section and Section 60 -

“data storage device” means a computer, mobile electronic device, portable information storage media, or any other electronic device for the storage of information;

“electronic information storage media” means a data storage device and any other facility, including an electronic facility, for the electronic storage of information.

(2) For the purposes of administering any tax law, the Commissioner General -

- (a) has the right, at all times and without notice, to full and free access to any premises, place, property, records or electronic information storage media; and

Tax Administration

- (b) may make an extract or copy of any records or information stored on electronic information storage media to which access is obtained under Paragraph (a); and
- (c) may seize records that, in the opinion of the Commissioner General, affords evidence that may be material in determining the tax liability of a taxpayer; and
- (d) may retain any records seized under Paragraph (c) for as long as they may be required for determining a taxpayer's tax liability or for any proceeding under a tax law; and
- (e) may, if a hard or electronic copy of information stored on a data storage device is not provided, seize and remove the device from the premises and retain the device for as long as is necessary to copy the information required.

(3) An IRC officer is not entitled to enter or remain on any premises or place if, upon request by the owner or lawful occupier, the officer is unable to produce the Commissioner General's written authorisation permitting the officer to exercise powers under Subsection (2).

(4) The Commissioner General may require a police officer to be present for the purposes of exercising powers under this section.

(5) The owner or lawful occupier of the premises or place to which an exercise of power under Subsection (2) relates must provide all reasonable facilities and assistance to the Commissioner General including -

- (a) answering questions relating to the investigation to which the exercise of power relates either orally or in writing; and
- (b) providing access to information stored on an electronic information storage media, including the entering of a password or other basis of authentication for access to the media; and
- (c) providing access to decryption information necessary to decrypt data to which access is sought under this section.

(6) A person whose records or data storage device have been seized under Subsection (2) may examine them and make copies, at the person's expense, during office hours and on such terms and conditions as the Commissioner General may specify.

(7) The Commissioner General must sign for all records and data storage devices removed and retained under this section and -

- (a) for records, must return the records to the owner within 14 days after the conclusion of the investigation and any related proceedings; and
- (b) for a data storage device, must return the device to the owner immediately after the data on the device has been copied in accordance with Subsection (2)(e).

(8) If any records or data storage device removed and retained under Subsection (2) is lost or destroyed while in the possession of the Commissioner General, the Commissioner General must appropriately compensate the owner for the loss or destruction.

(9) This section has effect notwithstanding -

- (a) any law relating to privilege (including legal professional privilege) or the public interest with respect to access to premises or places, or the production of any property or records; or
- (b) any contractual duty of confidentiality.

(10) Only the Commissioner General or an authorised officer is permitted to exercise the powers in this section.

59. ADMINISTRATIVE SUMMONS.

(1) For the purposes of administering any tax law, the Commissioner General may, by notice in writing, require any person, whether or not liable for tax under a tax law, to -

- (a) furnish, within the time specified in the notice, any information that may be required by the notice concerning the tax affairs of that person or any other person; or
- (b) attend, at the time and place specified in the notice, to give evidence concerning the tax affairs of that person or any other person; or
- (c) produce, within the time and at the place specified in the notice, any records or data storage devices in the custody or under the control of the person relating to the tax affairs of the person or any other person.

(2) If a notice served under Subsection (1) requires the production of records or a data storage device, it is sufficient if such records or device are described with reasonable certainty.

(3) A notice under Subsection (1) must be served personally on the person to whom it is directed or left at the person's last known usual place of business or abode and the certificate of service signed by the person serving the notice is evidence of the facts stated therein.

(4) The Commissioner General may require the information or evidence provided on examination referred to in Subsection (1) to be -

- (a) given on oath or affirmation and, for that purpose, the Commissioner General may administer the oath or affirmation; or
- (b) verified by statutory declaration or otherwise.

(5) This section has effect notwithstanding -

- (a) any law relating to privilege (including legal professional privilege) or the public interest with respect to access to premises or places, or the production of any property or records; or
- (b) any contractual duty of confidentiality.

(6) The Regulations may prescribe scales of expenses to be allowed to witnesses required to attend and give evidence under this section.

60. AUDIT OF TAXPAYER'S TAX AFFAIRS.

(1) The Commissioner General may select any taxpayer for an audit for the purposes of a tax law having regard to -

- (a) the taxpayer's history of compliance or non-compliance with that tax law or any other tax law; and
- (b) the amount of tax payable by the taxpayer; and
- (c) the class of business conducted by the taxpayer; and
- (d) any other matter that the Commissioner General considers relevant to ensuring the collection of tax due.

(2) The fact that a taxpayer has been audited in a tax period does not preclude the taxpayer from being audited again in the next and following tax periods if there are reasonable grounds for the audits, particularly having regard to the matters referred to in Subsection (1).

(3) An audit may be conducted for the purposes of more than one tax.

61. IMPLEMENTATION OF MUTUAL ADMINISTRATIVE ASSISTANCE AGREEMENTS.

(1) If a tax treaty or a mutual administrative assistance agreement, having legal effect in Papua New Guinea, provides for exchange of information or reciprocal assistance in the recovery of tax, service of process or other administrative obligation, the Commissioner General must use the powers available under this Act or any other law to meet Papua New Guinea's obligations under the treaty or agreement on the basis that a reference in this Act or other law to -

- (a) "tax" includes a foreign tax to which the exchange of information or reciprocal assistance relates; and
- (b) "unpaid tax" includes an amount specified in Paragraph (a) that has not been paid on or before the due date; and
- (c) "taxpayer" includes a person liable for an amount specified in Paragraph (a); and
- (d) "tax law" includes the law under which a foreign tax specified in Paragraph (a) is imposed.

(2) If the person holding the office of the Papua New Guinea competent authority under a tax treaty or mutual administrative assistance agreement is not the Commissioner General or other IRC officer, the person has all the powers of the Commissioner General under this Act for the purposes of meeting the person's obligations under the treaty or agreement.

PART XI. - TAX CLEARANCE.

62. TAX CLEARANCE CERTIFICATES.

(1) A person is required to produce a tax clearance certificate to a relevant authority in the circumstances prescribed in the Regulations.

(2) A person to whom Subsection (1) applies must apply, in the approved form, to the Commissioner General for the issue of a tax clearance certificate.

(3) Subject to Subsection (4), the Commissioner General must issue a tax clearance certificate to an applicant under Subsection (2) when satisfied that -

- (a) the applicant has no unpaid tax liabilities or the applicant was not a taxpayer for the previous year or years; or
- (b) if the applicant does have an unpaid tax liability, the applicant has entered into an arrangement satisfactory to the Commissioner General for the payment of the liability.

(4) The Commissioner General must issue the applicant with a tax clearance certificate or a notice refusing to issue a tax clearance certificate, as the case may be, within 14 days of the application being lodged with the Commissioner General.

(5) Subject to Subsection (6), a tax clearance certificate issued by the Commissioner General is valid for a period of 12 months from the date of issue or such longer period as the Commissioner General determines.

(6) The Commissioner General must revoke a tax clearance certificate issued to a person if, after issue of the certificate and before expiry under Subsection (5), the person fails to satisfy Subsection (3).

63. OTHER ADVICE PROVIDED BY THE INTERNAL REVENUE COMMISSION.

No guideline, publication, tax circular, or other advice (oral or in writing) provided by the IRC is binding on the Commissioner General.

PART XII. - COMMUNICATIONS, FORMS AND NOTICES.

64. OFFICIAL LANGUAGES.

The official language of communications in relation to the tax laws is English and the Commissioner General may refuse to recognise any communication or document that is not in the official language.

65. FORMS AND NOTICES; AUTHENTICATION OF DOCUMENTS.

(1) The Commissioner General must make approved forms and other documents required for the purposes of the tax laws available to the public at offices of the IRC and at such other locations, or by mail or such other means as the Commissioner General may determine, including making them available for downloading from the IRC's website, and publication of forms and documents in the *National Gazette* is not required.

(2) A notice or other document issued or served by the Commissioner General under a tax law is sufficiently authenticated if the name or title of the Commissioner General, or authorised officer, is printed, stamped, or written on the document, or the electronic signature of the Commissioner General or authorised officer is attached to the notice or document.

66. FURNISHING DOCUMENTS IN THE APPROVED FORM.

(1) A document is furnished by a person in the approved form under the tax laws when the document -

- (a) is in the approved form; and
- (b) contains the information as required by the form; and
- (c) includes any attached documents required by the form; and
- (d) is signed as required by the form; and
- (e) is furnished as specified in Section 67.

(2) Subject to Subsection (3), the Commissioner General, Chairperson or Registrar, as the case may be, must immediately notify a taxpayer, in writing, when a document furnished by a taxpayer does not satisfy Subsection (1).

(3) The Commissioner General, Chairperson or Registrar, as the case may be, may decide to accept a document that is not furnished in the approved form if the document has been furnished in a form that contains substantially the information required by the approved form for the document.

67. FURNISHING OF DOCUMENTS.

(1) Subject to this Act and except as otherwise provided in a tax law, a person must furnish a tax return or other documents with the Commissioner General in the prescribed manner.

(2) If a person fails to furnish a tax return or other documents as required under a tax law, the Commissioner General may, by notice in writing, require the person to furnish the return or other document within 21 days of the date of service of the notice or such later date as the Commissioner General may specify in the notice.

Tax Administration

(3) Subject to Subsection (4), a person may apply, in writing, to the Commissioner General for an extension of time to furnish a document required under a tax law.

(4) Subsection (3) applies only in relation to a document for which there is no specific provision for an application for an extension of time under this Act or the tax law requiring the furnishing of the document.

(5) The Commissioner General may, upon satisfaction that there is reasonable cause, grant an application under Subsection (3) and must serve notice of the decision on the applicant.

68. DUE DATE FOR FURNISHING DOCUMENTS AND PAYING TAX.

If the due date under a tax law for -

- (a) furnishing a tax return, application, notice, statement or other document; or
- (b) the payment of tax; or
- (c) the taking of any other action under a tax law,

is a Saturday, Sunday or a public holiday in Papua New Guinea, the due date is the next business day.

69. SERVICE OF NOTICES.

(1) In this section, "person" includes the person's representative or registered tax agent.

(2) Subject to this Act and except as otherwise provided in a tax law, a notice or other document required to be served by the Commissioner General on a person for the purposes of a tax law is treated as properly served on the person if -

- (a) personally served on the person; or
- (b) left at the person's usual or last known place of abode or business address in Papua New Guinea as stated in any communication by the person with the Commissioner General; or
- (c) sent by registered post to the person's current address for service of notices or, if no address for service has been provided by the person to the Commissioner General, to the person's last known address as stated in any communication by the person with the Commissioner General; or
- (d) transmitted electronically to the person in accordance with Section 70(3) to the person's last known electronic contact information as stated in any communication by the person with the Commissioner General.

(3) The validity of service of a notice or other document under a tax law cannot be challenged after the notice or document has been wholly or partly complied with.

70. ELECTRONIC TAX RETURNS, NOTICES AND OTHER DOCUMENTS.

(1) Notwithstanding the other provisions of this Act and for the purposes of a tax law, the Commissioner General may authorise the following to be done electronically through a computer system or mobile electronic device -

- (a) the furnishing of an application for a TIN or registration; and
- (b) the furnishing of a tax return or other document; and
- (c) the payment of tax; and
- (d) the payment of a refund of tax; and
- (e) the service of any document by the Commissioner General; and
- (f) the doing of any other act or thing that is required or permitted to be done under a tax law.

Tax Administration

(2) Subject to Subsection (4), the Commissioner General may direct a person to do anything referred to in Subsection (1) electronically through the use of a computer system or mobile electronic device.

(3) Subject to Subsection (4), the Commissioner General may do anything referred to in Subsection (1) electronically through the use of a computer system or mobile electronic device.

(4) Subsections (2) and (3) do not apply to a taxpayer if the Commissioner General is satisfied that the taxpayer does not have the capacity to receive or make communications or payments electronically.

(5) For the avoidance of doubt, an electronic communication made by, or to the Commissioner General pursuant to Subsection (2) or (3) is treated as a notice in writing.

(6) A taxpayer who furnishes a tax return and pays tax electronically under this section must continue to furnish tax returns and pay tax in that manner unless otherwise authorised by the Commissioner General to use some other method of furnishing a tax return or paying tax.

(7) A taxpayer who fails to file a tax return or pay tax electronically as required under Subsection (6) is liable to pay a manual processing fee as prescribed in the Regulations unless the taxpayer provides the Commissioner General with adequate reasons for the failure.

(8) Part VIII and Sections 10, 51(1)(b), 52(5)(b), and 94 apply to a manual processing fee payable by a taxpayer under Subsection (7) on the basis that the fee is "tax" payable by the taxpayer.

(9) The Regulations may provide for procedural rules for the electronic filing and service of documents, and the electronic payment of tax.

71. DOCUMENTS DULY FURNISHED.

(1) A tax return, statement, form, or other document purporting to be furnished or lodged under a tax law by, or on behalf of, a person is, for all purposes of the tax law, treated as having been furnished or lodged by the taxpayer or with the taxpayer's authority unless the contrary is proved.

(2) A person signing a tax return, statement, form, or other document referred to in Subsection (1) is treated as having full knowledge of the contents of the tax return, statement, form, or other document.

72. VALIDITY OF TAX AND REVIEWABLE DECISIONS.

The validity of a tax or reviewable decision, or a notice of a tax or reviewable decision, or any other document purporting to be made or executed under a tax law by the Commissioner General -

(a) cannot be quashed or deemed to be void or voidable for want of form; and
(b) is not affected by reason of any mistake, defect, or omission therein,
if it is, in substance and effect, in conformity with the tax law under which it has been made, issued, or executed and the person assessed, intended to be assessed, or affected by the decision or document, is designated in it according to common understanding.

73. RECTIFICATION OF MISTAKES.

If a notice of a tax assessment or other document served by the Commissioner General contains a mistake that is apparent from the record and the mistake does not involve a dispute as to the interpretation of the law or facts of the case, the Commissioner General may, for the purposes of rectifying the mistake, amend the notice or document any time before the expiry of three years from the date of serving the notice of the tax assessment or document.

PART XIII. - ADMINISTRATION.

Division 1. - Administration of the tax laws.

74. COMMISSIONER GENERAL.

The Commissioner General has responsibility for administration of this Act.

75. CONFIDENTIALITY.

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

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

- (3) The confidentiality obligation specified in Subsections (1) and (2) applies to -
- (a) a person employed or engaged by the Commission in any capacity, including as an independent contractor; and
 - (b) a former IRC officer, employee, or independent contractor of the Commission; and
 - (c) a police officer when performing duties under this Act.

(4) Nothing in this section prevents an IRC officer from disclosing a document or information to -

- (a) an IRC officer for the purposes of carrying out a duty arising under a tax law; or
- (b) a Customs officer for the purposes of carrying out any duty, power or function under the Customs legislation; or
- (c) the Tax Review Tribunal or a Court in relation to proceedings under a tax law; or
- (d) a person in the service of the government in the statistics department if such disclosure is necessary for the performance of official duties; or
- (e) the Auditor-General or a person authorised by the Auditor-General if such disclosure is necessary for the performance of official duties; or
- (f) the Controller of Foreign Exchange acting under, or in accordance with, Section 61 or 61A of the *Central Banking Act* (Chapter 138); or
- (g) a Review Tribunal appointed under Section 12(1) of the *Industrial Development (Wage Subsidy) Act* (Chapter 110B); or
- (h) the competent authority of the government of a foreign country with which Papua New Guinea has entered into an agreement providing for the exchange of information, to the extent permitted under that agreement; or

Tax Administration

- (i) the Bank of Papua New Guinea, or any officer thereof, exercising powers and functions of the Bank of Papua New Guinea pursuant to Section 7 of the ***Superannuation (General Provisions) Act 2000***; or
- (j) any police officer of the Royal Papua New Guinea Constabulary exercising powers and functions under Sections 14(e) and (f) of the ***Proceeds of Crime Act 2005***; or
- (k) the Ombudsman Commission or any officer thereof exercising powers and functions under the ***Organic Law on the Duties and Responsibilities of Leadership***; or
- (l) the Chief Collector of Taxes of the Autonomous Region of Bougainville or his delegate; or
- (m) an officer of the relevant division of the Department of Treasury approved by the Commissioner General to receive such information for the purposes of allowing that officer whose duty is to estimate or analyse taxation revenues or cost policy proposals and information that does not include the name, contact details or taxpayer identification number of any taxpayer; or
- (n) an officer of the relevant division of the Department of Treasury to receive such information for the purposes of enabling the Department of Treasury to report on the tax incentives available to particular entities or projects; or
- (o) an officer of the National Statistics Office approved by the Commissioner General to receive such information for the purpose of enabling the National Statistics Office to perform its functions or exercise its powers under the ***Statistical Services Act 1980*** and information that does not include the name, contact details or tax identification number of any entity; or
- (p) the Extractive Industries Transparency Initiative Secretariat or such equivalent body for purposes of reporting on the extractive industry in accordance with the Initiative; or
- (q) the Financial Analysis and Supervision Unit for purposes of carrying out their function under the ***Anti-Money Laundering and Counter Terrorist Financing Act 2015***; or
- (r) any other person with the written consent of the person to whom the document or information relates.

(5) An IRC officer is permitted to disclose a document or information under Subsection (2) only to the minimum extent necessary to achieve the object for which the disclosure is permitted.

(6) The confidentiality obligation in Subsections (1) and (2) also extends to a person receiving a document or information under Subsection (2) as if the person were an IRC officer.

(7) Notwithstanding Subsection (4) and any other law, and subject to Subsection (8), any information obtained by the Papua New Guinea competent authority from the competent authority of a country with which Papua New Guinea has entered into a tax treaty or mutual administrative assistance agreement may be disclosed only to the extent permitted under the treaty or agreement.

(8) Subsection (7) applies only to the extent that the information has not been provided to the Commissioner General, including in accordance with Section 57.

76. EXCHANGE OF INFORMATION.

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

Tax Administration

(2) Notwithstanding Section 75, if the Commissioner General has reasonable grounds to believe that a taxpayer has deliberately engaged in a transfer pricing manipulation that may affect the taxpayer's liability under another Act (other than a tax law), the Commissioner General may, at his absolute discretion, disclose any document or information as is necessary to enable any officer, who has responsibility for the administration of the other Act so that the officer can take action against the taxpayer under the other Act.

(3) Whenever it is practical to do so, the Commissioner General can disclose any document or information under Subsection (2) only to the Departmental Head of the relevant Department to which the disclosure relates.

(4) Section 75(4) applies to a person receiving documents or information under this section as if the person were an IRC officer.

Division 2. - Tax Review Tribunal.

77. ESTABLISHMENT OF TAX REVIEW TRIBUNAL.

There is hereby established a Tax Review Tribunal to hear applications for review of reviewable decisions.

78. APPOINTMENT OF MEMBERS OF THE TAX REVIEW TRIBUNAL.

(1) The Tax Review Tribunal is constituted by 4 members appointed by the Minister.

(2) Subject to Subsection (3), an individual may be appointed as a member of the Tribunal only if the individual satisfies one of the following:

- (a) the individual is admitted to practice as a lawyer under the *Lawyers Act 1986* and has significant experience in tax or commercial law; or
- (b) the individual is a qualified accountant who has significant experience in tax matters; or
- (c) subject to Subsection (3)(a), the individual was previously engaged as an IRC officer with significant technical experience in tax matters; or
- (d) the individual, including an individual from outside Papua New Guinea, has special knowledge, experience, or skills relevant to the functions of the Tribunal.

(3) The following individuals cannot be appointed as member of the Tribunal -

- (a) an individual currently employed as an IRC officer; or
- (b) an individual who has ceased to be an IRC officer for less than two years; or
- (c) an individual who has been liable for a penalty under Section 92(1)(a), 95(2)(a), 96(2)(a), or 97, or a penalty or additional tax under a similar provision in a tax law; or
- (d) an individual who has been convicted of an offence under a tax law; or
- (e) an individual who is an undischarged bankrupt.

(4) The Minister must, in accordance with the Regulations, appoint a member to act as Chairperson of the Tribunal.

(5) A member of the Tribunal -

- (a) may be appointed as either a full-time or part-time member; and
- (b) is appointed for a period of three years and is eligible for re-appointment for a further term of three years; and

Tax Administration

(c) holds office on such terms and conditions, including in relation to remuneration, as the Minister determines.

- (6) The Minister must terminate a member, by notice in writing, who -
- (a) becomes employed as an IRC officer; or
 - (b) becomes liable for a penalty as specified in Subsection (3)(c); or
 - (c) is convicted of an offence under a tax law; or
 - (d) becomes an undischarged bankrupt; or
 - (e) resigns from the office of member by notice in writing to the Minister; or
 - (f) is unable to perform the duties of the office of member; or
 - (g) engaged in proven misconduct, including failing to disclose a conflict of interest as required under Section 80(7).

(7) A member appointed to the Tax Review Tribunal is not liable to any action or other proceeding for damages for, or in respect of, any act done or omitted to be done by the member in good faith in the exercise or performance, or purported exercise or performance, of a power, function or duty conferred on him or her under this division.

79. REVIEW OF REVIEWABLE DECISIONS.

(1) A person dissatisfied with a reviewable decision may apply to the Tax Review Tribunal for review of the decision.

- (2) An application under Subsection (1) must be -
- (a) in the approved form; and
 - (b) filed with the Tribunal within 28 days after being served with notice of the reviewable decision; and
 - (c) accompanied by the prescribed fee.

(3) The Tax Review Tribunal may, upon application in writing, extend the time for making an application to the Tribunal for a review of a reviewable decision.

(4) An applicant to the Tax Review Tribunal must serve a copy of the application on the Commissioner General within seven days of filing the application with the Tribunal.

80. HEARINGS BY TAX REVIEW TRIBUNAL.

(1) The quorum of the Tax Review Tribunal for a particular hearing is 1 or 3 members at the discretion of the Chairperson.

(2) In hearing an application for review of a reviewable decision, the Tribunal may exercise all the powers of the Commissioner General under the tax law relating to the making of the reviewable decision.

(3) A hearing before the Tribunal is to be conducted with as little formality and technicality as possible and -

- (a) the Tribunal is not bound by the rules of evidence and may inform itself on any matter in such manner as it thinks appropriate; and
- (b) the Tribunal has the same powers as a Magistrate for the purposes of summoning persons to give evidence or requiring persons to produce records relevant to a hearing of the Tribunal; and
- (c) the Chairperson may make rules for the conduct of hearings before the Tribunal.

Tax Administration

(4) At least 28 days before the date fixed for a hearing before the Tribunal, the Chairperson must, by notice in writing, advise the applicant and the Commissioner General of the date on, and place at, which the hearing will be held.

(5) At every hearing of the Tribunal, the applicant and the Commissioner General are entitled to appear in person or by representation.

(6) The hearings of the Tribunal are to be open to the public unless the Tribunal determines that the hearing should be held in camera.

(7) A member of the Tribunal who has a material, pecuniary, or other interest in any proceeding that could conflict with the proper performance of the member's functions must disclose the interest to -

- (a) in the case of the Chairperson, the Minister who must record the interest, and the Chairperson must not take part in that proceeding; or
- (b) for any other member, the Chairperson who must record the interest, and such member must not take part in that proceeding.

(8) The Tribunal may direct that the parties attempt to resolve the dispute that is the subject of a hearing before the Tribunal by mediation, conciliation, or other alternative dispute resolution procedure.

81. DECISION OF TAX REVIEW TRIBUNAL.

(1) Subject to Subsection (2), the Tax Review Tribunal must hear and determine an application under Section 79 for review of a reviewable decision and make a decision on the application as set out in this section.

(2) The Tribunal may, at any time, dismiss an application for review of a reviewable decision if the application is frivolous or vexatious.

(3) Subject to Subsection (4), if an application for review concerns a tax assessment, the Tribunal may make an order to -

- (a) affirm, reduce, or otherwise vary the tax assessment; or
- (b) refer the tax assessment to the Commissioner General for reconsideration in accordance with the directions of the Tribunal.

(4) If, in considering an application for review of a reviewable decision involving a tax assessment, the Tribunal is of the view that the amount of tax assessed should be increased, the Tribunal must remit the tax assessment to the Commissioner General in accordance with Subsection (3)(b).

(5) If an application for review concerns a reviewable decision other than a tax assessment, the Tribunal may make an order to affirm, vary, or set aside the decision.

(6) The Tribunal must -

- (a) make a written decision on an application for review as soon as practicable after the hearing has been completed; and
- (b) cause a copy of its decision to be served on each party to the proceeding within seven days of the decision.

Tax Administration

(7) A decision referred to in Subsection (6)(a) must include the Tribunal's reasons for the decision and its findings on material questions of fact and reference to the evidence or other material on which those findings were based.

(8) Subject to Subsection (9), all decisions of the Tribunal are public records.

(9) In releasing information or allowing access to information under Subsection (8), the Tax Review Tribunal must ensure that -

- (a) the identity and affairs of the applicant and any other person concerned are concealed; and
- (b) trade secrets or other confidential information are not disclosed.

(10) An authenticated copy of the decision of the Tribunal must be received in court proceedings in accordance with the *Evidence Act* (Chapter 48).

82. ADMINISTRATION OF TAX REVIEW TRIBUNAL.

(1) The Chairperson is responsible for managing the administrative affairs of the Tax Review Tribunal.

(2) The Tribunal has a Secretary appointed by the Chairperson and such other staff as the Chairperson determines and appoints.

(3) The Secretary is to carry out the secretariat functions of the Tribunal.

(4) The Secretary has power to do all things necessary or convenient to be done for the purpose of assisting the Chairperson under Subsection (1) and may act on behalf of the Chairperson in relation to the administrative affairs of the Tribunal.

(5) The Regulations may provide for administrative matters relating to the operations of the Tax Review Tribunal, including the service of documents, place of hearings, conduct of hearings, and costs.

83. FINANCES AND REPORTING.

(1) The State must provide the budget for the Tax Review Tribunal.

(2) The Tribunal must keep complete and accurate books of account.

(3) The books of account and other financial documents of the Revenue Tribunal must be audited by the Auditor-General or by an auditor designated by the Auditor-General.

(4) The Chairperson must prepare a report of the affairs of the Tribunal for each financial year.

(5) The Chairperson must submit the report prepared under Subsection (4) for a financial year to the Minister within three months after the end of the year.

(6) The Minister must cause a copy of the annual report of the Tribunal to be laid before Parliament within two months after the Minister receives the report.

Division 3. - Registration of Tax Agents.

84. REGISTRAR OF TAX AGENTS.

- (1) There is hereby established the office of Registrar of Tax Agents (referred to as the "Registrar") to hear applications for tax agent registration.
- (2) The Registrar is appointed by the Minister.
- (3) Subject to Subsection (4), an individual may be appointed as the Registrar only if the individual has significant tax knowledge and experience.
- (4) The following persons cannot be appointed as the Registrar -
 - (a) an individual currently employed as an IRC officer; or
 - (b) an individual who has been liable for a penalty under Section 92(1)(a), 95(2)(a), 96(2)(a), or 97, or a penalty or additional tax under a similar provision in a tax law; or
 - (c) an individual who has been convicted of an offence under a tax law; or
 - (d) an individual who is an undischarged bankrupt.
- (5) The Registrar holds office for three years and is eligible for re-appointment.
- (6) The Minister must terminate the appointment of the Registrar if the Registrar -
 - (a) becomes employed as an IRC officer; or
 - (b) is liable for a penalty referred to in Subsection (4)(b); or
 - (c) is convicted of an offence under a tax law; or
 - (d) becomes an undischarged bankrupt; or
 - (e) resigns from the office of Registrar by notice in writing to the Minister; or
 - (f) is unable to perform the duties of the office of the Registrar; or
 - (g) engages in proven misconduct.
- (7) No action or suit can be brought or maintained against a person who is or has been the Registrar for any nonfeasance or misfeasance in connection with the Registrar's duties of office.
- (8) The Registrar may inform himself on any matter relating to an application for tax agent registration in such manner as he thinks appropriate, including the summoning of witnesses and requiring the production of documents.

85. APPLICATION FOR TAX AGENT REGISTRATION.

- (1) An individual, partnership, or company may apply to the Registrar for registration as a tax agent.
- (2) An application under Subsection (1) must be in the approved form and accompanied by the prescribed fee.

86. REGISTRATION OF TAX AGENTS.

- (1) If an applicant under Section 85 is an individual, the Registrar must register the applicant if satisfied that the applicant is a fit and proper person to provide tax agent services.
- (2) If an applicant under Section 85 is a partnership, the Registrar must register the applicant if satisfied that -

Tax Administration

- (a) each partner in, or employee of, the partnership nominated in the application to provide tax agent services is a fit and proper person to provide such services; and
 - (b) every partner in the partnership is of good fame, integrity and character or, if a partner is a company, every representative of the company is of good fame, integrity and character.
- (3) If an applicant under Section 85 is a company, the Registrar must register the applicant if satisfied that -
- (a) every employee of the company nominated by the company in the application to provide tax agent is a fit and proper person provide such services; and
 - (b) every representative of the company is of good fame, integrity and character.
- (4) The registration of a person as a tax agent may be for all purposes of the tax laws or for a specific purpose as set out in the Regulations.
- (5) The Regulations may provide for the following:
- (a) guidelines for determining when a person is a fit and proper person to provide tax agent services; and
 - (b) guidelines for determining when a person is of good fame, integrity and character; and
 - (c) the nomination by partnerships and companies of partners and employees, as the case may be, to provide tax agent services.
- (6) The Registrar must serve an applicant under Section 85 with notice, in writing, of the decision on the application within 28 days of the application being lodged with the Registrar or within such other time as prescribed.
- (7) The initial registration of a person as a tax agent is valid for the period commencing on the date of registration as specified in the notice of registration and ending on the next following 31st March after the date of registration.
- (8) In this division, "tax agent services" means the following:
- (a) the preparation of tax returns on behalf of taxpayers; and
 - (b) the preparation of notices of objection on behalf of taxpayers in relation to the tax laws; and
 - (c) the provision of advice to taxpayers on the application of the tax laws; and
 - (d) representing taxpayers in their dealings with the IRC in relation to the tax laws; and
 - (e) the transaction of any other tax-related business on behalf of taxpayers with the IRC in relation to the tax laws.

87. ANNUAL RENEWAL OF REGISTRATION OF TAX AGENTS.

- (1) A registered tax agent may apply to the Registrar for the renewal of the tax agent's registration.
- (2) An application under Subsection (1) must be lodged with the Registrar -
- (a) in the approved form and accompanied by the prescribed fee; and
 - (b) within seven days of the date of expiry of the tax agent's registration or within such further time as the Registrar may allow.

Tax Administration

(3) The Registrar must renew the registration of a tax agent who has applied under Subsection (1) if the tax agent continues to satisfy the conditions for registration under Section 86.

(4) The renewal of a tax agent's registration under Subsection (3) is valid until the 31st March and can be further renewed in accordance with this section.

(5) The Registrar must serve an applicant under Subsection (1) with notice, in writing, of the decision on the application within 28 days of the application being lodged with the Commissioner General or within such other time as prescribed.

(6) Subject to Section 88, the registration of a tax agent who does not apply for renewal of registration within the time specified in Subsection (2)(b) expires at the end of the current term of registration.

88. CANCELLATION OF TAX AGENT REGISTRATION.

(1) A registered tax agent must notify the Registrar, in writing, within seven days of ceasing to carry on business as a tax agent or ceasing to satisfy the conditions for registration in Section 86.

(2) If a notification under Subsection (1) is by a registered tax agent that is a partnership or company that no longer satisfied Section 86(2)(a) or (3)(a), as the case may be, the registration of the tax agent must be cancelled after 28 days of the notification under Subsection (1) if, by that time the partnership or company cannot satisfy Section 86(2)(a) or (3)(a), as the case may be.

(3) A registered tax agent must notify the Registrar, in writing, if the tax agent no longer wishes to be a registered tax agent.

(4) The Registrar must cancel the registration of a tax agent if -

- (a) subject to Subsection (2), the tax agent ceases to satisfy the conditions for registration in Section 86; or
- (b) the tax agent has ceased to carry on business as a tax agent, including when a tax agent has died or, in the case of a partnership or company, the partnership or company has ceased to exist; or
- (c) a tax return prepared and furnished to the Commissioner General by the tax agent is false in any material particular, unless the tax agent establishes to the satisfaction of the Registrar that this was not due to any deliberate or negligent conduct of the tax agent; or
- (d) the tax agent has notified the Registrar under Subsection (3).

(5) The Registrar must serve a tax agent whose registration is cancelled under Subsection (4) with notice in writing of the cancellation and such notice must include the reasons for the decision to cancel the tax agent's registration.

- (6) The cancellation of the registration of a tax agent takes effect on the earlier of -
- (a) the date the tax agent ceases to carry on business as a tax agent; or
 - (b) 60 days after the date that the tax agent has been served with notice of the cancellation.

89. UNREGISTERED PERSONS NOT TO CHARGE FEES.

(1) Subject to Subsection (2), a person cannot demand or receive a fee for providing tax agent services unless the person is registered as a tax agent and the person's registration covers the tax agent services provided.

(2) Subsection (1) does not apply to a lawyer under the *Lawyers Act 1986* acting in the course of undertaking legal work other than services specified in Paragraph (a) of the definition of "tax agent services" in Section 86(8).

PART XIV. - ADMINISTRATIVE PENALTIES AND TAX OFFENCES.

Division 1. - Application of Part XIV.

90. GENERAL PROVISIONS RELATING TO ADMINISTRATIVE PENALTIES AND TAX OFFENCES.

(1) A person cannot be subject to both the imposition of a penalty and prosecution of an offence for the same act or omission.

(2) When a person has committed an act or omission for which the person may be liable to both the imposition of penalty and the prosecution of an offence, the Commissioner General may decide whether to serve the person with a notice of a penalty assessment or whether the person is to be prosecuted for the offence.

(3) When a penalty has been paid by a person in respect of an act or omission and subsequently the person is prosecuted for an offence in respect of the same act or omission, the Commissioner General must apply the amount of the penalty paid in accordance with Section 52(5).

(4) Nothing in Subsection (3) precludes a person from being prosecuted for an offence for an act or omission when a penalty imposed on the person for the act or omission has not been paid by the person.

(5) A person who is assessed for penalty or convicted of an offence under this part is not relieved from the liability to pay the tax to which the penalty or conviction relates.

Division 2. - Administrative penalties.

91. PENALTIES RELATING TO TAXPAYER IDENTIFICATION NUMBERS.

(1) A person who, without reasonable cause, fails to apply for a TIN as required under this Act is liable for a penalty equal to K100.00 for each month or part of a month for the period

- (a) commencing from the month that the person was first required to apply for a TIN; and
- (b) ending on the earlier of -
 - (i) the month in which the person lodges an application for a TIN; or
 - (ii) the month in which the Commissioner General issues the person with a TIN on his own motion.

- (2) A person is liable for a penalty of K500.00 if the person -
- (a) fails to notify a change in circumstances as required under Section 7; or
 - (b) contravenes Section 8(1).

Tax Administration

(3) Except when Section 8(3) applies, a person is liable for a penalty of K1,000.00 if the person -

- (a) provides their TIN for use by another person; or
- (b) uses the TIN of another person.

(4) A person who, without reasonable cause, fails to apply for cancellation of a TIN as required under Section 9 is liable for a penalty of K100.00 for each month or part of a month for the period -

- (a) commencing on the date that the person was required to apply for cancellation of the TIN; and
- (b) ending on the earlier of -
 - (i) the month in which the person lodges the application for cancellation; or
 - (ii) the month in which the person's TIN is cancelled on the Commissioner General's own motion.

(5) A person is liable for a penalty of K1,000.00 if the person continues to use a TIN after it has been cancelled.

92. PENALTY FOR FAILURE TO MAINTAIN RECORDS.

(1) A taxpayer who fails to maintain or retain records as required under a tax law in accordance with the requirements of a tax law is liable -

- (a) for a failure that was made deliberately or recklessly, for penalty of 100 percent of the amount of tax payable by the taxpayer under the tax law for the tax period to which the failure relates; or
- (b) in any other case, for a penalty of 25 percent of the amount of tax payable by the taxpayer under the tax law for the tax period to which the failure relates.

(2) If no tax is payable by the taxpayer for the tax period to which the failure referred to in Subsection (1) relates, the penalty is -

- (a) for a body corporate, K5,000.00; and
- (b) for any other person, K1,000.00.

(3) A taxpayer who fails to maintain or retain records as required under Section 11(3) is liable for a penalty not exceeding K5,000.00.

(4) A taxpayer who fails to comply with a notice served on the taxpayer under Section 11(3) is liable for a penalty of K1,000.00.

(5) In addition to the penalty imposed under Subsection (4), the untranslated records cannot be accepted as evidence in challenging a tax assessment for the tax period to which the records relate.

93. LATE FILING PENALTY.

(1) A person who fails to furnish a tax return or other document on or before the due date is liable for a late filing penalty equal to the higher of -

- (a) 20 percent of any tax due under the tax return; or
- (b) K200 for each month or part month of default for a body corporate or K100 for each month or part month of default for any other person.

- (2) For the purposes of Subsection (1)(b), a person ceases to be in default -
 - (a) for a failure to furnish a tax return, at the time the Commissioner General receives the tax return or raises a default assessment for the period covered by the tax return; or
 - (b) for any other case, at the time the document is received by the Commissioner General.

(3) For the purposes of this section, a person who fails to comply with a notice served under Section 12(3) is not liable for a penalty separate from the late filing penalty payable by the person for the failure to furnish the tax return to which the notice relates.

94. LATE PAYMENT PENALTY.

(1) A taxpayer who fails to pay tax by the due date is liable for a late payment penalty of 20 percent of the amount of unpaid tax.

(2) Late payment penalty paid by a taxpayer under this section must be applied in accordance with Section 52(5) to the extent that the tax to which the penalty relates is found not to have been payable.

(3) Late payment imposed under this section is in addition to late payment interest payable in respect of the same default.

(4) Late payment penalty payable by a person in respect of the late payment of a secondary liability or withholding tax is borne personally by the person and is not recoverable from any other person.

(5) In this section, "tax" does not include penalty or late payment interest.

95. TAX SHORTFALL PENALTY.

- (1) This section applies to a person -
 - (a) who makes a statement to an IRC officer that is false or misleading in a material particular or omits from a statement made to an IRC officer a matter or thing without which the statement is false or misleading in a material particular; and
 - (b) the tax liability of the person, or any other person, calculated on the basis of the statement is less than it would have been if the statement had not been false or misleading (the difference being referred to as the "tax shortfall").

(2) Subject to Subsections (3) and (4), a person to whom this section applies is liable for a tax shortfall penalty equal to -

- (a) for a statement that was made deliberately or recklessly, 100 percent of the tax shortfall; or
- (b) in any other case, 25 percent of the tax shortfall.

(3) The rate of tax shortfall penalty imposed under Subsection (2) on a person is increased by -

- (a) ten percent points if this is the second application of this section to the person; or
- (b) 25 percent points if this is the third or a subsequent application of this section to the person.

• Tax Administration

(4) The rate of tax shortfall penalty imposed under Subsection (2) on a person is reduced by ten percentage points if the person voluntarily discloses to the Commissioner General the statement to which the section applies prior to the earlier of -

- (a) the Commissioner General informing the person to whom the statement relates of the discovery of the tax shortfall; or
- (b) the commencement of an audit of the tax affairs of the person to whom the statement relates.

(5) No tax shortfall penalty is payable under this section if -

- (a) the tax shortfall arises as a result of a taxpayer taking a reasonably arguable position on the application of a tax law to the taxpayer's position in making a self-assessment; or
- (b) the person who makes the statement establishes that, at the time that they made the statement, they did not know and could not reasonably be expected to know that the statement was false or misleading in a material particular; or
- (c) the making of the false or misleading statement was due to a clerical or similar error, other than a repeated clerical or similar error.

(6) A position taken by a taxpayer in making a self-assessment that is contrary to a public ruling in force under Section 65 or a private ruling issued to the taxpayer under Section 68 is not a reasonably arguable position for the purposes of Subsection (5)(a) unless the ruling is held to be incorrect.

(7) A tax shortfall penalty imposed under this section is in addition to any late payment interest payable in respect of the late payment of the tax representing the tax shortfall.

(8) Nothing in Subsection (5) prevents the imposition of late payment interest in respect of a tax shortfall if the tax is not paid by the due date.

(9) For the purposes of this section, a statement made to an IRC officer includes a statement made, in writing or orally, in any of the following circumstances -

- (a) in an application, certificate, declaration, election, notification, tax return, notice of objection, or other document furnished under a tax law; or
- (b) in any information furnished under a tax law; or
- (c) in a document provided to an IRC officer otherwise than pursuant to a tax law; or
- (d) in answer to a question asked of a person by an IRC officer; or
- (e) in a statement made to another person with the knowledge or reasonable expectation that the statement would be passed on to an IRC officer.

96. FALSE OR MISLEADING STATEMENT PENALTY.

(1) This section applies to a person who makes a statement to an IRC officer that is false or misleading as specified in Section 95(1)(a) but which does not result in a tax shortfall.

(2) Subject to Subsection (3), a person to whom this section applies is liable for a false or misleading statement as follows:

- (a) for a statement that was made deliberately or recklessly, K5,000.00; or
- (b) in any other case, K1,000.00.

(3) No false or misleading statement penalty is payable in the circumstances specified in Section 95(5).

(4) Section 95(8) applies in determining whether a person has made a statement to an IRC officer.

97. TAX AVOIDANCE PENALTY.

If the Commissioner General has applied a tax avoidance provision in assessing a taxpayer, the taxpayer is liable for a tax avoidance penalty not exceeding K50,000.00.

98. PENALTY FOR UNDERESTIMATED PROVISIONAL TAX.

(1) If the provisional tax paid by a taxpayer for a year of income is based on the estimated taxable income of the taxpayer for the year and the taxpayer's actual taxable income for the year exceeds the estimated taxable income by more than 20 percent the taxpayer is liable for a penalty equal to 20 percent of the amount by which the actual income tax payable by the tax year exceeds the provisional tax paid uplifted by 120 percent.

(2) For the purposes of calculating the penalty payable by a taxpayer under Subsection (1), the actual income tax payable by the taxpayer for the year of income is reduced by so much of that income tax that is collected by withholding tax.

99. GOODS AND SERVICES TAX PENALTIES.

(1) A person who fails to apply for registration as required under Section 43 of the *Goods and Services Tax Act 2003* is liable for a penalty equal to the higher of -

- (a) 50 percent of the GST payable (if any) for the period commencing on the day on which the person was required to apply for registration until either the person files an application for registration or the person is registered on the Commissioner General's own motion; or
- (b) K1,000.00.

(2) A registered person is liable for a penalty of K1,000.00 if the person -

- (a) fails to provide a tax invoice as required under Section 39 of the *Goods and Services Tax Act 2003* or a credit or debit note as required under Section 40 of the *Goods and services Tax Act 2003*; or
- (b) issues multiple tax invoices, credit notes, or debit notes contrary to Section 41 of the *Goods and Services Tax Act 2003*; or
- (c) fails to notify the Commissioner General that the person has ceased to carry on all taxable activities as required under Section 44 of the *Goods and Services Tax Act 2003*; or
- (d) fails to notify the Commissioner General of changes as required under Section 45 of the *Goods and Services Tax Act 2003*.

(3) A person who issues a tax invoice, credit note, or debit note that is erroneous or incomplete is liable for the following penalty:

- (a) when the erroneous or incomplete tax invoice, credit note, or debit was issued deliberately or recklessly, K5,000.00; or
- (b) in other case, K1,000.00.

100. MISCELLANEOUS PENALTIES.

(1) A person who fails to provide security as required by the Commissioner General under Section 38 is liable for a penalty of K1,000.00.

(2) An appointed person who fails to comply with Section 44 is liable for a penalty of K1,000.00.

101. GENERAL PROVISIONS RELATING TO ADMINISTRATIVE PENALTIES.

- (1) A person cannot be subject to more than one penalty in respect of the same act or omission.
- (2) A liability for penalty is calculated separately with respect to each section in this division.
- (3) A person is liable for a penalty only if the Commissioner General -
 - (a) makes an assessment (referred to as a "penalty assessment") of the penalty imposed under this division; and
 - (b) serves a notice of the penalty assessment on the person subject to the penalty stating the amount of penalty payable, the due date for payment, and any other matters as required under the Regulations.
- (4) Penalty payable by a person is due on the date specified in the notice of assessment served under Subsection (3)(b).
- (5) A person liable to pay penalty may apply, in writing, to the Commissioner General for remission of the penalty payable.
- (6) The Commissioner General may, upon application under Subsection (5) or on his own motion, remit, in whole or in part, any penalty payable by a person other than a tax shortfall penalty.

Division 3. - Taxation offences.

102. OFFENCE RELATING TO TAXPAYER IDENTIFICATION NUMBER.

- (1) A person is guilty of an offence if the person deliberately or recklessly uses a false TIN on a tax return or other document lodged with the Commissioner General for the purposes of a tax law.
- (2) A person who uses the TIN of another person is treated as having used a false TIN except when Section 8(3) applies.

103. OFFENCE FOR FAILURE TO MAINTAIN RECORDS.

A taxpayer is guilty of an offence if the taxpayer deliberately or recklessly fails to maintain proper records as required under a tax law.

104. OFFENCE FOR FAILURE TO FURNISH TAX RETURN OR OTHER DOCUMENT.

- (1) A taxpayer is guilty of an offence if the taxpayer, without reasonable cause, fails -
 - (a) to furnish a tax return by the due date, or within such further time as the Commissioner General may allow under Section 14; or
 - (b) to comply with Section 12(4)(b).
- (2) If a taxpayer who is convicted of an offence under Subsection (1)(a) has not furnished the tax return by the time of the conviction, the Court must order the taxpayer to furnish the return by the date specified in the order being a date that is not more than 28 days from the date of the conviction.
- (3) A taxpayer is guilty of an offence if the taxpayer fails to comply with an order under Subsection (2).

(4) For the purposes of Subsection (1), a failure to comply with a notice served under Section 12(3) does not constitute an offence separate from the offence constituted by the failure to furnish the tax return to which the notice relates.

105. OFFENCES RELATING TO RECOVERY OF UNPAID TAX.

A person is guilty of an offence if the person, without reasonable cause -

- (a) fails to comply with a notice served on the person under Section 42; or
- (b) rescues or attempts to rescue goods that have been seized under Section 46 or that are the subject of a distress notice under Section 47 or that are on premises the subject of a closure notice under Section 48(3); or
- (c) before, at, or after the execution of seizure or distress proceedings under Section 46 or 47, staves, breaks, or destroys the goods, or documents relating to the goods, to prevent -
 - (i) the seizure or the securing of the goods; or
 - (ii) the discovery of proof of an offence; or
- (d) enters premises the subject of closure notice under Section 48(3) without the permission of the Commissioner General; or
- (e) fails to comply with a preservation notice served on the person under Section 49; or
- (f) departs or attempts to depart Papua New Guinea in contravention of a certificate issued under Section 50(2)(a); or
- (g) allows a person to depart Papua New Guinea in contravention of an order issued under Section 50(1)(b).

106. OFFENCES RELATING TO INVESTIGATION POWERS.

A person is guilty of an offence if the person, without reasonable cause -

- (a) fails to provide facilities and assistance as required by Subsection 58(4); or
- (b) fails to comply with a notice under Section 59.

107. FRAUDULENT RECORDS, STATEMENTS OR DOCUMENTS.

(1) A person is guilty of an offence if the person -

- (a) maintains fraudulent records; or
- (b) deliberately or recklessly makes a statement referred to in Section 95(1)(a); or
- (c) furnishes a fraudulent document with the Commissioner.

(2) Section 95(8) applies in determining whether a person has made a statement referred to in Section 95(1)(a).

108. OBSTRUCTION OF INTERNAL REVENUE COMMISSION OFFICER.

(1) A person is guilty of an offence if the person deliberately obstructs an IRC officer in the performance of duties under a tax law.

(2) In this section, "IRC officer" includes an individual employed or engaged by the IRC in any capacity.

109. OFFENCES RELATING TO TAX AGENTS.

(1) A registered tax agent is guilty of an offence if the tax agent fails to notify the Commissioner General as required under Section 88.

(2) A person is guilty of an offence if the person contravenes Section 89.

110. OFFENCES RELATING TO INTERNAL REVENUE COMMISSION OFFICERS.

(1) In this section -

“Internal Revenue Commission officer” includes -

- (a) person employed or engaged by the Internal Revenue Commission in any capacity; and
- (b) a former Internal Revenue Commission officer, employee or contractor; and

“payment or reward”, in relation to an Internal Revenue Commission officer, includes a payment or reward for the benefit of the Internal Revenue Commission officer or any other person.

(2) An Internal Revenue Commission officer is guilty of an offence if the Internal Revenue Commission officer -

- (a) directly or indirectly asks for, or takes in connection with any of the officer’s duties, any payment or reward, whether financial or otherwise, or a promise or security for any such payment or reward, not being a payment or reward that the officer was lawfully entitled to receive; or
- (b) enters into or acquiesces in any arrangement under which the State is or may be defrauded of revenue, or that is contrary to a provision of a tax law, or to the proper execution of the officer’s duties; or
- (c) acts or omits to act so as to give an undue advantage or favour to the Internal Revenue Commission officer personally or another person; or
- (d) fails to prevent or report to the Internal Revenue Commission or any other relevant authority, the commission of an offence under a tax law; or
- (e) contravenes Section 75.

(3) A person is guilty of an offence if the person -

- (a) directly or indirectly offers or gives to an Internal Revenue Commission officer any payment or reward, whether financial or otherwise, or any promise or security for a payment or reward, not being a payment or reward that the officer was lawfully entitled to receive; or
- (b) proposes or enters into any arrangement with an Internal Revenue Commission officer under which the State is or may be defrauded of revenue, or that is contrary to a provision of a tax law, or to the proper execution of the officer’s duties; or
- (c) impersonates an Internal Revenue Commission officer; or
- (d) contravenes Section 75(5).

(4) A person commits an offence when the person threatens, intimidates, or harasses an Internal Revenue Commission officer in the performance of duties under a tax law.

(5) The prosecution of an Internal Revenue Commission officer for an offence under this section does not preclude any disciplinary action being taken against the officer under the *Internal Revenue Commission Act 2014*.

111. GOODS AND SERVICES TAX OFFENCES.

(1) A registered person is guilty of an offence if the person -

- (a) deliberately or recklessly provides a false tax invoice, credit note, or debit note; or
- (b) issues multiple tax invoices, credit notes, or debit notes contrary to Section 41 of the *Goods and Services Tax Act 2003*.

(2) A person who is not a registered person is guilty of an offence if the person issues a tax invoice, credit note, or debit note.

(3) A person is guilty of an offence if the person receives, or deals with goods or services, that the person knows or has reason to believe, that the GST payable on the supply of the goods or services has been or will be evaded.

112. OFFENCES RELATING TO THE TAX REVIEW TRIBUNAL.

(1) A person is guilty of an offence if the person -
(a) uses threatening or insulting language to the Tax Review Tribunal or to a member of the Tribunal whilst sitting, or to a member at any other time or place in relation to a hearing before the Tribunal; or
(b) without reasonable cause, interrupts a hearing of the Tribunal; or
(c) creates a disturbance or participates in creating a disturbance at the place where the Tribunal is sitting; or
(d) does any other act or thing that would, if the Tribunal were a Court, constitute contempt of the Court.

(2) A person is guilty of an offence if the person, without reasonable cause -
(a) refuses or fails to comply with a summons to appear before the Tribunal; or
(b) refuses or fails to take an oath or affirmation before the Tribunal; or
(c) refuses or fails to answer any question asked of the person during a hearing of the Tribunal; or
(d) refuses or fails to produce any book, record, or document to the Tribunal that the person was required to produce by a summons served on the person.

(3) A person is guilty of an offence if the person gives false or misleading evidence to the Tribunal.

(4) A member of the Tribunal is guilty of an offence if the member fails to disclose a conflict of interest as required under Section 80(7).

113. OFFENCE FOR AIDING OR ABETTING A TAXATION OFFENCE.

A person is guilty of an offence if the person aids, abets, assists, incites, or induces another person to commit an offence under a tax law (referred to as the "principal offence"), or who attempts to do so, is liable for the same sanction as imposed for the principal offence.

114. OFFENCES BY COMPANIES, PARTNERSHIPS, AGENTS OR EMPLOYEES.

(1) If an offence under this division is committed by a company or partnership, every person who, at the time the offence is committed is a representative of the company or partnership, or who acts or purports to act as representative of the company or partnership, is treated as having committed the offence.

(2) Subsection (1) does not apply to a representative if -
(a) the offence is committed without that representative's consent or knowledge; and
(b) the representative, having regard to the nature of his functions and all the circumstances, has exercised reasonable diligence to prevent the commission of the offence.

Tax Administration

(3) In a proceeding jointly against a company or partnership, and a person to whom Subsection (1) applies, for an offence under this division, any evidence that the company or partnership is guilty of the offence is evidence that the person to whom Subsection (1) applies is also guilty of the offence.

(4) If an agent or employee in the course of an agency or employment relationship does or omits to do an act, the doing of which, or omission to do, by the principal or employer would be an offence, the agent or employee commits the offence.

(5) A person who would have been guilty of an offence if anything had been done or omitted to be done by the person is guilty of that offence and is liable to the same penalty if that thing has been done or omitted to be done by the person's representative, agent, or employee in the course of the person's business or in the scope of employment, as the case may be, unless the person proves to the satisfaction of the court that the offence was committed without the person's knowledge and that the person took all reasonable precautions to prevent that act or omission.

115. SANCTIONS FOR OFFENCES.

(1) Subject to this section, a person guilty of an offence under this division is punishable, on conviction, by a fine not exceeding K1,000.00.

(2) A person who commits any of the following offences is punishable, on conviction, by a fine not exceeding K1,000.00 or imprisonment for a term not exceeding three years, or both -

- (a) an offence under Section 111 when the offence has been committed deliberately or recklessly; and
- (b) an offence under Section 114.

(3) If a person is convicted of an offence under Section 103 or 107 and the Court is satisfied that the person has a tax shortfall in relation to the offence, the Court may, in addition to the sanction imposed for the offence, order the convicted person to pay to the Commissioner General an amount not exceeding -

- (a) when the person has previously been convicted of an offence under Section 103 or 107, 300 percent of the tax shortfall; or
- (b) in any other case, 200 percent of the tax shortfall.

(4) A person convicted of an offence under Section 103 or 107 has a tax shortfall if the tax liability of the person, or another person, based on the records actually kept or false statement made is less than the tax liability that would have arisen if correct records had been maintained or the false statement not made, and the difference is the amount of the tax shortfall.

(5) A person may, at the same time, be charged with -

- (a) an offence against this Act; and
- (b) an intent to defraud the public revenue,

and, if convicted of both the offence and that intent, the maximum fine is twice that which is otherwise provided for the offence.

(6) If -

- (a) a person is convicted of an offence against this Act for which a fine only is provided; and
- (b) the person has been previously convicted of a similar offence,

the court may, instead of, or in addition to, imposing a fine, impose a sentence of imprisonment for a term of not less than 12 months and not exceeding two years, with or without the right of release from payment of a fine.

116. LIMITATION OF ACTION,

The prosecution of an offence under this division may be instituted at any time within seven years after the commission of the offence.

PART XV. - FINAL PROVISIONS.

117. REGULATIONS.

- (1) The Minister may make regulations -
- (a) prescribing forms and other matters as required under this Act; and
 - (b) for the administration of the Tax Review Tribunal; and
 - (c) for the registration of tax agents; and
 - (d) for the amendment of the Schedules to this Act; and
 - (e) for the proper and efficient administration of this Act.

(2) Without limiting the general effect of Subsection (1), regulations made under that Subsection may -

- (a) contain provisions of a saving or transitional nature consequent on the making of this Act; or
- (b) prescribe penalties for the contravention of the regulations.

(3) The regulations may provide that rules of a transitional nature that are made under this section within six months after the commencement date of the Act take effect from the commencement date.

118. TRANSITIONAL.

(1) The appointment of the Registrar of Tax Agents subsisting at the date this Act comes into force are treated as an appointment made under this Act.

(2) Subject to Subsections (3), (4), and (5), this Act applies to an act or omission occurring, or a tax assessment made, before this Act came into force.

(3) An appeal or prosecution commenced before this Act came into force can continue and be disposed of as if this Act had not come into force.

(4) If the period for an application, appeal, or prosecution had expired before this Act came into force, nothing in this Act is to be construed as enabling the application, appeal, or prosecution to be made under this Act by reason only of the fact that a longer period is specified in this Act.

(5) A tax liability that arose before this Act came into force may be recovered under this Act, but without prejudice to any action already taken for the recovery of the tax.

(6) A tax liability that is secured over property under a tax law before this Act came into force continues to be secured over that property in accordance with that tax law.

SCHEDULE 1.

TAX RETURNS.

PART I. - TAX RETURNS.

The following documents are tax returns for the purposes of the Act:

- (a) a tax return required to be furnished under a tax law; and
- (b) a remittance advice under Section 160A, 196F(4)(b), 196V(1)(c), 280(1)(b)(iii), or 312AE(1)(a)(ii) of the *Income Tax Act 1959*; and
- (c) a statement under Section 196V(1)(b), 299G(4)(a), 311E(1)(b), 312AE(1)(b), or 357(7)(b) of the *Income Tax Act 1959*; and
- (d) an annual reconciliation statement under Section 280(1)(f)(ii) or 299G(4)(f) of the *Income Tax Act 1959*; and
- (e) an estimate under Section 304 or 311AO of the *Income Tax Act 1959*; and
- (f) a remittance certificate under Regulation 67C of the *Income Tax Regulations 1959*; and
- (g) particulars required to be provided under Section 29 of the *Goods and Services Tax Act 2003*.

PART II. - SELF-ASSESSMENT RETURN.

The following tax returns are self-assessment returns for the purposes of this Act -

- (a) an income tax return; and
- (b) a GST tax return; and
- (c) a tax return furnished under Section 5 of the *Departure Tax Act 1980*; and
- (d) a tax return furnished under Section 106, 164, or 213 of the *Gaming Control Act 2007*;

SCHEDULE 2.

TAX LAWS.

- (1) The following are tax laws for the purposes of this Act -
 - (a) this Act; and
 - (b) *Income Tax Act 1959*; and
 - (c) *Income Tax (International Agreements) Act 1987*; and
 - (d) *Goods and Services Tax Act 2003*; and
 - (e) *Stamp Duties Act* (Chapter 117); and
 - (f) *Gaming Control Act 2007*; and
 - (g) *Departure Tax Act 1980*; and
 - (h) any other Act (other than the customs and excise legislation) under which a tax, levy, or duty is imposed if responsibility for the general administration of the tax, levy, or duty is imposed on the Commissioner General.

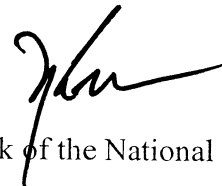
(2) A reference to a law in Paragraph (1) includes any regulations or other subsidiary legislation made under the law.

SCHEDULE 3.

**TRANSACTIONS FOR WHICH A TAXPAYER IDENTIFICATION NUMBER IS
REQUIRED.**

A TIN is required for the opening of an account with a financial institution.

I hereby certify that the above is a fair print of the *Tax Administration Act 2017* which has been made by the National Parliament.



Clerk of the National Parliament.

10 AUG 2018

I hereby certify that the *Tax Administration Act 2017* was made by the National Parliament on 5 December 2017, by an absolute majority in accordance with the *Constitution*.



Speaker of the National Parliament.

10 AUG 2018