THE BILL PROPOSES:

1. TO CHANGE THE DEFINITION OF “ASSESSMENT” TO INCLUDE CASES WHERE NO TAX IS PAYABLE AND CONSEQUENTIAL AMENDMENTS. THIS CHANGE WILL TAKE EFFECT FOR RETURNS RECEIVED ON OR AFTER 1 JANUARY 2013 RELATING TO AN INCOME TAX YEAR ON OR AFTER 1 JANUARY 2012;
2. TO EXTEND THE THIN CAPITALISATION INTEREST DEDUCTION LIMIT TO ALL TAXPAYERS, OTHER THAN FINANCIAL INSTITUTIONS. THE PROPOSED THIN CAPITALISATION RULES WILL APPLY TO BOTH RELATED AND NON-RELATED PARTY FOREIGN DEBT AND BORROWINGS; AND
3. TO MAKE TECHNICAL AMENDMENTS TO CLARIFY DRAFTING ERRORS IN THE LEGISLATION.

MR SPEAKER, I COMMEND THE BILL.
EXPLANATORY MEMORANDUM


The Bill proposes:

1. To change the definition of the term “assessment” to include cases where no tax is payable. Consequential amendments will be made to preserve the power of the Commissioner General to amend assessments where an assessment includes an assessment where no tax is payable and further to clarify the law relating to objections where the assessment is one where there is no taxable income or there is no tax payable. (Schedule 1).

2. To extend the thin capitalization rules (interest deduction limitation) to all taxpayers, other than financial institutions. The ratio of debt to equity for non-resource companies will be 2:1. The existing thin capitalization ratio of 3:1 will remain for resource companies. (Schedule 2)

3. To make technical amendments to clarify drafting errors in the legislation (Schedule 3).

Additional explanatory information on Schedule 1 is below.

Schedule 1 Nil Assessments

1. The definition of “assessment” under section 4 of the Income Tax Act 1959 states that an assessment means the ascertainment of the amount of taxable income and of the tax payable on that income.

2. This Bill amends the definition of “assessment” such that, “assessment” will also include instances where there is no taxable income and therefore no tax payable. Where the Commissioner General issues an assessment for a taxpayer with no taxable income or tax payable for an income year, amendments by the Commissioner General will be made in accordance with the Amendment of Assessments rules in section 232.

3. This amendment does not affect the definition of “assessment” prior to 1 January 2013.

4. However, an assessment will not include an ascertainment as to losses carried forward to future income years under section 101, Allowable Exploration Expenditure carried forward to future income years under Division 10; Allowable Capital Expenditure carried forward to future income years under Division 10; or Residual Capital Expenditure carried forward to future income years under Division 11. Rather, these deductions will form part of an assessment of taxable income and the tax payable on that income in the year in which they are utilised by the taxpayer as a deduction.
INDEPENDENT STATE OF PAPUA NEW GUINEA

No:    of  2012.


ARRANGEMENT OF SCHEDULES AND CLAUSES.

SCHEDULE 1 NIL ASSESSMENTS
   1. Interpretation (Amendment of Section 4).
   2. Amendment of Assessments (Amendment to Section 232).
   3. Objections (Amendment to Section 245).

SCHEDULE 2 EXTENSION OF THIN CAPITALISATION RULES
   4. Interpretation (Amendment of Section 4).
   5. New Section 68AF.

   “68AF.   RESTRICTION ON INTEREST DEDUCTION.”.

SCHEDULE 3 MINOR AMENDMENTS
   6. Concessional Treatment of Approved Redundancy Payments (Amendment of Section 46CA).
   7. Deduction for Gifts to Charitable Bodies (Amendment of Section 69E).
INDEPENDENT STATE OF PAPUA NEW GUINEA

A BILL

for

AN ACT

entitled

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

Being an Act to amend the Income Tax Act 1959,

MADE by the National Parliament. Schedule 1 is deemed to operate for all returns lodged after 1 January 2013, which relate to an income year commencing on or after 1 January 2012. Schedule 2 is deemed to operate from 1 January 2013. Schedules 2 and 3 are deemed to operate from 1 January 2013.

SCHEDULE 1: NIL ASSESSMENTS

1. INTERPRETATION (AMENDMENT OF SECTION 4).

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

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

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

a) Losses carried forward to future income years under Section 101;

b) Allowable Exploration Expenditure carried forward to future income years under Division 10;

c) Allowable Capital Expenditure carried forward to future income years under Division 10; or

d) Residual Capital Expenditure carried forward to future income years under Division 11;”.

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

Section 232 of the Principal Act is amended by:-

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

“(or in the case of an assessment under which no tax is payable – within six years of the date of issue of the assessment)”.

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

“(or in the case of an assessment under which no tax is payable – within three years of the date of issue of the assessment)”.

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

“(or in the case of an assessment under which no tax is payable – within three years of the date of issue of the assessment)”.

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

“Section 232(11) If the Commissioner General has commenced an examination of the affairs of a taxpayer in relation to an assessment and the Commissioner General has not completed the examination before the end of the amendment period (or that period as extended) the amendment period may be extended as follows:

a) if the Commissioner General, before the end of the amendment period (or that period as extended), requests the taxpayer to consent to extending the amendment period, then the taxpayer may, by notice in writing, consent to extending the amendment period to a specified date; or

b) if the Commissioner General, before the end of the amendment period (or that period as extended), applies to the National Court for an order extending the amendment period, then the Court may order an extension of the amendment period to a specified date if it is satisfied that it was not reasonably practicable, or
it was inappropriate, for the Commissioner to complete the examination within the amendment period (or that period as extended). In determining whether to extend the amendment period, the Court should consider:

i. the complexity of the issues under examination;
ii. any difficulty in obtaining records relating to the issues under examination;
iii. any action taken by the Commissioner General;
iv. any action taken by the taxpayer; and
v. any failure of the taxpayer to take action that would have been reasonable for the taxpayer to take.

“Section 232(12) The amendment period for an assessment may be extended more than once under Subsection (11).”.

3. **OBJECTIONS (AMENDMENT OF SECTION 245)**

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

“Section 245(1A) A taxpayer cannot object under subsection (1) against an assessment ascertaining that:

a) the taxpayer has no taxable income; or
b) the taxpayer has an amount of taxable income and no tax is payable;

unless the taxpayer is seeking an increase in the taxpayer's liability.”.
SCHEDULE 2: EXTEND THE THIN CAPITALISATION RULES

4. INTERPRETATION (AMENDMENT OF SECTION 4).

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

(a) following the definition of “debenture” inserting the new definition: -

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

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

(b) all guarantees or other obligations which are the economic equivalent of a guarantee, including any obligation to purchase, to provide funds for payment, to supply funds to or otherwise to invest in any other entity in respect of the indebtedness of any other entity for borrowed money or arising out of any credit facility or financial accommodation for the deferred purchase price or property or services (other than trade accounts payable arising in the ordinary course of business and on terms requiring payment in full within no more than 90 days); and

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

(b) following the definition of “entertainment allowance” inserting a new definition as follows:-

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

5. NEW SECTION 68AF.

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

“ 68AF. RESTRICTION ON INTEREST DEDUCTION

68AF(1) This Section does not apply to a financial institution as defined in Section 35(1).

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

68AF(3) Where a taxpayer has borrowed money for the purpose of deriving assessable income from a person who is, in the opinion of the Commissioner General, not at arms length –

(a) the Commissioner General shall determine, after consultation with the Bank of Papua New Guinea-

(i) the market rate of interest; and

(ii) the fees and charges that in his opinion are reasonable,
on a borrowing by the taxpayer; and

(b) any amount –

(i) of interest incurred on the money borrowed by the taxpayer in excess of the market rate of interest determined under Paragraph (a); or

(ii) of expenditure on the borrowing in excess of the fees and charges determined under Paragraph (a)(ii),

shall not be an allowable deduction under Sections 68 or 89, as the case maybe.

68AF(4) Notwithstanding any other provisions of this Act where at anytime during a year of income, debt of a taxpayer exceeds 200% of equity, the deduction allowable to the taxpayer for interest incurred during that period shall be limited to an amount ascertained in accordance with the formula:-

\[
\frac{TI \times 2E}{D}
\]

Where –

TI = total interest incurred by the taxpayer during the year of income and

D= debt of the taxpayer and

E= equity of the taxpayer.

68AF(5) To the extent interest is incurred in excess of the amount allowable pursuant to Subsection (4), any adjustment will be limited to amounts paid to non-resident persons.”.
SCHEDULE 3: MINOR AMENDMENTS

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

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

“46CA(4)”

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

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

repealing the words “other than money”; and

(a) inserting after the words “Commissioner General” the following words, numbers letters and mark: -

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