

## SECOND READING SPEECH

### *INCOME TAX (2015 BUDGET)(AMENDMENT) BILL 2014*

MR SPEAKER,

THE BILL PROPOSES:

1. AN AMENDMENT TO RECTIFY AN UNINTENDED CONSEQUENCE OF HAVING THE DEFINITIONS OF 'DEBT', EQUITY AND INTEREST APPLY TO ACT AS A WHOLE BUT RATHER CLARIFY THOSE DEFINITIONS AS NEEDED FOR CALCULATING RESTRICTIONS ON THE LEVEL OF DEDUCTIBLE INTEREST EXPENSES AS ORIGINALLY INTENDED.
2. AN AMENDMENT TO SECRECY PROVISION TO ENABLE COMMISSIONER GENERAL TO SHARE INFORMATION WITH THE DEPARTMENT OF TREASURY AND THE NATIONAL STATISTICS OFFICE FOR PURPOSES OF ANALYSIS.
3. AN AMENDMENT TO CLARIFY THE ELIGIBILITY OF GIFTS AND SPONSORSHIP TO THE PACIFIC GAMES FOR 150% DEDUCTION AND TO CLARIFY THE ROLE OF THE COMMISSIONER GENERAL IN VALUING MONEY OR PROPERTY FOR THESE PURPOSES.
4. AN AMENDMENT TO CLARIFY THE APPLICATION OF PRESCRIBED ROYALTY PAYMENTS TO LANDOWNERS AND MAKE ROYALTY WITHHOLDING TAX A FINAL TAX.
5. AN AMENDMENT TO ENHANCE COMPLIANCE FOR SALARY AND WAGES TAX OBLIGATIONS BY IMPROVING THE DIRECTOR PENALTIES REGIME TO PREVENT NON-COMPLIANT DIRECTORS FROM WINDING UP A COMPANY.
6. AN AMENDMENT TO ENCOURAGE COMPLIANCE BY PAYING AUTHORITIES AND EMPLOYERS IN DEDUCTING AND REMITTING TAXBY INTRODUCING STIFFER PENALTIES TO CONVICTED TAX OFFENDERS.
7. TECHNICAL AMENDMENTS TO CORRECT TYPOGRAPHICAL ERRORS AND OUT DATED REFERENCES.

MR SPEAKER, I COMMEND THE BILL.

## EXPLANATORY MEMORANDUM

### *Income Tax (2015 Budget)(Amendment) Bill 2014*

The Bill proposes:

#### Clause 1

An amendment to rectify an unintended consequence of having the definitions of ‘debt’, equity and interest apply to act as a whole but rather clarify those definitions as needed for calculating restrictions on the level of deductible interest expenses as originally intended.

#### Clause 2

To amend the secrecy provisions to enable the Commissioner General to provide information to the Department of Treasury and National Statistic Office for specified purposes.

The provisions relating to the Department of Treasury ensure that the Department is able to use tax information to effectively perform its functions in costing policies and forecasting revenue both where there is a risk aggregate information may identify a particular taxpayer (because, for example, it relates to a sector where there are few taxpayers) or where taxpayer specific information is required (for example, in costing a proposal to provide a particular taxpayer or project certain tax treatment that departs from the general tax treatment provided under the law).

The information will also be shared with National Statistics Office.

#### Clause 3

An amendment to correct wrong referencing. The word “Subsection” appearing in s.46CA(4) is meant to read “Section”.

#### Clause 4

Consequential amendments to Clause 1 to include the definition of debt and equity in section 68AF for the purposes of calculating thin capitalization.

#### Clause 5

To correct inconsistencies within the previous amendment, to clarify the eligibility of gifts and sponsorship to the Pacific Games for the 150% deduction and to clarify the role of the Commissioner General in valuing the sponsorship of money or property in consultation with the PNG 2015 Pacific Games Limited.

#### Clause 6

To update a reference to the new prescribed royalty withholding tax division and further clarifies that the landowner royalty payments are a final tax.

#### Clause 7

The current legislation taxes ‘*prescribed royalty payments*’ in the same manner and under the same provisions as it taxes ‘*business income payments*’. This occurs due to the fact that the provision of the relevant Division operates in respect of ‘*eligible payments*’ made by a paying authority. The definition of *eligible payments* includes *prescribed royalty payments* and *business income payments*.



These payments are unrelated in nature and the withholding of these amounts for tax purposes are also unrelated in its purpose and intent. This amendment would separate the legislative bonds that currently exist between these payments and allow them to be dealt with separately and distinctly. The amendment further makes royalty payments a final tax which will prevent the need for landowner beneficiaries to lodge tax returns.

#### Clauses 8&9

Consequential amendments to Clause 5 to take landowner royalty payments out of the Business payment tax regime and establish it as a final tax.

#### Clause 10

Under the Director Penalty provisions, Section 299AD(1) captures those persons who are directors of companies on or before the due date for payment of salary or wages tax. Subsection (3) is intended to capture those persons who become directors of companies *after* the due date. This is a typographical error which has an unintended effect.

#### Clauses 11&12

This prevents non-compliant directors from winding up a company under the Directors Penalty regime. The measure serves only to remove one of the three options available to non-compliant company directors. It applies a differentiated approach between directors who comply partially with their Salary and Wages Tax obligations (that is they report it even if they don't pay) and those who don't comply at all (that is, don't report and don't pay). This amendment will enhance compliance for salary and wages tax obligations by improving the director penalties regime to prevent non-compliant directors from winding up a company.

#### Clause 13

To amend the penalty for convicted tax offenders under section 315 of the Income Tax Act to include a jail term of up to 12 months imprisonment for individuals and public officers of corporate entities in the event of non-compliance of a court order compelling the offender (individual or corporate person) to comply with their obligations under the Income Tax Act. The introduction of a jail term and the increase in monetary fines range will act as a stronger incentive for taxpayers to comply with court orders.

#### Clause 14

An amendment to update the definition of the Central Bank to reflect the correct name as defined under the *Central Banking Act 2000*.

#### Clause 15

An amendment to replace out-dated references to provisions of the *Central Banking Act 2000* that do not exist anymore and update them with the correct legislative reference.



No: of 2014.

***Income Tax (2015 Budget)(Amendment) Bill 2014.***

**ARRANGEMENT OF CLAUSES.**

1. Interpretation (Amendment of Section 4).
2. Officers to observe secrecy (Amendment of Section 9).
3. Concessional treatment of approved redundancy payments (Amendment of Section 46CA).
4. Restriction on the interest deduction (Amendment of Section 68AF).
5. 150% Deduction for gifts and sponsorships in respect of the 2015 Pacific Games (Repeal and replacement of Section 69K).
6. Landowner resource trusts to be taxed as resource company (Amendment of Section 139).
7. New Division III.6C.

***"Division 6C – Landowner Royalty.***

- "142A. INTERPRETATION."***  
***"142B. LIABILITY TO LANDOWNER ROYALTY (WITHHOLDING) TAX."***  
***"142C. PAYMENT OF LANDOWNER ROYALTY (WITHHOLDING) TAX."***

8. Interpretation (Amendment of Section 276).
9. Duties of paying authority (Amendment of Section 280).
10. Director's liability for company's non-remittance of salary or wages tax to the Commissioner (Amendment of Section 299AD).
11. Remission of penalty where Section 299AD, is complied with before the notice period ends (Amendment of Section 299AG).
12. Non-remission in certain cases (New Section 299AI).
13. Order to comply with court order requirement (Amendment of Section 315).
14. Interpretation (Amendment of Section 354A).
15. Application for issue of certificate (Amendment of Section 354B).



A BILL

for

AN ACT

entitled

***Income Tax (2015 Budget)(Amendment) Act, 2014.***

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

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

- (a) in respect of Sections 14 and 15— on 20 April 2000;
- (b) in respect of Sections 10, 11 and 12— on 1 January 2011;
- (c) in respect of Section 3 — on 1 January 2012;
- (d) in respect of Sections 1 and 4— on 1 January 2013;
- (e) in respect of the remainder of the Act — on 1 January 2015.

**1. INTERPRETATION (AMENDMENT OF SECTION 4).**

Section 4 of the Principal Act is amended by repealing the definitions of “*debt*”, “*equity*” and “*interest*”.

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

Section 9 of the Principal Act is amended -

- (a) in Subsection (4) by -
  - (i) repealing the word “*and*” last appearing in Paragraph (j); and
  - (ii) repealing the full stop in Paragraph (k) and replacing it with the semi colon;  
and
  - (iii) inserting after Paragraph (k) the following new paragraphs:

“(l) 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 it is to estimate or analyse taxation revenues or cost policy proposals and is information that does not include the name, contact details or taxpayer identification number of any taxpayer; or



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- (m) 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
- (n) 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 is information that does not include the name, contact details or tax identification number of any entity.”; and

(b) by inserting after Subsection (6) the following new Subsection:

“(6A) Section (6) does not apply to the extent that the information provided is to the Minister responsible for Treasury for the purposes of considering or reporting on the provision of a tax incentive to a particular taxpayer or project.”.

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

Section 46CA of the Principal Act is amended in Subsection (4) by repealing the word “Subsection” and replacing it with “Section”.

**4. RESTRICTION ON THE INTEREST DEDUCTION (AMENDMENT OF SECTION 68AF).**

Section 68AF of the Principal Act is amended by inserting the following new Subsection:

“(1A) In this section -

“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

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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 or 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));

“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. 150% DEDUCTION FOR SPONSORSHIP AND GIFTS IN RESPECT OF THE 2015 PACIFIC GAMES (REPEAL AND REPLACEMENT OF SECTION 69K).**

Section 69K of the Principal Act is repealed and replaced with the following:

**“69K. 150% DEDUCTION FOR SPONSORSHIP AND GIFTS IN RESPECT OF THE 2015 PACIFIC GAMES**

(1) For the purposes of this Act, any reference to the PNG Sports Federation and Olympic Committee Inc. in this Act or any other law means the PNG Olympic Committee Inc.

(2) An amount by way of gift (the value of which is not less than K500,000.00) of money or property (other than money) purchased by a taxpayer in the 12 months immediately preceding the making of the gift by the taxpayer in a year of income, in respect of the 2015 Pacific Games to -

- (a) the PNG Sports Federation and Olympic Committee Inc.; or
  - (b) the Pacific Games (2015) Authority,
- shall be an eligible amount.



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(3) An amount by way of sponsorship (the value of which is not less than K500,000.00) of money or property (other than money), made by the taxpayer in a year of income, in respect of the 2015 Pacific Games to the PNG 2015 Pacific Games Limited, shall be an eligible amount.

(4) An amount equal to 150% of the eligible amount shall be an allowable deduction under this section.

(5) Where an eligible amount or a part of the eligible amount allowed under this section is recouped or recoupable, an amount shall be included in the assessable income to the extent that a deduction has been allowed.

(6) Where a 150% deduction is allowed under this section, the amount deductible shall be allowable only to the extent that the tax savings resulting from the allowance of the deduction does not exceed 45% of the eligible amount.

(7) This section applies to gifts and sponsorships made up to 31 December, 2015.

(8) The Commissioner General shall use every endeavor to value fairly, based on best market prices, the sponsorship money or property provided under Subsection (3), and such evaluation shall be made in consultation with the PNG 2015 Pacific Games Limited.”.

**6. LANDOWNER RESOURCE TRUSTS TO BE TAXED AS RESOURCE COMPANY (AMENDMENT OF SECTION 139).**

Section 139 of the Principal Act is amended by repealing Subsection (5) and replacing it with the following new Subsection:

“(5) Notwithstanding any other provision of this Act, where a landowner resource trust derives royalties from a related landowner resources project which have already been subject to prescribed royalty withholding tax under Division III.6C, the royalty shall not be included in the assessable income of the landowner resources trust.”.

**7. NEW DIVISION III.6C.**

Part III of the Principal Act is amended by inserting after Division 6B, the following new Division:

**“Division 6C. – Collection of Tax in Respect of Prescribed Royalty Payments.**

**142A. OBJECT.**

The object of this division is to impose and collect prescribed royalty withholding tax as a final tax on royalty payments made to customary landowners for certain activities carried out on their land.



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**142B. INTERPRETATION.**

In this Division unless the contrary intention appears -

“customary landowner” means the traditional landowners of customary land where activities giving rise to a prescribed royalty payment, are undertaken;

“prescribed royalty payment” means a payment made to or on behalf of a customary landowner that -

(a) arises out of any of the following activities:

(i) the exploration, taking, extraction, processing, transport or conveyance of any form of hydrocarbon and all activities incidental or ancillary to such exploration, taking, extraction, processing, transport or conveyance; or

(ii) the exploration, taking, extraction, processing, transport or conveyance of any mineral and all activities incidental or ancillary to such exploration, taking, extraction, processing, transport or conveyance; or

(iii) activities of the kinds listed in the definition of “fishing operations” under Section 4 of the Income Tax Act 1959 or listed in the definition of “fishing” under Section 2 of the Fisheries Management Act 1998 and all activities incidental or ancillary to such activities; or

(iv) activities of the kinds listed in the definition of “timber operations” under Section 166 of the Income Tax Act 1959 and all activities incidental or ancillary to such activities; and

(b) is made by reason of the activity being performed on or in the vicinity of customary land or in waters adjacent to customary land.

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

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

**142D. PAYMENT OF PRESCRIBED ROYALTY (WITHHOLDING) TAX.**

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

(2) Prescribed Royalty (Withholding) Tax, when it becomes due and payable, is a debt due to the Government and payable to the Commissioner General.

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

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

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

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

(6) The production of a notice served under Subsection (5) or of a document under the hand of the Commissioner General purporting to be a copy of such a notice, is evidence that the amount of Prescribed Royalty (Withholding) Tax specified in the notice or document became due and payable by the person on whom the notice was served on the date so specified.

(7) Where tax as provided under Subsection (1) has been deducted and paid -

- (a) the prescribed royalty income shall not be included in assessable income; and
- (b) in computing assessable income of the taxpayer no deduction shall be allowed in respect of any expenditure for or in connection with the earning of prescribed royalty income.”.

**8. INTERPRETATION (AMENDMENT OF SECTION 276).**

Section 276 of the Principal Act is amended in Subsection (1) by -

- (a) by repealing the definition “eligible payment” and replacing it with the following:

“eligible payment” means a business income payment.”; and

- (b) by repealing the definition “prescribed royalty payment”.

**9. DUTIES OF PAYING AUTHORITY (AMENDMENT OF SECTION 280).**

Section 280 of the Principal Act is amended by repealing Subsection (9) and replacing it with the following new Subsection:

“(9) In Subsection (1), “required amount” means 10% of the gross amount of the payment.”

**10. DIRECTOR’S LIABILITY FOR COMPANY’S NON-REMITTANCE OF SALARY OR WAGES TAX TO THE COMMISSIONER (AMENDMENT OF SECTION 299AD).**

Section 299AD of the Principal Act is amended in Subsection (3) by repealing the word “before” and replacing it with the word “after”.



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**11. REMISSION OF PENALTY WHERE SECTION 299AD, IS COMPLIED WITH BEFORE THE NOTICE PERIOD ENDS (AMENDMENT OF SECTION 299AG).**

Section 299AG of the Principal Act is amended by repealing and replacing it with the following new section:

“299AG. Subject to Section 299AI, where a penalty is payable by a director under Section 299AD and one or all of the acts referred to in Section 299AD(1)(a), (b) or (c) is complied with –

- (a) at a time when the Commissioner General has not yet given the person a notice under Section 299AE; or
- (b) within 30 days after the Commissioner General gives the person such a notice,

the penalty will be remitted by the Commissioner General.”

**12. NON-REMISSION IN CERTAIN CASES (NEW SECTION 299AI).**

The Principal Act is amended by inserting the following a new section after Section 299AH:

“299AI Where Section 299AD(1)(c) is complied with, a penalty payable by a director under Section 299AD shall not be remitted under Section 299AG where it is established that the company did not comply with its reporting obligations under Section 299G(4)(a)(i), (ii) and (iii) within 90 days of the due date for complying.”

**13. ORDER TO COMPLY WITH REQUIREMENT (AMENDMENT OF SECTION 315).**

Section 315 of the Principal Act is amended in Subsection (1) by repealing the penalty provision and replacing it with the following:

- “Penalty:    (a)    in the case of a natural person, a fine of not less than K1,000.00 and not exceeding K10,000.00, or a term of imprisonment not exceeding 12 months, plus K50.00 for each day during which the failure, refusal, or neglect continues; and
- (b)    In the case of a company, a fine of not less than K5,000.00 and not exceeding K50,000.00, or a term of imprisonment not exceeding 12 months to be served by the person who was the public officer of the company at the time of non-compliance with a court order, plus K50.00 for each day during which the failure, refusal, or neglect continues.”

**14. INTERPRETATION (AMENDMENT OF SECTION 354A).**

Section 354A of the Principal Act is amended by repealing the definition of “Central Bank” and “Bank” and replacing it with the following definition:

“Central Bank” or “Bank” means the Bank of Papua New Guinea;”.

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

Section 354B of the Principal Act is amended -

- (a) in Paragraph (a) by repealing the figure “61” and replacing it with “81”; and
- (b) in Paragraph (b) -
  - (i) by repealing the figures and letters “64A(1)(a)” and replacing them with “81(1)(a)”; and
  - (ii) by repealing the figures and letters “61A(1)(b)” and replacing them with “81(1)(b)”.