



No. 352 of 2021.

***Income Tax (2022 Budget)(Amendment) Bill 2021.***

**ARRANGEMENT OF SECTIONS.**

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2. New Division 11A (Amendment of Part III).

***“Division 11A. - Dominant Industry Player Levy.***

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19. Repeal and replacement of Section 275H.
20. Amount of Company Provisional Tax (Amendment of Section 275M).

21. Notice of company provisional tax (Amendment of Section 275N).
22. Repeal and replacement of Section 275P.
23. Group employees (Amendment of Section 299G).
24. Repeal of Section 308.
25. Alteration of notice of provisional tax (Amendment of Section 310).
26. Taxpayer to estimate income (Amendment of Section 311AO).
27. Payment of tax (Amendment of Section 3110AQ).
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33. Deductions to be forwarded to the Commissioner General (Amendment of Section 312AE).
34. Person paying royalty to non-residents (Amendment of Section 357).



A Bill  
for  
AN ACT  
entitled

***Income Tax (2022 Budget)(Amendment) Bill 2021,***

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

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

- (a) in respect of Sections 2, 12 and 20 - on 1 January 2022; and
- (b) in respect of Sections 9, 22(ii), 25 and 26 - on 1 January 2022; and
- (c) in respect of the remainder of this Act - on 21 April 2021.

**1. PAYMENT OF SALARY AND WAGES TAX (AMENDMENT OF SECTION 65H).**

Section 65H of the Principal Act is amended -

- (a) by repealing Subsections (3) and (4); and
- (b) by repealing Subsection (5) and replacing it with the following:

“(5) Any unpaid salary or wages tax payable under this Act, and any interest or penalty payable under the ***Tax Administration Act 2017*** may be sued for and recovered in a court of competent jurisdiction by the Commissioner General using his official name.”.

**2. NEW DIVISION 11A.**

Part III of the Principal Act is amended by inserting, immediately after Division 11, the following new Division:

***“Division 11A. - Market Concentration Levy.***

**170C. INTERPRETATION.**

- (1) For the purposes of this division -
  - “market concentration player” means -
    - (a) a financial institution authorised to operate under the ***Banks and Financial Institutions Act 2000***, who has 40% of the market share of the financial assets of the commercial banking sector based on information from the Central Bank; or

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- (b) a holder of a telecommunications license issued under the ***National Information and Communication Technology Act 2009***; who has 40% of total subscription services or turnover of the telecommunications sector based on information provided by National Information and Communications Technology Authority; or
- “market concentration levy” means -
- (a) for a market concentration player in the banking and financial sector, K190 million for each financial year commencing in 2022; for each subsequent year; and
  - (b) for a market concentration player in the telecommunication sector, K95 million for each financial year commencing in 2022; plus.

**170D. APPLICATION.**

(1) The object of this division is to provide for the imposition of a tax by the name of market concentration levy, which shall apply to licensed participants in the telecommunications or banking sector.

(2) A liability under this division is saved and continues where there is a merger or acquisition of any existing market concentration player.

**170E. LIABILITY FOR MARKET CONCENTRATION LEVY.**

(1) The market concentration levy shall be imposed on and is liable to be paid by a market concentration taxpayer pursuant to this division.

(2) The market concentration levy is payable in addition to any other tax payable by a market concentration taxpayer under this Act.

**170F. COLLECTION AND PAYMENT OF DOMINANT INDUSTRY PLAYER LEVY.**

(1) The market concentration levy shall be collected in addition to the amount of company provisional tax owed by the market concentration taxpayer as assessed for purposes of Section 275M.

(2) The market concentration levy is due and payable in three installments, as set out in the company provisional tax notice pursuant to Section 275N and Division VI.1B.

Penalty: For a breach of this Section, in addition to any penalties imposed under Division VI.1B, a fine not exceeding K50,000.00 or imprisonment for a term not exceeding six months.

**170G. NON-DEDUCTION OF DOMINANT INDUSTRY PLAYER LEVY.**

The amount of market concentration levy payable under this division shall not be an allowable deduction from assessable income under Section 68.

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**170H. DOMINANT INDUSTRY PLAYER LEVY NOT APPLICABLE.**

The market concentration levy imposed under Section 170E does not apply where a market concentration taxpayer is in a non-taxable position.”.

**3. PAYMENT OF PRESCRIBED PRODUCT WITHHOLDINGS TAX (AMENDMENT OF SECTION 185D).**

Section 185D of the Principal Act is amended -

(a) by repealing Subsections (3) and (4); and

(b) by repealing Subsection (5) and replacing it with the following:

“(5) Any unpaid Prescribed Product Withholding payable tax under this Act, and any other interest or penalty payable under the *Tax Administration Act 2017* may be sued for an recovered in a court of competent jurisdiction by the Commissioner General using his official name.”.

**4. PAYMENT OF INTEREST WITHHODLING TAX (AMENDMENT OF SECTION 187).**

Section 187 of the Principal Act is amended by repealing Subsection (3) and replacing it with the following:

“(3) Any unpaid Interest Withholding tax payable under this Act, and any interest or or penalty payable under the *Tax Administration Act 2017* may be sued for an recovered in a court of competent jurisdiction by the Commissioner General using his official name.”.

**5. PAYMENT OF DIVIDEND WITHHOLDING TAX (AMENDMENT OF SECTION 189D).**

Section 189D of the Principal Act is amended -

(a) by repealing Subsection (3) and (4); and

(b) by repealing Subsection (5) and replacing it with the following:

“(5) Any unpaid Dividend Withholding tax payable under this Act, and any interest or penalty payable under the *Tax Administration Act 2017* may be sued for and recovered in a court of competent jurisdiction by the Commissioner General using his official name.”.

**6. PAYMENT OF FOREIGN CONTRACTOR’S WITHHOLDING TAX (AMENDMENT OF SECTION 196E).**

Section 196E is amended -

(a) by repealing Subsection (3) and replacing it with the following:

“(3) Any unpaid Foreign Contractors Withholding tax payable under this Act, and any interest or penalty payable under the *Tax Administration Act 2017* may be sued for and recovered in a court of competent jurisdiction by the Commission General using his official name.”; and

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(b) by repealing Subsections (4) and (5).

**7. PAYMENT OF MANAGEMENT FEE WITHHOLDING TAX (AMENDMENT OF SECTION 196T).**

Section 196T of the Principal Act is amended -

(a) by repealing Subsections (3) and (4); and

(b) by repealing Subsection (5) and replacing it with the following:

“(5) Any unpaid Management Fee Withholding tax payable under this Act, and any interest or penalty payable under the ***Tax Administration Act 2017*** may be sued for and recovered in a court of competent jurisdiction by the Commissioner General using his official name.”.

**8. PAYMENT TO THE COMMISSIONER GENERAL (AMENDMENT OF SECTION 196V).**

Section 196V of the Principal Act is amended by repealing Subsections (5) and (6).

**9. CREDITS IN RESPECT OF PRESCRIBED INFRASTRUCTURE DEVELOPMENT (AMENDMENT OF SECTION 219C).**

Section 219C of the Principal Act is amended -

(a) in the definition of “eligible taxpayer” by repealing the full-stop after the word “tourism” and replacing it with the following:

“, who shall be in a taxable position.”; and

(b) in Subsection (2) Paragraph (a) Subparagraphs (i), (ii) and (iii) by repealing “0.75%”, “1.5%” and “1.5%” respectively appearing, and replacing them with the following:

“2%”; and

(c) by adding after Subsection (5A), the following new subsection:

“(5B) Notwithstanding any other provision of this section, except Subsection (13), expenditure incurred or income tax deemed to be paid under this section, shall only be carried forward separately from expenditure deemed to be income tax paid under Subsection (2) (with the provisions of Subsections (3), (4) and (5) applying), where -

(a) the eligible taxpayer has satisfactorily completed, as certified, the prescribed infrastructure development for which the expenditure was duly approved and incurred; and

(b) the expenditure shall not be deemed to be income tax paid for a year of tax that is more than seven years after the year in which the expenditure was actually incurred.

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(5C) Any carry forward expenditure or credit yet to be utilised as at 31 December 2021 may be carried forward despite Subsection (5B)(a) and (b), but only up to a maximum of seven years from 1 January 2022.”.

**10. REPEAL AND REPLACEMENT OF SECTION 220.**

The Principal Act is amended by repealing Section 220 and replacing it with the following new section:

**“220. APPLICATION OF CREDIT.**

The Commissioner General must apply any tax credit under this Division in accordance with Section 51 of the *Tax Administration Act 2017*.”.

**11. REPEAL OF SECTION 258.**

Section 258 of the Principal Act is repealed.

**12. INTERPRETATION (AMENDMENT OF SECTION 258A).**

Section 258A of the Principal Act is amended -

(a) by repealing the full stop after Paragraph (s) and replacing it with a semi-colon; and

(b) by adding after Paragraph (s) the following new subparagraph:

“(t) market concentration levy payable under Division III.11A.”.

**13. REPEAL OF SECTION 261.**

Section 261 of the Principal Act is repealed.

**14. REPEAL OF SECTION 262.**

Section 262 of the Principal Act is repealed.

**15. REPEAL OF SECTION 265.**

Section 265 of the Principal Act is repealed.

**16. REPEAL OF SECTION 266.**

Section 266 of the Principal Act is repealed.

**17. REPEAL OF SECTION 267.**

Section 267 of the Principal Act is repealed.

**18. REPEAL OF SECTION 269.**

Section 269 of the Principal Act is repealed.

**19. REPEAL AND REPLACEMENT OF SECTION 275H.**

The Principal Act is amended by repealing Section 275H and replacing it with the following new section:

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**“275H. REFUND OF OVERPAID NOTIONAL TAX.**

The Commissioner General must apply any overpaid notional tax in accordance with Section 52 of the *Tax Administration Act 2017* when all of the following conditions are complied with:

- (a) the Commissioner General had served a company with a notice under Section 275E(1) of this Act, specifying the amount payable as notional tax respect of a year of tax; and
- (b) the Commissioner General had served a further notice on the company under Section 275G(1) of this Act, specifying a reduced amount as the amount of the notional tax; and
- (c) the company has paid, in respect of the notional tax an amount exceeding the reduced amount.”.

**20. AMOUNT OF COMPANY PROVISIONAL TAX (AMENDMENT OF SECTION 275M).**

Section 275M of the Principal Act is amended by adding immediately after Subsection (3) the following new subsection:

“(4) For purposes of Subsection (1) and Section 275N, the amount of company provisional tax applicable to a dominant industry player, shall include the amount of any dominant industry player levy calculated and payable in accordance with Part III, Division 11A.”.

**21. NOTICE OF COMPANY PROVISIONAL TAX PAYABLE (AMENDMENT OF SECTION 275N).**

Section 275N of the Principal Act is amended by repealing Subsection (1) and replacing it with the following new subsection:

“(1) Where the Commissioner General has determined the company provisional tax for a year of tax, or a year of tax approved under 12A of this Act, he shall issue a notice setting out the amount of tax payable and his shall be paid in three instalments, due and payable as follows:

- (a) first instalment due 120 days from the end of the preceding year of tax or a year of tax as approved under Section 12A of this Act; and
- (b) second instalment due 210 days from the end of the preceding year of tax or a year of tax as approved under Section 12A of this Act; and
- (c) third instalment due 300 days from the end of the preceding year of tax or a year of tax as approved under Section 12A of this Act.”.

**22. REPEAL AND REPLAECEMNT OF SECTION OF 275P.**

The Principal Act is amended by repealing Section 275P and replacing it with the following new section:

**“275P. REFUND OF OVERPAID PROVISIONAL TAX.**

The Commissioner General shall apply any overpaid provisional tax in accordance with Section 52 of the *Tax Administration Act 2017* when all of the following conditions are complied with:



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- (a) the Commissioner General had served a company with a notice under Section 275N(1) of this Act, specifying the amount payable as provision tax in respect of a year of tax; and
- (b) the Commissioner General had served a further notice on the company under Section 275N(4) of this Act, specifying a reduced amount as the amount of the provisional tax; and
- (c) the company has paid, in respect of the provision tax an amount exceeding the reduced amount.”.

**23. GROUP EMPLOYEES (AMENDMENT OF SECTION 299G).**

Section 299G of the Principal Act is amended -

- (a) in Subsection (8) Paragraph (b) by repealing Subparagraphs (i) and (ii) and replacing them with the following new subparagraphs:

- “(i) late payment penalty prescribed by Section 94 of *Tax Administration Act 2017*; and
  - (ii) late payment interest prescribed by Section 39 of *Tax Administration Act 2017*.”;
- and

- (b) by adding after Subsection (10) the following new subsection:

“(11) Notwithstanding in this section, the Commissioner General may issue specific directions to any group employer with respect to their duties and obligations under this section including the form of statements and returns to be submitted, the due dates for filing such statements and returns, as well as the due dates and method for the payment of salary or wages tax deduction.”.

**24. REPEAL OF SECTION 308.**

Section 308 of the Principal Act is repealed.

**25. ALTERATION OF NOTICE OF PROVISIONAL TAX (AMENDMENT OF SECTION 310).**

Section 310 of the Principal Act is amended in Subsection (2) Paragraph (b) by repealing the words “shall credit any provisional tax overpaid in payment of any income tax payable by the taxpayer and refund to the taxpayer any amount of provisional tax overpaid not so credited” and replacing them with the following:

“must apply any overpaid provisional tax in accordance with Section 52 of the *Tax Administration Act 2017*.”.

**26. TAXPAYER TO ESTIMATE INCOME (AMENDMENT OF SECTION 311AO).**

Section 311AO of the Principal Act is amended -

- (a) in Subsection (1) by inserting after “31 March of the year of income” the following:

“or 90 days from the end of the year of tax as approved under Section 12A of this Act.”; and

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(b) by adding immediately after Subsection (1) the following new subsection:

“(1A) In addition to information relating to the likely taxable income liable to tax under this Division shall be taxed at the rates declared by the ***Income and Dividend (Withholding) Tax Rates Act*** (Chapter 111) and shall be payable in three instalments as follows:

- (a) first instalment due 120 days from the end of the preceding year of tax or a year of tax as approved under Section 12A of this Act; and
- (b) second instalment due 210 days from the end of the preceding year of tax or a year of tax as approved under Section 12A of this Act; and
- (c) third instalment due 300 days from the end of the preceding year of tax or a year of tax as approved under Section 12A of this Act.”.

**27. PAYMENT OF TAX (AMENDMENT OF SECTION 3110AQ).**

Section 311AO of the Principal Act is amended by repealing Subsection (1) and replacing it with the following new subsection:

“(1) An amount determined by the Commissioner General to be the estimated taxable income liable to tax under this Division shall be taxed at the rates declared by the ***Income and Dividend (Withholding) Tax Rates Act*** (Chapter 111) and shall be payable in three instalments as follows:

- (a) first instalment due 120 days from the end of the preceding year of tax or a year of tax as approved under Section 12A of this Act; and
- (b) second instalment due 210 days from the end of the preceding year of tax or a year of tax as approved under Section 12A of this Act; and
- (c) third instalment due 300 days from the end of the preceding year of tax or a year of tax as approved under Section 12A of this Act.”.

**28. REPEAL AND REPLACEMENT OF SECTION 311AU.**

The Principal Act amended by repealing Section 311AU and replacing it with the following new section:

**“311AU. REFUNDS.**

The Commissioner General shall apply any overpaid tax, which was paid under this Division, in accordance with Section 52 of the ***Tax Administration Act 2017*** when all of the following conditions are complied with:

- (a) the Commissioner General has served a company with a notice under Section 311AO(3) of this Act, specifying the amount payable as tax in respect of a year of tax; and
- (b) the Commissioner General has served a further notice on the company under Section 311AS(4) of this Act, specifying a reduced amount as the amount of tax; and
- (c) the company has paid an amount exceeding the reduced amount contained in the notice under Section 311AS(4).”.

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**29. PENALTY FOR LATE PAYMENT (AMENDMENT OF SECTION 311AW).**

The Principal Act is amended by repealing Section 311AW and replacing it with the following section:

**“311AW. PENALTY FOR LATE PAYMENT.**

Where an amount or amounts of tax determined as payable under this Division is not paid by the taxpayer on the original due date, the taxpayer is liable for late payment penalty under Section 39 of the *Tax Administration Act 2017*.”.

**30. DEDUCTIONS TO BE FORWARDED TO THE COMMISSIONER GENERAL (AMENDMENT OF SECTION 311E).**

Section 311E of the Principal Act is amended -

(a) by repealing Subsection (4) and replacing it with the following new subsection:

“(4) If a company fails to pay the tax deducted under Subsection (1) to the Commissioner General within the prescribed time, that company is liable to pay -

(a) late payment interest calculated under Section 39 of the *Tax Administration Act 2017*; and

(b) late payment penalty under Section 94 of the *Tax Administration Act 2017*;”;

(b) by repealing Subsection (5).

**31. PAYMENT OF DIVIDEND WITHHOLDING TAX (AMENDMENT OF SECTION 311G).**

Section 311G of the Principal Act is amended -

(a) in Subsection (1) Paragraph (b) by deleting “additional tax payable under Section 189(C)(3) in respect of that dividend (withholding) tax” and replacing them with the following:

“late payment interest payable under Section 39 of the *Tax Administration Act 2017*.”;

(b) by repealing Subsection (4).

**32. APPLICATION OF CREDITS (AMENDMENT OF SECTION 311J).**

Section 311J of the Principal Act is amended -

(a) by repealing Subsection (2) and replacing it with the following:

“(2) The Commissioner General must apply any tax credit under this Division in accordance with Section 51 of the *Tax Administration Act 2017*.”;

(b) by repealing Subsection (3).

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**33. DEDUCTIONS TO BE FORWARDED TO THE COMMISSIONER GENERAL (AMENDMENT OF SECTION 312AE).**

Section 312AE of the Principal Act is amended -

(a) by repealing Subsection (5) and replacing it with the following new subsection:

“(5) If a company fails to pay the tax deducted under Section 312AC of this Act to the Commissioner General within the prescribed time, that company is liable to pay -

- (a) late payment interest calculated under Section 39 of the *Tax Administration Act 2017*; and
- (b) late payment penalty under Section 94 of the *Tax Administration Act 2017*.”; and

(b) by repealing Subsection (6).

**34. PERSON PAYING ROYALTY TO NON-RESIDENTS (AMENDMENT OF SECTION 357).**

Section 357 of the Principal Act is amended -

(a) by repealing Subsection (9) and replacing it with the following new subsection:

“(9) Where an amount payable under this Section is not paid to the Commissioner General by the original due date, the person liable to pay that amount is liable to -

- (a) late payment penalty prescribed by Section 94 of *Tax Administration Act 2017*; and
- (b) late payment interest prescribed by Section 39 of *Tax Administration Act 2017*.”; and

(b) by repealing Subsection (10).