

## EXPLANATORY MEMORANDUM

### *Income Tax (2018 Budget)(Amendment) Bill 2017*

The Bill proposes to:

- remove training Levy and double deduction for training;
- treat royalty and production levy as a deduction in the Oil and Gas Sector;
- make tax payers settle their taxes due before mounting an appeal;
- hold parent company liable for subsidiary company tax liabilities;
- make Tax Identification Number (TIN) Registration a legal requirement;
- make taxpayer pay their taxes same time when lodging their tax return;
- simplify the administration of non-resident insurer's tax;
- introduce provision for bribery offence;
- permit Internal Revenue Commission to share tax information with PNG Extractive Transparency Initiative (PNGEITI) and Financial Analysis and Supervision Unit (FASU);
- to clarify the definition of "Primary Production to ensure it strictly applies to the Agriculture sector;
- transfer the power to declare landowners resources trust from the Minister for Treasury to the Commissioner General;
- reduce tax on Termination payment to align with tax on Superannuation payments;
- safe guard resource projects with Fiscal Stability guarantees entered through an agreement by the State;
- recognise existing resource projects that had incurred exploration and development expenditures prior to the revamped APT introduced in the 2017 Budget;
- ensure dividends distributed through companies are taxed once;
- exempt Superannuation Fund from Dividend Withholding Tax (DWT);
- ensure income from prescribed contracts by Foreign Contractors are taxed under the Foreign Contractors Withholding Tax regime separate from the Corporate Income Tax regime;
- allow the construction of APEC Haus under special ITC provision consistent with the NEC decision No. 219/2016 up to end of 2018; and
- Introduce other minor technical amendments to clarify law for ease tax administration.



## INDEPENDENT STATE OF PAPUA NEW GUINEA

No:                      of 2017.

### *Income Tax (2018 Budget) (Amendment) Bill 2017*

#### ARRANGEMENT OF CLAUSES

1. Interpretation (Amendment of Section 4).
2. Officers to Observe Secrecy (Amendment of Section 9).
3. Part II Administration (Amendment of Part II).
4. New Section 11A.

#### *“11A. Fiscal Stability.”*

5. Capital Amount of Allowance, etc, Deemed Salary or Wages (Amendment of Section 46B).
6. Double Deduction for Staff Training (Amendment of Section 72A).
7. Declaration of Trust as Landowner Resources Trust (Amendment of Section 137).
8. Interpretation (Amendment of Section 155).
9. Allowable Exploration Expenditure (Amendment of Section 155A).
10. Additional Deduction for Exploration Expenditure Incurred Outside the Resource Project (Amendment of Section 155N).
11. Application (Amendment of Section 159).
12. Accumulated Value of Net Project Receipts (Amendment of Section 159B).
13. Tax Credit Allowable (Amendment of Section 161A).
14. Liability to Dividend (Withholding) Tax (Amendment of Section 189B).
15. Overseas Contractors (Amendment of Division III.14A).
16. Training Levy (Amendment of Division III.14D).
17. Rate in Special Circumstances (Amendment of Section 208).
18. Concessional Rebates (Repeal of Division III.18A).
19. Rebate of Salary or Wages Tax (Amendment of Section 214).
20. Rebate of Education Expenses (Amendment of Section 214B).
21. Rebate on Dividends (Amendment of Section 216).
22. Credits in Respect of Prescribed Infrastructure Developments (Amendment of Section 219C).
23. Application for Review or Appeal (Amendment of Section 247).
24. When Tax Payable (Amendment of Section 259).
25. New Division VI.2AC.

#### *“Division 2AC – Recovery of tax from shareholders and related entities.”*

26. Additional Tax in Certain Cases (Amendment of Section 316).
27. Penal Provisions and Prosecutions (Amendment of Part VII).



**INDEPENDENT STATE OF PAPUA NEW GUINEA**

A BILL

for

AN ACT

entitled

***Income Tax (2018 Budget)(Amendment) Act, 2017,***

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

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

- (a) with respect to Sections 8, 9, 10, 11, 12, 14, 15 and 21 – on 1 January 2017; and
- (b) with respect to the remainder of the Act – on 1 January 2018.

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

Section 4 of the Principal Act is amended in the definition of “*primary production*” by inserting after the word “*manufacture*” second appearing, the following:-

*“but for the avoidance of doubt, does not include forestry, logging or timber operations”.*

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

Section 9 of the Principal Act is amended in Subsection (4) by inserting the following new Paragraphs:-

*“(o) the Extractive Industries Transparency Initiative Secretariat or such equivalent body for purposes of reporting on the extractive industry in accordance with the Initiative; or*

*(p) the Financial Analysis and Supervision Unit for purposes of carrying out their function under the Anti-Money Laundering and Counter Terrorist Financing Act 2015.”.*

**3. PART II ADMINISTRATION (AMENDMENT OF PART II).**

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

***“10B. ELECTRONIC TAX RETURNS, NOTICES, OTHER DOCUMENTS.***

*(1) 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;*
- (b) the furnishing of a tax return or other document;*
- (c) the payment of tax;*

- (d) *the payment of a refund of tax;*
  - (e) *the service of any document by the Commissioner General;*
  - (f) *the doing of any other act or thing that is required or permitted to be done under a tax law.*
- (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 to be determined by the Commissioner General unless the taxpayer provides the Commissioner General with adequate reasons for the failure.*
- (8) *The Commissioner General may provide for procedural rules for the electronic filing and service of documents, and the electronic payment of tax.*

**10C. APPLICATION FOR A TIN.**

- (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 Taxpayer Identification Number (“TIN”) unless the person has already been issued with a TIN that is in 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 this Act 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 opening an account with a financial institution 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) *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 any other tax law.*

**10D. ISSUE OF A TIN.**

- (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 has been 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.*
- (4) *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 10C(4)(c).*

**10E. 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) *Despite 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.*

**10F. 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 activities;*
  - (b) *the person's banking details;*
  - (c) *the person's electronic address used for communication with the Commissioner General;*
  - (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.*

**10G. USE OF A TIN.**

- (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.*

#### **10H. CANCELLATION OF A TIN.**

- (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 21 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.*

**10I. PENALTIES RELATING TO TIN.**

- (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 or her own motion.*
- (2) *A person is liable for a penalty equal to K500.00 if the person –*
- (a) *fails to notify a change in circumstances as required under Section 10F; or*
  - (b) *contravenes Section 10G(1).*
- (3) *Except when Section 10G(3) applies, a person is liable for a penalty equal to 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 10H is liable for a penalty equal to 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 equal to K1,000.00 if the person continues to use a TIN after it has been cancelled.*

**10J. OFFENCE RELATING TO TIN.**

- (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 10G(3) applies.*

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

#### **10K. IMPLEMENTATION OF MUTUAL ADMINISTRATIVE ASSISTANCE AGREEMENTS**

- (1) *If a tax treaty or 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 –*
  - (a) *to “tax” includes a foreign tax to which the exchange of information or reciprocal assistance relates; and*
  - (b) *to “unpaid tax” includes an amount specified in Paragraph (a) that has not been paid on or before the due date; and*
  - (c) *to “taxpayer” includes a person liable for an amount specified in Paragraph (a); and*
  - (d) *to “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.*

#### **10L. 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 the accounts of the taxpayer; and*
  - (b) *freeze access to any cash, valuables, precious metals, or other assets of the taxpayer held by the financial institution; and*
  - (c) *provide information relating to the taxpayer's accounts.*
- (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.*
- (4) *When a preservation notice has been served on a financial institution, the Commissioner General may make an 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) *Only the Commissioner General or an authorised officer is permitted to exercise powers under this section.”.*

**4. NEW SECTION 11A.**

Part III of the Principal Act is amended by inserting after Section 11, the following new section:-

**“11A. FISCAL STABILITY**

*For the avoidance of doubt, the taxation treatment of the LNG Project Company as well as any other resource project participant that is subject to a fiscal stability agreement with the State, continues to apply as agreed in the respective project agreement entered into by the LNG PNG Company or that participant with the State and guaranteed pursuant to the provisions of the Resource Contracts Fiscal Stabilization Act 2000, notwithstanding anything to the contrary in this Act or any other revenue law administered by the Commissioner General.”.*

**5. CAPITAL AMOUNT OF ALLOWANCE, ETC, DEEMED SALARY OR WAGES (AMENDMENT OF SECTION 46B).**

Section 46B of the Principal Act is amended as follows:-

- (i) in Subsection (1) by inserting after the number and figures “(2)”, the following numbers, letters and figures:-

“(2A), (2B)”;

- (ii) by repealing and replacing Subsection (2) with the following new subsection:-

“(2) *Income referred to in Subsection (1,) to the extent that it does not exceed the total value of—*

- (a) *payments made after 1 January 2018 in respect of long service leave accrued at a rate not exceeding six months per 15 years of service with an employer or an associated person of that employer where the employee had completed a minimum of fifteen years’ continuous service; and*

- (b) *distribution from an authorized superannuation fund being a prescribed sum, and the amount accrued before 1 January 1993,*

*shall be deemed to be salary or wages income taxable at the rate declared by Section 1(2) of the **Income Tax (Salary or Wages Tax) (Rates) Act 1979.**”;* and

- (iii) by inserting after Subsection (2A), the following new subsection:-

“(2B) *Income referred to in Subsection (1), except where it relates to income covered by Subsection (2), to the extent it is a payment, made after 1 January 2018, of long service leave accrued at a rate not exceeding six months per fifteen years of service with an employer or an associated person of that employer, shall be deemed to be salary or wages income taxable at the rate declared by Section 1(3A) of the **Income Tax (Salary or Wages Tax) (Rates) Act 1979.**”;* and

- (iv) in Subsection (4) by repealing the figures and number, “, (2)”.

**6. DOUBLE DEDUCTION FOR STAFF TRAINING (AMENDMENT OF SECTION 72A).**

Section 72A of the Principal Act is amended by inserting after Subsection (5), the following new subsection:-

“(6) *The double deduction under Subsection (3) and (4) shall only apply to expenditure incurred prior to 1 January 2018.*”.

**7. DECLARATION OF TRUST AS LANDOWNER RESOURCES TRUST (AMENDMENT OF SECTION 137).**

Section 137 of the Principal Act is amended by repealing and replacing Subsection (2) with the following:-

“(2) *The Commissioner General may by Gazettal Notice declare a trust, to which this section applies, to be a landowner resources trust.*”.

**8. INTERPRETATION (AMENDMENT OF SECTION 155).**

Section 155 of the Principal Act amended by repealing Subsection (3).

**9. ALLOWABLE EXPLORATION EXPENDITURE (AMENDMENT OF SECTION 155A).**

Section 155A of the Principal Act is amended in Paragraph (d) of Subsection (6) by repealing the following words:-

“*subject to Subsection 156E*”.

**10. ADDITIONAL DEDUCTION FOR EXPLORATION EXPENDITURE INCURRED OUTSIDE THE RESOURCE PROJECT (AMENDMENT OF SECTION 155N).**

Section 155N of the Principal Act is amended in Subsection (6) by repealing the following words “*Subject to Subsection 156E, no*” and replacing them with the following word:-

“*No*”.

**11. APPLICATION (AMENDMENT OF SECTION 159).**

Section 159 of the Principal Act is amended by repealing and replacing it with the following subsections:-

“(1) *Subject to Subsection (2) and Section 11A, this Subdivision provides for a tax by the name of additional profits tax which applies to participants in a resource project as defined in Section 155(1).*

(2) *In the case of participants in an existing mining project or petroleum project, this Subdivision shall apply from the commencement of the 2017 year of income.*

**12. ACCUMULATED VALUE OF NET PROJECT RECEIPTS (AMENDMEN OF SECTION 159B).**

Section 159B of the Principal Act is amended in Subsection (1) Paragraph (a) as follows:-

(i) in Sub-paragraph (i) by repealing the word “*and*” and replacing it with the word “*or*”; and

(ii) by repealing Sub-paragraph (ii) and replacing it with the following new sub-paragraphs:-

- “(ii) *for resource projects being a mining project or a petroleum project in existence on 31 December 2016, the estimated accumulated value of net project receipts in respect of the period from the year in which the uplift commencement date of the taxpayer occurred, to the end of the 2016 year of income, as they would have been had those projects been subject to the provisions of this Subdivision during that period; and*
- (iii) *other than those referred to in Paragraph (i) and (ii), in respect of the year in which the uplift commencement date of the taxpayer occurs and all preceding years of income—the sum of the net project receipts for the year of income plus the net project receipts for all preceding years of income;”.*

**13. TAX CREDIT ALLOWABLE (AMENDMENT OF SECTION 161A).**

Section 161A of the Principal Act is amended by repealing Subsections (1) and (2) and replacing them with the following new subsections:-

- “(1) *The total of royalty and development levy payable by a petroleum or designated gas project for a year of income is an allowable deduction in respect of that year of income in which the royalty and development levy were paid or became payable.*
- (2) *Notwithstanding Subsection (1), tax credits from payment of royalties and development levies made prior to 1 January 2018 shall be carried forward to the next succeeding year of income until fully utilised.”*

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

Section 189B of the Principal Act is amended in Subsection (4) by inserting after Paragraph (e), the following new paragraph:-

- “(f) *income that consists of dividends derived by an Authorised Superannuation Fund or a non-resident superannuation fund.”.*

**15. OVERSEAS CONTRACTORS (AMENDMENT OF DIVISION III.14A).**

Division III.14A of the Principal Act is amended by inserting after Section 196E, the following new Section:-

**“196F. Prescribed Contract Income Not Included in Assessable.**

- (1) *Prescribed contract income upon which foreign contractor (withholding) tax is payable and has been paid, shall not be included in the assessable income of a foreign contractor.*
- (2) *In computing the assessable income of a foreign contractor, no deduction shall be allowed in respect of any expenditure they incurred for or in connection, directly or indirectly, with the earning of the prescribed contract income.”.*

**16. TRAINING LEVY (AMENDMENT OF DIVISION III.14D).**

Division III.14D of the Principal Act is amended by inserting after Section 196ZA, the following new Section:-

**“196ZB. Application of Division 14D.**

*Notwithstanding Sections 196Y, 196Z AND 196ZA, training levy under this Division shall cease to apply as of 31 December 2017 and the last year of income in which training levy is imposed shall be that commencing 1 January 2017.”.*

**17. RATE IN SPECIAL CIRCUMSTANCES (AMENDMENT OF SECTION 208).**

Section 208 of the Principal Act is amended as follows:-

- a) by inserting the symbol and figure “(1)” before the word “Where” as it first appears; and
- b) inserting after the first paragraph, the following new Subsection:-

*“(2) The taxable income of an insurer under Section 204 shall taxed at the prescribed rate for non-resident taxpayers, except for any Lloyd’s underwriters (as defined in Section 2 of the Insurance Act 1995) which are taxed at the prescribed rate for resident taxpayers.”.*

**18. CONCESSIONAL REBATES (REPEAL OF DIVISION III.18A).**

Division III.18A of the Principal Act is repealed.

**19. REBATE OF SALARY OR WAGES TAX (AMENDMENT OF SECTION 214).**

Section 214 of the Principal Act is amended by inserting after Subsection (5), the following new subsection:-

*“(6) This Section only applies to losses or outgoings incurred prior to 1 January 2018.”.*

**20. REBATE OF EDUCATION EXPENSES (AMENDMENT OF SECTION 214B).**

Section 214B of the Principal Act is amended by inserting after Subsection (3), the following new subsection:-

*“(4) This Section only applies to education expenses incurred prior to 1 January 2018.”.*

**21. REBATE ON DIVIDENDS (AMENDMENT OF SECTION 216).**

Section 216 of the Principal Act is amended by repealing Subsection (3).

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

Section 219C of the Principal Act is amended as follows:-

(a) in Subsection (1):-

- (i) by inserting before the definition of “*approved national infrastructure project*”, the following new definition:-

*““APEC Haus Project” means the construction of the APEC Haus as approved for purposes of this Section by the National Executive Council on 07<sup>th</sup> September 2016 in NEC Decision No. 219 of 2016;” and;*

- (ii) by inserting after the definition of “*Highlands Highway*” the following new definition:-

*““related corporation” means, in relation to an eligible taxpayer, a corporation*

which is—

- (a) a wholly owned subsidiary of the taxpayer; or
  - (b) a corporation of which the taxpayer is a wholly owned subsidiary; or
  - (c) a wholly owned subsidiary of a corporation of which the taxpayer is a wholly owned subsidiary; and
- to the extent that the related corporation is engaged in mining, petroleum or gas operations;”

- (b) by inserting after Subsection (5A) the following new subsection:-

“(5B) In addition to any deemed tax payment under Subsection (2), where an eligible taxpayer or a related corporation incurs, between 7<sup>th</sup> September 2016 and 31 December 2018, expenditure on the APEC Haus Project, the amount of such expenditure is, subject to this Section, deemed to be income tax paid in respect of that taxpayer’s liability assessed for the year of tax relating to that year of income, limited to 1.25% of the assessable income derived by the taxpayer in the year of income, however the total expenditure incurred during the above mentioned period, shall not exceed K170 million.”; and

- (c) in Subsection (8) by inserting before the colon and figure “(6)”, the following colon, figure and word:-

“(5B) and”.

### **23. APPLICATION FOR REVIEW OR APPEAL (AMENDMENT OF SECTION 247).**

Section 247 of the Principal Act is amended by repealing and replacing it with the following new subsections:-

- “(1) Subject to Subsections (2), (3) and Section 257, a taxpayer dissatisfied with the decision of the Commissioner General under Section 246, may, within 60 days after service of the notice, either:-
- (a) make an application to the Review Tribunal for review in the prescribed form; or
  - (b) file an appeal to the National Court in accordance with the National Court Rules.
- (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 per cent 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, 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) 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.*”.

**24. WHEN TAX PAYABLE (AMENDMENT OF SECTION 259).**

Section 259 of the Principal Act is amended by repealing and replacing it with the following subsections:-

- “(1) *Subject to this Part, any income tax assessed is due and payable by the person liable to pay the tax on the date specified in the notice as the date upon which tax is due and payable, not being less than 30 days after the service of the notice, or, if no date is so specified, on the 30<sup>th</sup> day after the service of the notice.*
- (2) *Notwithstanding Subsection (1), payment of any income tax assessed may be made by the person liable, upon lodgment of a tax return or any time before the 30<sup>th</sup> day.*”.

**25. NEW DIVISION VI.2AC.**

Part VI of the Principal Act is amended by inserting after Division 2AB, the following new division:-

**“DIVISION 2AC - RECOVERY OF TAX FROM SHAREHOLDERS AND RELATED ENTITIES.**

**299AJ. Object.**

*The object of this division is to allow for the collection and recovery of any unpaid tax against shareholders of the taxpayer and their related entities.*

**299AK. Interpretation.**

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

*“amount due and payable” means any amount due and payable by a taxpayer to the Commissioner General pursuant to:*

- (a) *Section 259;*
- (b) *Section 262;*
- (c) *Any judgment entered against the taxpayer in respect of any amount due and payable pursuant to Sections 259 and 262;*

*“issued share” means a share;*

*“share” includes:-*

- (a) *a share in the share capital of a body corporate and includes stock;*
- (b) *a proprietary interest, however described, in any other body or association whether corporate or unincorporated, and*

*“shareholder” includes any person or body corporate or other body or association whether corporate or unincorporated which is the owner of a share regardless of whether it is beneficially entitled to the share thus owned by it;*

*“shareholder’s portion” means that percentage of an amount due and payable by a taxpayer which is equal to the share held either directly or indirectly in the taxpayer by a shareholder, expressed as percentage of the total number of issued shares in the taxpayer.*

- (2) *For the purposes of this Division a person, body corporate, or other body or association whether corporate or unincorporated is a related entity of a shareholder, which is not a natural person, if:-*
- (a) *it controls the composition of the board, or equivalent governing body, of the shareholder; or*
  - (b) *it is in a position to exercise, or control the exercise of more than one half of the maximum number of votes that can be exercised at a meeting of the shareholder; or*
  - (c) *more than one half of the issued shares of the shareholder are held by it and bodies corporate or other bodies or associations whether corporate or unincorporated related to it; or*
  - (d) *it holds at least one twentieth of the issued shares of the shareholder; or*
  - (e) *it is entitled to receive at least one twentieth of any dividend paid by the shareholder to its shareholders;*

**299AL. Application of this Division.**

*This Division applies in respect of any amount due and payable by a taxpayer that remains unpaid as at 1 January 2018.*

**299AM. Notices to Shareholders.**

- (1) *Where a taxpayer:-*
- (a) *is a body corporate or a body or association whether corporate or unincorporated;*
  - (b) *has an amount due and payable to the Commissioner General; and*
  - (c) *the Commissioner General, having taken reasonable steps to recover an amount due and payable from the taxpayer, is of the opinion that it will not or may not be able recover from the taxpayer the amount due and payable,*

*the Commissioner General may serve a notice on each shareholder of the taxpayer requiring it to take any steps which may be available to it to cause the taxpayer to pay to the Commissioner General the amount due and payable within 14 days of the date stated on the notice.*

- (2) *The reasonable steps referred to in Subsection (1)(c) includes those steps which the Commissioner General can take pursuant to the Act which the Commissioner General believes are reasonable in the circumstances.*

**299AN. Liability of Shareholders.**

- (1) *In the event a taxpayer does not pay to the Commissioner General the total amount due and payable by the expiry of the 14<sup>th</sup> day referred to in the notice served under Section 299AM(1), the shareholder in receipt of such notice, shall, from that date, become jointly and severally liable for the amount due and payable to the extent of that shareholder’s portion, and shall be*

*liable to pay to the Commissioner General, within 30 days of becoming jointly and severally liable, its shareholder's portion.*

- (2) *The Commissioner General may sue a shareholder referred to in Subsection (1) in the National Court for the recovery of the shareholder's portion due and payable by it.*
- (3) *The Commissioner General may sue a shareholder pursuant to Subsection (2):-*
  - (a) *in proceedings in which it also sues the taxpayer for recovery of the amount due and payable; or*
  - (b) *separately from any proceedings referred to in Paragraph (a) and subsequent to the determination by the Court in such proceedings.*

**299AO. Notice and Liability of Related Entities**

- (1) *Where a shareholder has become jointly and severally liable under Section 299AN(1), and neither the taxpayer nor the shareholder has paid the total amount due and payable or the total shareholders portion respectively, by the expiry of the 30<sup>th</sup> day referred to in that provision, the Commissioner General may serve notice on any related entity of the shareholder requiring that related entity to pay to it the shareholder's portion within 30 days of the date stated on the notice.*
- (2) *In the event the related entity does not make payment of the shareholder's portion within the time stated in Subsection (1) the related entity shall become jointly and severally liable to pay to the Commissioner the shareholder's portion.*
- (3) *The Commissioner General may sue the related entity in the National Court for recovery of the shareholder's portion due and payable by it.*
- (4) *The Commissioner General may sue a related entity pursuant to Subsection (3):*
  - (a) *in proceedings in which it also sues the taxpayer or shareholder for recovery of the amount due and payable or the shareholder's portion; or*
  - (b) *separately from any proceedings referred to in Paragraph (a) and subsequent to the determination by the Court in such proceedings."*

**26. ADDITIONAL TAX IN CERTAIN CASES (AMENDMENT OF SECTION 316).**

Section 316 of the Principal Act is amended in Subsection (2) by repealing Paragraph (dc) and replacing it with the following new paragraphs:-

- “(dc) includes in his return in a year of income, a deduction of a loss from a previous year under Section 101(3), and the Commissioner General forms an opinion or determines that such loss is not allowable as a deduction in full or in part in the year claimed; or*
- (dd) includes in his return in a year of income, a deduction under Section 68 and the Commissioner General forms an opinion or determines that such a deduction is not allowable in full or in part in the year claimed; or*
- (de) includes in his return in a year of income, a deduction under Division 10 and the Commissioner General form an opinion or determines that such a deduction is not allowable in full or in part in the year claimed; or*
- (df) includes in his return in a year of income, a claim for expenditure under Section 219C and the*

*Commissioner General forms an opinion or determines that such expenditure is not available, is incorrectly claimed or in excess of that which can be correctly claimed as income tax paid; or*

*(dg) is assessed under any other provision of this Act which requires the Commissioner General to form an opinion or determine a taxable income other than that declared.”.*

**27. PENAL PROVISIONS AND PROSECUTIONS (AMENDMENT OF PART VII).**

Part VII. of the Principal Act is amended by inserting after Section 322, the following new Section:-

**“322A. Bribery**

*A person who—*

- (a) gives or procures to be given, or offers or promises to give or procure to be given, any bribe, recompense or reward to an officer to induce him to neglect his duty; or*
- (b) makes a collusive agreement with an officer to induce him to neglect his duty; or*
- (c) attempts by threats, demands or promises to influence an officer in the discharge of his duty,*

*is guilty of an offence.*

*Penalty: Imprisonment for a term of up to but not exceeding five years.”.*

I hereby certify that the above is a fair print of the ***Income Tax (2018 Budget) (Amendment) Act 2017*** which has been made by the National Parliament.

.....  
Clerk of the National Parliament

I hereby certify that the ***Income Tax (2018 Budget)(Amendment) Act 2017*** was made by the National Parliament on ..... 2017.

.....  
Speaker of the National Parliament