

No. 22 of 2004.

***Income Tax (2005 Budget Amendment) Act 2004.***

Certified on: 11.02.05



**INDEPENDENT STATE OF PAPUA NEW GUINEA.**

No. of 2004.

***Income Tax (2005 Budget Amendment) Act 2004.***

**ARRANGEMENT OF SECTIONS.**

1. Interpretation (Amendment of Section 4).
2. Exemption of certain interest income (Amendment of Section 35).
3. Management fees (Amendment of Section 68AD).
4. Interpretation (Amendment of Section 145A).
5. New Section 145L.

**"145L. TRANSFER OF INFRASTRUCTURE TAX CREDITS."**

6. Interpretation (Amendment of Section 155).
7. Deduction for residual exploration expenditure (Amendment of Section 155C).
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9. Limitation on deduction of management fees (Amendment of Section 155M).
10. Interpretation (Amendment of Section 196P).
11. Repeal and replacement of Section 219C.

**"219C. CREDITS IN RESPECT OF PRESCRIBED  
INFRASTRUCTURE DEVELOPMENT."**



INDEPENDENT STATE OF PAPUA NEW GUINEA.

AN ACT

entitled

*Income Tax (2005 Budget Amendment) Act 2004,*

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

MADE by the National Parliament.

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

Section 4(1) of the Principal Act is amended by inserting, in alphabetical order, the following new definition:-

" "Management fee" means a payment of any kind to any person, other than to an employee of the person making the payment and other than in the way of royalty, in consideration for any services of a technical or managerial nature and includes payments for consultancy services, to the extent the Commissioner is satisfied those consultancy services are of a managerial nature;"

**2. EXEMPTION OF CERTAIN INTEREST INCOME (AMENDMENT OF SECTION 35).**

Section 35(2) of the Principal Act is amended by repealing Paragraph (a) and replacing it with the following:-

"(a) interest income derived by any person from a long term bond issued on or before 16 November 2004;"

**3. MANAGEMENT FEES (AMENDMENT OF SECTION 68AD).**

Section 68AD of the Principal Act is amended –

(a) by repealing Subsection (1); and

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- (b) by repealing Subsection (3) and replacing it with the following new subsections:-

“(3) Notwithstanding anything in any other provision of this Act, the deduction allowable under Section 68 in respect of management fees paid after 1 January 2005 shall not exceed the greater of –

- (a) 2% of the assessable income derived from Papua New Guinea sources by the taxpayer; or
- (b) 2% of the total allowable deductions, excluding management fees, incurred by the taxpayer in Papua New Guinea.

“(4) To the extent management fees are deductible under this Section, the source country in which those management fees are derived shall be deemed to be Papua New Guinea.”.

**4. INTERPRETATION (AMENDMENT OF SECTION 145A).**

Section 145A of the Principal Act is amended by inserting, in alphabetical order, the following new definitions:-

“accrual expenditure” means expenditure incurred by an amalgamating company prior to the amalgamation some or all of which would, but for the amalgamation, be an allowable deduction of the amalgamating company in the year of income and/or in a subsequent year of income and without limiting the generality of this term, includes expenditure to which the provisions of Division 10 of Part III apply;

“unexpired accrual expenditure” means the amount of accrual expenditure incurred by an amalgamating company prior to the date of amalgamation less the amount of that expenditure which has been or will be allowed as a deduction to the amalgamating company prior to the date of amalgamation and without limiting the generality of this term includes residual exploration expenditure and residual capital expenditure.”.

**5. NEW SECTION 145L.**

The Principal Act is amended by inserting after Section 145K the following new section:-

**“145L. TRANSFER OF INFRASTRUCTURE TAX CREDITS.**

Where at the time of amalgamation an amalgamating company is entitled to carry forward expenditure or credits in accordance with the provisions of Section 219C, the amalgamated company shall be entitled to that expenditure or credit in the same way as the amalgamating company and the provisions of Section 219C shall apply to the amalgamated company in respect of that expenditure or credit as it would have applied to the amalgamating company if the amalgamation had not occurred.”.

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

Section 155(1) of the Principal Act is amended by repealing the definition of "exploration activities" and replacing it with the following:-

““exploration activities” means exploration activities for the purpose of discovering petroleum or minerals in Papua New Guinea, and includes geophysical analysis and geophysical surveys, exploration drilling and appraisal drilling and appraisal in relation to such petroleum or minerals, whether pursuant to a petroleum prospecting licence or a retention licence or a development licence or a mining exploration licence;”.

**7. DEDUCTION FOR RESIDUAL EXPLORATION EXPENDITURE (AMENDMENT OF SECTION 155C).**

Section 155C of the Principal Act is amended by inserting after Subsection (3) the following new subsection:-

“(4) The amount of the deduction allowable under this section shall not exceed an amount equal to so much of the assessable income from resource operations derived by the taxpayer from the resource project in the year of income as remains after deducting from that income all allowable deductions relating to the project, other than any deductions allowable under this section or Section 155E.”.

**8. DEDUCTION FOR ALLOWABLE CAPITAL EXPENDITURE (AMENDMENT OF SECTION 155E).**

Section 155E of the Principal Act is amended by inserting after Subsection (5) the following new subsection:-

“(6) The amount of the deduction allowable under this section shall not exceed an amount equal to so much of the assessable income from resource operations derived by the taxpayer from the resource project in the year of income as remains after deducting from that income all allowable deductions relating to the project, other than any deductions allowable under this section.”.

**9. LIMITATION ON DEDUCTION OF MANAGEMENT FEES (AMENDMENT OF SECTION 155M).**

Section 155M of the Principal Act is amended by repealing Subsection (1).

**10. INTERPRETATION (AMENDMENT OF SECTION 196P).**

Section 196P of the Principal Act is amended by repealing Paragraph (a).

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**11. REPEAL AND REPLACEMENT OF SECTION 219C.**

Section 219C of the Principal Act is repealed and is replaced with the following:-

**"219C. CREDITS IN RESPECT OF PRESCRIBED INFRASTRUCTURE DEVELOPMENTS.**

(1) In this Section—

“eligible taxpayer” means—

(a) a taxpayer engaged in mining, petroleum or gas operations;  
or

(b) a taxpayer engaged in primary production;

“Gas Agreement” means the *Gas Agreement* between the State, the Bank of Papua New Guinea and the Project Developers signed in Port Moresby on the 6<sup>th</sup> of June 2002;

“gas project companies” mean the companies defined as gas project companies in Section 1.1 of the Gas Agreement;

(2) Where an eligible taxpayer has, in a year of income, incurred expenditure in relation to a prescribed infrastructure development, 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 the lesser of—

(a) for a taxpayer engaged in –

(i) mining, petroleum or gas operations – 0.75% of the assessable income derived in the year of income; and

(ii) primary production – 1.0% of the assessable income derived in the year of income 2005 or in subsequent years; or

(b) the amount of tax payable.

(3) Where in any year the actual expenditure by an eligible taxpayer is less than the maximum amount of expenditure which, under Subsection (2), the taxpayer would be entitled to claim as deemed tax paid, the difference may be carried forward to be expended in the next two years of income.

(4) Amounts expended in a year of income pursuant to Subsection (3) shall be in addition to amounts which may be expended under Subsection (2).

(5) Where in any year an eligible taxpayer has incurred expenditure greater than the total of the amounts he is entitled to expend under Subsections (2) and (3), for the purposes of this section the amount of the excess shall be deemed to be expenditure of the next succeeding year of income.

(6) Where an eligible taxpayer would have been, on 1 January 2001, entitled to expend additional amounts on prescribed infrastructure development under the provisions of this section as they were in force prior to that date, that entitlement may be expended before 31 December 2003 and shall be in addition to the amounts which may be expended under Subsections (2) and (3).

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"(7) Where an eligible taxpayer incurs, in the year of income 2002 or the year of income 2005, expenditure on the construction, upgrading or repair of a prescribed section of the Highlands Highway, 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 the lesser of –

- (a) 1.25% of the assessable income derived by the taxpayer in the year of income, which shall be additional to the amount provided in Subsection (2)(a); or
- (b) the amount of tax payable.

"(8) Expenditure incurred or income tax deemed to be tax paid under Subsection (7) may be carried forward, separately from expenditure deemed to be income tax paid under Subsection (2) and the provisions of Subsections (3), (4) and (5) shall apply in the same manner they apply to expenditure incurred or tax deemed under the provisions of Subsection (2).

"(9) Where a gas project company incurs expenditure on behalf of the State on the construction, upgrading or repair of a road defined under the heading 'State Road Commitments' in Section 1(a) of Attachment 3 to the Gas Agreement, the amount of such expenditure is, subject to this section, deemed to be income tax paid in respect of that taxpayers liability assessed for the year of tax relating to that year of income, limited to the lesser of –

- (a) for expenditure on behalf of the State on construction of the other roads defined in the Gas Agreement under the heading "State Road Commitments", 1.25% of the assessable income derived by the taxpayer at any time following the ***PNG Gas Project Decision*** as defined in *Section 1.1 of the Gas Agreement*,

which shall be additional to the amount provided in Subsection (2)(a); or

- (b) 50% of the amount of tax payable.

"(10) Expenditure incurred or income tax deemed to be tax paid under Subsection (9) may be carried forward, separately from expenditure deemed to be income tax paid under Subsection (2) and the provisions of Subsections (3), (4) and (5) shall apply in the same manner they apply to expenditure incurred or tax deemed under the provisions of Subsection (2).

"(11) Where an eligible taxpayer incurs, in the year of income 2003, expenditure on the construction of roads between Gobe-Semberigi-Erave, the amount of such expenditure is, subject to this section, deemed to be income tax paid in respect of that taxpayers liability assessed for the year of tax relating to that year of income, limited to the lesser of –

- (a) 1.25% of the assessable income derived by the taxpayer in the year of income, which shall be additional to the amounts provided in Subsections (2)(a) and (7)(a); or

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(b) the amount of tax payable,  
and expenditure incurred or income tax deemed to be tax paid under this  
Subsection may be carried forward, separately from expenditure deemed to be  
income tax paid under Subsection (2) and the provisions of Subsections (3), (4)  
and (5) shall apply in the same manner they apply to expenditure incurred or tax  
deemed under the provisions of Subsection (2)."

I hereby certify that the above is a fair print of the ***Income Tax (2005 Budget Amendment) Act 2004*** which has been made by the National Parliament.

*Clerk of the National Parliament.*

I hereby certify that the ***Income Tax (2005 Budget Amendment) Act 2004*** was made by  
the National Parliament on 24 November 2004.

*Speaker of the National Parliament.*