

No. 14 of 2017.

***Income Tax (Amendment) Act 2017.***

Certified on : 24/11/2017



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**ARRANGEMENT OF SECTIONS.**

1. Interpretation (Amendment of Section 155).
2. Interpretation (Amendment of Section 159A).
3. Dividend paid by resident Companies (Amendment of Division III.13A).

- “189AA. Application of division.
- 189A. Interpretation.
- 189B. Liability to dividend (withholding) tax.
- 189C. Payment of dividend (withholding) tax.
- 189D. Certain income not including in assessable income.
- 189E. Refund of dividend (withholding) tax.”.

4. Country-By-Country reporting (Amendment of Division III.16A).

**“Division 16. Country-By-Country Reporting.**

- 198. Interpretation.
- 199. Filing obligation.
- 200. Notification.
- 201. Country-by-country report.
- 201A. Time of filing.
- 201B. Use and confidentiality of country-by-country report information.”.

5. Rebate on Dividends (Amendment of Section 216).

6. New Division VI.4.

**“Division 4. Collection of Dividend (Withholding) Tax.**

- 311A. Object of Division 4.
- 311B. Interpretation.
- 311C. Deductions from Dividends.
- 311D. Exemptions and variations.
- 311E. Deductions to be forwarded to the Commissioner General.
- 311F. Dividends not in money not to be paid until payment made to Commissioner General on account of tax.
- 311G. Liability of person who fails to made deduction etc.
- 311H. Recovery of amounts by Commissioner General.

- 311I. Credits in respect of deductions made from dividends
- 311J. Application on Credits.
- 311K. Liability of Trustee to pay deductions to Commissioner General.
- 311L. Persons discharged from liability in respect of deductions.
- 311M. Payments to and from General Revenue.
- 311N. Time for prosecutions.
- 311O. Joinder of charges under this division.



No. of 2017.

An Act

entitled

***Income Tax (Amendment) Act 2017.***

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

MADE by the National Parliament and deemed to come into operation on 1 January 2017.

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

Section 155 of the Principal Act is amended by inserting, after Subsection (2), the following new subsection:

“(3) Notwithstanding anything in this Division, the provisions of the ***Resource Contracts Fiscal Stabilization Act 2000*** and any agreement entered into by the State referred to under that Act, in relation to fiscal stability guarantees, shall apply as provided in such agreement.”.

**2. INTERPRETATION (AMENDMENT OF SECTION 159A).**

Section 159A of the Principal Act is amended -

- (a) by repealing the definitions of “resource project”; and
- (b) in Subsection (4), by repealing the word “gas” and replacing it with the word “resource”.

**3. DIVIDEND PAID BY RESIDENT COMPANIES (AMENDMENT OF DIVISION III.13A).**

Division III.13A of the Principal Act is amended by repealing and replacing it with the following:

**“189AA. APPLICATION OF DIVISION.**

This Division applies notwithstanding anything in any other Act.

**189A. INTERPRETATION.**

(1) In this Division, unless the context otherwise requires or some other meaning is clearly intended -

- “dividend” includes a part of a dividend;
- “person” includes a trustee.

(2) For the purposes of this Division, other than Section 189D, where a dividend paid by a company that is a resident is included in the income of a trust estate, the trustee of that trust estate shall be deemed to have derived that dividend.

**189B. LIABILITY TO DIVIDEND (WITHHOLDING) TAX.**

(1) Subject to Subsection (2), this Division applies to income that consists of a dividend -

- (a) paid by a company that is a resident; or
- (b) deemed to be a dividend by virtue of this Act; or

***Income Tax (Amendment)***

- (c) deemed to be a dividend paid by a company by virtue of Section 361.

(2) Where a resident company pays or credits a dividend to which this Division applies, to:

- (a) a resident individual; or
- (b) a resident trust estate; or
- (c) a non-resident person,

the company making the payment or crediting the dividend in the account, shall withhold and pay tax upon that amount at the rate prescribed by Section 10 of the ***Income Tax, Dividend (Withholding) Tax and Interest (Withholding) Tax Rates Act 1984.***

(3) For the avoidance of doubt, the persons specified in Subsection (2)(a), (b) and (c) who derive dividend income to which this section applies, are liable to dividend withholding tax.

(4) This section does not apply to -

- (a) income derived by a non-resident that is exempt from income tax by virtue of Section 25(a) or (b) or Section 26, 27 or 28, and is exempt from income tax in the country in which the non-resident resides; or
- (b) income derived by a resident that is exempt from income tax by virtue of Section 24, 25, 25A, 26, 27, 28 or 40A; or
- (c) income derived by a resident who is referred to in Section 24(2), including income derived by a corporation which, in the opinion of the Commissioner General, is wholly beneficially owned by such a resident; or
- (d) income that is exempt from income tax by virtue of Section 22A, 39(1) or 140(1); or
- (e) income that consists of a dividend excluded from assessable income by virtue of Section 42; or

(5) Tax payable by a person in accordance with this section is in addition to any other tax payable by him upon income to which this section does not apply.

**189C. PAYMENT OF DIVIDEND (WITHHOLDING) TAX.**

(1) Dividend (withholding) tax is due and payable by the person liable to pay the tax at the expiration of 21 days after the end of the month in which the income to which the tax relates was derived by him, or of such further period as the Commissioner General, in special circumstances, allows.

(2) Dividend (withholding) tax, when it becomes due and payable, is a debt due to the State and payable to the Commissioner General.

(3) Subject to Subsection (4), if any dividend (withholding) tax remains unpaid at the expiration of the time when it became due and payable, additional tax is due and payable at the rate of 20% per annum on the amount unpaid, computed from the expiration of that period.

### *Income Tax (Amendment)*

(4) The Commissioner General may, in any case, for reasons that he thinks sufficient, remit the additional tax or any part of the additional tax.

(5) Any unpaid dividend (withholding) tax, and any unpaid additional tax payable under this section, may be sued for and recovered in a court of competent jurisdiction by the Commissioner General suing in his official name.

(6) Subject to the provisions of Part V.2, the ascertainment of the amount of any dividend (withholding) tax shall not be deemed to be an assessment within the meaning of any of the provisions of this Act.

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

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

(8) The production of a notice served under Subsection (7), 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 dividend (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.

**189D. CERTAIN INCOME NOT INCLUDED IN ASSESSABLE INCOME.**

Income upon which dividend (withholding) tax is payable and has been paid, is not included in the assessable income of -

- (a) a person who is a non-resident; or
- (b) a person who is a resident; or
- (c) a resident trust estate,

and in computing assessable income of the above taxpayers, no deduction shall be allowed in respect of any expenditure for or in connection, directly or indirectly, with the earning of dividend income.

**189E. REFUND OF DIVIDEND (WITHHOLDING) TAX.**

(1) Subject to Subsection (11), where a resident company derives a dividend to which Section 189B applies, it shall record in its books of account the gross amount of such dividend (being the amount of the dividend before the amount of dividend (withholding) tax was deducted) in an account entitled "Undistributed Dividend Income Account" and the amount of dividend withholding tax for which it is liable under Section 189B in respect of that dividend in an account entitled "Refundable Dividend (Withholding) Tax Account".

(2) Subject to Subsections (10) and (12), a resident company is entitled to receive a refund of dividend (withholding) tax in respect of any amount paid out of the Undistributed Dividend Income Account as a dividend to a shareholder.

### *Income Tax (Amendment)*

(3) The amount of refund under Subsection (2) is that proportion of the balance of the Refundable Dividend (Withholding) Tax Account as the amount paid or to be paid out of the Undistributed Dividend Income Account bears to the balance of that account before that payment is or was made, as the case may be.

(4) Where a resident company referred to in Subsection (1) declares a dividend in favour of an exempt body, it shall apply to the Commissioner General, in a form approved by him, advising him of the amount it intends to pay out of its Undistributed Dividend Income Account in respect of the declared dividend, and the Commissioner General shall refund to the resident company the dividend (withholding) tax calculated in accordance with Subsection (3).

(5) Where a resident company receives a refund of dividend (withholding) tax under Subsection (4), it shall, within 21 days immediately after receiving that refund, pay to the exempt body the amount of that dividend declared.

Penalty: A fine not exceeding double the amount refunded to and not paid out to the exempt body by the resident company and, in addition, the court shall order the resident company to repay to the Commissioner General the amount of that refund not paid out to the exempt body.

(6) Where a resident company pays a dividend out of its Undistributed Dividend Income Account to a shareholder who is not an exempt body, it may notify the Commissioner General, in a form approved by him, at least 14 days before the date it is required to make the payment under Division III.13A in respect of that dividend, requesting that the payment due or to become due under that Division be made from any refund payable to it under this section and, upon that application being made, the liability of the resident company under that Division in respect of the dividend, and the liability under Sections 189B and 189C of the recipient of the dividend, is discharged.

(7) Upon the payment of a dividend from the Undistributed Dividend Income Account, the resident company shall immediately deduct -

- (a) from that account, the gross amount of each dividend paid by it; and
- (b) from the Refundable Dividend (Withholding) Tax Account, the refund calculated under Subsection (3).

(8) Subject to Subsection (9), no resident company shall make an entry in its Undistributed Dividend Income Account or its Refundable Dividend (Withholding) Tax Account other than -

- (a) an entry provided for by Subsections (1) and (7); or
- (b) in the case of the Undistributed Dividend Income Account, an entry necessary to include as assessable income a dividend derived during the year of income by the resident.

## *Income Tax (Amendment)*

(9) A resident company shall, in respect of any amount of dividend to which Section 189B applies and in respect of which it is not entitled to a refund of dividend (withholding) tax under this section, in addition to any entry referred to in Subsection (7), make the necessary accounting adjustments to its Undistributed Dividend Income Account and its Refundable Dividend (Withholding) Tax Account as soon as practicable after it is no longer entitled to a refund of dividend (withholding) tax in respect of that amount.

Penalty: A fine of not less than K200.00 and not more than K1,000.00.

(10) Subject to Subsections (4) and (6), instead of making a refund that might otherwise be made under this section, the Commissioner General may, where the resident company is liable or about to become liable to make a payment or a deduction under this Act, apply to that other liability the amount that would otherwise be refundable.

(11) A resident company that derives a dividend to which Section 189B applies may, on or before the date on which it derives that dividend or within such further time as the Commissioner General allows, lodge with the Commissioner General an election in writing to record only the net amount of the dividend derived or to be derived by it, and upon so electing, the provisions of this section do not apply to or in respect of that dividend.

(12) A resident company is not entitled to a refund of dividend (withholding) tax under this section in respect of the whole or any part of a dividend derived that has not been paid out as a dividend by the company within the seven years of income or substituted accounting periods immediately following the year of income or substituted accounting period in which the dividend was so derived.

(13) In this section “exempt body” means a person or body in respect of whose income Section 189B does not apply.

(14) This Section only applies to dividend income derived prior to 1 January 2017.”.

**4. COUNTRY-BY-COUNTRY REPORTING (AMENDMENT OF DIVISION III.16A).**  
Division III.16A of the Principal Act is repealed and replaced with the following:

**“DIVISION 16. - COUNTRY-BY-COUNTRY REPORTING.**

**198. INTERPRETATION.**

For purposes of this Act, unless the contrary intention appears -

“consolidated financial statements” means the financial statements of an MNE group in which the assets, liabilities, income, expenses and cash flows of the ultimate parent entity and the constituent entities are presented as those of a single economic entity;



### *Income Tax (Amendment)*

“constituent entity” means;

- (a) any separate business unit of an MNE group that is included in the consolidated financial statements of the MNE group for financial reporting purposes, or would be so included if equity interests in such business unit of an MNE group were traded on a public securities exchange; and
- (b) any such business unit that is excluded from the MNE group’s consolidated financial statements solely on size or materiality grounds; and
- (c) any permanent establishment of any separate business unit of the MNE group included in (i) or (ii) above provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes;

“excluded MNE group” means, with respect to any fiscal year of the group, a group having total consolidated group revenue of less than 2.3 billion kina as of January 2016 during the fiscal year immediately preceding the reporting fiscal year as reflected in its consolidated financial statements for such preceding fiscal year;

“fiscal year” means an annual accounting period with respect to which the ultimate parent entity of the MNE group prepares its financial statements;

“group” means a collection of enterprises related through ownership or control such that it is either required to prepare Consolidated Financial Statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange;

“international agreement” shall mean the ***Multilateral Convention for Mutual Administrative Assistance in Tax Matters***, any bilateral or multilateral Tax Convention, or any Tax Information Exchange Agreement to which Papua New Guinea is a party, and that by its terms provides legal authority for the exchange of tax information between jurisdictions, including automatic exchange of such information;

“MNE” means a multinational enterprise;

“MNE group” means any group that -

- (a) includes two or more enterprises the tax residence for which is in different jurisdictions, or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction; and
- (b) is not an excluded MNE group;

“qualifying competent authority agreement” means an Agreement -

- (a) that is between authorised representatives of those jurisdictions that are parties to an International Agreement; and
- (b) that requires the automatic exchange of country-by- country reports between the party jurisdiction

“reporting entity” means the constituent entity that is required to file a country-by-country report conforming to the requirements in Section 201 in its jurisdiction of tax residence on behalf of the MNE group. The reporting entity may be the ultimate parent entity, the surrogate parent entity, or any entity described in Section 199(2);

### *Income Tax (Amendment)*

- “reporting fiscal year” means that fiscal year the financial and operational results of which are reflected in the country-by country report defined in Section 201;
- “surrogate parent entity” means one constituent entity of the MNE group that has been appointed by such MNE group, as a sole substitute for the ultimate parent entity, to file the country-by-country report in that constituent entity’s jurisdiction of tax residence, on behalf of such MNE group, when one or more of the conditions set out in Section 199(2)(ii) applies;
- “systemic failure” with respect to a jurisdiction, means that a jurisdiction has a Qualifying Competent Authority Agreement in effect with Papua New Guinea, but has suspended automatic exchange (for reasons other than those that are in accordance with the terms of that Agreement) or otherwise persistently failed to automatically provide to Papua New Guinea country-by-country reports in its possession of MNE groups that have constituent entities in Papua New Guinea;
- “ultimate parent entity” means a constituent entity of an MNE group that meets the following criteria:
- (a) it owns directly or indirectly a sufficient interest in one or more other constituent entities of such MNE group such that it is required to prepare consolidated financial statements under accounting principles generally applied in its jurisdiction of tax residence, or would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence; and
  - (b) there is no other constituent entity of such MNE group that owns directly or indirectly an interest described in (i) above in the first mentioned constituent entity;

### **199. FILING OBLIGATION.**

(1) Each ultimate parent entity of an MNE group that is resident for tax purposes in Papua New Guinea shall file a country-by-country report conforming to the requirements of Section 201 with the Commissioner General with respect to its reporting fiscal year on or before the date specified in Section 201A.

(2) A constituent entity which is not the ultimate parent entity of an MNE group shall file a country-by-country report conforming to the requirements of Section 201 with the Commissioner General with respect to the reporting fiscal year of an MNE group of which it is a constituent entity, on or before the date specified in Section 201A, if the following criteria are satisfied:

- (a) the entity is resident for tax purposes in Papua New Guinea; and
- (b) one of the following conditions applies:
  - (i) the ultimate parent entity of the MNE group is not obligated to file a country-by-country report in its jurisdiction of tax residence; or
  - (ii) the jurisdiction in which the ultimate parent entity is resident for tax purposes has a current international agreement to which Papua New Guinea is a party but does not have a Qualifying Competent Authority Agreement in effect to which Papua New Guinea is a party by the time specified in Section 201A for filing the country-by-country report for the Reporting Fiscal Year; or

### *Income Tax (Amendment)*

- (iii) there has been a systemic failure of the jurisdiction of tax residence of the ultimate parent entity that has been notified by the Commissioner General to the constituent entity resident for tax purposes in Papua New Guinea, and where there are more than one constituent entities of the same MNE group that are resident for tax purposes in Papua New Guinea and one or more of the conditions set out in Paragraph (b)(ii) above apply, the MNE group may designate one of such constituent entities to file the country-by-country report conforming to the requirements of Section 201 with the Commissioner General with respect to any reporting fiscal year on or before the date specified in Section 201A and to notify the Commissioner General that the filing is intended to satisfy the filing requirement of all the constituent entities of such MNE group that are resident for tax purposes in Papua New Guinea.

(3) Notwithstanding the provisions of Subsection (2), when one or more of the conditions set out in Subsection (2)(b) apply, an entity described in Subsection (2) shall not be required to file a country-by-country report with the Commissioner General with respect to any reporting fiscal year if the MNE group of which it is a constituent entity has made available a country-by-country report conforming to the requirements of Section 201 with respect to such fiscal year through a surrogate parent entity that files that country-by-country report with the tax authority of its jurisdiction of tax residence on or before the date specified in Section 201A and that satisfies the following conditions:

- (a) the jurisdiction of tax residence of the surrogate parent entity requires filing of country-by-country reports conforming to the requirements of Section 201; and
- (b) the jurisdiction of tax residence of the surrogate parent entity has a Qualifying Competent Authority Agreement in effect to which Papua New Guinea is a party by the time specified in Section 201A for filing the country-by-country report for the reporting fiscal year; and
- (c) the jurisdiction of tax residence of the surrogate parent entity has not notified the Commissioner General of a systemic failure; and
- (d) the jurisdiction of tax residence of the surrogate parent entity has been notified in accordance with Section 200(1) by the constituent entity resident for tax purposes in its jurisdiction that it is the surrogate parent entity; and
- (e) a notification has been provided to the Commissioner General in accordance with Section 200(2).

#### **200. NOTIFICATION.**

(1) Any constituent entity of an MNE group that is resident for tax purposes in Papua New Guinea shall notify the Commissioner General whether it is the ultimate parent entity or the surrogate parent entity, no later than the last day of the reporting fiscal year of such MNE group.

## *Income Tax (Amendment)*

(2) Where a constituent entity of an MNE group that is resident for tax purposes in Papua New Guinea is not the ultimate parent entity nor the surrogate parent entity, it shall notify the Commissioner General of the identity and tax residence of the reporting entity, no later than the last day of the reporting fiscal year of such MNE group.

### **201. COUNTRY-BY-COUNTRY REPORT.**

(1) For purposes of this Act, a country-by-country report with respect to an MNE group is a report containing -

- (a) aggregate information relating to the amount of revenue, profit (loss) before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees, and tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the MNE group operates; and
- (b) an identification of each constituent entity of the MNE group setting out the jurisdiction of tax residence of such constituent entity, and where different from such jurisdiction of tax residence, the jurisdiction under the laws of which such constituent entity is organised, and the nature of the main business activity or activities of such constituent entity.

(2) The country-by-country report shall be filed in a form identical to and applying the definitions and instructions contained in the standard template set out at Annex III of Chapter V of the OECD Transfer Pricing Guidelines as modified from time to time and Annex III of title of the final report on BEPS Action 13.

### **201A. TIME FOR FILING.**

The country-by-country report required under this Division shall be filed no later than 12 months after the last day of the reporting fiscal year of the MNE group.

### **201B. USE AND CONFIDENTIALITY OF COUNTRY-BY-COUNTRY REPORT INFORMATION.**

(1) The Commissioner General shall use the country-by-country report for purposes of assessing high-level transfer pricing risks and other base erosion and profit shifting related risks in Papua New Guinea, including assessing the risk of non-compliance by members of the MNE group with applicable transfer pricing rules, and where appropriate for economic and statistical analysis, and transfer pricing adjustments by the Commissioner General will not be based on the country-by-country report.

(2) The Commissioner General shall preserve the confidentiality of the information contained in the country-by-country report at least to the same extent that would apply if such information were provided to it under the provisions of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.”.

## **5. REBATE ON DIVIDENDS (AMENDMENT OF SECTION 216).**

Section 216 of the Principal Act is amended by inserting after Subsection (2), the following new subsection:

***Income Tax (Amendment)***

“(3) This section only applies to dividend income derived prior to 1 January 2017.”.

**6. NEW DIVISION VI.4.**

Part VI of the Principal Act is amended by inserting, after Division 3B, the following new division:-

**“DIVISION 4. - COLLECTION OF DIVIDEND (WITHHOLDING) TAX.**

**311A. OBJECT OF DIVISION 4.**

The object of this Division is to facilitate the collection of dividend (withholding) tax imposed under Section 189B, and this Division shall be construed and administered accordingly.

**311B. INTERPRETATION.**

(1) In this Division, unless the contrary intention appears, “dividend” includes a part of a dividend.

(2) A reference in this Division to a company shall, in relation to distributions by a liquidator of the company or by any other person that, by virtue of Section 48, are deemed to be dividends paid by the company, be read as including a reference to the liquidator or that other person.

**311C. DEDUCTIONS FROM DIVIDENDS.**

(1) A company that is a resident shall, subject to this section and to Section 311D, before or at the time when a dividend of the company is paid, make a deduction from the dividend at the rate prescribed by Section 10 of the ***Income Tax, Dividend (Withholding) Tax and Interest (Withholding) Tax Rates Act 1984***.

(2) For the purposes of this section, an amount which, by virtue of Part III.7.B is deemed to be a dividend, shall be deemed to have been paid by the company on the last day of the year of income of -

- (a) the company in which the transactions relating to that deemed dividend were made; or
- (b) the person deemed to have derived the deemed dividend, whichever is the earlier.

(3) A company person is not required to make a deduction from a dividend under this section -

- (a) if dividend (withholding) tax is not payable in respect of the dividend; or
- (b) if an amount has, or amounts have, previously been deducted from the dividend under this section and that amount, or the sum of those amounts, is not less than the dividend (withholding) tax payable in respect of the dividend.

(4) Notwithstanding anything contained in the Regulations made for the purposes of this section, a company person is not required to make a deduction from a dividend under this section of an amount that exceeds the dividend (withholding) tax payable in respect of the dividend.

***Income Tax (Amendment)***

(5) This section does not apply in relation to a dividend that is not paid in money or is not credited to a person.

(6) A company who does not make a deduction from a dividend as required by this section is guilty of an offence against this Act punishable upon conviction by a fine of not less than K500.00 and not exceeding K5,000.00.

(7) In this section, “money” includes postal orders, money orders, bills of exchange, promissory notes, drafts and letters of credit.

**311D. EXEMPTIONS AND VARIATIONS.**

The Commissioner General may, for the purpose of meeting the special circumstances of a case or of the cases included in a class of cases, by notice in writing to a company -

- (a) exempt that company from an obligation imposed on him by Section 311C; or
- (b) vary the amount to be deducted under that section by that company from a dividend or from the dividends included in a class of dividends.

**311E. DEDUCTIONS TO BE FORWARDED TO THE COMMISSIONER GENERAL.**

(1) Where a company has made a deduction from a dividend and that deduction was made, or purports to have been made, under Section 311C that person shall within 21 days after the end of the month in which the deduction was made -

- (a) pay to the Commissioner General an amount equal to the deduction; and
- (b) furnish to the Commissioner General a statement in the form authorised by the Commissioner General signed by or on behalf of the company who made the deduction.

(2) A company who fails to comply with Paragraph (a) of Subsection (1) is guilty of an offence against this Act punishable, upon conviction, by a fine of not less than K500.00 and not exceeding K5,000.00 or imprisonment for a period not exceeding six months.

(3) A company who fails to comply with Paragraph (b) of Subsection (1) is guilty of an offence against this Act punishable, upon conviction, by a fine of not less than K500.00 and not exceeding K5,000.00.

(4) Where an amount payable to the Commissioner General by a company person under this section remains unpaid after the expiration of the period within which, by this section, it is required to be paid -

- (a) that amount continues to be payable by that company to the Commissioner General; and
- (b) an additional amount is, in addition to any other penalty to which that company may be liable, payable by that company to the Commissioner General at the rate of 20% per annum on the amount unpaid, computed from the expiration of that period.

***Income Tax (Amendment)***

(5) The Commissioner General may, in any case, for reasons that he thinks sufficient, remit any additional amount payable under Subsection (4) or any part of such an additional amount.

**311F. DIVIDENDS NOT IN MONEY NOT TO BE PAID UNTIL PAYMENT MADE TO COMMISSIONER GENERAL ON ACCOUNT OF TAX.**

(1) Where -

- (a) a dividend is to be paid by a company to a person; and
- (b) the company would, but for Section 311C(5), be required to make a deduction under that section from the dividend,

the company shall not pay, credit or distribute the dividend to any person until an amount equal to the amount that, but for that subsection, would have been required to be deducted has been paid to the Commissioner General in respect of the dividend.

(2) A person who has paid an amount to the Commissioner General in respect of a dividend for the purposes of this section may, in writing, request the Commissioner General to inform the company by which the dividend is to be paid, or any person to whom the dividend has been paid, that that amount has been so paid in respect of that dividend, and, upon receipt of such a request, the Commissioner General shall, in writing, inform that other person accordingly.

(3) A person who fails to comply with a provision of this section is guilty of an offence.

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

**311G. LIABILITY OF PERSON WHO FAILS TO MADE DEDUCTIONS, ETC.**

(1) Where a company has failed to make a deduction from a dividend in accordance with Section 311C or has contravened Section 311F(1) in relation to a dividend, that company is liable, in addition to any other penalty to which he may be liable, to pay to the Commissioner General -

- (a) an amount equal to any unpaid dividend (withholding) tax payable in respect of that dividend; and
- (b) an amount equal to any unpaid additional tax payable under Section 189C(3) in respect of that dividend (withholding) tax.

(2) Where a company has paid to the Commissioner General an amount payable by virtue of Subsection (1)(a), that company may recover an amount equal to that amount from the person liable to pay the dividend (withholding) tax to which that first-mentioned amount relates.

(3) Where an amount payable under Subsection (1) has been paid to the Commissioner General, the person liable to pay the dividend (withholding) tax to which the amount relates is entitled to a credit equal to that amount.

(4) Where a company has paid to the Commissioner General an amount payable by virtue of Subsection (1)(b) and the additional tax or any part of the additional tax to which the amount relates is remitted by the Commissioner General under Section 189C(4) -

***Income Tax (Amendment)***

- (a) any credit under Subsection (3) that relates to the amount shall be reduced by an amount equal to the additional tax that is remitted; and
- (b) the Commissioner General shall pay to the company who paid the amount to the Commissioner General, an amount equal to the additional tax that is remitted.

**311H. RECOVERY OF AMOUNTS BY COMMISSIONER GENERAL.**

- (1) An amount payable to the Commissioner General under this Division by a company is a debt due to the State and payable to the Commissioner General and -
- (a) that amount may be sued for and recovered in a court of competent jurisdiction by the Commissioner General suing in his official name; or
  - (b) a court before which proceedings are taken against that company for an offence against this Division may order that company to pay that amount to the Commissioner General.
- (2) The provisions of Section 333 apply in proceedings for the recovery of an amount payable to the Commissioner General under this Division in the same way as those provisions apply in proceedings for the recovery of a pecuniary penalty under this Act.

- (3) The provisions of Section 339 apply to an order for the payment of a sum of money to the Commissioner General made under Subsection (1)(b) in the same way as they apply to an order for the payment of a sum of money to the Commissioner General made under Part VII.

**311I. CREDITS IN RESPECT OF DEDUCTIONS MADE FROM DIVIDENDS.**

- (1) A person who is liable, under Section 189B, to pay dividend (withholding) tax on a dividend from which a deduction has been made, or purports to have been made, under Section 311C is entitled to a credit -
- (a) where the whole of the deduction has been borne by that person - of an amount equal to the deduction; or
  - (b) where part only of the deduction has been borne by that person - of an amount equal to that part.
- (2) A person who is liable, under Section 189B, to pay dividend (withholding) tax on a dividend in respect of which an amount has been paid to the Commissioner General for the purposes of Section 311F is entitled to a credit -
- (a) where the whole of that amount has been met by that person - of an amount equal to that amount; or
  - (b) where part only of that amount has been met by that person - of an amount equal to that part.

**311J. APPLICATION OF CREDITS.**

- (1) Subject to this section, the amount of a credit to which a person is entitled under this Division is a debt due and payable to that person by the Commissioner General on behalf of the State.



*Income Tax (Amendment)*

(2) The Commissioner General may apply the whole or a part of a credit to which a person is entitled under this Division in total or partial discharge of any liability to the State of the person entitled to the credit arising under, or by virtue of, this Act or any other Act of which the Commissioner General has the general administration.

(3) Where, under Subsection (2), the Commissioner General has applied an amount of credit in discharge of a liability of a person to the State, that person shall be deemed to have paid the amount so applied -

- (a) for the purposes for which it has been so applied; and
- (b) at the time at which it has been so applied or at such earlier time as the Commissioner General determines.

(4) Where the amount, or the sum of the amounts, applied or paid by the Commissioner General as a credit to which a person is entitled under this Division exceeds the amount of the credit to which that person is so entitled, the Commissioner General may recover the amount of the excess as if it were income tax due and payable by that person.

**311K. LIABILITY OF TRUSTEE TO PAY DEDUCTIONS TO COMMISSIONER GENERAL.**

(1) Where -

- (a) an amount deducted from a dividend is payable to the Commissioner General under this Division by a person; and
- (b) the property of that person has become vested in, or the control of the property of that person has passed to, a trustee,

the trustee is liable to pay that amount to the Commissioner General.

(2) Notwithstanding anything contained in any other Act, an amount payable to the Commissioner General by a trustee under this section has priority over all other debts (other than debts payable to the Commissioner General), whether preferential, secured or unsecured.

(3) Where a trustee, being the trustee of the estate of a bankrupt or the liquidator of a company that is being wound up, is liable to pay an amount to the Commissioner General under this section, Subsection (2) does not operate so as to make that amount payable in priority to any costs, charges or expenses of the administration of the estate or of the winding-up of the company (including costs of a creditor or other person upon whose petition the sequestration order or the winding-up order, if any, was made and remuneration of the trustee) that are lawfully payable out of the assets of the estate or of the company except where, in the case of the winding-up of a company, any creditor is entitled to payment of a debt by the liquidator in priority to all or any of those costs, charges and expenses and has not waived that priority.

**311L. PERSONS DISCHARGED FROM LIABILITY IN RESPECT OF DEDUCTIONS.**

Where a company has made a deduction from a dividend, being a deduction made, or purporting to have been made, under Section 311C, the person is, by force of this section, discharged from all liability to pay or account for the deduction to any person other than the Commissioner General.

*Income Tax (Amendment)*

**311M. PAYMENTS TO AND FROM GENERAL REVENUE.**

(1) All moneys received by the Commissioner General under this Division shall be paid into the General Revenue of Papua New Guinea.

(2) An amount that the Commissioner General is liable to pay under this Division is payable out of the General Revenue of Papua New Guinea, which, is to the necessary extent, appropriated accordingly.

**311N. TIME FOR PROSECUTIONS.**

A prosecution for an offence against any provision of this Division may be commenced at any time.

**311O. JOINDER OF CHARGES UNDER THIS DIVISION.**

(1) Charges against the same person for any number of offences against this Division may be joined in one complaint if those charges are founded on the same facts or form, or are part of, a series of offences of the same or a similar character.

(2) Where more than one charge is included in the same complaint in pursuance of Subsection (1), particulars of each offence charged shall be set out in a separate paragraph.

(3) All charges so joined shall be tried together unless the court deems it just that any charge should be tried separately and makes an order to that effect.

(4) If a person is found guilty of more than one offence, the court may, if it thinks fit, inflict one penalty in respect of all offences of which he has been found guilty, but that penalty shall not exceed the sum of the maximum penalties that could be inflicted if penalties were imposed for each offence separately.”.

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

Acting Clerk of the National Parliament.

I hereby certify that the *Income Tax (Amendment) Act 2017* was made by the National Parliament on 3 February 2017.

Speaker of the National Parliament.