

No. 36 of 1994.

Income Tax (Budget Provisions) Act 1994.

Certified on : 20.12.94

INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 1994.

Income Tax (Budget Provisions) Act 1994.

ARRANGEMENT OF SECTIONS.

1. Repeal and replacement of Section 65E.
2. Losses and Outgoings (Amendment of Section 68).
3. Repeal of Division III.14E.
4. Repeal and replacement of Section 276A.
5. Repeal of Section 354N.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 1994.

AN ACT

entitled

Income Tax (Budget Provisions) Act 1994,

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

MADE by the National Parliament to come into operation on 1 January 1995.

1. REPEAL AND REPLACEMENT OF SECTION 65E.

Section 65E of the Principal Act is repealed and is replaced with the following:-

***65E. INCOME APPLICABLE.**

(1) Subject to Sections 46B, 46C, 65F, 145 and 299E, this Division applies to income consisting of -

- (a) salary or wages; and
- (b) the value to a taxpayer of all benefits or allowances given or granted in respect of his employment whether so given or granted in money, goods, sustenance, the use of premises, or otherwise; and
- (c) the net amount of an annuity after the exclusion of any amount of undeducted purchase price by virtue of Section 49; and
- (d) the capital amount of any allowance, gratuity or compensation paid in a lump sum, by virtue of Section 46B; and
- (e) subject to Section 40AA, the actual cost price of any leave fares paid to or on behalf of a taxpayer by his employer or an associated person; and
- (f) the prescribed value of motor vehicles and housing provided to an employee free of charge or at a subsidised cost; and
- (g) the prescribed value of housing allowance, or in relation to a citizen taxpayer, the amount of housing allowance insofar as it exceeds housing expenditure; and

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- (h) an amount equal to the cost to the employer of any benefit granted outside Papua New Guinea to the taxpayer in respect of or in relation to his employment; and
- (i) the prescribed value of meals.

(2) Subsection (1) does not apply to an employee who is a member of the disciplined forces in relation to the value of meals or sustenance provided in connection with the employment of that person.

(3) Salary or wages paid or payable by a foreign contractor in respect of an employment exercised in Papua New Guinea shall be deemed to be derived from a source in Papua New Guinea and for the purpose a "foreign contractor" has the same meaning as in Division 14A.III.

(4) In determining, for the purposes of the application of Section 65E, the value to a taxpayer of a benefit granted in respect of or in relation to his employment, being a benefit by way of the grant of lease or licence in respect of residential accommodation, or the use of a motor vehicle, the Commissioner General shall have regard to all relevant matters, and in particular whether -

(a) in the case of residential accommodation -

- (i) the residential accommodation is situated in a place that is remote from a major centre of population; or
- (ii) it is customary for employers in the industry in which the taxpayer is employed to provide residential accommodation for their employees without charge or for a rent or for other consideration that is less than the market value of the right to occupy the accommodation concerned; or
- (iii) the taxpayer has no reasonable alternative other than to occupy the residential accommodation by reason of the unavailability on reasonable terms and conditions of suitable alternative residential accommodation (other than accommodation provided by or on behalf of his employer) within a reasonable distance from his place of employment; or
- (iv) the residential accommodation is of a higher standard than could reasonably be expected to be provided for the taxpayer or is of a larger size than is necessary to accommodate the taxpayer or the taxpayer and his family; or
- (v) any onerous conditions are attached to the lease or licence; and

(b) in the case of motor vehicles -

- (i) restrictions are imposed upon the private use of the vehicle; or
- (ii) fuel is provided.

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2. LOSSES AND OUTGOINGS (AMENDMENT OF SECTION 68).

Section 68 of the Principal Act is amended by adding the following new subsections:-

"(10) Subject to Subsections (11) and (12) a deduction is not allowable under this section to the extent that it is a loss or outgoing incurred after 31 December 1994 in respect of club subscription or fees, payment for domestic services, or expenditure on electricity, gas or security relating to an employee, or provision of entertainment.

"(11) A reference in Subsection (10) to the provision of entertainment is a reference to the provision (whether to the taxpayer or to another person and whether gratuitously, pursuant to an agreement or otherwise) of -

- (a) entertainment by way of food, drink or recreation; or
- (b) accommodation or travel in connection with, or for the purpose of facilitating, entertainment to which Paragraph (a) applies (whether or not the accommodation or travel is also in connection with something else or for another purpose),
whether or not -
- (c) business discussions or business transactions occur; or
- (d) in connection with the working of overtime or otherwise in connection with the performance of the duties of any office or employment; or
- (e) for the purposes of promotion or advertising; or
- (f) at or in connection with a seminar.

"(12) Subsection (10) does not apply to a loss or outgoing incurred by the taxpayer in a year of income to the extent to which -

- (a) in a case where the taxpayer carries on a business that consists of, or includes the provision of entertainment to clients or customers of that business - the loss or outgoing is in respect of the provision of that entertainment by the taxpayer for payment in the ordinary course of that business; or
- (b) the loss or outgoing is incurred by the taxpayer -
 - (i) in respect of the provision of entertainment to another person under a contract between the taxpayer and that other person for the supply of goods or services to that other person in the ordinary course of a business carried on by the taxpayer; and
 - (ii) for the purpose of promoting or advertising to the public -
 - (A) a business carried on by the taxpayer; or
 - (B) goods or services provided by a business carried on by the taxpayer; or

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- (c) the loss or outgoing is incurred by the taxpayer for the purpose of promoting or advertising to the public goods or services provided by a business carried on by the taxpayer, being a loss or outgoing incurred in providing or exhibiting those goods or services; or
- (d) the loss or outgoing is in respect of entertainment provided by the taxpayer -
 - (i) for the purpose of promoting or advertising to the public -
 - (A) a business carried on by the taxpayer or another person; or
 - (B) goods or services provided by a business carried on by the taxpayer or another person; and
 - (ii) on the basis that the opportunities available to any of the following:-
 - (A) clients, customers or suppliers of the taxpayer or the other person;
 - (B) employees of the taxpayer or the person;
 - (C) any other associates of the taxpayer or the other person;
 - (D) journalists;
 - (E) dignitaries;
 - (F) any other special class of persons, to obtain the benefits of the entertainment are not greater than those of ordinary members of the public; or
- (e) the loss or outgoing is incurred by the taxpayer in respect of -
 - (i) the provision of food and drink (not being food or drink provided at a party, reception or other social function) on working days to persons in an in-house dining facility of the taxpayer in respect of which the taxpayer has not made an election under Subparagraph (ii) in relation to the year of income; or
 - (ii) in a case where the taxpayer elects that this subparagraph shall apply to the taxpayer in relation to an in-house dining facility of the taxpayer in relation to the year of income, the provision of food and drink (not being food or drink provided at a party, reception or other social function) on working days -
 - (A) in any case - to employees of the taxpayer; or
 - (B) if the taxpayer is a company - to employees of the taxpayer or of a company that is related to the taxpayer, in that in-house dining facility of the taxpayer; or

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- (iii) the provision, in an in-house dining facility of the taxpayer, of food and drink (not being food and drink provided at a party, reception or other social function) on working days -
 - (A) in any case - to employees of the taxpayer; or
 - (B) if the taxpayer is a company - to employees of the taxpayer or of a company that is related to the taxpayer,
being employees the duties of whose employment consist of, or consist principally of, duties to be performed in, or in connection with -
 - (C) that in-house dining facility; or
 - (D) a facility for the provision of accommodation, recreation or travel or which the in-house dining facility forms a part; or
 - (iv) the provision of entertainment to a person (including the taxpayer) that -
 - (A) is reasonably incidental to the person's attendance at a seminar; and
 - (B) is not by way of, or in connection with, the recreation of the person; or
 - (v) the provision of food or drink to an employee of the taxpayer pursuant to the provisions of an industrial instrument relating to overtime; or
- (f) the loss or outgoing is incurred by the taxpayer in providing gratuitous entertainment to members of the public who are sick, disabled, poor or otherwise disadvantaged."

3. REPEAL OF DIVISION III.14E.

Division III.14E of the Principal Act is repealed.

4. REPEAL AND REPLACEMENT OF SECTION 276A.

Section 276A is repealed and is replaced with the following:-

"276A. APPLICATION.

(1) Notwithstanding anything in this Division, the provisions of this Division, to the extent that they would apply to a payment that is a business income payment by virtue of Division IX.2A, shall not apply to such payment made after 31 December 1992.

(2) Subsection (1) does not affect the application of this Division to a business income payment which is also an eligible payment by virtue of Division IX.2A, where such payment is made to a person who has not obtained a compliance certificate under Section 354L."

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5. **REPEAL OF SECTION 354N.**
Section 354N(2) is repealed.

I hereby certify that the above is a fair print of the *Income Tax (Budget Provisions) Act* 1994 which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *Income Tax (Budget Provisions) Act* 1994 was made by the National Parliament on 9 November 1994.

Speaker of the National Parliament.