

No. 32 of 2021.

Income Tax (2022 Budget)(Amendment) Act 2021.

Certified on : 7 FEB 2022



No. 32 of 2021.

Income Tax (2022 Budget)(Amendment) Act 2021.

ARRANGEMENT OF SECTIONS.

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No. **32** of 2021.

AN ACT

entitled

Income Tax (2022 Budget)(Amendment) Act 2021,

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

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

- (a) in respect of Clauses 2, 12 and 20 - on 1 January 2022;
- (b) in respect of Clause 9, 20, 22(ii), 25 and 26 - on 1 January 2022;
- (c) in respect of the remainder of the Act - in accordance with the commencement of the ***Tax Administration Act 2017*** by a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister for Treasury.

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

Section 65H of the Principal Act is amended -

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

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

2. PART III (NEW DIVISION 11A).

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

“DIVISION 11A. - MARKET CONCENTRATION LEVY.

170C. APPLICATION.

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

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

170D. INTERPRETATION.

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

“market concentration taxpayer“ means -

- (a) a financial institution authorized to operate under *the Banks and Financial Institutions Act 2000*, who has more than 40% of the market share of the financial assets of the commercial banking sector in a financial year based on information from the Central Bank obtained in the preceding year; or

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- (b) a holder of a telecommunications license issued under the ***National Information and Communication Technology Act 2009***; who has more than 40% of total subscription services or turnover of the telecommunications sector in a financial year based on information provided by National Information and Communications Technology Authority obtained in the preceding year.

“market concentration levy” means -

- (a) for a market concentration player in the banking and financial sector, K190 million for each financial year commencing in 2022.
- (b) for a market concentration player in the telecommunication sector, K95million for each financial year commencing in 2022.

170E. LIABILITY FOR MARKET CONCENTRATION LEVY.

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

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

170F. COLLECTION AND PAYMENT OF MARKET CONCENTRATION LEVY.

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

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

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

170G. NON-DEDUCTION OF MARKET CONCENTRATION LEVY.

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

170H. MARKET CONCENTRATION LEVY NOT APPLICABLE.

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

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

Section 185D of the Principal Act is amended -

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

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

4. PAYMENT OF INTEREST WITHHOLDING TAX (AMENDMENT OF SECTION 187).

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

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

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

Section 189D of the Principal Act is amended -

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

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

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

Section 196E is amended by repealing -

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

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

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

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

Section 196T of the Principal Act is amended -

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

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

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

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

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

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

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

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

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

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

“2%”; and

- (c) by inserting after Subsection (5A), the following new subsections:

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

- (a) the eligible taxpayer has satisfactorily completed, as certified, the prescribed infrastructure development for which the expenditure was duly approved and incurred; and
(b) the expenditure shall not be deemed to be income tax paid for a year of tax that is more than 7 years after the year in which the expenditure was actually incurred.

“(5C) Any carry forward expenditure or credit yet to be utilised as at 31 December 2021 may be carried forward despite subsection (5B)(a) and (b), but only up to a maximum of 7 years from 1 January 2022.”

10. REFUND OF TAX CREDITS (AMENDMENT OF SECTION 220).

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

“220. APPLICATION OF CREDIT.

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

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11. **ADJUSTMENT OF TAX AFTER APPEAL (REPEAL OF SECTION 258).**
Section 258 of the Principal Act is repealed.
12. **INTERPRETATION (AMENDMENT OF SECTION 258A).**
Section 258A of the Principal Act is amended -
 - (a) by repealing the full stop after Paragraph (s) and replacing it with the following:-

“;” and
 - (b) by inserting after Paragraph (s) the following new sub-paragraph:

“(t) market concentration levy payable under Division III.11A.”.
13. **EXTENSION OF TIME AND PAYMENT BY INSTALMENTS (REPEAL OF SECTION 261).**
Section 261 of the Principal Act is repealed.
14. **PENALTY FOR UNPAID TAX (REPEAL OF SECTION 262).**
Section 262 of the Principal Act is repealed.
15. **ISSUE OF TAX CLEARANCE CERTIFICATES (REPEAL OF SECTION 265).**
Section 265 of the Principal Act is repealed.
16. **TAX CLEARANCE CERTIFICATES TO BE PRODUCED TO SHIPOWNER, ETC. (REPEAL OF SECTION 266).**
Section 266 of the Principal Act is repealed.
17. **TEMPORARY BUSINESS (REPEAL OF SECTION 267).**
Section 267 of the Principal Act is repealed.
18. **LIQUIDATORS, ETC. (REPEAL OF SECTION 269).**
Section 269 of the Principal Act is repealed.
19. **REFUND OF OVERPAID NOTIONAL TAX (AMENDMENT OF SECTION 275H).**
Section 275H of the Principal Act is amended by repealing it and replacing it with the following new section:

“275H. REFUND OF OVERPAID NOTIONAL TAX.

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

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

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

Section 275M of the Principal Act is amended by including the following a new Subsection: -

“(4) For purposes of Subsection (1) and Section 275N, the amount of company provisional tax applicable to a market concentration taxpayer, shall include in addition, the amount of any market concentration levy imposed pursuant to Part III. Division 11A.

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

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

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

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

22. REFUND OF OVERPAID PROVISIONAL TAX (AMENDMENT OF SECTION 275P)

Section 275P of the Principal Act is amended by repealing and replacing it with the following: -

“275P. REFUND OF OVERPAID PROVISIONAL TAX

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

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

23. GROUP EMPLOYERS (AMENDMENT OF SECTION 299G).

Section 299G of the Principal Act is amended: -

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

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

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- ✳ (ii) by inserting after Subsection (10), the following new subsection:

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

24. PROVISIONAL TAX TO BE CREDITED AGAINST TAX ASSESSED (REPEAL OF SECTION 308).

Section 308 of the Principal Act is repealed.

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

Section 310 of the Principal Act is amended in Subsection (2), Paragraph (b) by repealing the words:

“shall credit any provisional tax overpaid in payment of any income tax payable by the taxpayer and refund to the taxpayer any amount of provisional tax overpaid not so credited” and replacing them with the following:

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

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

Section 311AO of the Principal Act is amended:

- (i) in Subsection (1) by inserting the following after the words, “31 March of the year of income”; and

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

- (ii) by inserting after Subsection (1), the following new subsection:-

“(1A) In addition to information relating to the likely taxable income to be derived by the taxpayer during the year of income, the estimate required under Subsection (1) shall further contain details of costs, production volumes, expenditure reports for prescribed infrastructure development under Section 219C and such other information as requested by the Commissioner General.”.

27. PAYMENT OF TAX (AMENDMENT OF SECTION 311AQ).

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

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

- (a) 1st installment due 120 days from the end of the preceding year of tax or a year of tax as approved under Section 12A of this Act; and

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- (b) 2nd installment due 210 days from the end of the preceding year of tax or a year of tax as approved under Section 12A of this Act; and
- (c) 3rd installment due 300 days from the end of the preceding year of tax or a year of tax as approved under Section 12A of this Act.”.

28. REFUNDS (AMENDMENT OF SECTION 311AU).

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

“311AU. REFUNDS.

The Commissioner General must apply any overpaid tax, which was paid under this Division, in accordance with Section 52 of the *Tax Administration Act 2017* when all of the follow conditions are satisfied -

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

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

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

“311AW. PENALTY FOR LATE PAYMENT.

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

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

Section 311E of the Principal Act is amended -

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

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

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

- (b) by repealing Subsection (5).

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

Section 311G of the Principal Act is amended -

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

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

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(b) by repealing Subsection (4).

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

Subsection 311J of the Principal Act is amended -

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

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

(b) by repealing (3).

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

Subsection 312AE of the Principal Act is amended: -

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

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

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

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

(b) by repealing Subsection (6).

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

Subsection 357 of the Principal Act is amended -

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

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

(a) late payment penalty prescribed by Section 94 of *Tax Administration Act 2017*; and

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

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(b) by repealing Subsection (10).

I hereby certify that the above is a fair print of the ***Income Tax (2022 Budget)(Amendment) Act 2021***, which has been made by the National Parliament.


Clerk of the National Parliament.

7 FEB 2022

I hereby certify that the ***Income Tax (2022 Budget)(Amendment) Act 2021***, was made by the National Parliament on 30 November 2021.


Speaker of the National Parliament.

7 FEB 2022