

No. 9 of 2008.

Income Tax (PNG LNG Project) (Amendment) Act 2008.

Certified on : 07.10.08



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No. of 2008.

AN ACT

entitled

Income Tax (PNG LNG Project) (Amendment) Act 2008.

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

MADE by the National Parliament to come into operation:-

- (a) in respect of Section 2 – to be deemed to have come into operation on 3 September 2007; and
- (b) in respect of the remainder of the Act – to be deemed to have come into operation on 22 May 2008.

1. INTERPRETATION (AMENDMENT OF SECTION 4).

Section 4(1) of the Principal Act is amended by:-

- (a) repealing the definition of "gas operations" and replacing it with the following:-

"gas operations" means:-

- (a) petroleum operations relating to the recovery of, processing, transportation or sale of petroleum recovered from a gas field; and
- (b) in respect of the LNG Project, operations relating to the recovery of, processing (including liquefaction), storage, transportation and sale of petroleum recovered from a gas field, which may include:-
 - (i) operations for the purposes of recovering natural gas and other petroleum incidental to the recovery of natural gas; and
 - (ii) operations relating to the processing (including liquefaction) or use of petroleum incidental to the recovery of natural gas; and
 - (iii) the refining of petroleum products where such refining is solely for the purpose of or incidental to the operations in Papua New Guinea for recovering petroleum or the construction of facilities used in those

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operations or where the Commissioner General considers the refining is required in order for the taxpayer to be able to conduct those operations; and

- (iv) exploration activities included within a gas project,

but does not include exploration"; and

- (b) inserting after the definition of "live stock" the following:-

"LNG Project' has the meaning given in the PNG LNG Gas Agreement."; and

"LNG Project Company' has the meaning given in the PNG LNG Gas Agreement."; and

- (c) inserting after the definition of "paid" the following:-

"Participant' has the meaning given in the PNG LNG Gas Agreement."; and

- (d) inserting after the definition of "petroleum project" the following:-

"PNG LNG Gas Agreement' means the PNG LNG Gas Agreement dated 22 May 2008 between the Independent State of Papua New Guinea and each of Esso Highlands Limited, Esso PNG Juha Limited, Ampolex (Papua New Guinea) Limited, Ampolex (PNG Petroleum), Inc., Ampolex (Highlands) Limited, Oil Search Limited, Oil Search (PNG) Limited, Oil Search (Tumbudu) Limited, Merlin Petroleum Company, Merlin Pacific Oil Company Limited, Santos Hides Ltd, Lavana Limited, AGL Gas Developments (PNG) Pty Limited, Petroleum Resources Kutubu Limited, Petroleum Resources Gobe Limited and Eda Oil Limited, as amended, novated or replaced from time to time;"

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

Section 35(2) of the Principal Act is amended in Paragraph (e) by repealing the words "to the extent such interest is payable under a financial arrangement approved by the Bank of Papua New Guinea".

3. NEW SECTION 124A.

The Principal Act is amended by adding after Section 124 the following new section:-

"124A. PNG LNG FINANCE COMPANY DEEMED PARTNERSHIP.

"For the purposes of this Act, any *Finance Company* referred to in Clause 13.3(f) of the PNG LNG Gas Agreement shall at its election be deemed to be a partnership and the shareholders of any such *Finance Company* shall be deemed to be partners in such partnership."

4. RESTRICTION ON INTEREST DEDUCTION (AMENDMENT OF SECTION 155H).

Section 155H of the Principal Act is amended by repealing Subsection (1) and replacing it with the following:-

"(1) Where a taxpayer carrying out a resource project has borrowed money for the purposes of carrying on the resource operations from a person who is, in the opinion of the Commissioner General, at arm's length, the amount of interest and other fees and charges incurred in each year of income on the money borrowed by the taxpayer shall, subject to Subsection (3), be an allowable deduction under Section 68 for the taxpayer's assessable income from resource operations in relation to that project."

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5. **NEW SECTION 158J.**

The Principal Act is amended by inserting after Section 158I the following new section:-

"158J. ADDITIONAL DEDUCTIONS FOR PNG LNG PROJECT PARTICIPANTS.

"(1) This section applies to a taxpayer that is a LNG Project Company in respect of the LNG Project, and deductions for allowable capital expenditure calculated in accordance with this section shall be allowable to such a taxpayer in respect of the years of income specified in this section in addition to any other deductions allowable to the taxpayer in respect of that allowable capital expenditure and in respect of those years of income under this Act.

"(2) Where Cumulative Gas Operating Profit divided by Base Capital Expenditure is greater than:-

- (a) 0 but less than or equal to 1.91, then an amount equal to the Additional Deduction Amount shall be allowable in the First Uplift Year and each of the following 4 calendar years;
- (b) 1.91 but less than or equal to 2.02, then an amount equal to the Additional Deduction Amount shall be allowable in the First Uplift Year and each of the following 3 calendar years;
- (c) 2.02 but less than or equal to 2.13, then an amount equal to the Additional Deduction Amount shall be allowable in the First Uplift Year and the following 2 calendar years;
- (d) 2.13 but less than or equal to 2.24, then an amount equal to the Additional Deduction Amount shall be allowable in the First Uplift Year and the following calendar year;
- (e) 2.24 but less than or equal to 2.36, then an amount equal to the Additional Deduction Amount shall be allowable in the First Uplift Year; and
- (f) 2.36, then no Additional Deduction Amount shall be allowable.

"(3) In addition to any amount that is allowable as a deduction under Subsection (2), where Subsequent Capital Expenditure has been incurred in any year and:-

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- (a) a deduction is allowable under Subsection (2)(a), then an amount equal to the Subsequent Capital Expenditure Deduction Amount is allowable in the First Year of Additional SCE Deduction and each of the following 4 calendar years;
- (b) a deduction is allowable under Subsection (2)(b), then an amount equal to the Subsequent Capital Expenditure Deduction Amount is allowable in the First Year of Additional SCE Deduction and the following 3 calendar years;
- (c) a deduction is allowable under Subsection (2)(c), then an amount equal to the Subsequent Capital Expenditure Deduction Amount is allowable in the First Year of Additional SCE Deduction and the following 2 calendar years;
- (d) a deduction is allowable under Subsection (2)(d) then an amount equal to the Subsequent Capital Expenditure Deduction Amount is allowable in the First Year of Additional SCE Deduction and the following calendar year;
- (e) a deduction is allowable under Subsection (2)(e), then an amount equal to the Subsequent Capital Expenditure Deduction Amount is allowable in the First Year of Additional SCE Deduction; and
- (f) a deduction is not allowable under Subsection (2)(f), than no Additional Deduction Amount shall be allowable.

"(4) In this Section:-

"Additional Deduction Amount" means an amount equal to BCE divided by 10;

"Base Capital Expenditure" or "BCE" means Capital Expenditure incurred on or before the First Project Income Year;

"Capital Expenditure" in relation to an LNG Project Company means the total allowable capital expenditure incurred by the LNG Project Company in relation to the LNG Project;

"CDOA" has the meaning given in the PNG LNG Gas Agreement;

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"Cumulative Gas Operating Profit" means the sum of the assessable income from gas operations (other than LNG Project Oil Field Income) derived up until the tenth anniversary of the date of the First LNG Cargo reduced by deductions allowable under Section 68 related to that income (excluding deductions related to Financing);

"Financing" has the meaning given in the PNG LNG Gas Agreement;

"First LNG Cargo" has the meaning given in the PNG LNG Gas Agreement;

"First Project Income Year" means the calendar year in which the First LNG Cargo occurs;

"First Uplift Year" means the calendar year which is 11 years after the First Project Income Year;

"First Year of Additional SCE Deduction" means, in relation to any Subsequent Capital Expenditure, the year which is 10 years after the year during which the Subsequent Capital Expenditure is incurred;

"LNG Project Oil Field Income" means assessable income derived from the sale of Oil Field Crude Oil;

"Oil Field Crude Oil" has the meaning given to that term in the CDOA;

"Subsequent Capital Expenditure" or "SCE" means Capital Expenditure incurred after the First Project Income Year; and

"Subsequent Capital Expenditure Deduction Amount" means an amount equal to SCE divided by 10."

6. INTERPRETATION (AMENDMENT OF SECTION 159A).

Section 159A (1) of the Principal Act is amended:-

- (a) in the definition of "accumulation rate X":-
 - (i) in Paragraph (a) by deleting "15%" and substituting "17.5%"; and
 - (ii) in Paragraph (b) by deleting "12%" and substituting "14.5%"; and
- (b) by repealing Paragraph (c) of the definition of "project deductions" and replacing it with the following:-

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"(c) expenditure which becomes allowable exploration expenditure in relation to the project, other than expenditure allocated to the resource project under Sections 155N (from an exploration licence other than an exploration licence from which a resource development licence included within the project was drawn), or 157B(6) or 158C(2) or (3)"; and

(c) by inserting after the definition of "project deductions" the following:-

"resource project", as used in this Subdivision, means a designated gas project"; and

(d) by repealing the definition of "uplift commencement date" and replacing it with the following:-

"uplift commencement date" means in respect of a taxpayer: -

(a) the later of:-

(i) the date of grant or last extension, whichever is the later, of the resource right from which the resource project was drawn; or

(ii) the date upon which the taxpayer first obtained an interest in the resource project or a petroleum right held by the taxpayer first became part of the resource project, as the case may be; and

(b) for the LNG Project generally, subject to Paragraph (a)(ii) of this definition, the date of the PNG LNG Gas Agreement.

7. LIABILITY FOR ADDITIONAL PROFITS TAX (AMENDMENT OF SECTION 159C).

Section 159C(1) of the Principal Act is amended:-

(a) in Paragraph (a) by deleting "20%" and substituting "7.5%"; and

(b) in Paragraph (b) by deleting "25%" and substituting "10%".

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8. CONSEQUENCES OF A PETROLEUM PROJECT CONVERTING TO A GAS PROJECT (AMENDMENT OF SECTION 159F).

Section 159F of the Principal Act is amended by repealing Paragraph (c) and replacing it with the following: -

"(c) on the date Petroleum Development Licence No. 1 ("PDL 1") becomes part of a designated gas project, the accumulated value of net project receipts of a taxpayer in that designated gas project who had an interest in PDL 1 shall include the total of all allowable exploration expenditure and allowable capital expenditure incurred by the taxpayer in relation to PDL 1, excluding any expenditure incurred in respect of the Hides Gas to Electricity (Porgera) Project as defined in the PNG LNG Gas Agreement."

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

Section 219C of the Principal Act is amended by adding the following new subsections:-

"(12) Where a LNG Project Company has, in a year of income, incurred expenditure that is "Approved Infrastructure Expenditure" as described in Exhibit F to the PNG LNG Gas Agreement, the amount of such expenditure is 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 at anytime following the LNG Project Decision as defined in Clause 1.1 of the PNG LNG Gas Agreement, which shall be additional to the amount provided in Subsection 2(a); or
- (b) 50% of the amount of tax payable.

"(13) Expenditure incurred or income tax deemed to be paid under Subsection (12) 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), provided that expenditure may not be deemed to be income tax for a year of tax that is more than 20 years after the year in which the expenditure was actually incurred.

"(14) For the purposes of Subsections (12) and (13) "approved infrastructure expenditure" shall mean all expenditures in respect of upgrades for existing roads or construction of new roads or other infrastructure of public

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benefit which are approved by the State and undertaken by the PNG LNG Project Companies, including:-

- (a) the upgrading of the existing public roads from Kopi to the Samberigi turn off, Moro to Homa Road and the Idauwi to Hides Gas Conditioning Plant turn off; and
- (b) in the event that Homa to Idauwi Road is declared a public road the construction of the new Homa to Idauwi Road.

I hereby certify that the above is a fair print of the ***Income Tax (PNG LNG Project) (Amendment) Act 2008*** which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the ***Income Tax (PNG LNG Project) (Amendment) Act 2008*** was made by the National Parliament on 18 September 2008.

Speaker of the National Parliament.