

No. 8 of 2019.

***Income Tax (Papua LNG Project)(Amendment) Act 2019.***

Certified on : 23/12/2019



No.            of 2019.

***Income Tax (Papua LNG Project)(Amendment) Act 2019.***

**ARRANGEMENT OF SECTIONS.**

1. Interpretation (Amendment of Section 4).
2. New Section 11B.

**“11B.      PAPUA LNG PROJECT COMPANY.”.**

3. Exemption of certain interest income (Amendment of Section 35).
4. Exemption of certain dividends (Amendment of Section 42).
5. Restriction on interest deduction (Amendment of Section 155H).
6. Project basis of assessment (Amendment of Section 158A).
7. Additional allowable capital expenditure (Amendment of Section 158D).
8. Liability for additional profits tax (Amendment of Section 159C).
9. Liability to interest (Withholding) Tax (Amendment of Section 186).
10. Interpretation (Amendment of Section 197A).



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AN ACT

entitled

***Income Tax (Papua LNG Project)(Amendment) Act 2019,***

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

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

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

Section 4 of the Principal Act is amended in Subsection (1) -

- (a) in the definition of “assessable income from gas operations” by inserting after the words “assessable income from the sale of petroleum gas” where they appear in Paragraph (a), the words “and other than from the sale of Papua LNG Project Petroleum”; and
- (b) in the definition of “gas operations” -
  - (i) by inserting at the end of the definition before the concluding words a new Paragraph (c) as follows:

“(c) in respect of the Papua LNG Project, Papua LNG Project Operations”; and

- (ii) by inserting after the word “but” in the concluding words, the words “other than in respect of the Papua LNG Project”; and
- (c) by inserting the following new definitions in their correct alphabetical order:
  - “Papua LNG Gas Agreement” means the Papua LNG Project Gas Agreement dated 9 April 2019, between the Independent State of Papua New Guinea and each of Total E & P PNG Limited, ExxonMobil PNG Elk Limited, Exxon Mobil PNG Antelope Limited, PAC LNG Assets Limited, PAC LNG International Limited, PAC LNG Investments Limited, PAC LNG Overseas Limited and PAC LNG Holdings Limited, as amended, novated or replaced from time to time;
  - “Papua LNG Project” has the meaning given to Project in the Papua LNG Gas Agreement;
  - “Papua LNG Project Affiliate” has the meaning given to Affiliate in the Papua LNG Gas Agreement;
  - “Papua LNG Project Assets” has the meaning given to Project Assets in the Papua LNG Gas Agreement;
  - “Papua LNG Project Company” means the company referred to in the definition of Company in the Papua LNG Gas Agreement;

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- “Papua LNG Project Kumul Financing” has the meaning given to Kumul Financing in the Papua LNG Gas Agreement;
- “Papua LNG Project Operations” has the meaning given to Project Operations in the Papua LNG Gas Agreement;
- “Papua LNG Project Participating Interest” has the meaning given to Participating Interest in the Papua LNG Gas Agreement;
- “Papua LNG Project Petroleum” has the meaning given to Project Petroleum in the Papua LNG Gas Agreement”.

**2. NEW SECTION 11B.**

The Principal Act is amended by inserting after Section 11A, the following new section:

**“11B. PAPUA LNG PROJECT COMPANY.**

- (1) This provision applies, on and from such time, to Papua LNG Project Company specified in a notice, in writing, to the Commissioner General, which time may be on or after the time of incorporation of Papua LNG Project Company and may be prior to the service of the notice.
- (2) For all purposes of this Act -
  - (a) Papua LNG Project Company is deemed to be an unincorporated joint venture and each Papua LNG Project participant that is a shareholder in Papua LNG Project Company is deemed to hold a participating interest as a participant in that unincorporated joint venture in proportion to its shareholding in Papua LNG Project Company and its participating interest in the Papua LNG Project from time to time; and
  - (b) any transaction between Papua LNG Project Company and any Papua LNG Project participant (other than a transaction between a Papua LNG Project participant in its capacity as operator of any Papua LNG Project Operations that have been delegated to it by Papua LNG Project Company shall be disregarded; and
  - (c) each Papua LNG Project participant is liable to pay such tax as may arise under this Act and lodge an income tax return in respect of its interest in the Papua LNG Project and Papua LNG Project Company shall not be a taxpayer in respect of the Papua LNG Project.
- (3) Without limiting anything in Subsection (2), for all purposes of this Act -
  - (a) everything that happens to or is done by Papua LNG Project Company shall be taken to have happened to or been done by each Papua LNG Project participant; and
  - (b) all assets, benefits, liabilities and obligations of Papua LNG Project Company shall be taken to be assets, benefits, liabilities and obligations of the Papua LNG Project participants; and
  - (c) all income derived by Papua LNG Project Company shall be taken, to have been derived by the Papua LNG Project participants and the amount thereof derived by each Papua LNG Project participant shall be the amount that is held for or credited to such Papua LNG Project participant by Papua LNG Project Company; and

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- (d) all expenditure incurred by Papua LNG Project Company shall be taken to have been incurred by the Papua LNG Project participants and the amount thereof taken to be incurred by each Papua LNG Project participant shall be the amount that is allocated or debited to such Papua LNG Project participant by Papua LNG Project Company.”.

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

Section 35 of the Principal Act is amended in Subsection (2), by inserting after Paragraph (g), the following new paragraph:

- “(h) interest derived by a non-resident lender under or in connection with any financing as defined in the Papua LNG Gas Agreement (such interest being exempt notwithstanding Section 155R).”.

**4. EXEMPTION OF CERTAIN DIVIDENDS (AMENDMENT OF SECTION 42).**

Section 42 of the Principal Act is amended by inserting after Subsection (2), the following new subsection:

- “(3) The assessable income of a shareholder does not include the amount of any dividends that are paid or credited or deemed to be paid or credited or to the extent, sourced from income that was assessable income from gas operations that are Papua LNG Project Operations.”.

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

Section 155H of the Principal Act is amended by -

- (a) inserting in Subsection (3)(a) before the words “where at any time” the words “subject to Subsection (4)”; and  
(b) inserting after Subsection (3), the following new subsection:

- “(4) For the avoidance of doubt in applying Subsection (3) to a taxpayer who is a Papua LNG Project participant, the operation of Section 11B is taken into account.”.

**6. PROJECT BASIS OF ASSESSMENT (AMENDMENT OF SECTION 158A).**

Section 158A of the Principal Act is amended in Subsection (1), by inserting after the words “made pursuant to the *Oil and Gas Act 1998*”, the words “, and includes the Papua LNG Project.”.

**7. ADDITIONAL ALLOWABLE CAPITAL EXPENDITURE (AMENDMENT OF SECTION 158D).**

Section 158D of the Principal Act is amended by inserting after Subsection (3), the following new subsection:

- “(4) For the purposes of this division, without limitation to Section 158D(1)(b), allowable capital expenditure of a taxpayer in relation to the Papua LNG Project includes any payment made to a LNG Project Company in consideration for access to and the use of the LNG Project downstream facilities pursuant to any commercial arrangement entered into between that taxpayer and a LNG Project Company.”.

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

Subsection 159C of the Principal Act is amended in Subsection (1), by inserting after the words “rate of 30 percent”, the words “or, where the resource project is the Papua LNG Project, at the rate of 15 percent.”.

**9. LIABILITY TO INTEREST (WITHHOLDING) TAX (AMENDMENT OF SECTION 186).**

Subsection 186 of the Principal Act is amended in Subsection (4), by inserting after Paragraph (b), the following new paragraph:

“(c) where interest is received by a Papua LNG Project participant or a Papua LNG Project Affiliate of a Papua LNG Project participant under or in connection with the Papua LNG Project Kumul Financing.”.

**10. INTERPRETATION (AMENDMENT OF SECTION 197A).**

Section 197A of the Principal Act is amended by inserting after Subsection (3), the following new subsection:-

“(4) For the purposes of applying this division in connection with the Papua LNG Project, this division shall be interpreted consistently with the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, as approved by the Council of the Organisation for Economic Cooperation and Development.”.

I hereby certify that the above is a fair print of the ***Income Tax (Papua LNG Project)(Amendment) Act 2019***, which has been made by the National Parliament.

Acting Clerk of the National Parliament.

I hereby certify that the ***Income Tax (Papua LNG Project)(Amendment) Act 2019***, was made by the National Parliament on 16 October 2019.

Acting Speaker of the National Parliament.

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