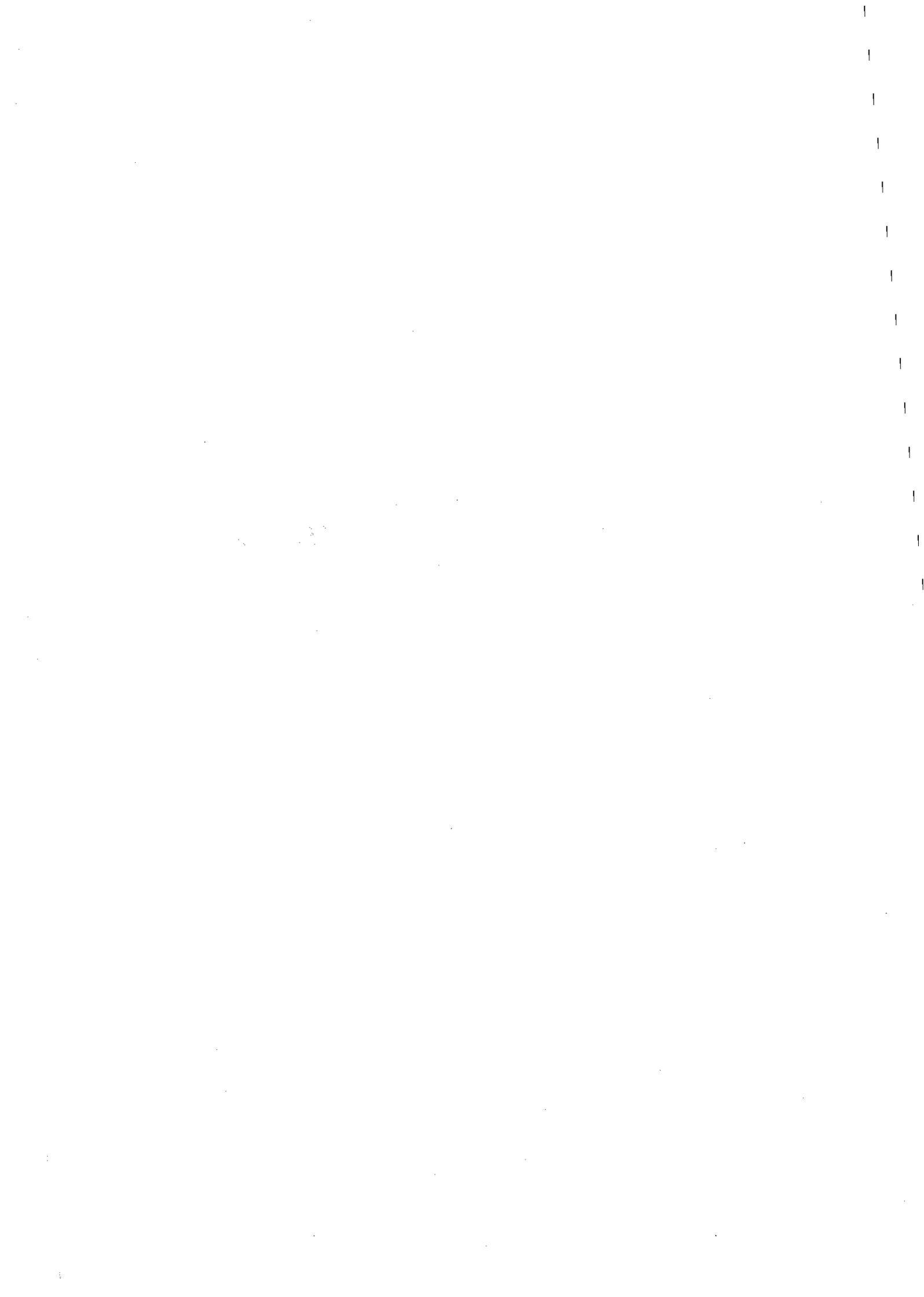




No. 46 of 1995.

Income Tax (Budget Provisions 1996) Act 1995.

Certified on : 2 FEB 1996



INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 1995.

Income Tax (Budget Provisions 1996) Act 1995.

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"219C. CREDITS IN RESPECT OF PRESCRIBED INFRASTRUCTURE DEVELOPMENT.

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"219D. ROYALTY TAX.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 1995.

AN ACT

entitled

Income Tax (Budget Provisions 1996) Act 1995,

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

MADE by the National Parliament -

- (a) in respect of Section 34 to be deemed to have come into operation on 1 January 1992; and
- (b) in respect of Sections 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27, to be deemed to have come into operation on 1 January 1994; and
- (c) in respect of Section 7, to be deemed to have come into operation on 16 September 1994; and
- (d) in respect of Section 3, to be deemed to have come into operation on 1 August 1995; and
- (e) in respect of Section 35, to come into operation on 1 January 1996; and
- (f) in respect of the remainder of the Act - to come into operation on 1 January 1996.

1. IMPOSITION OF INCOME TAX (AMENDMENT OF SECTION 11).

Section 11(2) of the Principal Act is repealed and is replaced with the following:-

"(2) Notwithstanding anything in this Act, income tax is not imposed on a taxable income that does not exceed K4000.00 derived by -

- (a) a resident person other than a company;
- or
- (b) a non-profit company."

2. REPEAL AND REPLACEMENT OF SECTION 16.

Section 16 of the Principal Act is repealed and is replaced with the following:-

"16. NON-PROFIT COMPANIES.

Where the taxable income of a non-profit company does not exceed K6000.00 the maximum amount of tax payable is 50% of the amount by which taxable income exceeds K4000.00."

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3. NEW SECTION 31.

The Principal Act is amended by inserting after Section 30 the following new section:-

"31. EXEMPTION OF INTERNATIONAL TRADE FINANCIAL INSTITUTIONS.

The income of the following international trade financial institutions are exempt:-

- (a) Multilateral Investment Guarantee Agency;
- (b) Export Finance Insurance Corporation of Australia."

4. EXEMPT DIVIDENDS (AMENDMENT OF SECTION 42).

Section 42(3) of the Principal Act is amended by repealing the words "non-resident".

5. INTERPRETATION (AMENDMENT OF SECTION 45N).

Section 45N of the Principal Act is amended by repealing the word "business" (first occurring) in the definition of "business enterprise" and replacing it with the following:-

"sole trader, company or other economic entity".

6. REPEAL AND REPLACEMENT OF SECTION 450.

Section 450 of the Principal Act is repealed and is replaced with the following:-

"450. TAX EXEMPTION PERIOD.

The income derived during the period 21 April 1993 to 31 December 2000 from any business enterprise, or where the business enterprise is a partnership the share of the money from that partnership, is exempt from tax."

7. NEW DIVISION III.ID.

Part III of the Principal Act is amended by inserting after Division 1C the following new Division:-

"Division 1D. - Volcano Affected Area Incentive.

"46AA. INTERPRETATION.

In this Division, unless the contrary intention appears -

"forestry operations" means any operations, other than subsistence activities, of or pertaining to forestry;

"Volcano Affected Area" means -

- (a) the area known as and forming the Town of Kerevat; or

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- (b) the Town of Kokopo within the boundaries declared under the **Town Boundaries Act** (Chapter 8) on 10 April 1986 and published in National Gazette No. G28 on 8 May 1986; or
- (c) the area known as and forming the Town of Palmalmal; or
- (d) the Town of Rabaul within the boundaries declared under the **Town Boundaries Act** (Chapter 8) on 10 October 1977 and published in National Gazette No. G83 on 20 October 1977; or
- (e) the area known as and forming the town of Warangoi; or
- (f) the proposed township site of Baliora;

"Volcano Affected Area Business Enterprise" means that part of a person's business, trading or manufacturing operation or activity, (other than forestry operations or mining operations) whether comprising the entire or part only of that person's operations or activities in Papua New Guinea, which the Commissioner General is satisfied, is based in and carried on in a Volcano Affected Area;

"Volcano Affected Area net assessable income" or "Volcano Affected Area net loss" (as the context requires) means the net assessable income or the net loss (assessable income less allowable deductions) incurred or suffered by a Volcano Affected Area Business Enterprise as if it were a separate taxpayer entity, but in this computation income shall exclude salary or wages income and income that is not substantially sourced in a Volcano Affected Area;

"tax" means tax on income imposed under this Act and includes tax imposed under Part III.14D, but does not include taxes imposed under Parts III.2B, III.13A, III.14, III.14A, III.14C, III.14E, III.17 and VI.2.

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"46AB. TAX EXEMPTION AND LOSSES.

Volcano Affected Area net assessable income for the period 16 September 1994 to 31 December 2000 is exempt from tax, or in the case of a Rabaul net loss, the loss shall be deemed to be a loss incurred in deriving assessable income and shall be deductible in accordance with the provisions of Section 101 or 101A as is appropriate.

"46AC. SUITABLE BUSINESS AND ACCOUNTING RECORDS.

(1) For the purposes of this Division, the onus is on the person claiming exemption to keep suitable business and accounting records to enable the computation of the person's Rabaul net assessable income or Rabaul net loss and to establish that the relevant income is substantially sourced in Rabaul.

"(2) The Commissioner General shall have full and absolute discretion in determining whether the relevant income of a Rabaul Business Enterprise is substantially sourced in Rabaul.

"46AD. GAINING IMPROPER ADVANTAGE.

Where the Commissioner General is of the opinion that arrangements have been made by a person individually or in conjunction with any other person, with a view to gaining an improper advantage under this Division, the amount of the exempt income calculated under this Division in respect of that person shall not exceed the amount that, in the opinion of the Commissioner General, would have been calculated if that arrangement had not been made.

"46AE. OFFENCE.

(1) A person, or where the person is a company, or a public officer or a director, servant or agent of the company, who or which, by any act, default or neglect, or by any fraud or contrivance whatsoever, gains or attempts to gain an improper advantage or an exemption to which he or it or his company is not or would not lawfully be entitled under this Division, is guilty of an offence.

Penalty: A fine of not less than K500.00 and not exceeding K50,000.00.

"(2) In addition to any fine imposed under Subsection (1), the Court before which the action is brought may order the person or company, as the case may be, to pay to the Commissioner General a sum not exceeding double the amount of tax that, in the opinion of the Court, was avoided or attempted to be avoided.

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"(3) Without derogating the provisions of any other law, where the Court is satisfied that the commission of an offence against this section was counselled or assisted in any way by any other person (whether in a professional or other capacity) the Court may order that person to be liable, or jointly and severally liable with any other person, for the payment of the additional tax under Subsection (2).".

8. DEPRECIATION (AMENDMENT OF SECTION 73).

Section 73(9) of the Principal Act is amended by adding the following new paragraph:-

- "(c) plants or articles, being boats or ships and ancillary equipment fitted to those boats or ships where -
- (i) those boats or ships are used solely as dive boats or ships by a person carrying on business as scuba diving and/or snorkelling tour operators and accredited as such by the Papua New Guinea Tourism Promotion Authority; and
 - (ii) a copy of the relevant accreditation certificate has been supplied to the Commissioner General."

9. INTERPRETATION (AMENDMENT OF SECTION 154E).

Section 154E of the Principal Act is amended -

- (a) in the definition of "allowable capital expenditure" by repealing the words "special mining lease" (wherever occurring) and replacing them with the following:-

"mining project"; and

- (b) in the definition of "allowable exploration expenditure" by repealing the words "special mining lease" (wherever occurring) and replacing them with the following:-

"mining project".

10. NEW SECTION 154EC.

Subdivision III.10.A of the Principal Act is amended by inserting after Section 154EB the following new section:-

"154EC. MINING PROJECT.

(1) In this Division, unless the contrary intention appears, "mining project" means -

- (a) where a Regulation so prescribes, those mining operations and the costs and expenses and revenues from the

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construction and operations of all facilities used in those mining operations which are prescribed to constitute a mining project, but excludes any particular operations or facilities or use thereof or costs or expenses or revenues which are prescribed to be precluded from that mining project; and

- (b) in cases to which Paragraph (a) does not apply, mining operations conducted pursuant to a special mining lease, and shall include the costs and expenses and revenues from the construction and operation of all facilities used in those mining operations.

"(2) A mining project to which Subsection (1)(b) applies shall only include those operations which are attributable to one special mining lease.

"(3) A mining project referred to in Subsection (1)(a) may include mining operations pursuant to any number of special mining leases, or special mining leases combined with mining leases.

"(4) A Regulation made under Subsection (1)(a) or an amendment thereto shall only be made with the consent of the licensees of the mining rights to which the Regulation pertains."

11. INTERPRETATION (AMENDMENT OF SECTION 163AB).

Section 163AB of the Principal Act is amended -

(a) in Subsection (1) -

- (i) in the definition of "initial capital investment of the taxpayer", by deleting the words "special mining lease" (wherever occurring) and replacing them with the following:-

"mining project"; and

- (ii) in the definition of "investment recovery period", by deleting the words "special mining lease" (wherever occurring) and replacing them with the following:-

"mining project"; and

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(iii) in the definition of "investment recovery period", by repealing Paragraph (b) and replacing it with the following:-

"(b) all deductions allowable under -
(i) this Subdivision that relate to the mining project; or
(ii) Section 73 that relate to plant or articles in respect of which the taxpayer made an election under Section 163AW in respect of any part of this period,
as reduced by the sum of the amounts of mining income tax payable by the taxpayer in respect of those years of income in relation to that mining project,"; and

(b) in Subsection (2), by repealing the words "special mining lease" and replacing them with the following:-

"mining project"; and

(c) in Subsection (3) -

(i) in the preamble and in Paragraph (a), by repealing the words "special mining lease" (wherever occurring) and replacing them with the following:-

"mining project"; and

(ii) in Paragraph (b), by repealing the words "of the special mining leases" and replacing them with the following:-

"mining project".

12. PROJECT BASIS OF ASSESSMENT (AMENDMENT OF SECTION 163AC).
Section 163AC of the Principal Act is amended by repealing Subsection (1).

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13. ALLOWABLE CAPITAL EXPENDITURE (AMENDMENT OF SECTION 163AE).

Section 163AE(1)(1) of the Principal Act is amended -

- (a) by inserting after the words "issue of the relevant special mining lease" the following:-

"pursuant to which the mining project is conducted"; and

- (b) by repealing the words "special mining lease" (where second occurring) and replacing them with the following:-

"mining project".

14. RESIDUAL CAPITAL EXPENDITURE (AMENDMENT OF SECTION 163AF).

Section 163AF of the Principal Act is amended by adding the following new subsections:-

"(3) Where, immediately before the special mining lease pursuant to which a mining project is carried out (or if more than one the last of the special mining leases pursuant to which a mining project is carried out) is surrendered or cancelled or expires, a taxpayer is entitled to the benefit of residual capital expenditure in relation to that mining project, the Commissioner General may at any time, but subject to Subsection (4), allocate that residual capital expenditure -

- (a) if the taxpayer has a beneficial interest in the mining rights pursuant to which any other mining project is being carried out and from which the taxpayer is deriving assessable income from mining operations, to that mining project or those mining projects, as the case may be, in such proportions as the Commissioner General considers reasonable; or
- (b) in any other case, to any mining project carried on pursuant to any special mining lease issued within seven years from the date of surrender, cancellation or expiry of that special mining lease,

and following allocation that residual capital expenditure shall become residual capital expenditure of the mining project or projects to which it was allocated (other than for the purposes of Subdivision D of this Division or for inclusion in the initial capital investment of the taxpayer), with effect from the date of allocation.

"(4) Subject to Subsection (5), Subsection (3) does not apply in a case where the taxpayer is a company, unless the Commissioner General is satisfied that, as at the date the allocation is made, shares in the taxpayer carrying between -

- (a) the right to exercise not less than 50% of the voting power in the company; and

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(b) the right to receive not less than 50% of any dividends that may be paid by the company; and
(c) the right to receive not less than 50% of any distribution of capital of the company in the event of the winding up or of a reduction in the capital of the company,
were beneficially owned by persons or associates of persons who, at the date the expenditure was incurred by or transferred to the taxpayer under Section 163AK and at all intervening times, beneficially owned shares in the taxpayer carrying rights of each of those kinds.

"(5) Subsection (4) shall not apply if the Commissioner General is satisfied that it would have otherwise applied only or predominantly by reason of -

- (a) the Independent State of Papua New Guinea electing to take up an equity share in a mining project; or
- (b) a requirement of a law of Papua New Guinea that relates to the restriction upon ownership of shares in companies operating in Papua New Guinea; or
- (c) such other commercial reason (other than the obtaining of the benefit of a tax deduction) as the Commissioner General considers is reasonable in the circumstances; or
- (d) a combination of the matters referred to in Paragraphs (a), (b) and (c)."

15. RESIDUAL EXPLORATION EXPENDITURE (AMENDMENT OF SECTION 163AI).

Section 163AI of the Principal Act is amended -

- (a) In Subsection (1)(h) by deleting the words "Special Mining Lease" and replacing them with the following:-

"other mining project"; and

- (b) in Subsection (2) -

- (i) in the preamble -

- (A) by repealing the words "a special mining lease" and replacing them with the following:-

"the special mining lease pursuant to which a mining project is carried out (or if more than one, the last of the special mining leases pursuant to which a mining project is carried out)"; and

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(B) by repealing the word "lease" and replacing it with the following:-

"mining project"; and

(ii) in Paragraph (a) -

(A) by repealing the words "special mining lease" and replacing them with the following:-

"mining project"; and

(B) by repealing the words "leases or those leases" and replacing them with the following:-

"mining project or projects";
and

(iii) in Paragraph (b), by inserting after the words "and in any other case - to any" the following:-

"mining project carried out pursuant to any".

16. DEDUCTION FOR RESIDUAL EXPLORATION EXPENDITURE (AMENDMENT OF SECTION 163AJ).

Section 163AJ(2) of the Principal Act is amended by repealing the words "special mining lease" and replacing them with the following:-

"mining project".

17. ADJUSTMENT OF DEDUCTIONS ON DISPOSAL OF RIGHT OR INFORMATION (AMENDMENT OF SECTION 163AK).

Section 163AK(a) of the Principal Act is amended by repealing the words "special mining lease" and replacing them with the following:-

"mining project".

18. ACCELERATED DEDUCTIONS FOR EXPENDITURE INCURRED BEFORE COMMENCEMENT OF COMMERCIAL PRODUCTION (AMENDMENT OF SECTION 163AL).

Section 163AL of the Principal Act is amended -

(a) in Subsection (1), by repealing the words "special mining lease" (twice occurring) and replacing them with the following:-

"mining project"; and

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- (b) in Subsection (2) -
 - (i) by repealing the words "special mining lease" (wherever occurring) and replacing them with the following:-

"mining project"; and
 - (ii) in Paragraph (d), by repealing the word "lease" and replacing it with the following:-

"mining project"; and
- (c) in Subsection (4), by repealing the words "special mining lease" (wherever occurring) and replacing them with the following:-

"mining project"; and
- (d) in Subsection (7), by repealing the words "special mining lease" and replacing them with the following:-

"mining project".

19. INTERPRETATION (AMENDMENT OF SECTION 163B).

Section 163B of the Principal Act is amended -

- (a) in Subsection (1) -
 - (i) in the definition of "initial capital investment of the taxpayer", by repealing the words "special mining lease" (wherever occurring) and replacing them with the following:-

"mining project"; and
 - (ii) in the definition of "investment recovery period", by repealing the words "special mining lease" (wherever occurring) and replacing them with the following:-

"mining project"; and
- (b) in Subsection (2), by repealing the words "special mining lease" and replacing them with the following:-

"mining project"; and

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- (c) in Subsection (3) -
(i) in the preamble and in Paragraph (a), by repealing the words "special mining lease" (wherever occurring) and replacing them with the following:-

"mining project"; and

- (ii) in Paragraph (b) by repealing the words of the special mining leases" and replacing them with the following:-

"mining projects"; and

20. RESIDUAL CAPITAL EXPENDITURE (AMENDMENT OF SECTION 163D).

Section 163D(1) of the Principal Act is amended -

- (a) by repealing the words "a special mining lease" and replacing them with the following:-

"the special mining lease pursuant to which a mining project is carried out (or if more than one, the last of the special mining leases pursuant to which a mining project is carried out)"; and

- (b) by repealing the words "special mining lease" (wherever occurring) and replacing them with the following:-

"mining project".

21. DEDUCTION FOR RESIDUAL CAPITAL EXPENDITURE (AMENDMENT OF SECTION 163E).

Section 163E of the Principal Act is amended by repealing the words "special mining lease" (wherever occurring) and replacing them with the following:-

"mining project".

22. RESIDUAL EXPLORATION EXPENDITURE (AMENDMENT OF SECTION 163G).

Section 163G(2) of the Principal Act is amended -

- (a) in the preamble -

- (i) by repealing the words "a special mining lease (in this section called "the original lease")" and replacing them with the following:-

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"the special mining lease pursuant to which a mining project is carried out (or if more than one, the last of the special mining leases pursuant to which a mining project is carried out)"; and

- (ii) by repealing the word "lease" and replacing it with the following:-

"mining project"; and

- (b) in Paragraph (a) -

- (i) by repealing the words "special mining lease" and replacing them with the following:-

"mining project"; and

- (ii) by repealing the words "lease or those leases" and replacing them with the following:-

"mining project or projects"; and

- (c) in Paragraph (b), by inserting after the words "and in any other case - to any" the following:-

"mining project carried out pursuant to any".

23. DEDUCTION FOR RESIDUAL CAPITAL EXPENDITURE (AMENDMENT OF SECTION 163H).

Section 163H of the Principal Act is amended by repealing the words "special mining lease" (wherever occurring) and replacing them with the following:-

"mining project".

24. ACCELERATED DEDUCTIONS (AMENDMENT OF SECTION 163K).

Section 163K of the Principal Act is amended -

- (a) by repealing the words "special mining lease" (wherever occurring) and replacing them with the following:-

"mining project"; and

- (b) in Subsection (2)(d), by repealing the word "lease" and replacing it with the following:-

"mining project".

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25. INTERPRETATION (AMENDMENT OF SECTION 163Z).

Section 163Z of the Principal Act is amended -

(a) in Subsection (1) -

(i) in the definition of "net cash receipts" -

(A) in the preamble, by repealing the words "special mining lease" and replacing them with the following:-

"mining project"; and

(B) in Paragraph (a), by repealing the words "special mining lease" (wherever occurring) and replacing them with the following:-

"mining project"; and

(C) in Paragraph (b) by repealing the words "special mining lease" and replacing them with the following:-

"mining project"; and

(D) in Paragraph (c) -

(1) in subparagraph (ii), by repealing the words "special mining lease or the prospecting authority from which the special mining lease" and replacing them with the following:-

"any mining right pursuant to which the mining project is carried out or any prospecting authority from which such a mining right"; and

(2) in subparagraph (iii), by repealing the words "special mining lease or the prospecting authority from which the special mining lease" and replacing them with the following:-

"any mining right pursuant to which the mining project is carried out or any prospecting authority from which such a mining right"; and

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(E) in Paragraph (d)(iii), by repealing the words "special mining lease" and replacing them with the following:-

"mining project"; and

(F) in Paragraph (e), by repealing the words "special mining lease" and replacing them with the following:-

"mining project"; and

(G) in Paragraph (f), by repealing the words "special mining lease" and replacing them with the following:-

"mining project"; and

(H) in Paragraph (g) -

(1) by repealing the words "the special mining lease" (first occurring) and replacing them with the following:-

"any mining right pursuant to which the mining project is carried out"; and

(2) by repealing the word "the special mining lease" (second occurring) and replacing them with the following:-

"such mining right"; and

(I) in Subparagraph (i)(iii), by repealing the words "special mining lease" and replacing them with the following:-

"mining project"; and

(J) in Paragraph (j), by repealing the words "special mining lease" and replacing them with the following:-

"mining project"; and

(b) in Subsection (2) -

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- (i) by repealing the words "special mining leases" (twice occurring) and replacing them with the following:-

"mining projects"; and
- (ii) by repealing the words "special mining leases" and replacing them with the following:-

"mining project"; and
- (c) in Subsection (3) -
 - (i) in Paragraph (a), by repealing the words "special mining lease" and replacing them with the following:-

"mining project"; and
 - (ii) in Paragraph (b), by repealing the words "special mining leases" and replacing them with the following:-

"mining projects"; and
- (d) in Subsection (4) -
 - (i) by repealing the words "a special mining lease" and replacing them with the following:-

"the special mining lease (or the first special mining lease if more than one) pursuant to which the mining project is carried out"; and
 - (ii) by repealing the words "special mining lease" and replacing them with the following:-

"mining project"; and
- (e) in Subsection (6), by repealing the words "special mining lease" (wherever occurring) and replacing them with the following:-

"mining right"; and
- (f) in Subsection (7), by repealing the words "special mining leases" (wherever occurring) and replacing them with the following:-

"mining rights".

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26. ACCUMULATED VALUE OF NET CASH RECEIPTS (AMENDMENT OF SECTION 163ZA).

Section 163ZA of the Principal Act is amended by repealing the words "special mining lease" (wherever occurring) and replacing them with the following:-

"mining project".

27. ASSESSMENT OF TAXABLE ADDITIONAL PROFITS (AMENDMENT OF SECTION 163ZB).

Section 163ZB of the Principal Act is amended by repealing the words "special mining lease" (wherever occurring) and replacing them with the following:-

"mining project".

28. INTERPRETATION (AMENDMENT OF SECTION 164).

Section 164(1) of the Principal Act is amended in the definition of "the initial capital investment attributable to the taxpayer's interest" by repealing subparagraph (iii) in the reference to "allowable capital expenditure incurred" and replacing it with the following:-

"(iii) in the case of a petroleum development licence granted after 1 January 1995 - such allowable capital expenditure incurred in the development drilling programme implemented for the petroleum project as it was envisaged by the taxpayer and approved by the Minister as at the date of commencement of commercial operation."

29. ALLOWABLE EXPLORATION EXPENDITURE (AMENDMENT OF SECTION 164AB).

Section 164AB of the Principal Act is amended -

- (a) by inserting in the preamble, prior to the words "For the purposes of the application of this Subdivision", the following:-

"Subject to Subsection (2),"; and

- (b) by adding the following new subsections:-

"(2) A taxpayer may elect at any time prior to the date of commencement of commercial operation of a petroleum project, by notice in writing to the Commissioner-General, that all or any amount of the allowable exploration expenditure which in accordance with Subsection (1) may be allowable exploration expenditure of that project, will not be allowable exploration expenditure of that project.

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"(3) Where a taxpayer makes an election under Subsection (2), the allowable exploration expenditure in respect of which the election is made shall not be allowable exploration expenditure of that project but shall remain available to be allowable exploration expenditure of another petroleum project carried out pursuant to a petroleum development licence issued from the same petroleum prospecting licence area from which the petroleum development licence of the first mentioned petroleum project was drawn.

"(4) Where a taxpayer has made an election under Subsection (2) in respect of allowable exploration expenditure the taxpayer may, at any time prior to that expenditure becoming allowable exploration expenditure of another petroleum project, further elect by notice in writing to the Commissioner-General that expenditure should become allowable exploration expenditure of the original petroleum project, and upon such a further election being made that expenditure shall become allowable exploration expenditure of that project with effect from the time of that further election.

"(5) Allowable exploration expenditure in respect of which an election is made under Subsection (4) shall not be included in the initial capital investment attributable to the taxpayer's interest in that petroleum project, nor in the net cash receipts of the taxpayer in respect of that project (as defined in Section 165)."

30. DEDUCTION FOR RESIDUAL CAPITAL EXPENDITURE (AMENDMENT OF SECTION 164D).

Section 164D of the Principal Act is amended by adding the following new subsections:-

"(4) Where, immediately before the petroleum development licence, pursuant to which a petroleum project is carried out (or if more than one the last of the petroleum development licences pursuant to which a petroleum project is carried out), is surrendered or cancelled or expires, a taxpayer is entitled to the benefit of residual capital expenditure in relation to that petroleum project, the Commissioner General may at any time, but subject to Subsection (5), allocate that residual capital expenditure -

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- (a) if the taxpayer has a beneficial interest in a petroleum development licence pursuant to which any other petroleum project is being carried out and from which the taxpayer is deriving assessable income from petroleum operations, to that petroleum project or those petroleum projects, as the case may be, in such proportions as the Commissioner General considers reasonable; or
- (b) in any other case, to any petroleum project carried on pursuant to any petroleum development licence issued within seven years from the date of surrender, cancellation or expiry of that petroleum development licence,

and following allocation that residual capital expenditure shall become residual capital expenditure of the petroleum project or projects to which it was allocated (other than for the purposes of Subdivision C of this Division or for inclusion in the initial capital investment attributable to the taxpayer's interest), with effect from the date of allocation.

"(5) Subject to Subsection (6), Subsection (4) does not apply in a case where the taxpayer is a company, unless the Commissioner General is satisfied that as at the date the allocation is made shares in the taxpayer carrying between them -

- (a) the right to exercise not less than 50% of the voting power in the company; and
- (b) the right to receive not less than 50% of any dividends that may be paid by the company; and
- (c) the right to receive not less than 50% of any distribution of capital of the company in the event of the winding up or of a reduction in the capital of the company,

were beneficially owned by persons or associates of persons who, at the date the expenditure was incurred by or transferred to the taxpayer under Section 164B and at all intervening times, beneficially owned shares in the taxpayer carrying rights of each of those kinds.

"(6) Subsection (5) shall not apply if the Commissioner General is satisfied that it would have otherwise applied only or predominantly by reason of -

- (a) the Independent State of Papua New Guinea electing to take up an equity share in a petroleum project; or

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- (b) a requirement of a law of Papua New Guinea that relates to the restriction upon ownership of shares in companies operating in Papua New Guinea; or
- (c) such other commercial reason (other than the obtaining of the benefit of a tax deduction) as the Commissioner General considers is reasonable in the circumstances; or
- (d) a combination of the matters referred to in Paragraphs (a), (b) and (c)."

31. REFUND OF DIVIDEND (WITHHOLDING) TAX (AMENDMENT OF SECTION 189E).

Section 189E of the Principal Act is amended by repealing Subsection (9) and 9A).

32. NON-APPLICATION OF DIVISION (AMENDMENT OF SECTION 213C).

Section 213C(b) of the Principal Act is amended by repealing the amount K16,200.00 and replacing it with the following:-

"K16,310.00".

33. REPEAL AND REPLACEMENT OF SECTION 219C.

Section 219C of the Principal Act is repealed and is replaced with the following:-

"219C. CREDITS IN RESPECT OF PRESCRIBED INFRASTRUCTURE DEVELOPMENT.

(1) Where a taxpayer engaged in mining or petroleum operations has, in a year of income, incurred expenditure in relation to a prescribed infrastructure development, the amount of such expenditure is, subject to this section, deemed to be income tax paid in respect of the tax liability of that taxpayer in respect of that mining or petroleum project.

"(2) The total amount of expenditure which may be deemed to be tax paid under this section by a taxpayer in respect of a mining or petroleum project at the end of any particular year of income shall not exceed the sum of the relevant amount for each year of income (commencing the year of income 1992), the relevant amount in respect of any year of income being the lessor of -

- (a) 0.75% of the assessable income derived by the taxpayer in that year of income from that mining or petroleum project; and
- (b) the amount of tax payable by the taxpayer in respect of income derived during that year of income from that mining or petroleum project.

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"(3) If at any time the maximum amount of expenditure, which under Subsection (2) a taxpayer might (if it had made sufficient expenditure) claim to be deemed to be tax paid under this section in respect of prior years of income, exceeds the total amount of expenditure actually made by the taxpayer and deemed to be tax paid under this Section, the amount of such excess may (subject to Subsection (4)) be carried forward to be applied in future years of income.

"(4) In any year of income, the amount of expenditure which may be deemed to be tax paid under this section by a taxpayer in respect of a mining or petroleum project shall not exceed the lesser of -

(a) the sum of -

(i) any amount carried forward from prior years of income under Subsection (3); and

(ii) 0.75% of the assessable income derived by the taxpayer in that year of income from that mining or petroleum project; and

(b) the amount of tax payable by the taxpayer in respect of income derived during that year of income from that mining or petroleum project.

"(5) Where a taxpayer has in a year of income incurred expenditure in relation to a prescribed infrastructure development in excess of the amount which under Subsection (4) may be deemed to be tax paid, the amount of the excess expenditure shall be deemed to have been incurred in the next succeeding year of income."

34. NEW SECTION 219D.

The Principal Act is amended by inserting after Section 219C the following new section:-

"219D. ROYALTY TAX.

(1) This section applies to all assessable income from mining operations earned by a taxpayer in carrying on mining operations and to all assessable income from petroleum operations earned by a taxpayer in carrying on petroleum operations.

"(2) A taxpayer earning assessable income from mining operations or assessable income from petroleum operations to which this section applies shall pay a tax equal to 0.75% of the net revenue comprised in that income.

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"(3) For the purposes of this section "net revenue" means, in the case of mining operations, the net smelter return calculated in the same manner as for royalties payable under the **Mining Act** 1992 or its predecessor and, in the case of petroleum operations, the wellhead value calculated in the same manner as for royalties payable under the **Petroleum Act** (Chapter 198).

"(4) The tax payable under this section shall be paid by the taxpayer in the same manner and at the same time as royalties are paid under the **Mining Act** 1992 or the **Petroleum Act** (Chapter 198), as the case may be.

"(5) Notwithstanding the other provisions of this Act, tax paid under this section shall be deemed to be income tax paid by the taxpayer in respect of its liability to income tax on its assessable income from mining operations or petroleum operations, as the case may be, derived from the mining project or petroleum project in question.

"(6) If in a year of income the amount of tax paid by a taxpayer under this section in respect of a mining or petroleum project exceeds the amount of income tax (if any) payable by that taxpayer in respect of that mining or petroleum project, the amount of that exceeds shall be carried forward as a credit against income tax payable by that taxpayer in future years of income in respect of income from that mining or petroleum project, but shall not be a credit against income tax in respect of any other income derived by that taxpayer."

35. REFUND OF TAXES (AMENDMENT OF SECTION 234).

Section 234 of the Principal Act is amended by -

- (a) repealing the words "Chief Collector" and replacing them with the following:-

"Commissioner General"; and

- (b) adding after Paragraph (d) the following words and Paragraph:-

"and the Commissioner General may -

- (e) apply the credit to any customs duty, excise duty, stamp duties and any other duty or impost payable by the taxpayer and charged, levied or imposed under any revenue legislation administered by the Commissioner General."

36. REPEAL OF SECTION 311IA.

Section 311IA of the Principal Act is repealed.

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37. TAXPAYER TO KEEP RECORDS (AMENDMENT OF SECTION 364).

Section 364 of the Principal Act is amended by adding the following new subsection:-

"(4) For the purposes of this section, a taxpayer shall be deemed to be keeping records in the English language if he keeps records stored in magnetic tapes or computer disks or other information or storage devices which are readily accessible and convertible into written form in the English language."

38. REPEAL AND REPLACEMENT OF SECTION 367.

Section 367 of the Principal Act is repealed and is replaced with the following:-

"367. HARDSHIP RELIEF.

(1) There shall be a Hardship Relief Board comprising of -

- (a) the Commissioner General; and
- (b) the Commissioner of Taxation; and
- (c) the Commissioner of Customs; and
- (d) the Secretary for Finance,

or of such substitutes for all or any of them as the Minister appoints from time to time.

"(2) In any Board proceedings -

- (a) the Commissioner General or his substitute shall be the Chairman of the Board and in the case of a tied vote the Chairman shall have an additional casting vote; and
- (b) the Commissioner General or his substitute and any two of the other Board members or their respective substitutes shall constitute a quorum; and
- (c) the decision of the majority shall prevail.

"(3) In any case where it is shown to the satisfaction of the Board that a taxpayer (being a natural person) is in such impecunious circumstances or is deceased and the exaction of the full amount of any tax (assessed or charged or imposed under this Act) will entail serious financial hardship on the taxpayer or the beneficiaries of the deceased taxpayer, the Board may release the taxpayer or the trustee of the estate of the deceased taxpayer, as the case may be, wholly or in part from tax liability.

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"(4) Where the amount of the tax liability does not exceed K1000.00 all the powers conferred on the Board may be exercised by the Commissioner General and notwithstanding the other provisions of this section, the Board shall be deemed to consist of the Commissioner General."

I hereby certify that the above is a fair print of the **Income Tax (Budget Provisions 1996) Act 1995** which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the **Income Tax (Budget Provisions 1996) Act 1995** was made by the National Parliament on 6 December 1995.

Speaker of the National Parliament.