

# INCOME TAX ASSESSMENT ACT 1975

## No. 80 of 1975

An Act to amend the Law relating to Income Tax.

BE IT ENACTED by the Queen, the Senate and the House of Representatives of Australia, as follows:—

Short title  
and citation.

1. (1) This Act may be cited as the *Income Tax Assessment Act* 1975.<sup>1</sup>

(2) The *Income Tax Assessment Act* 1936-1974<sup>2</sup> is in this Act referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the *Income Tax Assessment Act* 1936-1975.

Commence-  
ment.

2. This Act shall come into operation on the day on which it receives the Royal Assent.<sup>1</sup>

Interpret-  
ation.

3. Section 6 of the Principal Act is amended—

(a) by inserting in sub-section (1), after the definition of “income tax” or “tax”, the following definition:—

“ ‘income tax laws of Papua New Guinea’ means the laws in force in Papua New Guinea (other than laws of Australia) relating to taxes on income; ”;

(b) by inserting in sub-section (1), after the definition of “paid”, the following definitions:—

“ ‘Papua New Guinea’ means—

(a) in relation to a time before the establishment of an independent sovereign state in the territories that constituted the Territory of Papua and the Territory of New Guinea—those Territories; or

(b) in relation to a later time—that independent sovereign state;

‘Papua New Guinea independence day’ means the date of establishment of an independent sovereign state in the territories that constituted the Territory of Papua and the Territory of New Guinea; ”;

(c) by omitting from sub-section (1) the definitions of “petroleum exploration company” and “the Income Tax Ordinances of Papua New Guinea”; and

(d) by adding at the end thereof the following sub-sections:—

“(7) In determining, in relation to the year of income in which Papua New Guinea independence day occurs or any subsequent year of income, whether a provident, benefit, superannuation or retirement fund was a ‘foreign superannuation fund’ within the definition of that expression in sub-section (1)—

- (a) the reference in that definition to a country outside Australia shall be deemed to include a reference to Papua New Guinea;
- (b) references in that definition to a Territory shall be deemed not to include references to Papua New Guinea; and
- (c) the reference in that definition to an amount having been set aside for, or having been paid to, a fund shall be deemed not to include a reference to an amount set aside for, or paid to, a fund established in Papua New Guinea where the amount was set aside or paid before Papua New Guinea independence day.

“(8) The establishment of an independent sovereign state in the territories that constituted the Territory of Papua and the Territory of New Guinea shall not be taken to affect the operation of the definition of ‘public securities’ in sub-section (1) in relation to securities issued before Papua New Guinea independence day but securities issued on or after that day shall not be taken to be public securities by reason that they are issued by a municipal corporation, other local governing body or public authority that was constituted before that day by or under the law of Papua New Guinea.”.

**4. (1) Section 6AA of the Principal Act is amended—**

- (a) by inserting in paragraph (a) of sub-section (1), after the words “adjacent area” (wherever occurring), the words “or of the Papua New Guinea offshore area”;
- (b) by omitting paragraphs (c), (d) and (e) of sub-section (1) and substituting the following paragraphs:—
  - “(c) the whole of each adjacent area were, and at all times had been, a part of Australia; and
  - (d) the Papua New Guinea offshore area were, and at all times had been, a part of Papua New Guinea.”;
- (c) by omitting from sub-section (2) the words “, other than the adjacent area in relation to the Territory of Papua or the Territory of New Guinea, ”; and
- (d) by omitting sub-section (4) and substituting the following sub-section:—

Continental shelf to be treated as part of Australia for certain purposes.

“(4) For the purposes of this section—

- (a) 'adjacent area' means an area specified in Schedule 2 to the *Petroleum (Submerged Lands) Act 1967-1974* as being adjacent to a State or Territory;
- (b) the adjacent area in relation to a Territory is the area specified in that Schedule as being adjacent to that Territory and, in relation to the Territory of Ashmore and Cartier Islands, includes the area, whether land or water, within the territorial limits of that Territory;
- (c) a reference in this section to an adjacent area includes a reference to the land below that adjacent area and the space above that adjacent area; and
- (d) 'Papua New Guinea offshore area' means the sea-bed and subsoil beneath, and the space above, the waters within the areas that were specified in Schedule 2 to the *Petroleum (Submerged Lands) Act 1967-1974* as being adjacent, respectively, to the Territory of Papua and to the Territory of New Guinea, to the extent only that those waters are territorial waters or superjacent waters of the continental shelf."

(2) The amendments made by sub-section (1) shall be deemed to have had effect on and from 3 April 1975.

Extension of  
Act to Papua  
New Guinea.

5. (1) Section 7 of the Principal Act is repealed.

(2) The repeal effected by sub-section (1) does not take effect until Papua New Guinea independence day.

(3) Notwithstanding the repeal effected by this section—

- (a) the Principal Act as amended by this Act does not apply to any income derived before Papua New Guinea independence day by a resident of Papua New Guinea from sources within Papua New Guinea; and
- (b) for the purposes of the assessment and payment of income tax on income derived from sources in Australia in the year of income in which Papua New Guinea independence day occurs or in a preceding year of income, a taxpayer who is resident in Papua New Guinea shall be deemed to be a resident of Australia.

Officers to  
observe  
secrecy.

6. Section 16 of the Principal Act is amended by inserting in paragraph (ca) of sub-section (4), after the words "Papua New Guinea", the words "if the Chief Collector is authorized by a law of Papua New Guinea to afford similar information to the Commissioner, a Second Commissioner or a Deputy Commissioner".

Exemptions.

7. (1) Section 23 of the Principal Act is amended—

- (a) by omitting from paragraph (h) the words "or Papua New Guinea";

(b) by inserting after paragraph (kc) the following paragraph:—

“(kd) income derived by way of pension by a person who is a resident of Papua New Guinea and is not a resident of Australia if income derived by way of pension by a person who is a resident of Australia and is not a resident of Papua New Guinea is exempt from income tax under the income tax laws of Papua New Guinea;”;

(c) by omitting paragraph (n);

(d) by omitting from paragraph (o) the words “or in Papua New Guinea”;

(e) by inserting after paragraph (q) the following paragraph:—

“(qa) income consisting of earnings, salary, wages, commission, bonuses or allowances derived from sources in Papua New Guinea from any office or employment (including employment by a Government or an authority of a Government or as a member of the Defence Force) where the income is not exempt from income tax under the income tax laws of Papua New Guinea and, if there is a liability for payment of income tax under those laws, the Commissioner is satisfied that the tax has been or will be paid;”;

(f) by inserting in paragraph (z), after the word “authority” (last occurring), the words “or an amount received under the scheme known as the National Employment and Training System”.

(2) The amendments made by paragraphs (1) (a), (c) and (e) apply in respect of income derived on or after Papua New Guinea independence day.

(3) The amendment made by paragraph (1) (b) applies to assessments in respect of income of the year of income that commenced on 1 July 1974 and in respect of income of all subsequent years of income and for the purposes of the application of paragraph 23 (kd) of the Principal Act as amended by this Act in relation to income derived in the year of income in which Papua New Guinea independence day occurs or a preceding year of income a person shall not be taken to be a resident of Australia by reason only of his being resident in Papua New Guinea.

(4) The amendment made by paragraph (1) (d) applies in respect of income derived from the working of a mining property where the working of the mining property took place on or after Papua New Guinea independence day and, for the purpose of the application of paragraph 23 (o) of the Principal Act in relation to income derived from the working of a mining property in Papua New Guinea during the year of income in which Papua New Guinea independence day occurs, the reference in that last-mentioned paragraph to the end of the year of

income shall be construed as a reference to the expiration of the day immediately preceding Papua New Guinea independence day.

(5) The amendment made by paragraph (1) (f) applies to assessments in respect of income of the year of income that commenced on 1 July 1974 and in respect of income of all subsequent years of income.

8. (1) After section 23 of the Principal Act the following section is inserted:—

Exemption  
of certain  
payments to  
persons  
formerly  
employed in  
Papua New  
Guinea.

“23AAA. (1) Subject to sub-section (2), the assessable income of a taxpayer who was employed under Part II of the *Papua New Guinea (Staffing Assistance) Act* 1973 and whose employment was terminated under section 13 or 14 of that Act does not include an amount received under section 19 of that Act by way of compensation, contingencies allowance, resettlement grant, fares or removal expenses.

“(2) Sub-section (1) excludes from the assessable income of a taxpayer an amount by way of compensation, contingencies allowance, resettlement grant, fares or removal expenses only to the extent that the amount is of a kind prescribed by the Papua New Guinea (Staffing Assistance) (Termination of Employment) Regulations as in force on 1 December 1973.

“(3) The assessable income of a taxpayer whose employment in Papua New Guinea was terminated before 1 December 1973 and who at the time of the termination of that employment—

- (a) was an overseas officer within the meaning of the *Public Service (Papua and New Guinea) Ordinance* 1963;
- (b) was, by virtue of section 4B of the *Superannuation (Papua and New Guinea) Ordinance* 1951, deemed to be an employee within the meaning of section 4 of that Ordinance;
- (c) was an overseas member within the meaning of the *Royal Papua and New Guinea Constabulary Ordinance* 1965; or
- (d) was an officer of the Papua New Guinea Electricity Commission and was contributing to the Papua New Guinea Superannuation Fund or the Papua New Guinea Provident Account established under the *Superannuation (Papua and New Guinea) Ordinance* 1951,

does not include an amount received by the taxpayer on the termination of that employment if the amount was of a kind referred to in sub-section (1).”

(2) Section 23AAA of the Principal Act as amended by this Act applies to assessments in respect of income of the year of income that commenced on 1 July 1972 and in respect of income of all subsequent years of income.

(3) Nothing in section 170 of the Principal Act as amended by this Act prevents the amendment of assessments in respect of income of th

year of income that commenced on 1 July 1973 or the immediately preceding year of income for the purpose of giving effect to section 23AAA of the Principal Act as so amended as that section applies by virtue of sub-section (2) of this section.

**9.** (1) Section 23C of the Principal Act is amended by omitting the words “or in Papua New Guinea” (wherever occurring).

Exemption of certain income from sale of gold.

(2) The amendment made by sub-section (1) applies in respect of income derived from the sale of gold produced on or after Papua New Guinea independence day.

**10.** (1) Section 26AAB of the Principal Act is repealed.

Assessable income to include net stand-by value of car made available to employee for private use.

(2) The repeal effected by sub-section (1) applies to assessments in respect of income of the year of income that commenced on 1 July 1974 and in respect of income of all subsequent years of income.

**11.** (1) Section 26B of the Principal Act is amended by omitting from sub-section (1) the words “or in Papua New Guinea”.

Insurance recoveries in respect of losses of live stock and trees.

(2) The amendment made by sub-section (1) applies to amounts received in respect of losses occurring on or after Papua New Guinea independence day.

**12.** (1) Section 36 of the Principal Act is amended by omitting from paragraph (a) of sub-section (3) the words “or in Papua New Guinea”.

Disposal of trading stock.

(2) The amendment made by sub-section (1) applies in respect of a disposal of live stock in consequence of an event occurring on or after Papua New Guinea independence day.

**13.** (1) Section 36AAA of the Principal Act is amended by omitting from paragraph (a) of sub-section (1) the words “or in Papua New Guinea”.

Alternative election in respect of income resulting from forced disposal of live stock.

(2) The amendment made by sub-section (1) applies in respect of a disposal of live stock in consequence of loss or destruction occurring on or after Papua New Guinea independence day.

**14.** (1) Section 36AA of the Principal Act is amended by omitting from paragraph (a) of sub-section (1) the words “or in Papua New Guinea”.

Compensation for death or compulsory destruction of live stock.

(2) The amendment made by sub-section (1) applies in respect of the death or destruction of live stock occurring on or after Papua New Guinea independence day.

**15.** (1) Section 44 of the Principal Act is amended by omitting from sub-section (1) the words “, to the next succeeding section”.

Dividends.

(2) The amendment made by sub-section (1) applies in respect of dividends paid on or after 24 September 1974.

Certain dividends paid by companies incorporated in Papua New Guinea.

16. (1) Section 44A of the Principal Act is repealed.

(2) The repeal effected by sub-section (1) applies in respect of dividends paid on or after 24 September 1974.

Credit in respect of tax paid abroad on ex-Australian dividends.

17. Section 45 of the Principal Act is amended by omitting from paragraph (b) of sub-section (9) the words "Income Tax Ordinances" and substituting the words "income tax laws".

Rebate on dividends.

18. (1) Section 46 of the Principal Act is amended by omitting sub-section (10).

(2) The amendment made by sub-section (1) does not take effect until Papua New Guinea independence day.

(3) In determining whether a company is entitled to a rebate under section 46 of the Principal Act as amended by this Act in respect of dividends derived by the company on or after 26 October 1973, the company shall not be taken to have been a resident of Australia by reason only of its having been resident in Papua New Guinea.

Rebate on dividends paid as part of dividend stripping operation.

19. (1) Section 46A of the Principal Act is amended by omitting sub-section (17).

(2) The amendment made by sub-section (1) does not take effect until Papua New Guinea independence day.

(3) In determining whether a company is entitled to a rebate under section 46A of the Principal Act as amended by this Act in respect of dividends derived by the company on or after 26 October 1973, the company shall not be taken to have been a resident of Australia by reason only of its having been resident in Papua New Guinea.

20. (1) After section 57AB of the Principal Act the following section is inserted:—

Special depreciation on manufacturing plant and plant used in primary production.

"57AC. (1) Subject to sub-section (3), this section applies to property, being plant or articles owned by a taxpayer, in respect of which depreciation is allowable under this Act and which—

(a) has been or is first used for the purpose of producing assessable income (not having been installed ready for use for that purpose before 1 July 1974), or has been or is first installed ready for use for that purpose, by the taxpayer on or after 1 July 1974 and before 1 July 1975; and

(b) is property in relation to expenditure on which—

- (i) a deduction would have been allowable under section 62AA but for the operation of sub-section (14) of that section; or
- (ii) a deduction would have been allowable under section 62AB but for the operation of sub-section (10) of that section.

“(2) Notwithstanding anything contained in section 55, sub-section (1) of section 56, or section 56A or 57, but subject to sub-sections (2) and (3) of section 56, the depreciation that is an allowable deduction under section 54 in respect of property to which this section applies shall be twice the amount of depreciation that, but for this section, would be an allowable deduction in respect of that property.

“(3) A taxpayer may elect, for the purpose of the calculation of depreciation allowable as a deduction to him under this Act, that this section shall not apply in relation to all property to which this section would otherwise apply that is owned by the taxpayer and that, in a year of income specified in the election—

- (a) was or is first used by the taxpayer for the purpose of producing assessable income (not having been installed ready for use for that purpose in a preceding year of income); or
- (b) was or is first installed ready for use by the taxpayer for that purpose,

and, where an election is so made, this section does not apply in relation to that property.

“(4) An election referred to in sub-section (3)—

- (a) shall be exercised by notice in writing to the Commissioner; and
- (b) shall be lodged with the Commissioner on or before the date of lodgment of the return of income of the taxpayer for the year of income specified in the election or within such further period as the Commissioner allows.”.

(2) Nothing in section 170 of the Principal Act as amended by this Act prevents the amendment of an assessment made before the commencement of this Act for the purpose of giving effect to section 57AC of the Principal Act as amended by this Act.

**21. (1)** Section 72 of the Principal Act is amended—

- (a) by omitting from sub-section (1) the words “or in Papua New Guinea”; and
- (b) by omitting from the definition of “sub-divided residence scheme” in sub-section (4) the words “or in Papua New Guinea”.

Rates and  
taxes.

(2) The amendments made by sub-section (1) apply to assessments in respect of income of years of income subsequent to the year of income in which Papua New Guinea independence day occurs.



Expenditure  
on scientific  
research.

**22.** (1) Section 73A of the Principal Act is amended by omitting from sub-section (6) the definition of "Australia".

(2) The amendment made by sub-section (1) takes effect on Papua New Guinea independence day but does not affect approvals given before that day.

(3) In determining for the purposes of sub-section 73A (3) of the Principal Act as amended by this Act whether any expenditure or payment is incurred or made outside Australia, any expenditure incurred or payments made in Papua New Guinea—

(a) before Papua New Guinea independence day; or

(b) on or after that day but before 1 July 1976 in pursuance of a contract made before 22 May 1975,

shall be deemed to have been incurred or made in Australia.

Certain  
expenditure  
on land used  
for primary  
production.

**23.** (1) Section 75 of the Principal Act is amended by omitting from sub-section (1) the words "or in Papua New Guinea".

(2) The amendment made by sub-section (1) applies in respect of expenditure incurred on or after 1 July 1976.

Deduction of  
certain  
expenditure  
on land used  
for primary  
production.

**24.** (1) Section 75A of the Principal Act is amended by omitting from sub-section (1) the words "or Papua New Guinea".

(2) The amendment made by sub-section (1) applies in respect of expenditure incurred on or after Papua New Guinea independence day other than expenditure incurred before 1 July 1976 in pursuance of a contract made before 22 May 1975, being a contract under which goods were to be acquired by, or work was to be performed for, the taxpayer.

Loss in  
deriving  
exempt  
income.

**25.** (1) Section 77 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-sections:—

"(1A) In this section, 'exempt business' means a business the income, if any, from which would be exempt income.

"(1) Where a loss is incurred in the year of income by a taxpayer in carrying on an exempt business in Australia, that loss is an allowable deduction."

(2) Sub-section 77 (1) of the Principal Act as amended by this Act applies in respect of losses incurred in the year of income that commenced on 1 July 1974 and in respect of losses incurred in all subsequent years of income but, in its application in relation to the year of income in which Papua New Guinea independence day occurs or a preceding year of income, that sub-section has effect as if the reference to Australia included a reference to Papua New Guinea.

**26.** (1) Section 78 of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-section:—

Gifts, calls  
on affores-  
tation shares,  
pensions, &c.

“(2) For the purposes of sub-section (1), the value of a gift of property other than money shall be deemed to be the value of the property at the time of the making of the gift or the amount paid by the taxpayer for the property, whichever is the less.”.

(2) The amendment made by sub-section (1) applies in respect of gifts or calls made on or after Papua New Guinea independence day.

**27.** Section 79B of the Principal Act is amended by omitting from sub-section (5) the words “and Papua New Guinea”.

Deductions  
for members  
of Defence  
Force  
serving  
overseas.

**28.** Section 80 of the Principal Act is amended by omitting from paragraph (a) of sub-section (3) the words “any country outside Australia or under the Income Tax Ordinances of Papua New Guinea” and substituting the words “any country or place outside Australia”.

Losses of  
previous  
years.

**29.** (1) Section 82AAA of the Principal Act is amended by omitting from paragraph (b) of the definition of “employee” in sub-section (1) the words “or a resident of Papua New Guinea”.

Interpret-  
ation.

(2) The amendment made by sub-section (1) applies to assessments in respect of income of years of income subsequent to the year of income in which Papua New Guinea independence day occurs.

**30.** (1) Section 82AA of the Principal Act is repealed.

Definition.

(2) The repeal effected by sub-section (1) applies to assessments in respect of income of years of income subsequent to the year of income in which Papua New Guinea independence day occurs.

**31.** (1) Section 82D of the Principal Act is amended by omitting from sub-section (1) the words “or Papua New Guinea”.

House-  
keeper.

(2) The amendment made by sub-section (1) applies to assessments in respect of income of years of income subsequent to the year of income in which Papua New Guinea independence day occurs.

**32.** (1) Section 103 of the Principal Act is amended—

Interpret-  
ation.

(a) by omitting from the definition of “special fund dividends” in sub-section (1) the word and figures “, section 44A,”; and

(b) by omitting from sub-paragraph (iii) of paragraph (b) of the definition of “the distributable income” in sub-section (1) the words “a country other than Australia, or under the Income Tax Ordinances of Papua New Guinea,” and substituting the words “a country or place outside Australia”.

(2) The amendment made by paragraph (1) (a) applies in respect of dividends paid on or after 24 September 1974.

Prescribed  
dividends.

33. (1) Section 103AA of the Principal Act is amended by omitting sub-section (9).

(2) The amendment made by sub-section (1) does not take effect until Papua New Guinea independence day.

(3) A person shall not be taken for the purposes of paragraph 103AA (1) (a) or paragraph 103AA (2) (a) of the Principal Act as amended by this Act to have been a resident of Australia at any time by reason only of his having been resident in Papua New Guinea.

Interpret-  
ation.

34. (1) Section 122 of the Principal Act is amended by omitting from sub-section (1) the definition of "Australia".

(2) The amendment made by sub-section (1) applies in respect of expenditure incurred by a taxpayer on or after Papua New Guinea independence day other than expenditure incurred before 1 July 1976 in pursuance of a contract made before 22 May 1975, being a contract under which property was to be acquired by, or work was to be performed for, the taxpayer.

Application  
of Division.

35. (1) Section 123A of the Principal Act is amended by omitting from sub-section (1A) the words "or in Papua New Guinea".

(2) The amendment made by sub-section (1) applies in respect of expenditure incurred by a taxpayer on or after Papua New Guinea independence day other than expenditure incurred before 1 July 1976 in pursuance of a contract made before 22 May 1975, being a contract under which property was to be acquired by, or work was to be performed for, the taxpayer.

Interpret-  
ation.

36. (1) Section 124 of the Principal Act is amended by omitting from sub-section (1) the definition of "Australia".

(2) The amendment made by sub-section (1) applies in respect of expenditure incurred by a taxpayer on or after Papua New Guinea independence day other than expenditure incurred before 1 July 1976 in pursuance of a contract made before 22 May 1975, being a contract under which property was to be acquired by, or work was to be performed for, the taxpayer.

Division not  
to apply to  
certain  
interest.

37. Section 125 of the Principal Act is amended by omitting the words "section 128F or 128G applies" and substituting the words "section 128EA, 128F or 128G applies".

Interpret-  
ation.

38. (1) Section 128A of the Principal Act is amended by omitting sub-section (1A).

(2) The amendment made by sub-section (1) does not take effect until Papua New Guinea independence day.

(3) For the purpose of ascertaining the meaning of the expression “non-resident” in Division 11A of Part III of the Principal Act as amended by this Act, a person shall not be taken to have been a resident of Australia at any time by reason only of his having been resident in Papua New Guinea.

**39.** Section 128B of the Principal Act is amended by omitting from sub-paragraph (iv) of paragraph (h) of sub-section (3) the words “or in sub-section (1) of section 128F or 128G” and substituting the words “sub-section (1) of section 128EA, sub-section (1) of section 128F or sub-section (1) of section 128G”.

Liability to withholding tax.

**40.** Section 128D of the Principal Act is amended by omitting the words “section 128F or” and substituting the words “section 128EA, section 128F or”.

Certain income not included in assessable income.

**41.** After section 128E of the Principal Act the following section is inserted:—

“128EA. (1) This section applies to interest paid on or after 1 July 1973 by the Australian Industry Development Corporation (in this sub-section referred to as the ‘Corporation’) in respect of a loan to the Corporation where—

Division not to apply to interest on borrowings by Australian Industry Development Corporation.

- (a) the loan was raised outside Australia by the Corporation;
- (b) the interest is or was paid outside Australia by the Corporation; and
- (c) if the loan was raised by the issue of debentures the principal and interest moneys in respect of which are expressed to be payable to the bearers of the debentures—
  - (i) the debentures were issued outside Australia;
  - (ii) the loan was raised in a currency other than the currency of Australia; and
  - (iii) the interest is or was paid in a currency other than the currency of Australia.

“(2) Tax is not payable, and shall be deemed not to have been payable, in accordance with this Division in respect of interest to which this section applies.”.

**42.** (1) Section 142 of the Principal Act is amended—

- (a) by omitting from sub-section (2) the words “Subject to the next succeeding sub-section, where” and substituting the word “Where”; and
- (b) by omitting sub-section (3).

Income derived by non-resident insurer.

(2) The amendments made by sub-section (1) apply in respect of premiums paid or payable under an insurance contract made on or after Papua New Guinea independence day.

Application  
of Division  
to primary  
producers.

**43.** (1) Section 157 of the Principal Act is amended by omitting from sub-section (2) the words “or a person who, being a resident of Australia but not being a resident of Papua New Guinea, carries on in Papua New Guinea a business of primary production”.

(2) The amendment made by sub-section (1) applies to assessments in respect of income of years of income subsequent to the year of income in which Papua New Guinea independence day occurs.

**44.** (1) Division 18 of Part III of the Principal Act is repealed and the following Division substituted:—

*“Division 18—Credits in respect of Tax paid under the Income Tax Laws of Papua New Guinea*

Interpret-  
ation.

“160AE. (1) In this Division, unless the contrary intention appears—

‘adjusted net Papua New Guinea income’, in relation to a taxpayer, means—

- (a) where sub-section (8) of section 160AF does not apply and the net Papua New Guinea income of the taxpayer of the year of income exceeds the sum of the taxpayer’s taxable income of the year of income and the apportionable deductions—an amount equal to that taxable income;
- (b) where sub-section (8) of section 160AF applies and the amount that, but for that sub-section, would be the net Papua New Guinea income of the taxpayer of the year of income exceeds the sum of the taxpayer’s taxable income of the year of income and the apportionable deductions—the amount that bears to the net Papua New Guinea income of the taxpayer of the year of income the same proportion as the taxpayer’s taxable income of the year of income bears to the amount that, but for that sub-section, would be that net Papua New Guinea income; or
- (c) in any other case—the amount that bears to the net Papua New Guinea income of the taxpayer of the year of income the same proportion as the taxpayer’s taxable income of the year of income bears to the sum of that taxable income and the apportionable deductions;

‘average rate of Australian tax’, in relation to a taxpayer, means an amount per dollar ascertained by dividing the amount of income tax that would be assessed under this Act in respect of the taxpayer’s taxable income of the year of income if—

- (a) the taxpayer was not entitled to any rebate of tax (other than a rebate under section 160AA or under an Act imposing income tax for the year of tax) or credit against his liability for tax; and
  - (b) the taxpayer was not liable to pay additional tax under Division 7, or additional tax in respect of income from property payable in accordance with an Act imposing income tax for the year of tax,
- by a number equal to the number of whole dollars in that taxable income;
- ‘company’ does not include a company in the capacity of a trustee;
- ‘dividend’ includes a part of a dividend;
- ‘net Papua New Guinea income’, in relation to a taxpayer, means an amount equal to that part of the taxpayer’s assessable income of the year of income that is derived from sources in Papua New Guinea, reduced by—
- (a) any deductions allowed or allowable from that assessable income that relate exclusively to that part of that assessable income; and
  - (b) so much of any other deductions allowed or allowable from that assessable income (other than apportionable deductions) as, in the opinion of the Commissioner, may appropriately be related to that part of that assessable income;
- ‘Papua New Guinea undistributed amount’, in relation to a taxpayer being a private company, means the amount that bears to the adjusted net Papua New Guinea income of the company of the year of income the same proportion as the undistributed amount of the company of the year of income bears to the company’s taxable income of the year of income;
- ‘undistributed amount’, in relation to a private company, means the amount that is the undistributed amount in relation to the company under Division 7.
- “(2) Where—
- (a) an amount is included in the assessable income of a taxpayer of a year of income under sub-section (6) or (7) of section 26B by virtue of an insurance recovery in respect of a loss incurred in Papua New Guinea;
  - (b) an amount is included in the assessable income of a taxpayer of a year of income under section 36 or 36AAA by virtue of an election made by the taxpayer under either of those sections in relation to the disposal of live stock being assets of a business of primary production carried on by him in Papua New Guinea; or
  - (c) an amount is included in the assessable income of a taxpayer of a year of income under sub-section (2) or (5) of section 36AA by

virtue of an election made by the taxpayer under sub-section (1) of that section in relation to the death or destruction of live stock being assets of a business of primary production carried on in Papua New Guinea,

the amount so included shall, for the purposes of this Division, be deemed to be income derived by the taxpayer in the year of income from sources in Papua New Guinea.

“(3) For the purposes of this Division—

- (a) a dividend, or an amount of income attributable to a dividend, being a dividend paid on or after 19 October 1967, shall, subject to paragraph (b), be deemed to be derived from sources in Papua New Guinea to the extent to which the dividend, or the dividend to which the amount is attributable, as the case may be, is paid out of profits derived from sources in Papua New Guinea other than profits upon which dividend (withholding) tax under the income tax laws of Papua New Guinea has been directly or indirectly paid; and
- (b) a dividend, or an amount of income attributable to a dividend, being a dividend paid on or after 29 August 1972 by a company that is a resident of Papua New Guinea for the purposes of the income tax laws of Papua New Guinea, shall be deemed to be derived from sources in Papua New Guinea.

Credit in  
respect of tax  
paid in  
Papua New  
Guinea.

“160AF. (1) Where—

- (a) the assessable income of a year of income of a taxpayer who is a resident of Australia includes income derived from sources in Papua New Guinea; and
- (b) the taxpayer has paid, directly or indirectly, income tax payable in respect of the income so derived under the income tax laws of Papua New Guinea, being tax for which he was personally liable under those laws but not being tax payable as provisional tax or by way of penalty,

the taxpayer is, subject to this Act, entitled to a credit of—

- (c) the amount of that income tax, as reduced by the amount of any refund or credit of or in respect of that income tax to which the taxpayer is entitled under the income tax laws of Papua New Guinea; or
- (d) the amount of Australian tax payable in respect of the income derived from sources in Papua New Guinea,

whichever is the less.

“(2) For the purposes of sub-section (1), the amount of Australian tax payable in respect of income derived from sources in Papua New Guinea by a taxpayer in a year of income is, subject to the succeeding provisions of this section, an amount ascertained by—

- (a) applying the average rate of Australian tax of the taxpayer of the year of income to the adjusted net Papua New Guinea income of the taxpayer of the year of income; and
- (b) deducting from the resultant amount any rebate (other than a rebate under section 46 or 46A or a rebate under an Act imposing income tax for the year of tax) to which the taxpayer is entitled in his assessment in respect of income derived by him in the year of income and which relates exclusively to the part of that income that is derived from sources in Papua New Guinea.

“(3) Subject to the succeeding provisions of this section, where—

- (a) the whole or a part of a taxpayer’s taxable income of the year of income (in this sub-section referred to as the ‘property component’) is derived from income from property; and
- (b) additional tax is payable in respect of the property component by virtue of an Act imposing income tax for the year of tax,

the amount of Australian tax payable in respect of income derived from sources in Papua New Guinea by the taxpayer in the year of income is, for the purposes of sub-section (1), the sum of—

- (c) the amount ascertained in accordance with the preceding provisions of this section as being the amount of Australian tax so payable; and
- (d) whichever of the following amounts is applicable—
  - (i) where sub-section (8) does not apply—so much of the additional tax referred to in paragraph (b) as bears to that additional tax the same proportion as the Papua New Guinea property component bears to the property component; or
  - (ii) where sub-section (8) applies—so much of the amount that, but for that sub-section, would be ascertained in accordance with sub-paragraph (i) as bears to that amount the same proportion as the Papua New Guinea property component bears to the amount that, but for sub-section (8), would be the Papua New Guinea property component.

“(4) For the purposes of sub-section (3), the Papua New Guinea property component is an amount equal to the part of the income from property included in the taxpayer’s assessable income of the year of income that was derived from sources in Papua New Guinea, reduced by the sum of—

- (a) any deductions allowed or allowable from income from property included in the taxpayer’s assessable income of the year of income that relate exclusively to that part of that income from property; and
- (b) so much of any other deductions allowed or allowable from income from property included in the taxpayer’s assessable



income of the year of income as, in the opinion of the Commissioner, may appropriately be related to that part of that income from property.

“(5) Subject to the succeeding provisions of this section, where the assessable income derived by a company in a year of income includes dividends derived from sources in Papua New Guinea in respect of which the company is entitled to a rebate under section 46 or 46A, the adjusted net Papua New Guinea income of the company of the year of income shall, for the purposes of sub-section (2), be deemed to be the amount that would have been the adjusted net Papua New Guinea income of the company if the company had not derived those dividends.

“(6) Where additional tax under Division 7 has been paid, or is payable, by a private company upon the undistributed amount of the company of the year of income, the amount of Australian tax payable in respect of income derived from sources in Papua New Guinea by the company in the year of income is, for the purposes of sub-section (1), the sum of—

- (a) the amount ascertained in accordance with the preceding provisions of this section as being the amount of Australian tax so payable; and
- (b) the amount ascertained by applying the rate of the additional tax to the Papua New Guinea undistributed amount of the company of the year of income.

“(7) Where—

- (a) a person who has paid or is liable to pay further tax assessed under section 94 in respect of income derived in the year of income has derived income in the year of income from sources in Papua New Guinea;
- (b) a trustee of a trust estate has paid or is liable to pay tax assessed under section 102 in respect of income derived in the year of income, being income that consists of or includes income derived from sources in Papua New Guinea; or
- (c) a private company's taxable income of the year of income includes dividends that are private company dividends for the purposes of sub-section (3) of section 46 or sub-section (6) of section 46A and in relation to which the company is not allowed a further rebate under that sub-section,

the amount of Australian tax payable in respect of the income derived by the person, trustee or company in the year of income from sources in Papua New Guinea is, for the purposes of sub-section (1), such amount as the Commissioner determines, being so much of the tax paid or payable by the person, trustee or company in respect of income of the year of income as, in the opinion of the Commissioner, is reasonably attributable to the income derived from sources in Papua New Guinea.

“(8) Notwithstanding the preceding provisions of this section, where the income derived by a taxpayer in a year of income from sources in Papua New Guinea (in this sub-section referred to as the ‘Papua New Guinea income’) consists of income that is, or is attributable to, dividends, and of other income, this section does not apply in relation to the taxpayer in relation to the Papua New Guinea income as a whole but, instead, applies in relation to the taxpayer separately in relation to the income that is, or is attributable to, dividends and in relation to the other income, and, for the purposes of this section as so applying in relation to the income that is, or is attributable to, dividends or in relation to the other income, the income that is, or is attributable to, dividends, or the other income, as the case may be, shall be treated as the whole of the Papua New Guinea income.

“160AG. (1) Where—

- (a) a credit allowable under this Division relates wholly or in part to tax paid in respect of income to which this section applies;
- (b) a credit allowable under or by virtue of section 45 or under or by virtue of the *Income Tax (International Agreement) Act* 1953-1974 also relates wholly or in part to tax paid in respect of that income; and
- (c) the amount that, but for this section, would be the sum of those credits in so far as they relate to tax paid in respect of that income exceeds the amount that would be the amount of Australian tax payable in respect of that income as ascertained in accordance with section 15 of the *Income Tax (International Agreements) Act* 1953-1974 if that income were a relevant part of the taxpayer’s income for the purposes of that Act,

Reduction of credit in certain circumstances.

the credit referred to in paragraph (a) shall be reduced by the amount of the excess.

“(2) Where a credit referred to in sub-section (1) relates in part only to tax paid in respect of income to which this section applies, the amount of that credit that relates to tax paid in respect of that income is, for the purposes of that sub-section, such amount as the Commissioner, having regard to all the circumstances of the case, determines.

“(3) In this section, ‘income to which this section applies’ means a dividend or an amount of income attributable to a dividend.”.

(2) The amendment made by sub-section (1) applies in relation to the determination of credits in respect of income of the year of income commencing on 1 July 1975 and in respect of income of all subsequent years of income.

(3) In the application of Division 18 of Part III of the Principal Act in relation to the determination of credits in respect of income of a year of income before the year of income commencing on 1 July 1975, references in that Division to the Income Tax Ordinances of Papua New

Guinea shall be read as references to the income tax laws of Papua New Guinea.

**Definitions.**

**45.** Section 160AH of the Principal Act is amended by omitting from paragraph (b) of the definition of “non-Australian tax” the words “Income Tax Ordinances” and substituting the words “income tax laws”.

**Deter-  
mination of  
claims for  
credits.**

**46.** (1) Section 160AI of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:—

“(1) Where a person makes a claim for a credit the Commissioner shall determine whether a credit is allowable and, if so, the amount of the credit.”.

(2) The amendment made by sub-section (1) applies in relation to the determination of credits in respect of income of the year of income commencing on 1 July 1975 and in respect of income of all subsequent years of income.

(3) In the application of section 160AI of the Principal Act in relation to the determination of credits in respect of income of a year of income before the year of income commencing on 1 July 1975, the reference in that section to the Income Tax Ordinances of Papua New Guinea shall be read as a reference to the income tax laws of Papua New Guinea.

**Application  
of credits.**

**47.** (1) Section 160AN of the Principal Act is amended—

(a) by omitting sub-section (1A); and

(b) by omitting from sub-section (2) the words “Subject to the last preceding sub-section, the” and substituting the word “The”.

(2) The amendments made by sub-section (1) apply in relation to credits in respect of income of the year of income commencing on 1 July 1975 and in respect of income of all subsequent years of income.

(3) In the application of section 160AN of the Principal Act in relation to credits in respect of income of a year of income before the year of income commencing on 1 July 1975, the reference in that section to the Income Tax Ordinances of Papua New Guinea shall be read as a reference to the income tax laws of Papua New Guinea.

(4) In the application of sub-section 160AN (1A) of the Principal Act after Papua New Guinea independence day in relation to credits in respect of income of a year of income before the year of income commencing on 1 July 1975, references in that sub-section to the Chief Collector of Taxes for the Territory of Papua New Guinea and to the Administration of that Territory shall be read as references to the Chief Collector of Taxes for Papua New Guinea and to the Government of Papua New Guinea, respectively.

**48.** Section 221AC of the Principal Act is amended by omitting from paragraph (a) of sub-section (1) the figure and word “2 instalments” and substituting the figure and word “1 instalment”.

Liability to pay instalments of tax.

**49.** (1) Section 221AF of the Principal Act is amended by omitting paragraph (a) of sub-section (2) and substituting the following paragraph:—

When instalment of tax payable.

“(a) in the case of an instalment of tax in respect of income of the year of income that commenced on 1 July 1973—not earlier than 15 November 1974; and”.

(2) Where, before the commencement of this Act, 2 notices were served on a company under sub-section 221AF (1) of the Principal Act specifying amounts payable by the company as instalments of tax in respect of its income of the year of income that commenced on 1 July 1973, the first notice shall be deemed to be the notice served on the company in respect of its income of that year of income for the purposes of sub-section 221AF (1) of the Principal Act as amended by this Act and the second notice shall be disregarded.

**50.** (1) Section 221A of the Principal Act is amended—

Interpretation.

- (a) by omitting from paragraph (e) of the definition of “salary or wages” in sub-section (1) the word “or” (last occurring); and
- (b) by inserting after paragraph (f) of that definition the following word and paragraph:—

“; or (g) by way of allowance under the scheme known as the National Employment and Training System,”.

(2) The amendments made by sub-section (1) apply to assessments in respect of income of the year of income that commenced on 1 July 1974 and in respect of income of all subsequent years of income.

**51.** (1) Section 221YK of the Principal Act is amended by omitting sub-section (1A).

Interpretation.

(2) The amendment made by sub-section (1) does not take effect until Papua New Guinea independence day.

(3) For the purpose of ascertaining the meaning of the expression “non-resident” in Division 4 of Part VI of the Principal Act as amended by this Act, a person shall not be taken to have been a resident of Australia at any time by reason only of his having been resident in Papua New Guinea.

**52.** (1) Section 251B of the Principal Act is amended by omitting paragraph (b).

Territories.

(2) The amendment made by sub-section (1) takes effect on Papua New Guinea independence day.

## Schedule 2.

**53.** (1) Schedule 2 to the Principal Act is amended by omitting clauses 4 to 9, inclusive, of Part I and substituting the following clauses:—

“4. Norfolk Island.

5. The Territory of Heard Island and McDonald Islands.

6. The Australian Antarctic Territory.

7. The Territory of Cocos (Keeling) Islands.”.

(2) The amendment made by sub-section (1) applies to assessments in respect of income of years of income subsequent to the year of income in which Papua New Guinea independence day occurs but, for the purposes of assessments in respect of income of that last-mentioned year of income, Papua New Guinea shall be deemed to have been part of the area comprised in Zone A in Part I of Schedule 2 to the Principal Act as amended by this Act at all times during that year of income.

Transitional  
provisions  
relating to  
Papua New  
Guinea.

**54.** (1) Income derived by a provident, benefit, superannuation or retirement fund on or after Papua New Guinea independence day shall not be taken to be income to which paragraph 23 (jaa) of the Principal Act as amended by this Act applies by reason that the fund was established before that day by an Ordinance of Papua New Guinea or by reason that the fund was established by a municipal corporation, other local governing body or public authority that was constituted before that day by or under such an Ordinance.

(2) Paragraph 23 (jb) of the Principal Act as amended by this Act does not apply in respect of income derived by a provident, benefit, superannuation or retirement fund before Papua New Guinea independence day where, but for this sub-section, that paragraph would apply in respect of that income by reason of the operation of sub-section 6 (7) of the Principal Act as amended by this Act.

(3) Where a company was, immediately before Papua New Guinea independence day, a body constituted by a law of Papua New Guinea, then—

(a) for the purposes of the application of sub-paragraph 103A (2) (d) (iii) of the Principal Act as amended by this Act in relation to the year of income in which Papua New Guinea independence day occurs—the company shall not be taken to have ceased to be a body constituted by a law of a Territory by reason of the establishment of an independent sovereign state in the territories that constituted the Territory of Papua and the Territory of New Guinea; and

(b) for the purposes of the application of that sub-paragraph in relation to any subsequent year of income—the company shall not be taken to be a body constituted by a law of a Territory.

(4) For the purposes of the application of Division 8 of Part III of the Principal Act as amended by this Act in relation to the year of income

in which Papua New Guinea independence day occurs, a reference in that Division to a Territory shall be construed as including a reference to the independent sovereign state established in the territories that constituted the Territory of Papua and the Territory of New Guinea.

(5) In the application of Division 10AA of Part III of the Principal Act as amended by this Act to assessments in respect of income of any year of income subsequent to the year of income in which Papua New Guinea independence day occurs—

- (a) section 124AD of the Principal Act as so amended applies separately in relation to expenditure incurred in or in connexion with carrying on mining operations in Australia and in relation to expenditure incurred in or in connexion with carrying on mining operations in Papua New Guinea, but—
  - (i) for the purposes of the separate application of that section in relation to expenditure incurred in or in connexion with carrying on mining operations in Australia, the references in that section to assessable income from petroleum shall be construed as references to assessable income derived from the sale of petroleum, or of the products of petroleum, obtained from mining operations carried on in Australia; and
  - (ii) for the purposes of the separate application of that section in relation to expenditure incurred in or in connexion with carrying on mining operations in Papua New Guinea, any deduction allowable under that section in its application in relation to expenditure incurred in or in connexion with carrying on mining operations in Australia shall be deemed to be a deduction allowable otherwise than under that section or section 124AH;
- (b) section 124AF of the Principal Act as so amended applies separately in relation to expenditure incurred in or in connexion with carrying on mining operations in Australia and in relation to expenditure incurred in or in connexion with carrying on mining operations in Papua New Guinea but—
  - (i) for the purposes of the separate application of that section in relation to expenditure incurred in or in connexion with carrying on mining operations in Australia, the references in that section to assessable income from petroleum shall be construed as references to assessable income derived from the sale of petroleum, or of the products of petroleum, obtained from mining operations carried on in Australia; and
  - (ii) for the purposes of the separate application of that section in relation to expenditure incurred in or in connexion with carrying on mining operations in Papua New Guinea, any deduction allowable under that section in its

application in relation to expenditure incurred in or in connexion with carrying on mining operations in Australia shall be deemed to be a deduction allowable otherwise than under that section, section 124AD or section 124AH; and

- (c) section 124AH of the Principal Act as so amended applies separately in relation to expenditure incurred on exploration or prospecting in Australia and in relation to expenditure incurred on exploration or prospecting in Papua New Guinea but—
    - (i) for the purposes of the separate application of that section in relation to expenditure incurred on exploration or prospecting in Australia, the references in that section to assessable income from petroleum shall be construed as references to assessable income derived from the sale of petroleum, or of the products of petroleum, obtained from mining operations carried on in Australia; and
    - (ii) for the purposes of the separate application of that section in relation to expenditure incurred on exploration or prospecting in Papua New Guinea, the reference in subsection (2) of that section to all other allowable deductions includes a reference to any deduction under that section in its application to expenditure incurred on exploration or prospecting in Australia.
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## NOTES

1. Act No. 80, 1975; assented to 20 June 1975.
2. Act No. 27, 1936, as amended by No. 88, 1936; No. 5, 1937; No. 46, 1938; No. 30, 1939; Nos. 17 and 65, 1940; Nos. 58 and 69, 1941; Nos. 22 and 50, 1942; No. 10, 1943; Nos. 3 and 28, 1944; Nos. 4 and 37, 1945; No. 6, 1946; Nos. 11 and 63, 1947; No. 44, 1948; No. 66, 1949; No. 48, 1950; No. 44, 1951; Nos. 4, 28 and 90, 1952; Nos. 1, 28, 45 and 81, 1953; No. 43, 1954; Nos. 18 and 62, 1955; Nos. 25, 30 and 101, 1956; Nos. 39 and 65, 1957; No. 55, 1958; Nos. 12, 70 and 85, 1959; Nos. 17, 18, 58 and 108, 1960; Nos. 17, 27 and 94, 1961; Nos. 39 and 98, 1962; Nos. 34 and 69, 1963; Nos. 46, 68, 110 and 115, 1964; Nos. 33, 103 and 143, 1965; Nos. 50 and 83, 1966; Nos. 19, 38, 76 and 85, 1967; Nos. 4, 60, 70, 87 and 148, 1968; Nos. 18, 93 and 101, 1969; No. 87, 1970; Nos. 6, 54 and 93, 1971; Nos. 5, 46, 47, 65 and 85, 1972; Nos. 51, 52, 53, 164 and 165, 1973; No. 216, 1973 (as amended by No. 20, 1974); and Nos. 26 and 126, 1974.