Income Tax Bill 2025

Navigating Change: Your Guide to the new Income Tax Bill 2025

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Executive Summary

The Papua New Guinea Income Tax Bill 2025 was passed in Parliament on 20 March 2025. It is yet to be certified into law. The Bill represents a comprehensive modernisation of the country's tax framework. Effective from 1 January 2026, following a cooling off period, the new legislation introduces significant structural changes to align with international standards while addressing PNG-specific economic conditions.

While the initial objective had been a simplification and consolidation of the Income Tax Act 1959, one of the oldest Income Tax Acts in the world, many policy changes have made their way into the new Bill. The number of sections has been halved, the length reduced by 80% and the language simplified. The modernization includes major policy reforms, minor policy reforms and technical amendments. Some changes may even benefit taxpayers.

The legislation will be supported by Regulations providing administrative mechanisms, substantiation requirements, and practical implementation frameworks. The Regulations have not yet been published. Comprehensive transitional provisions ensure business continuity while enabling the shift to the new system. Updates are required to the Tax Administration Act to ensure it aligns with the Income Tax Act – these are to follow at a later date.

A major advantage of the Act is that it brings together into one place various disparate exemptions and treatments previously codified in some cases in legislation other than the Income Tax Act. In our view, the new Income Tax Act attempts to strike a balance between international best practice and local economic realities. While introducing more sophisticated mechanisms for countering tax avoidance, it maintains important concessions for key sectors and provides clear pathways for compliance.

While we have highlighted some of the key reforms, our guide is not comprehensive, and we recommend that taxpayers obtain specific tax advice to address their specific circumstances. In our commentary, references to the new Act refer to the Bill passed in Parliament, on the assumption the final certified Act will remain unchanged.

With 2026 looming, taxpayers, and the Internal Revenue Commission, will need to be prepared for the implementation of the new Act and Regulations.

Regards

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CFO/Head of Tax Checklist

With a whole new Income Tax Act to get to grips with, the following are some suggestions as to where to start:

Issue	Action
Transitional rules	For companies with substitute accounting periods, finance leases or long-term contracts (as defined), determine when new Act applies.
Depreciable and non-depreciable assets	Assess and prepare for tax depreciation rate changes, removal of accelerated tax depreciation, business intangibles previously non-depreciable now depreciable.
Foreign exchange	Prepare to substantiate foreign exchange losses, as these now require specific support when calculating net foreign currency exchange gains or losses.
Employee payments	Prepare for the change in tax treatment of motor vehicles, meals, medical insurance and more robust rules around salary packaging, discounted loans and employee share schemes. As before, consider the tax treatment of payments to individual contractors/consultants to ensure SWT applied where appropriate.
Thin capitalization	Consider how thin capitalisation rules, which limit interest deductions for foreign-controlled companies with excessive debt relative to equity, will be affected by expanding their application to include domestic interest and finance lease interest. Consider also the requirement to include in debt calculation trade payables that have been outstanding for 120 days or more.
Cross border payments	Conduct a full analysis of all payments to non-residents to clarify the tax treatment and commercial implications. Pay particular attention to: • Foreign contractors with permanent establishments in PNG as they may no longer be subject to withholding tax. • Payments for administrative services (not previously caught) subject to 15% non-resident tax. • Reduction in withholding tax rate from 17% to 15% for management and technical fees. • Payments for software, digital content and equipment leasing within the royalty withholding tax rules from 2026. • Payments for technical fees recharged by group companies. Consider the interaction of the above with PNG's Double Tax Treaty network.
Transfer pricing	Ensure the necessary transfer pricing documentation is in place to support arm's length transactions.
Foreign tax losses	Plan for the ring-fencing of foreign tax losses into separate pools for foreign business income and foreign property income.

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Issue	Action
Corporate restructuring and tax planning	Consider whether restructuring before 1 January 2026, under current amalgamation provisions, is more advantageous. If your group has both loss-making and profitable entities, then evaluate how group loss relief might affect the restructuring outcome or how the group may benefit from claims.
Controlled foreign company/tax haven rules	Assess impact of passive income attribution rules on companies with 50% or more direct or indirect interest in a low tax entity.
Capital gains tax - resource companies	Obtain valuations as of 1 January 2026 for resource related assets within CGT net.
Foreign contractors operating in PNG	Determine whether a PNG permanent establishment will arise in 2026 and how any transitional rules will affect the contract. If a permanent establishment is formed, clarify whether registration for PNG income taxes is required from 2026.
Filing deadlines	Plan for the revised income tax filing deadlines: • Corporate taxpayers: due within nine months of the end of the tax year if a registered tax agent is engaged, or within six months if not. • All other income taxpayers, including individuals, partnerships, and trusts: returns must be submitted within 3 months.

1 Transitional Rules

The transition from the current Income Tax Act to the new legislation represents a significant challenge for both taxpayers and tax administrators. To address this challenge, the new Act includes comprehensive transitional provisions designed to provide clarity, certainty, and continuity while facilitating the smooth implementation of the reformed tax system.

1.1.1 Effective Dates

The new legislation takes effect from 1 January 2026, following a cooling-off period after enactment.[1] This extended implementation window provides taxpayers with time to understand and prepare for the new provisions.

1.1.2 Accounting Period Treatment

For income tax purposes, accounting periods that commence before 1 January 2026 will remain subject to the repealed Act, even if they end after 1 January 2026.[2] This clean-cut approach based on commencement date rather than end date avoids the complexity of apportioning tax treatments within a single accounting period.

For organisations with substitute accounting periods (non-calendar year accounting periods):

- The repealed Act applies to substitute periods commencing before 2026 even if they end during 2026[3]
- The new Act applies to substitute periods commencing on or after 1 January 2026[4]

1.1.3 Depreciable Assets

Assets that were owned and depreciated under the old legislation will be subject to the depreciation rates outlined in the new Act going forward.[5] This avoids the need.

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[1] Income Tax Bill 2025, s 165(1).

[2] Ibid, s 165(2).

[3] Ibid, s 164(2).

[4] Ibid, s 165(2).

[5] Ibid, s 164(6)(a).

to maintain parallel depreciation systems while ensuring appropriate transition to the new rates.

1.1.4 Previously Non-Depreciable Assets

If assets were owned but not depreciable under the old legislation (e.g. business intangibles such as trademarks), but are depreciable under the new Act, their opening tax written down value will be calculated as if they had been depreciated under the new Act's rates from the time they were first acquired.[6] This "notional depreciation" approach means that although these assets were not actually depreciated previously, they are treated as having been depreciated to determine their adjusted tax base going forward.[7]

This approach prevents taxpayers from claiming excessive depreciation on previously non-depreciable assets while providing a reasonable transition mechanism for these newly depreciable items.

1.1.5 Cost Base Elections

When determining cost bases for assets subject to capital gains tax, taxpayers can elect to use either:

- The original substantiated cost, or
- The fair market value on 1 January 2026[8]

1.1.6 Contracts and Leases

Existing finance leases and long-term contracts entered into before 2026 will continue to follow the previous rules, while arrangements beginning on or after 1 January 2026 must comply with the new provisions.[9] A long term contract means a construction or engineering contract that will take more than 12 months to complete. This grandfathering of existing arrangements acknowledges the disruption that could be caused by forcing renegotiation or restructuring of established contracts.

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[6] Ibid, s 164(4).

[7] Ibid, s 164(5).

[8] Ibid, s 164(10).

[9] Ibid, s 164(8).

1.1.7 Carry forward losses.

Tax losses and deductions previously claimed under the repealed legislation will be recognised when applying the new provisions.[10] This ensures that taxpayers are not disadvantaged by the legislative change and can continue to use properly incurred tax attributes.

1.1.8 Extractive Industries

The extractive industry sector receives special transitional treatment due to its economic importance and the long-term nature of resource projects. Under the new legislation, extractive industry projects that commenced before 1 January 2026 continue to be governed by Division 10 of Part III of the repealed Income Tax Act.[11] The term commencement is not defined. The Act also states the repealed legislation will continue to apply to existing fiscal stability agreements made before the commencement date.[12] The legislation applies strict ring-fencing of resource projects, with deductions generally only allowed against income from the same project.[13]

1.1.9 Fiscal Stability Agreements

For projects operating across both regimes, the new Act ensures that fiscal stability agreements under the Resource Contracts Fiscal Stabilisation Act 2000 take precedence over any conflicting new provisions.[14] This reflects PNG's commitment to honouring contractual arrangements with investors in the resource sector.

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[10] Ibid, s 164(7).

[11] Ibid, s 164(12).

[12] Ibid, s 164(16)(a).

[13] Ibid, s 164(12).

[14] Ibid, s 164(16)(b).

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2 Employment Income

The new Income Tax Act consolidates and refines the taxation of employment income in Papua New Guinea, defining it broadly to include all forms of remuneration while preserving key principles from the previous regime. The legislation clarifies the tax treatment of non-cash benefits with a comprehensive valuation framework and the codified 60/40 rule for salary packaging arrangements. For the first time, the Act introduces specific provisions for employee share schemes, resolving previous uncertainties by establishing clear taxing points and valuation methodologies. Notably, the Act expands exemptions for non-resident employees and maintains essential compliance requirements, including withholding obligations for employers. These provisions collectively address modern employment arrangements while preserving important PNG-specific concessions for housing, transport, and other benefits.

2.1 Employment Income: Fundamental Principles

2.1.1 Definition

The new Act defines ‘employment income’ broadly to include all payments or benefits received by an employee in respect of employment.[15] This comprehensive approach ensures that all forms of remuneration—whether cash- based or non-monetary—are captured for tax purposes. The legislation affirms that employment income is derived by an employee when it is received or otherwise made available to the employee by the employer, their associate or a third party.[16]

For tax purposes, the Act maintains that the relationship between an employer and employee is determined according to common law principles, with special deeming applying to certain independent contractors, as discussed below.[17]

2.1.2 Independent Contractors

The new Act maintains the long-standing approach in PNG tax law whereby independent contractors, being individuals, are generally subject to salary or wages tax. The new Act carries over, but tightens up, from the repealed legislation anti-avoidance provisions which provide that contracts with individuals will be treated as employment contracts unless the individual “substantially satisfies” the following: the individual is in business on their own account, and is responsible for

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[15] Ibid, s 19(2).

[16] Ibid, s 19(5).

[17] Ibid, s 132.

the success or failure of the business and can make a profit or loss; they can decide what, when, where and how the work is done; they can hire someone else to do the work; they must fix any unsatisfactory work in their own time and on their own account; they receive a fixed remuneration which does not depend on how long the job takes to finish; more than 80% of their income is not received from one party; they cover the purchase of their business assets and their operating costs and provide their own tools and equipment necessary; they can work for more than one person.[18]

2.1.3 Filing Dates and Compliance Requirements

Under the new Act, withholding tax returns and payments for employment income must be lodged by the 7th day of the month following the month in which the employment income was paid.[19] This is the same filing date as the repealed legislation.

The withholding agent must also furnish an annual withholding tax statement with the Commissioner General within 3 months after the end of each year.[20] This annual statement is treated as a tax return for the purposes of the Tax Administration Act 2017.[21]

The withholding tax is generally a final tax on employment income where the employee is not required to file an income tax return.[22] Again, this is unchanged.

2.2 Employment Income: Employer-Provided Benefits

2.2.1 Taxation Framework

The new Income Tax Act establishes a comprehensive framework for the taxation of non-cash benefits provided by employers. This integrated approach covers salary packaging arrangements, valuation of taxable benefits, exemptions, and specific rules for various benefit categories. The Act consolidates previously fragmented legislation or practices into a coherent system with clearly defined rules for each benefit type.

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[18] Ibid, s 132(1).

[19] Ibid, s 158(1)(a).

[20] Ibid, s 159(1).

[21] Ibid, s 159(2).

[22] Ibid, s 13(6).

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2.2.2 Legal Foundations of Salary Packaging

Salary packaging refers to a formal arrangement whereby an employee receives part of their total remuneration as non-cash benefits that may qualify for concessional tax treatment.[23] These arrangements allow employees to optimize their after-tax income through a strategic mix of cash and benefits while providing employers with flexible compensation options.

The percentage of employment benefits that can be provided under a salary packaging arrangement is capped at 40% of the employee's total remuneration package.[24] This rule ensures that a substantial portion of employment income remains in cash form, thereby protecting the tax base. Any benefits exceeding this threshold are reclassified and taxed as ordinary salary or wages.[25]

Regulatory oversight has been significantly enhanced under the new legislation. All salary packaging arrangements must conform to the employer's formal salary packaging policy and receive prior written approval from the Commissioner General. Furthermore, employers must report these arrangements within 14 days of implementation, modification, or termination. While these requirements aim to prevent potential abuse of this concessional treatment, they represent a substantial increase in the administrative burden if advance approval from IRC is required.

2.2.3 Housing Benefits

The taxation of employer-provided housing has been structured to reflect Papua New Guinea's diverse geographic and economic conditions. The taxable value of employer-provided accommodation is prescribed in the Regulations based on a combination of geographic location and housing category.[26]

Geographic locations continue to be classified into three areas: Area 1 (major centres like Port Moresby), Area 2 (secondary urban areas like Kavieng), and Area 3 (all other PNG locations). Within each area, housing is further categorized based on quality and cost, ranging from very high-cost accommodations to basic mess/barracks facilities. The prescribed taxable values are largely unchanged and range from 0 to 2,500 PGK per fortnight.

Similar to the current treatment, housing allowances received by employees and used to pay their rent may qualify as prescribed benefits. These allowances require

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[23] Ibid, s 19(1).

[24] Ibid, s 19(6).

[25] Ibid, s 19(7).

[26] Ibid, Schedule 2, Clause 3(2).

a formal IRC approved ‘housing variation’. The taxable value is calculated using a formula that considers both the excess of the allowance over actual housing costs and the prescribed value for the relevant housing category. In addition, housing subsidies for PNG citizens under approved first home buyer schemes have nil taxable value.[27] Additionally, amounts advanced by an employer to a first homeowner employee to buy residential property costing PGK700,000 or less, which are debited against entitlements including recreation leave, furlough, superannuation, or gratuity entitlements, are exempt income.[28]

2.2.4 Transportation Benefits

The tax treatment of transportation benefits has been rationalized under the new legislation. Motor vehicle benefits are taxed at 10% of the vehicle’s acquisition cost divided by 26 (on a fortnightly basis).[29] However, this amount is reduced by several factors: any payment the employee makes for use or maintenance of the vehicle, the proportion of business use, and any period during which the vehicle is unavailable for private use. This approach more accurately reflects the actual benefit received by the employee.

The rules in relation to the tax treatment of leave fare benefits are unchanged, other than a change in terminology from family to dependents. One return airfare per annum for the employee and their dependents, from the place of employment to the place or origin or recruitment, is exempt from tax.[30] The Commissioner General may approve additional exempt fares in specific circumstances, such as for hardship or remote locations, providing flexibility where warranted.[31]

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[27] Ibid, Schedule 3, Part 3(1)(e)(x).

[28] Ibid, Schedule 3, Part 3(1)(e)(xi).

[29] Ibid, Schedule 2, Clause 5(3).

[30] Ibid, Schedule 3, Part 3(1)(e)(iii).

[31] Ibid, Schedule 3, Part 3(1)(e) (iv-v).

Travel allowances are excluded from taxable income to the extent that they are used or expected to be used for travel away from the employee's home overnight in the course of performing employment duties.[32]

2.2.5 Health, Welfare, and Other Benefits

The new legislation introduces a comprehensive approach to health and welfare benefits based on the principle of equal availability. Medical insurance premiums and health services are exempt from tax, but only when they are available to all non-casual employees on equal terms.[33] This "all-or-nothing" approach prevents selective provision of tax-exempt benefits to executives and encourages employers to provide health coverage on a company-wide basis.

Similarly, workplace meals and refreshments are exempt when three conditions are met: the facility operates solely for employees, access is available to all non-casual employees equally, and benefits are provided on the employer's premises or worksites.[34] Educational benefits for school fees other than tertiary fees for employees' student children continue to be exempt.[35]

The legislation also addresses a range of other common benefits. The taxable benefit of discounted interest loans is valued at the difference between market interest rates and the discounted rate actually charged.[36] Discounted goods or services are taxed at 75% of the selling price for items ordinarily supplied to customers, or at cost in other cases.[37]

Private expenditure paid by employers is fully taxable based on the amount incurred.[38] Similarly, debt waiver benefits are fully taxable at the value of the debt waived.[39] For benefits not specifically addressed elsewhere (residual benefits), the taxable value is the fair market value when provided, less any payment made by the employee.[40]

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[32] Ibid, s 19(3).

[33] Ibid, Schedule 3, Part 3(1)(e)(vii).

[34] Ibid, Schedule 3, Part 3(1)(e)(ii).

[35] Ibid, Schedule 3, Part 3(1)(e)(viii).

[36] Ibid, Schedule 2, Clause 4(2).

[37] Ibid, Schedule 2, Clause 6(2).

[38] Ibid, Schedule 2, Clause 7(2).

[39] Ibid, Schedule 2, Clause 2(2).

[40] Ibid, Schedule 2, Clause 8(2).

Specific expense allowances receive favourable treatment when they are used strictly for employment-related purposes, though any excess becomes taxable.[41] For redundancy payments, concessional tax treatment requires Commissioner General approval for schemes affecting 10 or more employees.[42]

2.3 Employment Income: Employee Share Scheme Benefits

2.3.1 Comprehensive Framework and Policy Objectives

The new Act introduces a dedicated legislative framework for the taxation of employee share schemes, replacing the previous reliance on case law that created uncertainty for both employers and employees.[43] The legislation defines an "employee share scheme" broadly to include any arrangement under which an employee is granted shares or rights to acquire shares in the employer or its associate in respect of employment.[44] This definition captures a wide range of equity compensation structures, from direct share grants to complex option and rights plans.

2.3.2 Treatment of Options and Rights at Grant

The grant of a right or option to acquire shares under an employee share scheme does not constitute a taxable event.[45] Taxation is deferred until the point at which the employee acquires an actual economic benefit.

2.3.3 Tax Point at Share Allotment

The tax point occurs when shares are actually allotted to the employee, including allotments resulting from the exercise of previously granted rights or options.[46] At

this point, the value of the shares becomes part of the employee's employment income and is subject to tax accordingly.

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[41] Ibid, s 19(2) (c-d).

[42] Ibid, s 21.

[43] Ibid, s 20.

[44] Ibid, s 20(1).

[45] Ibid, s 20(2).

[46] Ibid, s 20(3).

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2.3.4 Deriving Income: Timing Considerations for Restricted Shares

If an employee is prevented from disposing of or otherwise realizing the value of their shares until some future time, the taxation point is deferred until the earlier of:

- The date the disposal restriction is lifted; or
- The actual date of disposal of the shares[47]

This provision recognizes that shares subject to trading restrictions or potential forfeiture may have contingent or reduced value until those restrictions are removed.

2.3.5 Valuation Methodology and Net Benefit Approach

The taxable value is calculated as the fair market value of the shares at the time of derivation, reduced by any amount the employee paid to acquire them.[48]

2.4 Employment Income: Exemptions

2.4.1 Exemptions from income tax include:[49]

- **Foreign Employment Income**: Income and pensions from foreign employment for residents are exempt if taxed in the country of employment.[50]

- **Non-Resident Employees**: Income of non-residents (excluding entertainers) from services in PNG is exempt if:

  - they stay in PNG for no more than 90 days in a tax year,
  - the income is taxed in their home country,
  - they are paid by a non-resident entity and not from a PNG-based permanent establishment.[51]

  The above is a significant new provision as it allows an employment tax exemption to extend to individuals tax resident in non-Double Tax Treaty countries where their foreign employer does not have a permanent establishment in PNG.

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[47] Ibid, s 20(4).

[48] Ibid, s 20(4)(b).

[49] Ibid, Schedule 3, Part 3.

[50] Ibid, Schedule 3, Part 3(1)(f).

[51] Ibid, Schedule 3, Part 3(1)(g).

- **Parliamentary Pensions:** Pensions, benefits, or lump sums paid to current or former Members of Parliament under the Parliamentary Members Retirement Benefits Act 1979 are exempt.52
- **Foreign Military Income:** PNG source employment income for individuals in foreign naval, military, or air forces is exempt if not paid by PNG or Australia.53
- **Foreign Government Employees:** Income of employees or officers from foreign governments that are prescribed donors of international aid to Papua New Guinea (PNG) where the income is not exempt in their home country. It appears the Regulations will limit this to the extent certified by PNG DFAT.[54]
- **Aid Workers:** Foreign income of individuals in PNG solely to assist prescribed aid organizations, without remuneration or PNG source income, is exempt.[55]
- **Peace Corps:** Official employment and foreign income of U.S. Peace Corps officers or citizens temporarily in PNG under the Peace Corps Understanding are exempt.[56]
- **Commissioners and Experts:** Remuneration paid by the State to non-residents as Commissioners or as counsel/technical/professional experts under the Commissions of Inquiry Act 1951 is exempt.[57]
- **Sports Representatives:** Income of individuals representing foreign sports associations or clubs visiting PNG for contests.[58]
- **NRL/WNRL Representatives:** Income of players, staff, or officials of the PNG NRL or WNRL franchise club is exempt if not taxable elsewhere.[59]
- **Government Representatives:** Income of individuals representing foreign governments or their entourage visiting PNG in an official capacity.[60]
- **Educational/Scientific/Religious/Philanthropic Representatives:** Income of individuals representing societies or associations for educational,

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[52] Ibid, Schedule 3, Part 3(1)(h).

[53] Ibid, Schedule 3, Part 3(1)(i).

[54] Ibid, Schedule 3, Part 3(1)(k).

[55] Ibid, Schedule 3, Part 3(1)(l).

[56] Ibid, Schedule 3, Part 3(1)(m).

[57] Ibid, Schedule 3, Part 3(1)(n).

[58] Ibid, Schedule 3, Part 3(1)(o)(i).

[59] Ibid, Schedule 3, Part 3(1)(o)(ii).

[60] Ibid, Schedule 3, Part 3(1)(o)(iii).

scientific, religious, or philanthropic purposes visiting PNG for conferences or research.[61]

- **Press Representatives:** Income of foreign press representatives visiting PNG to report on relevant proceedings.[62]
- **Fishing Employees:** Employment income of employees of non-residents engaged in certain fishing operations.[63]
- **Aid workers:** Income treated as exempt income under Australia-PNG Development Cooperation Treaty.[64]

[61] Ibid, Schedule 3, Part 3(1)(o)(iv).

[62] Ibid, Schedule 3, Part 3(1)(o)(v).

[63] Ibid, Schedule 3, Part 6(1)(b).

[64] Ibid, Schedule 3, Part 6(1)(k).

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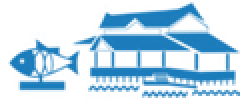

3 Business Income

3.1 Business Income: Executive Summary

The new Income Tax Act largely preserves the fundamental structure of business taxation while introducing important refinements and new provisions. The central elements of company income tax remain unchanged - the core principle is still to tax a company's annual net gain derived from its business activities at the 30% tax rate.

The foundational formula for calculating taxable income continues to be the difference between assessable income and allowable deductions for a taxpayer in a tax year.[65] This maintains continuity with the existing tax framework while incorporating targeted changes.

For most businesses, the general scope of what constitutes assessable income and what qualifies as allowable deductions remains largely familiar.[66] This provides welcome certainty and stability for taxpayers while the new provisions are incorporated into tax planning and compliance processes.

The Act introduces notable refinements in several key areas, however, ranging from uniform asset rules and enhanced depreciation provisions to innovative approaches for business intangibles and international transactions. These changes reflect modern business practices and international tax trends, creating a more robust and coherent framework for business taxation.

Perhaps the most exciting and useful aspect, if tax can ever be said to be exciting, is the introduction of a type of group relief for the intra-group transfer of tax losses and assets, subject to certain conditions.

3.2 Business Income: Uniform Asset Rules

3.2.1 Comprehensive Framework for Asset Transactions

The new Act introduces a comprehensive framework of uniform asset rules that standardize tax treatment across different asset classes and transaction types.[67]

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[65] Ibid, s 17.

[66] Ibid, s 23 and s 29.

[67] Ibid, ss 85-99.

These provisions create greater certainty and consistency in how assets are treated for tax purposes throughout their lifecycle.

The rules systematically address:

- When an asset is considered acquired or disposed of for tax purposes[68]
- How to determine and allocate an asset's cost basis[69]
- Methods for adjusting cost basis in various scenarios[70]
- Special treatments for specific transaction types[71]

This integrated approach replaces previously fragmented provisions, creating a coherent system that enhances both compliance certainty and administrative efficiency.

3.2.2 Special Situations and Complex Transactions

The uniform asset rules provide clarity for complex scenarios including:

- Merging or splitting assets[72]
- Compulsory acquisitions[73]
- Assets transmitted on death or divorce[74]
- Jointly owned assets[75]
- Transactions involving intangible assets[76]
- Related party transactions[77]

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[68] Ibid, ss 86-87.

[69] Ibid, ss 88-89.

[70] Ibid, ss 89-93.

[71] Ibid, ss 94-99.

[72] Ibid, s 90.

[73] Ibid, s 98(1)(c).

[74] Ibid, ss 98(1)(a)-(b).

[75] Ibid, s 85.

[76] Ibid, ss 88(4)-88(6).

[77] Ibid, s 99.

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These provisions ensure consistent treatment across different asset categories and transaction types, reducing ambiguity and potential disputes.

3.2.3 Right to Occupy Real Property

A recent addition to the final legislation is the carryover from the repealed legislation of the ability to claim tax depreciation on costs incurred for the purchase of a right to indefinitely occupy or use PNG real property without obtaining legal ownership rights. In such cases, the parties may agree to treat part or all of the payment as the property's purchase price for tax purposes.[78]

This election:

- Must be approved by the Commissioner General[79]
- Must be filed by the due date for the first income tax return following acquisition[80]
- Results in the agreed amount being treated as the purchase/sale price for tax purposes[81]

This provision recognises the economic substance of certain long-term rights that function similarly to ownership, given the issues in PNG around strata title.

3.3 Business Income: Depreciation of Depreciable Assets

3.3.1 Core Principles and Methodology

The new Act establishes a systematic approach to depreciation, allowing taxpayers to deduct a portion of the cost of depreciable assets to the extent they are used to derive assessable income over time.[82] This reflects the fundamental principle that capital assets contribute to income generation across multiple tax years and should be expensed accordingly.

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[78] Ibid, s 94.

[79] Ibid, s 94(4).

[80] Ibid, s 94(6)(a).

[81] Ibid, s 94(2).

[82] Ibid, s 36(1).

3.3.2 Depreciation Methods

The Act permits two tax depreciation methods: 1. Straight-line Method: This applies by default to all classes of depreciable assets and involves applying the prescribed rate against the asset's cost.[83] 2. Diminishing Value Method: Taxpayers may make an irrevocable election to use this accelerated method for Class 1, 2, and 3 assets on a pooling basis.[84]

The key departure is the application of the diminishing value method on a pooling basis. The tax depreciation rate applicable to the pool is applied against the written down value of the pool at the end of the year. The written down value at year end is calculated as the opening written down value plus 50% of the cost of the assets added to the pool during the tax year plus 50% of the cost of the assets added to the pool in the previous tax year minus consideration for disposals from the pool during the year.[85]

The election to use the diminishing value method must be made in writing in the approved form by the due date for the tax return. Once made it cannot be revoked.[86]

3.3.3 Asset Classification System

The Act implements a streamlined classification system with five distinct classes of depreciable assets, each assigned a specific prescribed rate of depreciation. This represents a simplification from the previous approach and creates greater certainty for taxpayers. The asset classes are:

Class	Asset Types	Straight-line Rate	Diminishing Value Rate
1	Motor vehicles; buses and minibuses with a seating capacity of less than 30 passengers; goods vehicles with a load capacity of less than 7 tonnes; computers and data handling equipment; software; and construction and earthmoving equipment.	25%	40%
2	Heavy vehicles, specialised equipment, manufacturing plant Buses with a seating capacity of 30 or more passengers; goods vehicles designed to carry or pull loads of 7 or more tonnes; specialised trucks; tractors;	20%	30%

[83] Ibid, s 37.

[84] Ibid, s 38.

[85] Ibid, s 38(3).

[86] Ibid, s 36(5).

Class	Asset Types	Straight-line Rate	Diminishing Value Rate
	trailers and trailer-mounted containers; and plant and machinery used in manufacturing, mining, forestry, or farming operations.		
3	Vessels, barges, tugs, and similar water transportation equipment; aircraft; office furniture, fixtures, and equipment; and any depreciable asset not included in another Category (other than a business intangible).	12.5%	20%
4	Structural improvements	5%	N/A
5	Business intangibles	25% - preliminary expenditure 10% - useful life of more than 10 years 100% divided by useful life - other	N/A

3.3.4 Special Provisions and Limitations

Several important provisions and some limitations apply to depreciation claims:

- The total depreciation deductions for any asset cannot exceed its cost.[87]
- No tax depreciation can be claimed for buildings under construction until they are certified as complete even if they are put into use before certified.[88]
- Low-value assets costing less than K1,000 qualify for immediate 100% depreciation.[89]
- Solar power heating equipment also qualifies for immediate 100% depreciation regardless of cost.[90]
- Accelerated tax depreciation has generally been removed from the legislation.
- An initial allowance of 20% is available for qualifying assets (plant or machinery used solely in manufacturing).[91]

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[87] Ibid, s 37(3).

[88] Ibid, s 36(7)-36(8).

[89] Ibid, Schedule 4, Clause (2).

[90] Ibid, Schedule 4, Clause (3).

[91] Ibid, s 39.

3.3.5 Business Intangibles

The new Act introduces a new class of depreciable asset: the business intangible. This is a type of asset that is not physical but helps derive assessable income. It includes rights such as patents, trademarks, or secret formulas, as well as marketing intangibles, contractual rights, certain expenditure providing long-term benefits, and preliminary expenditure before business start-up.[92]

Different categories of business intangibles are given specific depreciation rates in Schedule 4.[93] This ensures that the cost involved in acquiring or creating these assets is recognised over time in calculating taxable income. For business intangibles that are expenditures providing long-term benefits or preliminary expenditure, the cost is simply the amount of the expenditure.[94]

The Act also treats certain specialized expenditures as business intangibles, including development expenditure for resource projects[95] and environmental impact study expenditure.[96]

3.4 Business Income: Finance Leases

3.4.1 Substance Over Form Approach

The new Income Tax Act adopts a 'substance over form' approach to finance leases. Under this approach, the income tax consequences arising from finance leases now follow the economic substance rather than the legal form of such transactions. This represents a significant shift from the legal ownership determining the tax treatment.

3.4.2 Definition and Scope

A finance lease is defined as a lease of an asset where the lease payments include an explicit or implicit credit charge.[97]

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[92] Ibid, s 3.

[93] Ibid, Schedule 4(4).

[94] Ibid, s 88(5).

[95] Ibid, s 105(2).

[96] Ibid, s 127(2).

[97] Ibid, s 50(1).

3.4.3 Deemed Ownership and Loan Treatment

The core of the finance lease provisions involves a two-part characterisation:

- Lessee as Asset Owner: It deems the lessee to be the owner of the asset and to have acquired it at the commencement of the lease.[98]
- Lessor as Lender: Correspondingly, the lessor is treated as having made a loan to the lessee, with each lease payment representing part repayment of principal and part payment of interest.[99]

3.4.4 Asset Cost Determination and Loan Principal

The cost of the leased asset to the lessee (and correspondingly, the amount of the deemed loan) is determined by reference to two possible values:

- Where the parties are not associates: The amount stated in the lease agreement[100]
- Where the parties are associates or in other circumstances: The fair market value of the asset at lease commencement[101]

This deemed cost amount serves two purposes:

- It establishes the lessee's depreciable asset base[102]
- It is treated as the loan principal for calculating the interest component of payments[103]

The interest component of each lease payment is calculated using the interest rate that is implicit in the lease agreement.[104]

3.4.5 Practical Implications

These finance lease provisions have several important practical implications:

- Lessees can claim depreciation deductions on leased assets.

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[98] Ibid, s 50(3)(a)-(b).

[99] Ibid, s 50(3)(c).

[100] Ibid, s 50(4)(a).

[101] Ibid, s 50(4)(b).

[102] Ibid, s 50(4).

[103] Ibid, s 50(5).

[104] Ibid, s 50(6).

- Lessees can claim interest deductions on the financing component.
- Lessors recognize interest income rather than lease income.
- The timing of income and deduction recognition may differ from accounting treatment.
- Businesses must properly identify and classify finance leases to ensure correct tax treatment.
- The thin capitalisation provisions may also apply to finance lease arrangements when calculating a foreign controlled company's debt-to-equity ratio.
- Existing finance leases entered into before 2026 will continue to follow the previous rules, while arrangements beginning on or after 1 January 2026 must comply with the new provisions.

3.5 Business Income: Long Term Contracts

3.5.1 Percentage of Completion Method

Taxpayers must include in their assessable income for each tax year the proportionate share of the contract's estimated total taxable income based on the percentage of completion determined according to financial reporting standards.[105]

This methodology aligns tax treatment with financial accounting practices.

3.5.2 Loss Provisions

If at the end of the final tax year, a contractor has a final year loss that would normally be carried forward, but they cannot do so because they cease PNG business operations at the contract's end, they may carry the loss back to the preceding tax year.[106]

This carry-back provision does not apply if the loss can be transferred to a group company.[107]

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[105] Ibid, s 49(2).

[106] Ibid, s 49(3)-(4).

[107] Ibid, s 49(5).

This targeted relief mechanism balances the needs of contractors with revenue protection considerations and is particularly valuable for international contractors executing limited-duration projects in PNG.

3.5.3 Definition and Scope

The new Act introduces specific provisions for long-term contracts, which are defined as construction or engineering contracts that will take more than 12 months to complete.[108] These provisions are particularly relevant for:

- Major infrastructure projects
- Large-scale construction undertakings
- Complex engineering installations
- Long-duration mining and resource development contracts

Existing long-term contracts entered into before 2026 will continue to follow the previous rules, while arrangements beginning on or after 1 January 2026 must comply with the new provisions.[109]

3.6 Business Income: Thin Capitalisation

3.6.1 Core Concept and Application

Thin capitalisation rules are designed to prevent excessive interest deductions by foreign-controlled entities that are financed primarily through debt rather than equity. Under the new Act, when a foreign-controlled resident company is thinly capitalised, its interest deductions are limited to prevent base erosion through excessive interest payments.

A company is considered “foreign-controlled” when more than 50% of its membership interests are held by a non-resident either alone or with their associate(s).[110] These rules aim to ensure that multinational groups cannot artificially reduce their PNG tax liability through excessive debt funding of their PNG operations.

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[108] Ibid, s 49(1).

[109] Ibid, s 164(8).

[110] Ibid, s 77(1).

3.6.2 The 2:1 Debt-to-Equity Threshold

A company is deemed to be thinly capitalised when its average debt-to-equity ratio exceeds 2:1 during a tax year.[111] This establishes a clear and measurable threshold for the application of these provisions.

For this calculation:

- “Average debt” is the sum of the debt at the end of each calendar month divided by the number of months the company conducted business in PNG during the tax year[112]
- “Average equity” is calculated similarly, using the equity at month-end[113]
- “Debt” includes all interest-bearing obligations as determined under financial reporting standards, but excludes accounts payable that have been outstanding for less than 120 days[114]
- “Equity” is determined according to financial reporting standards[115]

3.6.3 Interest Deduction Limitation Formula

When a company exceeds the 2:1 threshold, its interest deductions are limited according to this formula: Disallowed Interest = A × B/C

Where:

- A is the company’s total deductible interest expenditure for the year (before applying thin capitalisation rules)
- B is the company’s “excess debt” (the amount by which average debt exceeds twice the average equity)
- C is the company’s average debt for the year[116]

This formula proportionally reduces interest deductions based on the extent to which debt exceeds the permitted threshold.

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[111] Ibid, s 77(2).

[112] Ibid, s 77(1).

[113] Ibid, s 77(1).

[114] Ibid, s 77(1).

[115] Ibid, s 77(1).

[116] Ibid, s 77(2).

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3.6.4 Expanded Scope

The new Act expands the thin capitalisation restrictions to apply to:

- Domestic interest (not just foreign interest) as the new Act does not distinguish between domestic and foreign interest. Instead, the thin capitalization provision applies to all 'deductible interest expenditure' without qualification.
- Finance lease interest as the definition of 'interest' specifically includes finance lease interest.[117]

These provisions also apply to PNG permanent establishments of non-resident companies, which are treated as foreign-controlled resident companies for this purpose. The debt-to-equity ratio for permanent establishments is calculated based on debt obligations and equity attributable to the permanent establishment.[118]

3.6.5 Exceptions

The restrictions do not apply where the lender is tax resident in a Double Tax Treaty country with an applicable non-discrimination clause and the amount of the average debt of the company for the year does not exceed the arm's length debt.[119] This represents the amount of debt that an unrelated financial institution would be prepared to lend to the company in an arm's length transaction.[120]

A formula applies to calculate the average debt amount. This exception attempts to recognise international treaty obligations and provides an exception for certain cross-border financing arrangements.

Additionally, these rules do not apply to foreign-controlled financial institutions, acknowledging their different business models and capital structures.[121]

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[117] Ibid, s 3.

[118] Ibid, s 77(5).

[119] Ibid, s 77(3).

[120] Ibid, s 77(1).

[121] Ibid, s 77(2).

3.7 Business Income: Charitable Donations

3.7.1 Deductible Donation Framework

The new Act provides a structured framework for tax-deductible charitable donations, balancing incentives for philanthropy with appropriate limitations and safeguards. This recognises the important role that businesses play in supporting community and social initiatives in PNG.

3.7.2 Qualifying Recipients

Donations qualify for tax deductions only when made to specific categories of recipients:

- Approved charitable bodies.
- Amateur sporting bodies
- Government emergency appeals
- The Central Fund
- Registered political parties.
- Candidates for political office[122]

For each category, specific criteria must be met before deductions can be claimed, including minimum donation thresholds. This ensures that only substantial philanthropic commitments qualify for tax benefits.

3.7.3 Valuation Rules for Property Donations

When donations are made in the form of property rather than cash, specific valuation rules apply:

- The property must have been held for no more than 12 months prior to donation.
- It is valued at the lower of its cost or fair market value at the time of donation[123]

These provisions prevent potential overvaluation of donated property and ensure that only recently acquired assets can be donated with tax benefits, avoiding potential manipulation.

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[122] Ibid, s 33(2).

[123] Ibid, s 33(3).

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3.7.4 Donation Limits

While donations to the Central Fund remain unlimited, significant constraints apply to other categories as donations to political parties and candidates are subject to specified monetary limits.[124] The total charitable deduction for all categories combined cannot exceed 10% of the taxpayer's assessable income[125]

3.8 Business Income: Foreign Currency Exchange Gains or Losses

3.8.1 Currency Translation Requirements

Under the new Act, all amounts must be expressed in Kina unless specific permission is granted by the Commissioner General.[126] For amounts in foreign currencies, translation to Kina must use the Bank of PNG exchange rate on the date the amount is taken into account for tax purposes.[127] However, to reduce the administrative burden, businesses may apply to the Commissioner General for prior written permission to use average exchange rates for a tax year in calculating the income and expenditure of the taxpayer for a period.[128] While current practice allows taxpayers to translate their accounts for tax return purposes using the average exchange rate for the year, it is of note that the new Act appears to require prior written permission to be permitted to do this.

If a taxpayer keeps their financial accounts in a functional currency other than Kina, they may seek approval from the IRC to lodge their income tax return in that functional currency.

Previously foreign exchange movements on debtor loans were neither assessable nor deductible – this is no longer the case.

3.8.2 Definition and Recognition

A foreign currency exchange gain or loss arises from currency fluctuations in business transactions such as:

- Foreign currency dealings

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[124] Ibid, s 33(5).

[125] Ibid, s 33(6).

[126] Ibid, s 52(1).

[127] Ibid, s 52(2).

[128] Ibid, s 52(3).

- The issuing or, or obtaining of, a foreign currency debt obligation denominated in a foreign currency.
- Other foreign currency transactions[129]

These gains or losses are subject to three key requirements:

1. They must arise from transactions entered into in the conduct of a business to derive assessable income[130]

2. They must be attributable to currency exchange rate fluctuations[131]

3. They must be on revenue account rather than capital account[132]

3.8.3 Calculation Methodology

For resident persons, the net foreign currency gain or loss for a tax year is determined by a simple formula: total foreign exchange gains minus total foreign exchange losses.[133] This net amount is then included in assessable income (if a gain) or allowed as a deduction (if a loss).

For non-resident persons, only gains and losses incurred through a permanent establishment in PNG are included in the calculation.[134] This territorial limitation aligns with the treatment applied to foreign contractors under the new Act.

The new legislation specifically addresses hedging. The amount of a foreign currency exchange gain or loss incurred must be adjusted to take account of the position under a hedging contract entered into by the taxpayer or their associates specifically designed to reduce currency risk.[135] This ensures that attempts to mitigate foreign exchange risk through hedging are appropriately recognised in the tax treatment.

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[129] Ibid, s 53(1).

[130] Ibid, s 53(1).

[131] Ibid, s 53(2)-(3).

[132] Ibid, s 54(5).

[133] Ibid, s 54(1).

[134] Ibid, s 54(2).

[135] Ibid, s 53(4).

3.8.4 Substantiation Requirements

When claiming foreign currency exchange losses, taxpayers should be aware that the Act allows for substantiation requirements to be specified in the Regulations.[136] The Regulations may prescribe comprehensive documentation requirements such as:

- Details of each relevant foreign currency transaction
- Evidence of the exchange rates used in calculation.
- Any supporting financial records
- Any additional information or documentation requested by the Commissioner General

3.9 Business Income: Dividends

3.9.1 Participation Interest Treatment for Dividends in PNG

The new Act introduces a significant corporate tax concept known as the 'participation exemption' for dividends. This provision impacts the tax treatment of dividend income received by PNG companies from both domestic and foreign sources. Under the repealed legislation, dividends between PNG resident companies were effectively exempt from income tax and dividend withholding tax, however the mechanisms for achieving this through dividend rebates were not straightforward.

3.9.2 Domestic Intercorporate Dividends

Under the new Act, dividends paid between resident PNG companies constitute exempt income.[137] This domestic intercorporate dividend exemption applies only to the extent that the dividend is not subject to withholding tax.[138] Additionally, the exemption does not apply to dividends paid by a non-profit body or former non-profit body out of income that was itself exempt.[139]

The rationale behind this exemption is straightforward; when corporate profits move between PNG companies, exempting such transfers from tax prevents the

[136] Ibid, s 54(3).

[137] Ibid, Schedule 3, Part 4(1)(a).

[138] Ibid, s 151(2).

[139] Ibid, Schedule 3, Part 5(1)(a).

same profits from being taxed repeatedly before reaching ultimate individual shareholders.

3.9.3 Foreign Dividends and the Participation Interest Requirement

The tax treatment of dividends paid by non-resident companies to PNG resident companies depends on the relationship between the companies.[140]

For dividends paid directly or indirectly from a non-resident company to a resident company that is an approved superannuation fund, a full exemption applies regardless of ownership percentage.[141]

For dividends paid by a non-resident company to any other resident company, exemption applies only if the PNG resident company holds a 'participation interest' in the non-resident company that pays the dividend.[142]

The Act defines a 'participation interest' as a 10% or greater interest in the voting power of the company.[143] This threshold ensures that the exemption only applies where the PNG company has a meaningful ownership stake in the foreign entity, distinguishing between portfolio investments and more substantial strategic holdings.

It appears that this participation threshold serves several important policy objectives. It limits the exemption to situations where the PNG company likely has some managerial influence in the foreign entity, reducing opportunities for tax avoidance through artificial structures. Additionally, this approach also helps prevent base erosion by ensuring that a dividend exemption is available only for substantive business relationships rather than passive investments.

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[140] Ibid, Schedule 3, Part 4(1)(b).

[141] Ibid, Schedule 3, Part 4(1)(b)(i).

[142] Ibid, Schedule 3, Part 4(1)(b)(ii).

[143] Ibid, Schedule 3, Part 4(5).

3.10 Business Income: Tax Losses

3.10.1 Ring-fencing of tax losses

The new Act defines a 'net loss' as occurring when a person's total allowable deductions for a tax year exceed their total assessable income.[144] Losses must be calculated separately for business income and property income, with employment income specifically excluded from this calculation.[145] This is a fundamental change in the application of tax losses in PNG and may require monitoring and additional effort to calculate and track these losses.

As before, net losses can be carried forward for use against future taxable income for a period of up to seven years after the end of the tax year in which the loss was initially incurred.[146] The earliest losses must be used first.[147]

3.10.2 Company loss restriction rule

The concepts of the continuity of ownership and same business tests continue to apply under the new Act in respect of the carry-forward of tax losses where there has been a change in ownership. When there is a change in the beneficial ownership of 50% or more of a company's membership interests, tax losses from before the ownership change cannot be deducted in years after the change unless two specific conditions are satisfied.[148]

First, the company must continue to carry on the same business it operated when the loss originally occurred.[149] Second, the company must not engage in any new business or investment with the principal purpose of using the tax loss.[150] These conditions are designed to prevent 'loss trafficking,' where companies with accumulated tax losses are acquired primarily for their tax attributes rather than their business operations.

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[144] Ibid, s 35(1).

[145] Ibid, s 35(6)-(7).

[146] Ibid, s 35(4).

[147] Ibid, s 35(5).

[148] Ibid, s 65(2).

[149] Ibid, s 65(2)(a).

[150] Ibid, s 65(2)(b).

A new departure is that to ensure compliance with these provisions, companies must notify the Commissioner General in writing within 15 days of any change in beneficial ownership of 50% or more of membership interests.[151] This notification requirement creates transparency and allows tax authorities to monitor potential loss trafficking arrangements. The consequences of a failure to notify have not been spelled out. Practically this timeline is very tight and could cause issues in practice.

3.11 Business Income: Group Transfer Losses, Amalgamations and Corporate Re-organisations

3.11.1 Intra-Group Loss Transfers

A new and welcome change is the introduction of a group relief for tax losses. Resident companies within the same corporate group may transfer tax losses between entities, providing valuable flexibility in managing group tax positions.[152] This provision is subject to several requirements:

- The companies must be resident companies within the same group.
- The transfer must be agreed in writing by both parties before lodging the income tax return.
- The transferred losses cannot exceed the recipient company's taxable income.
- The agreement must specify the amount of the loss transferred.

3.11.2 Amalgamations/Corporate Re-organisations

The legislation facilitating amalgamations have not made their way into the new Act in a comprehensive form. A new section in relation to corporate reorganisations attempts to address intra-group transfers of assets in corporate reorganisations. If an amalgamation is planned, it may be best to do this before the new Act comes into force.

The new Act provides that where the parties make a proper election, the transfer of assets as part of a corporate reorganisation can be treated as tax-neutral: no gain or loss is deemed to arise for the transferor, and the transferee is deemed to have acquired the assets at prescribed values that essentially maintain the pre-

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[151] Ibid, s 65(3).

[152] Ibid, s 66.

reorganisation tax position.[153] This preserves the potential tax on built-in gains until a subsequent disposal outside the group.

The Act provides specific rules for determining the deemed acquisition cost of transferred assets:[154]

Asset Type	Acquisition Value for Transferee
Depreciable assets in a pool	Written down value of the pool at transfer time
Individually depreciated assets	Written down value at transfer time
Other assets	Transferor's cost at disposal

To avail of this relief, taxpayers must make a formal election to the Commissioner General:

- The election must be in writing[155]
- It must be lodged by the tax return due date (or within any extended time allowed)[156]

Another significant feature is the ability to transfer assets between group companies without immediate tax consequences.[157] This preserves the potential tax on built-in gains until a subsequent disposal outside the group.

3.12 Business Income: Withholding Tax Rates

The new Act establishes a streamlined schedule of withholding tax rates that apply to various categories of payments.[158] These rates represent the final tax for many recipients, simplifying compliance and administration while ensuring appropriate taxation of various income flows.

Category	Description	Rate
Interest	Payments of interest to residents or non-residents	15%[159]

[153] Ibid, s 67.

[154] Ibid, s 67(3).

[155] Ibid, s 67(5).

[156] Ibid, s 67(5).

[157] Ibid, s 67.

[158] Ibid, Schedule 1, Part 1.

[159] Ibid, Schedule 1, Part 1(17).

Category	Description	Rate
Dividends – standard	Dividends paid to individuals, partnerships, or trusts or non-residents	15%[160]
Dividends - non-profit bodies	Dividends paid by a non-profit body or former non-profit body out of exempt income	30%[161]
Technical fees to non-residents	Payments for technical fees (meaning administrative, management, technical, professional, consultancy services, including a fee for the supply of administrative, management, technical, or other personnel	15%[162]
Resource royalties	Prescribed royalties to customary landowners for resource, timber, or fishing projects	5%[163]
Business income payments	Payments for specified business services e.g. security, construction, transport by road of goods, mv repairs	10%[164]
Prescribed product payments	Payments for agricultural and similar prescribed products	5%[165]
Insurance premium to non-resident	Payment to non-resident for insurance premium	3%[166]
Entertainment payment to non-resident	Payment to non-resident entertainer	10%[167]
Royalty to non-resident	Paid to an associate	30%[168]
Royalty to non-resident	Paid to a non-associate	10%[169]
International transportation tax to non-resident		2.4%[170]

[160] Ibid, Schedule 1, Part 1(15).

[161] Ibid, Schedule 1, Part 1(16).

[162] Ibid, Schedule 1, Part 1(9)(d).

[163] Ibid, Schedule 1, Part 1(14).

[164] Ibid, Schedule 1, Part 1(19).

[165] Ibid, Schedule 1, Part 1(20).

[166] Ibid, Schedule 1, Part 1(9)(a).

[167] Ibid, Schedule 1, Part 1(9)(b).

[168] Ibid, Schedule 1, Part 1(9)(c)(i).

[169] Ibid, Schedule 1, Part 1(9)(c)(ii).

[170] Ibid, Schedule 1, Part 1(13).

These withholding mechanisms play a crucial role in PNG's tax administration system, ensuring that tax is collected at source for various payment types, improving compliance and reducing collection costs.

3.13 Business Income: Tax Filing Deadlines, Provisional Tax and Tax Rates

3.13.1 Annual Income Tax Returns

The filing deadlines are:[171]

- Corporate tax returns prepared by registered tax agents: due within 9 months of the tax year end.
- Corporate tax returns not using registered tax agents: due within 6 months the tax year end.
- All other income taxpayers, including individuals, partnerships, and trusts: returns must be submitted within 3 months after the end of the tax year. While this accelerated timeline is supposed to reflect the less complex nature of these returns, it is likely than some of these taxpayers may struggle to meet this timeline.

Non-resident entities conducting business through permanent establishments in PNG have additional reporting obligations. Their income tax returns must include details of the repatriated profit of the permanent establishment for the year, ensuring that PNG appropriately taxes profits attributable to PNG operations. See Section 4 for more details.

3.13.2 Monthly Compliance

A withholding agent who has withheld tax must, by the due date for payment of withholding tax, provide the recipient of the withholding income with a withholding tax certificate, in the approved form, showing the amount of the payment made and the tax withheld from the payment.[172] From a practical perspective this will be a welcome change for the withholdee who under the current regime does not receive formal evidence from the withholder of tax withheld.

3.13.3 Provisional Tax

The concept of provisional tax is largely unchanged. It applies to all income taxpayers in PNG except individuals with expected taxable income below the tax-

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[171] Ibid, s 135.

[172] Ibid, s 157(1).

free threshold.[173] Taxpayers must make three equal instalments, each due by the last day of the month following the end of the third, sixth, and ninth months of the taxpayer's tax year.[174]

Each instalment is equal to one-third of the difference between the taxpayer's most recent assessed income tax liability (multiplied by a 108% uplift factor) and any amounts already paid through withholding tax.[175] For businesses with prior year losses or newly commenced operations, each instalment equals 2% of the total assessable income for the relevant instalment period, excluding any income that has been subject to withholding tax.[176]

Taxpayers may elect to vary their instalments if they have reasonable grounds to believe that their current year tax will be less than the previous year, or that no tax liability will arise.[177] Of note is the reduced period for lodging a variation as it must be lodged with the Commissioner General by the due date for the first instalment payment or a later date if allowed by the Commissioner.[178]

All provisional tax instalments paid by a taxpayer for a tax year are credited against the final income tax liability for that year.[179]

3.13.4 Tax Rates

The corporate income tax rate remains at 30% for companies. The 2025 Budget tax rate changes for commercial banks have been carried over into the new Act i.e. 35% on taxable income up to K300m, 43% on the taxable income over K300m for 2026 scaling down by 1% per annum to 35% by 2034.

3.14 Business Income: Income Splitting and Tax Avoidance

3.14.1 Income Splitting

The new Act includes new provisions targeting income splitting arrangements designed to minimize tax liabilities. The legislation identifies income splitting as an

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[173] Ibid, s 138(3).

[174] Ibid, s 138(2).

[175] Ibid, s 138(4).

[176] Ibid, s 138(5).

[177] Ibid, s 138(6).

[178] Ibid, s 138(7).

[179] Ibid, s 138(9).

arrangement where a person attempts to split income with an associate for the purpose, or purposes that include the purpose, of lowering the total income tax payable.[180] This broad definition gives the Commissioner General substantial authority to scrutinize arrangements that result in tax advantages.

The Act outlines several specific methods of income splitting that fall within its scope:

- Directly or indirectly transferring income or the right to income to an associate.[181] This captures straightforward assignments of income streams to family members or related entities.
- Transferring or donating property or money to an associate where the associate receives or enjoys income from that property or from investing the money.[182] This provision targets asset transfers that effectively shift income-generating capacity to associates.
- Making payments to associates for services that exceed the fair market value of those services or where there is no economic need for the services.[183] This addresses artificial service arrangements created primarily for tax advantages.
- Finally, the legislation includes a catch-all provision covering income splitting "by any other means."[184] This ensures that creative or novel splitting arrangements not specifically enumerated will still fall within the Commissioner General's authority.

When the Commissioner General determines that income splitting has occurred, they may adjust the taxable income and tax credits of both the transferor and the transferee to prevent any reduction in tax payable resulting from the splitting of income.[185] In making this determination, the Commissioner General must consider the value, if any, given by the associate for the transfer.[186]

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[180] Ibid, s 130(1).

[181] Ibid, s 130(1)(a).

[182] Ibid, s 130(1)(b).

[183] Ibid, s 130(1)(c).

[184] Ibid, s 130(1)(d).

[185] Ibid, s 130(2).

[186] Ibid, s 130(3).

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3.14.2 Tax Avoidance Schemes

Similar to the repealed legislation the new Act includes a general anti-avoidance section. It applies where, a scheme has been implemented, a person has gained a tax benefit from the scheme and the scheme's sole or principal purpose was to obtain the tax benefit. In this regard a scheme includes any agreement, arrangement, plan, proposal, or unilateral action while a tax benefit refers to the reduction, postponement, or avoidance of tax liability.[187]

Where it applies, the Commissioner General can adjust the tax liability of any person involved in the scheme as if the scheme had not occurred, so as to prevent or reduce the tax benefit.[188]

3.15 Business Income: Cross Border Management Fees

3.15.1 Consolidation into Technical Fees

In line with the OECD approach, the concept of a management fee in the new Act is subsumed within the broader definition of a technical fee. This represents a significant shift from the previous regime, which maintained separate treatment for management fees. Under the new Act, a technical fee includes administrative, management, technical, professional, and consultancy services.[189] This consolidation creates a more streamlined approach to taxing service-based cross-border payments.

3.15.2 Non-Resident Withholding Tax Rate

When a non-resident derives a technical fee (including what would previously have been classified as a management fee) from a PNG source, the fee is taxed as a

non-resident withholding tax at a rate of 15% on the gross payment.[190] This represents a reduction from the previous 17% management fee withholding tax rate. The tax is final if withheld at source, simplifying compliance for non-residents.

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[187] Ibid, s 131.

[188] Ibid, s 131(3).

[189] Ibid, s 3.

[190] Ibid, Schedule 1, Part 1(9)(d).

3.15.3 Permanent Establishment Exception

Importantly, if the fee is paid to a non-resident through a permanent establishment in PNG, it is not subject to the 15% withholding tax but is instead taxed as business income under the normal rules for permanent establishments.[191] This recognises the different economic character of fees derived through an established business presence in PNG.

3.15.4 Recharged Technical Fees

The new Act introduces the concept of a 'recharged technical fee' to address indirect service arrangements. A recharged fee arises when technical or management services or royalty for leased equipment are supplied by a non-resident supplier to a PNG recipient, but the actual fee is initially paid by a non-resident associate and then charged back to the PNG recipient.[192] The new Act treats the associate as the service supplier in these cases, and the recharged fee is taxed as a technical fee.[193] This anti-avoidance measure is intended to ensure that the interposition of related entities does not circumvent the withholding tax provisions.

3.15.5 Deduction for Management Fees

The repealed Act restricts deductions for management fees to 2% of the assessable income/allowable deductions or the arm's length amount under an applicable Double Tax Treaty. Of note, the new Act does not include a similar 2% restriction although transfer pricing rules would dictate that an arm's length rate should apply.

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[191] Ibid, s 14(4)(b).

[192] Ibid, s 72(2).

[193] Ibid, s 72(3).

4 International Tax

4.1 Executive summary

Papua New Guinea's new tax framework significantly modernises its international tax provisions, aligning with global standards while addressing specific economic concerns. The enhanced international tax regime balances PNG's interests as a resource-rich developing economy with the need to attract foreign investment by providing greater clarity and certainty for cross-border transactions.

The international tax provisions apply across several key areas:

- Defining PNG tax jurisdiction through permanent establishment rules
- Streamlining withholding taxes on cross-border payments
- Fundamental change in taxation of foreign contractors
- Implementing robust transfer pricing provisions
- Providing specific regimes for foreign losses and tax credits

These changes respond to global developments including the OECD's Base Erosion and Profit Shifting (BEPS) initiatives while maintaining PNG's sovereignty over its tax policy.

4.2 International Tax: Non-Resident Withholding Tax

4.2.1 Non-resident Withholding Tax

Under the new Act, non-resident tax now consolidates and streamlines the taxation of PNG source dividends, interest, royalties, annuities, insurance premiums, natural resource amounts, technical fees, and entertainment fees derived by non-residents.[194] Previously, each type of income was subject to separate liability rules and withholding and remittance procedures. By introducing a uniform approach for determining liability, withholding, and remission of tax, the new legislation ensures consistency and ease of administration. The only reason to classify a payment as a dividend, interest, or another category under the new provisions is to determine which tax rate applies.[195]

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[194] Ibid, s 14(1)(a).

[195] Ibid, Schedule 1, Part 1(9).

As a result, non-residents who derive income from PNG will be subject to a more straightforward set of rules when calculating their final tax liability, eliminating the piecemeal framework of the former regime.

4.2.2 Withholding Tax Rates Summary

The non-resident withholding tax rates under the new Act are:[196]

- Insurance premiums of 3%: The standard effective rate was 4.8% under the repealed legislation.
- Non-resident entertainer payments of 10%: Applies to amounts paid to non-resident entertainers or entertainment groups.
- Royalties to associates of 30%: Applies to royalty payments to related parties. Expanded definition of royalty now explicitly includes equipment leasing arrangements.
- Other royalties of 10%: Applies to royalty payments to unrelated parties. The same expanded royalty definition applies.
- Interest, technical fees, annuities, and natural resource amounts of 15%: Technical fees now include management fees, representing a reduction from the previous 17% management fee withholding tax rate.
- Dividends from non-profit bodies of 30%: Applies to dividends paid by a non-profit body or former non-profit body out of exempt income.
- Other dividends of 15%: Applies to standard dividends and repatriated profits of PNG permanent establishments of non-resident persons. Repatriated profits represent a new category under the Act.

The definition of technical fee has been broadened to include administrative, management, technical, professional, and consultancy services, consolidating the previous separate treatment of management fees. This expansion to include administrative fees is important to note.

4.2.3 Expanded Royalty Definition

A significant change under the new Act is the substantially expanded definition of royalty. This expanded scope has important implications for cross-border arrangements and may capture payments previously not subject to withholding tax.

[196] Ibid, Schedule 1, Part 1(9).

The key expansion is the explicit inclusion of payments for the use of industrial, commercial, or scientific equipment. This brings equipment leasing arrangements potentially within the scope of royalty withholding tax, whereas previously they may have been treated as lease payments subject to different tax treatment.[197]

Other significant impacts include the expanded application to computer software, and the expanded application to digital media and broadcasting.

4.2.4 Comprehensive Scope of Royalty Payments

Under the new Act, a royalty is defined as a periodic or lump sum amount paid as consideration for:[198]

- Intellectual Property Rights
  - The use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematography films, and films and tapes for radio, television, or internet broadcasting.
  - The use of, or the right to use, any patent, invention, trademark, design or model, plan, secret formula or process, or other like property or right.
- Digital Media and Broadcasting
  - The use of, or the right to use, or receipt of or right to receive, visual images or sounds, or both, transmitted by satellite, cable, optic fibre, or similar technology in connection with television, radio, or internet broadcasting.
- Software and Technology
  - The use of, or the right to use, any computer software.
  - The acquisition of any copy of computer software for the purposes of using it.
- Know-How and Technical Knowledge
  - The use of, or the right to use, any information concerning industrial, commercial, or scientific experience (know-how).
- Equipment Leasing
  - The use of, or the right to use, any industrial, commercial, or scientific equipment.
- Ancillary Services
  - The supply of assistance that is ancillary and subsidiary to and is furnished as a means of enabling the application or enjoyment of any of the above rights or properties.

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[197] Ibid, s 3(1).

[198] Ibid, s 3(1).

4.2.5 Differential Tax Rates

Similar to the repealed Act, the new Act applies different withholding tax rates depending on the relationship between the parties:[199]

- 30% for royalty payments to associates (related parties)[200]
- 10% for royalty payments to non-associates (unrelated parties)[201]

This significant rate differential (30% vs 10%) makes appropriate transfer pricing documentation and substance in related party arrangements particularly important.

4.2.6 Practical Implications

The expanded definition has several practical implications for businesses:

- Equipment leasing arrangements with non-residents may now be subject to royalty withholding tax.[202]
- Digital content and software license payments are clearly captured as royalties.[203]
- Technical service arrangements may need to be reviewed to determine if they include elements that could be classified as royalties.[204]
- The high withholding rate (30%) for payments to related parties increases the importance of appropriate transfer pricing analysis.[205]
- Companies should review existing cross-border arrangements to identify potential royalty elements and consider restructuring where appropriate to manage withholding tax exposures efficiently.

4.3 International Tax: Foreign Contractors

4.3.1 Fundamental Shift in Tax Treatment

Under the repealed Act, foreign contractors (non-residents providing prescribed services in PNG) are subject to a 15% withholding tax on gross revenue. This

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[199] Ibid, Schedule 1, Part 1(9)(c).

[200] Ibid, Schedule 1, Part 1(9)(c)(i).

[201] Ibid, Schedule 1, Part 1(9)(c)(ii).

[202] Ibid, s 3(1).

[203] Ibid, s 3(1).

[204] Ibid, s 3(1).

[205] Ibid, Schedule 1, Part 1(9)(c)(i).

system provided simplicity but was often criticized for failing to account for the contractor's actual profitability and expenses. The new Act fundamentally changes this approach by repealing the foreign contractor withholding provisions. Instead, taxation of foreign contractors will now be determined by whether, their activities constitute a permanent establishment in PNG.[206] This aligns PNG's approach with international norms under the OECD and UN Model Tax Conventions. If the foreign contractor does not have a permanent establishment in PNG, a 15% non-resident tax rate applies.[207] If the foreign contractor has a permanent establishment in PNG, they will be subject to tax on a net profits tax basis.

See Section 2.4.1 for our comments on the tax treatment of non-resident employees of foreign contractors without a permanent establishment in PNG.

4.3.2 Permanent Establishment Determination

The new Act has reworked the definition of a permanent establishment to largely mirror the typical features of a permanent establishment as defined in the UN model tax treaty, albeit without the standard exclusions for preparatory or auxiliary activities.[208] The domestic definition includes:

- Maintain a fixed place of business through which the business is wholly or partly carried on.
- Have a dependent agent habitually exercising authority to conclude contracts.
- A building site, construction, installation or assembly project or supervisory activities connected with such site or project exceeding 90 days in any 12-month period. Connected activities by associates on the site/project will be added to this time.
- Services through employees/personnel for periods exceeding 183 days within any 12-month period.
- The use, maintenance, installation of substantial machinery or equipment for a period aggregating more than 90 days in any 12-month period.
- Mine site, oil or gas well, branch, office, place of management etc.

At the same time, if an activity or presence is a permanent establishment under a tax treaty but would not meet the domestic permanent establishment requirements, PNG still treats it as a permanent establishment for the purposes of applying that

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[206] Ibid, s 8.

[207] Ibid, Schedule 1, Part 1(9)(d).

[208] Ibid, s 8(1)-(2).

treaty.[209] This override only applies in the context of that specific treaty. If there is no treaty, or the relevant treaty does not extend its permanent establishment definition to a certain presence or activity, then the domestic rules alone determine whether a permanent establishment exists.[210]

4.3.3 Net Basis Taxation

When a foreign contractor's activities create a permanent establishment, they must:

- Register for corporate taxes with the Internal Revenue Commission
- Lodge an annual income tax return.
- Pay tax at the standard corporate tax rate of 30% on net taxable profits attributable to that permanent establishment.

Income attribution follows international standards, treating the permanent establishment as a separate entity dealing at arm's length with its head office.[211]

4.3.4 Repatriated Profits Tax

Beyond the standard corporate tax, non-residents with a permanent establishment in PNG must pay an additional tax on repatriated profits.[212] This ensures comparable treatment between:

- Foreign branches (permanent establishments) repatriating profits to their head office
- PNG subsidiaries paying dividends to their non-resident parent companies.

The repatriated profit amount is calculated using a prescribed formula:[213]

$$RP = (A + (B - C)) - D$$

Where:

[209] Ibid, s 8(6).

[210] Ibid, s 8(7).

[211] Ibid, s 73(5).

[212] Ibid, ss 14(1)(b), 71.

[213] Ibid, s 71(1).

- RP is the repatriated profit amount.
- A is the total cost of assets, net of liabilities, of the permanent establishment at the commencement of the tax year; and
- B is the net profit of the permanent establishment for the tax year calculated in accordance with financial reporting standards; and
- C is the income tax payable on the taxable income of the permanent establishment for the tax year.
- D is the total cost of assets, net of liabilities, of the permanent establishment at the end of the tax year[214]

These repatriated profits are taxed at 15%.[215] This is due for payment at the same time as the tax payable under the tax return.

4.3.5 Effective Tax Rate Analysis

The combined effect of these provisions means the effective tax rate for a foreign company with a PNG permanent establishment can reach approximately 40.5%:

- 30% corporate income tax on net taxable income
- Plus 15% on repatriated profits from after-tax income (effectively 10.5% on pre-tax income)
- This calculation assumes full profit repatriation and no reinvestment in PNG operations.

4.3.6 Treaty Considerations

The ten countries with which PNG has tax treaties (Australia, Canada, China, Fiji, Indonesia, Korea, Malaysia, New Zealand, Singapore, and the United Kingdom) may have modified rules for permanent establishment determination and profit attribution.

However, under the new Act, treaties cannot override:

- Transfer pricing provisions; and,
- Part 8 of the Act (covering tax returns, assessments, withholding obligations, and collection mechanisms).[216]

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[214] Ibid, s 71(1).

[215] Ibid, Schedule 1, Part 1(9)(f).

[216] Ibid, s 75(3).

This means even treaty country residents must comply with PNG's administrative requirements once a permanent establishment exists.

4.3.7 Transitional Provisions

For contracts spanning the implementation date (1 January 2026):[217]

- Foreign contractor withholding tax applies to payments up to 31 December 2025.
- Contracts entered into from 1 January 2026 onward fall under the new regime[218]
- As it is stated that the repealed Act will continue to apply to 'long-term contracts' (defined as construction or engineering contracts taking more than 12 months to complete) entered into before 1 January 2026, it will be necessary to consider how this applies in the context of a foreign contractor.

Given the complexity of the above in relation to the timing and nature of contracts, foreign contractors should seek specific advice to see how the new legislation applies to them.

4.3.8 Compliance Framework for Foreign Contractors

This shift from gross-basis to net-basis taxation creates several critical compliance requirements:

- Permanent Establishment Analysis:
  - Conduct thorough assessment of activities against PNG's broad permanent establishment definition.
  - Document analysis supporting permanent establishment determination or non-determination.
- Accounting and Record-keeping:
  - Maintain detailed books and records reflecting PNG operations.
  - Segregate income and expenses attributable to the PNG permanent establishment
  - Track net asset position at beginning and end of each tax year.
- Registration and Filing:
  - Submit annual income tax returns by tax deadline[219]

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[217] Ibid, s 164(2).

[218] Ibid, s 165(2).

[219] Ibid, s 135.

    - Calculate and report repatriated profits each year[220]
- Financial Implications:
    - Taxation on net rather than gross basis typically favours contractors with lower profit margins.
    - Cash flow planning must account for annual rather than transaction-based taxation.
    - Consider whether to close long-term contracts (as defined) by or after 31 December 2025

4.4 International Tax: Foreign Income and Loss Treatment

4.4.1 Foreign Losses

The new Act provides for the ring-fencing of foreign tax losses into separate pools for foreign business income and foreign property income.[221] This is a departure from the current practice. Tax losses may only be carried forward for seven years.[222] This segregation prevents foreign losses from offsetting domestic PNG-source income, protecting the PNG tax base while providing a reasonable timeframe for loss utilisation.

4.4.2 Foreign Tax Credits

Taxpayers will continue to be able to claim a foreign tax credit (subject to the lower of the foreign tax or the PNG tax on that income) in respect of foreign income subject to tax in PNG.[223] However, ring-fencing will apply as the new Act calculates the foreign tax credit separately for assessable foreign business income and foreign property income.[224] To claim the credit the taxpayer must have evidence that the foreign tax was paid and was paid within two years from the end of the tax year in which the foreign income was derived.[225]

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[220] Ibid, s 135(2).

[221] Ibid, s 70(5).

[222] Ibid, s 70(3).

[223] Ibid, s 69(3).

[224] Ibid, s 69(6).

[225] Ibid, s 69(8)(a).

4.4.3 Foreign Currency Exchange Loss Documentation

To properly substantiate foreign currency exchange losses, taxpayers must maintain:[226]

(a) information concerning the nature of the transaction giving rise to the loss; and
(b) the reasons why the loss is on revenue account; and
(c) evidence of the exchange rates used in calculating the loss; and
(d) details of any hedging contract entered into in relation to the transaction giving rise to the loss, including a hedging contract entered into outside PNG by an associate; and
(e) such other information or documentation as required by the Commissioner General by notice in writing to the person.

4.5 International Tax: Tax Treaties and Anti-Avoidance

4.5.1 PNG's Tax Treaty Network

Papua New Guinea has established a small but strategic network of double tax treaties designed to facilitate international trade and investment while protecting its domestic tax base. The country currently maintains double tax treaties with the following ten jurisdictions:[227]

- Australia
- Canada
- China
- Fiji
- Indonesia
- Korea, Republic of
- Malaysia
- New Zealand
- Singapore
- United Kingdom

These treaties typically follow the OECD Model Tax Convention structure with some modifications reflecting PNG's specific economic interests, particularly in natural resources, and often incorporate elements from the UN Model Tax Convention that favour source-based taxation. Unlike the domestic legislation,

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[226] Ibid, s 54(3) and Regulation 16(2).

[227] Ibid, Schedule 5.

PNG's treaty network remains relatively limited, covering key trading and investment partners while leaving interactions with many other jurisdictions to be governed solely by domestic tax law.

PNG is also a signatory to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI).[228] Additionally, PNG participates in the Convention on Mutual Administrative Assistance in Tax Matters which facilitates international cooperation for better enforcement of tax laws.[229]

4.5.2 Legal Status and Implementation

Under the new Act, PNG's tax treaties and multilateral conventions continue to have force of law according to their terms from the date they entered into force.[230] This ensures continuity of international commitments during the transition to the new domestic tax regime.

4.5.3 Treaty Override Provisions

While tax treaties generally prevail over provisions in the Income Tax Act where there is any conflict,[231] the new legislation introduces two significant exceptions where domestic law takes precedence over treaty provisions:

1. Transfer Pricing Rules: The transfer pricing provisions in section 73 cannot be overridden by a tax treaty.[232]
2. Anti-Avoidance Provisions: Part 8 of the Act, which covers anti-avoidance measures such as income splitting and tax avoidance schemes, cannot be overridden by tax treaties.[233] This ensures that taxpayers cannot use treaty provisions to circumvent PNG's domestic anti-avoidance rules designed to protect the tax base.

These override provisions align with global trends in tax treaty policy and reflect growing concerns about treaty abuse and base erosion. They represent PNG's commitment to protecting its tax base while still honouring the primary purpose of tax treaties to prevent double taxation.

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[228] Ibid, Schedule 5, Clause 11.

[229] Ibid, Schedule 5, Clause 12.

[230] Ibid, s 75(1).

[231] Ibid, s 75(2).

[232] Ibid, s 75(3).

[233] Ibid, s 75(3).

4.5.4 Transfer Pricing Documentation Requirements

Companies operating across borders will face enhanced transfer pricing documentation requirements.[234] The new Act contains robust requirements for:

- Local Files: Details of PNG entity transactions with functional analyses and comparability studies[235]
- Master Files: Overview of the multinational group's global business operations and transfer pricing policies[236]
- Country-by-Country Reports: Aggregate data on global allocation of income, profits, taxes paid, and economic activity[237]

These documentation requirements are part of PNG's transfer pricing rules, which cannot be overridden by tax treaty provisions.[238]

4.5.5 Use of Tax Havens and CFC Rules

The new Act introduces provisions targeting the use of tax haven structures.[239] Where a PNG resident holds a 50% or more interest directly or indirectly in a low tax entity, a portion of the property income derived by the low tax entity will be attributed to the PNG resident.[240]

This attribution applies specifically to passive income streams such as:[241]

- Dividend[242]
- Interest[243]

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[234] Ibid, s 74.

[235] Ibid, s 74(a)(i).

[236] Ibid, s 74(a)(ii).

[237] Ibid, s 74(a)(iii).

[238] Ibid, s 75(3).

[239] Ibid, s 76.

[240] Ibid, s 76(2).

[241] Ibid, s 24(1).

[242] Ibid, s 24(1)(a).

[243] Ibid, s 24(1)(b).

- Royalties[244]
- Rent[245]
- Pension or annuity[246]
- Any other income derived from the provision, use or exploitation of property[247]

The inclusion of royalties in this anti-avoidance provision is particularly significant given the expanded definition of royalties under the new Act, ensuring that routing royalty payments through tax havens will not achieve tax advantages.

A jurisdiction qualifies as a tax haven if it meets any of these criteria:

- Has an effective rate of corporate tax below 15%[248]
- Does not tax foreign income of residents, or taxes foreign income only if remitted to that country[249]
- Has laws providing for financial or corporate secrecy that facilitate concealing beneficial ownership[250]

The amount attributed to the PNG resident is calculated as the resident's percentage interest in the tax haven entity multiplied by the entity's property income for the tax year.[251] This anti-avoidance measure functions similarly to controlled foreign company (CFC) rules found in many developed economies, targeting passive income shifted to low-tax jurisdictions. It applies regardless of treaty protection[252] and serves as a backstop to prevent treaty abuse through artificial routing of income. Dividends paid out of attributed income is treated as exempt income in PNG.[253]

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[244] Ibid, s 24(1)(c).

[245] Ibid, s 24(1)(d).

[246] Ibid, s 24(1)(e).

[247] Ibid, s 24(1)(f).

[248] Ibid, s 76(1)(a).

[249] Ibid, s 76(1)(b)(i).

[250] Ibid, s 76(1)(c)(ii).

[251] Ibid, s 76(2).

[252] Ibid, s 75(3).

[253] Ibid, s 76(7).

4.5.6 Practical Implications for Businesses

Companies with cross-border operations involving PNG should take several key actions to comply with the new international tax framework:

- Prepare for Documentation: Develop systems to produce the required transfer pricing documentation, particularly for significant related party transactions.
- Monitor Treaty Developments: Stay informed about renegotiations and protocols that may affect existing treaty positions.
- Consider Restructuring: Evaluate whether current structures involving low-tax jurisdictions remain viable under the new anti-tax haven provisions.
- Assess Permanent Establishment Risk: Review activities against both treaty and domestic definitions of permanent establishment, noting the broader domestic scope.[254]
- Consider Expanded Royalty Scope: Payments not previously within the royalty net may be caught under the new Act i.e. software payments, equipment leasing and digital content.

These steps should be undertaken well before the Act's effective date to ensure compliance and optimize tax positions under the new regime.

4.6 International Tax: International Transportation Tax

4.6.1 Overview

The international transportation income tax is imposed on non-resident enterprises that carry passengers, livestock, mail, merchandise, or goods that are embarked or loaded in PNG and destined for places outside PNG.[255] For international carriers, a tax at the rate of 2.4% is imposed on the gross amount derived from such carriage.[256] The tax does not apply to:

- Amounts that are exempt income.
- Passengers who are only in PNG in transit between two places outside PNG
- The transhipment of livestock, mail, merchandise, or goods.[257]

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[254] Ibid, s 8(6).

[255] Ibid, s 15(1).

[256] Ibid, Schedule 1, Part 1(13).

[257] Ibid, s 15(2)(b)(ii).

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This is a final tax, with the liability discharged once payment is made.[258]

4.6.2 Compliance Requirements

For ships, before being granted clearance to depart PNG, the captain, chief commanding officer, or shipping agent must:

- Submit a tax return showing the gross amount derived and tax payable[259]
- Pay the tax due.[260]

The Commissioner General may allow payment within 20 days after departure if satisfactory payment arrangements are made.[261] For aircraft, similar requirements apply, with the pilot or PNG agent needing to submit returns and pay tax before departure.[262] However, for regular flights to PNG, the Commissioner General may allow quarterly returns and payments.[263]

For international carriers resident in treaty countries, the tax treatment may vary as the shipping and aviation articles in PNG's tax treaties differ significantly.[264] The income of a non-resident person operating a ship or airline in international traffic is exempt but only if an equivalent exemption from income tax is granted to PNG resident persons by the country in which the non-resident person is resident.[265]

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[258] Ibid, s 15(3).

[259] Ibid, s 139(1)(a).

[260] Ibid, s 139(1)(b).

[261] Ibid, s 139(2).

[262] Ibid, s 140(1).

[263] Ibid, s 140(2).

[264] Ibid, s 75(2).

[265] Ibid, Schedule 3, Part 6, Clause 1(d).

5 Sector Specific

The new Income Tax Act has some new provisions specific to certain sectors of the economy. We have highlighted some of the issues that may be of interest to participants in certain specific sectors.

5.1 Sector Specific: Strategic Industries

5.1.1 Extractives Industry

The repealed legislation continues to govern any resource project covered by a fiscal stability agreement, as permitted by the terms of that agreement and any resource projects that commenced prior to 1 January 2026.[266] The new Act will maintain the key features of the old resource taxation regime such as ring-fencing,[267] accelerated depreciation for exploration and development expenditure,[268] and an additional profits tax.[269] It does not permit the Section 155N pooling of exploration costs between related parties. The new Act does however allow for the transfer of losses to another resource project held by the licensee[270] or to another licensee that is a group company where the licensee's right to undertake the resource project has been terminated, transferred or expired.[271]

5.1.2 Insurance

Under the new Act, a company carrying on a general insurance business (as defined in the Insurance Act 1995) is allowed a deduction for the balance of its provision for unexpired risks at the end of each tax year, so long as the amount claimed does not exceed the requirement under financial reporting standards.[272] Any amount claimed for this provision in one tax year must be added back to the following year's assessable income.[273]

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[266] Ibid, s 164(12).

[267] Ibid, s 101.

[268] Ibid, s 104-105.

[269] Ibid, s 108.

[270] Ibid, s 101(8).

[271] Ibid, s 101(9).

[272] Ibid, s 115(2)-(3).

[273] Ibid, s 115(4).

A life assurance company remains exempt from tax on premiums received for policies of life assurance and consideration received for annuities granted.[274] Expenditure linked solely to these exempt amounts is not deductible.[275] Only that portion of general management expenditure which is in the same ratio as the company's assessable income bears to its total income is allowable as a deduction.[276] Detailed formulae govern the valuation of liabilities, referred to as calculated liabilities, and allow an additional 3% deduction of the portion of those liabilities that relates to income-producing assets.[277] If, at the end of a tax year, the calculated liabilities of a life assurance company exceed the value of its assets, the company is not liable to income tax on the life assurance business income for that year.[278] The withholding tax rate on payments to non-residents for insurance premium is reduced to 3% (previously 4.8% in many cases).[279]

5.1.3 Superannuation Industry

Contributions made by employers to approved superannuation funds continue to be allowable deductions insofar as they do not exceed 15% of the taxed employment income of the employee for the tax year.[280] Approved superannuation funds will continue to pay income tax at the rate of 25%.[281] A contribution made to an approved or non-approved superannuation fund is exempt income of the fund.[282] Income derived during a tax year from investments held in a retirement savings account is, to the extent prescribed, exempt income.[283] Amounts withdrawn from a retirement savings account during a tax year, not exceeding the prescribed amount, are exempt income.[284]

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[274] Ibid, s 116(1).

[275] Ibid, s 116(2).

[276] Ibid, s 116(3).

[277] Ibid, s 116(7).

[278] Ibid, s 116(8).

[279] Ibid, Schedule 1, Part 1(9)(a).

[280] Ibid, s 117(2).

[281] Ibid, Schedule 1, Part 1(5)(a).

[282] Ibid, s 118(4).

[283] Ibid, s 118(3).

[284] Ibid, s 119(4).

Payouts by a fund to a member are exempt income in the member's hands to the extent that it represents a taxed contribution.[285] Any other part of the payout is taxable at the rate specified in Part 1 of Schedule 1 i.e. at rates between 2% and 42%.[286] An approved or non-approved superannuation fund must withhold tax from a payment made by the fund to a member of the fund, or a dependant of a member, as specified in Schedule 6.[287]

5.1.4 Fishing

The income derived by non-residents carrying on fishing operations in PNG territorial waters and their non-resident employees is exempt where the fishing operations are carried out by the non-resident under an agreement with the State that was signed on or before 25 May 1992 and the State is entitled to receive payment in relation to those fishing operations in accordance with the Treaty on Fisheries between the State and the United States of America.[288]

Similarly, any royalties paid by that non-resident for the charter of fishing vessels are exempt if the international agreement specifically provides for such charter arrangements.[289] This targeted exemption recognizes the special nature of international fishing agreements and prevents double taxation where payments are already covered by government-to-government arrangements.

5.1.5 Aviation and Shipping

The income of a non-resident person operating a ship or airline in international traffic is exempt but only if an equivalent exemption from income tax is granted to PNG resident persons by the country in which the non-resident person is resident.[290]

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[285] Ibid, s 119(2)(a).

[286] Ibid, s 119(2)(b).

[287] Ibid, s 149(5).

[288] Ibid, Schedule 3, Part 6, Clause 1(a)-(b).

[289] Ibid, Schedule 3, Part 6, Clause 1(c).

[290] Ibid, Schedule 3, Part 6, Clause 1(d).

5.1.6 Technical Assistance

The Act provides a targeted exemption for income derived by persons to the extent provided under agreements between the government and a foreign government or an international organisation[291]

Key limitations apply:

- Exemption covers only specifically named persons.
- Employees, contractors, and subcontractors are excluded unless explicitly included in the agreement.

The Act also provides an exemption for income derived by a person to the extent treated as exempt income under Australia-PNG Development Cooperation Treaty.[292]

5.1.7 Special Economic Zones

The new Act codifies into the Income Tax legislation the exemptions available under the Special Economic Zones Authority Act 2019. The income of an investor, business establishment, or enterprise operating within an economic zone is exempt to the extent provided by Section 60(3)(a) of the Special Economic Zones Authority Act 2019.[293] Dividends paid out of such income are also exempt. These are extensive exemptions, particularly given the Paga Hill economic zone in Port Moresby is currently under development.

5.1.8 International Organisations

A welcome change is the consolidation into one place of various exemptions available to international organisations. Income is exempt to the extent provided for under the following Acts:

- the International Organisations (Privileges and Immunities) Act 1975; and
- the Loans and Assistance (International Agencies) Act 1971; and
- the Loans (Overseas Borrowings) Act 1973; and
- the Loans (Overseas Borrowings) (No. 2) Act 1976; and

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[291] Ibid, Schedule 3, Part 6, Clause 1(e).

[292] Ibid, Schedule 3, Part 6, Clause 1(k).

[293] Ibid, Schedule 3, Part 6, Clause 1(f).

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- the Asian Development Bank Act 1971 and the Asian Development Bank (Privileges and Immunities) Regulation 1976; and
- the International Financial Organisations Act 1977; and
- the Aid Status (Privileges and Immunities) Act 1977; and
- the United Nations and Specialised Agencies (Privileges and Immunities) Act 1975[294]

The income of the following international trade financial institutions is exempt:

- the Multilateral Investment Guarantee Agency; and
- the Export Finance and Insurance Corporation of Australia; and
- the European Investment Bank.[295]

5.1.9 Non-profit Bodies and Social Policy Exemptions

The following are exempt from income tax:

- a non-profit body (as defined), other than business income that is not directly related to the core function of the body. A non-profit body must meet certain conditions, similar to the current rules for charities, and still requires IRC approval. A simplification is the expansion of the definition to include companies as well as irrevocable trusts.
- a fund established for the purpose of enabling scientific research to be conducted by, or in conjunction with, a public university or public hospital, to the extent that the fund is being applied for the purpose for which it was established.
- the income derived by any association or club in any foreign country or territory as its share of the proceeds of sporting matches played in PNG by a team controlled by that association or a club visiting PNG from that foreign country or territory where certain conditions are met.

5.1.10 Government and Foreign Governments

The following are exempt from income tax:

- the National Government arising from the performance of normal Government functions.
- the Bank of Papua New Guinea

[294] Ibid, Schedule 3, Part 2.

[295] Ibid, Schedule 3, Part 2, Clause 2.

- a public authority constituted by, or under, an Act, other than a public authority treated as taxable under the Regulations.
- the income of a Provincial Government or Local-level Government received pursuant to the Organic Law on Provincial Governments and Local-level Governments 1998, other than income derived from a commercial enterprise conducted by a Provincial Government or Local-level Government.
- the government of a foreign country or foreign territory to the extent provided for under the Diplomatic and Consular Privileges and Immunities Act 1975 or an international agreement.

5.1.11 Savings and Loans Societies

Savings and Loans Societies continue to be exempt from income tax.

5.2 Sector Specific: Trusts

5.2.1 Beneficiary Attribution

The new Act codifies a 'look through' approach for trust taxation with clear rules for income attribution:

- Vested Interest Rule: When a beneficiary has a vested and indefeasible interest in trust income, that amount is treated as derived directly by the beneficiary in that tax year[296]
- Expense Attribution: Related expenditures and losses follow the income to the beneficiary[297]
- Character Preservation: Income retains its original character and source when attributed to beneficiaries[298]
- Distribution Timing: Attribution occurs when the beneficiary becomes entitled to the amount or the trustee credits it to the beneficiary[299]

5.2.2 Trustee Taxation

Trustees are taxable on undistributed income:

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[296] Ibid, s 62(2).

[297] Ibid, s 62(3).

[298] Ibid, s 62(4)(a).

[299] Ibid, s 62(4)(b).

- Tax Liability: Trustees pay tax on trust taxable income at rates specified in Part 1 of Schedule 1[300]. The rates applicable to trusts are:
  - For a trust that is a deceased estate and during the first 3 years of administration, the same rates that apply to the deceased (resident or non-resident) individual[301]
  - For all other trusts, a flat rate of 42%[302]
- Where a trustee has paid income tax on the taxable trust income of a trust under this Section, that income is not taxed again to the beneficiary.
- Resident Trust Calculation: Total assessable income minus beneficiary-attributed amounts and allowable deductions[303]
- Non-Resident Trust Calculation: Limited to PNG-source income with same deductions formula[304]
- Trust Loss Attribution: There is no mechanism for trust losses to be attributed to beneficiaries. As there is no provision for attributing net losses, they must remain within the trust[305]

5.2.3 Compliance Obligations

The Act imposes specific compliance requirements:

- Personal Liability: Trustees are personally liable for tax not satisfied from trust assets[306]
- Joint Liability: Multiple trustees are jointly and severally liable[307]
- Filing Obligations: Trustees must file annual returns in respect of the trust income by the prescribed deadlines i.e. with 3 months of year end[308]
- Election Authority: Trustee elections and notices bind all beneficiaries[309]

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[300] Ibid, s 63(1).

[301] Ibid, Schedule 1, Part 1(6)(a).

[302] Ibid, Schedule 1, Part 1(6)(b).

[303] Ibid, s 63(3).

[304] Ibid, s 63(4).

[305] Ibid, s 62(3), (4).

[306] Ibid, s 63(6).

[307] Ibid, s 63(6).

[308] Ibid, s 135(5).

[309] Ibid, s 61(3).

- Documentation: We recommend that trustees maintain detailed records of distributions, beneficiary interests, and tax calculations[310]

5.2.4 Special Trust Types

The regulations provide specific rules for:

- Prescribed Unit Trusts: Special treatment when meeting specific criteria for public investment vehicles[311]
- Charitable Trusts: Exempt when registered as non-profit bodies[312]
- Foreign Trusts: Additional reporting for foreign trustees with PNG beneficiaries[313]

The new Act also addresses landowner resource trusts. Landowner resource trusts are generally subject to 30% income tax while distributions to beneficiaries are exempt from tax.

[310] Ibid, s 134(1).

[311] Ibid, s 3.

[312] Ibid, s 7(2).

[313] Ibid, s 62(6).

6 Capital Gains

The introduction of Capital Gains Tax (CGT) represents one of the most significant new elements in PNG's tax reform package. Unlike many jurisdictions with broad-based capital gains taxes, PNG has implemented a targeted approach focusing specifically on resource-related assets—reflecting the country's economic reliance on its natural resource sector while avoiding potential administrative challenges of a comprehensive CGT system.[314]

This selective approach aims to:

- Capture value from transactions in PNG's most economically significant assets.
- Align with international trends.
- Address indirect transfers.
- Maintain simplicity by targeting a well-defined asset class.

The new Capital Gains Tax applies at a rate of 15% to gains made on the disposal of taxable assets.[315]

6.1 Capital Gains Tax: Scope and Calculation

6.1.1 Taxable Assets

The scope of the tax is deliberately limited and will only apply to:

(f) a resource right; and
(g) information relating to a resource right; and
(h) a membership interest in an entity where more than 50% of the value of the interest is derived, directly or indirectly, from an asset or assets referred to in Paragraphs (a), (b), and (d); and
(i) an option or right to acquire an asset referred to in the preceding Paragraphs.[316]

The 50% threshold mentioned above can be met at any time in the 365 days before disposal.[317] This provision is specifically designed to catch indirect sales by

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[314] Ibid, s 16.

[315] Ibid, s 16(1), Schedule 1, Part 1, Clause 21.

[316] Ibid, s 83(1).

[317] Ibid, s 83(3).

foreign vendors and purchasers that might otherwise attempt to circumvent PNG tax by structuring transactions at higher levels of ownership chains.

6.1.2 Specific Exclusions

Specifically excluded from the scope of the tax are:

- trading stock.
- assets held on revenue account; and,
- a taxable asset that is used by a person solely to derive exempt income.[318]

These exclusions ensure that assets already subject to income tax are not doubly taxed, maintaining the distinction between income and capital treatment.

6.1.3 Gain Calculation

A capital gain arises upon the disposal of a taxable asset where the consideration for the disposal of the asset exceeds the cost of the asset at the time of the disposal, and the capital gain is the amount of the excess.[319] The tax is 15% of the gain, subject to any capital losses carried forward.[320]

6.1.4 Treatment of Losses

Capital losses can be carried forward indefinitely but not backward, even within the same tax year.[321] This represents a significant asymmetry in treatment compared to ordinary business losses, which have a seven-year carry-forward limitation. For losses to be recognised, they must be substantiated to the Commissioner General's satisfaction.[322]

The indefinite carry-forward of capital losses provides some relief to taxpayers in recognising that capital transactions may be infrequent, especially in the resource sector where asset disposals might occur years apart.

[318] Ibid, s 83(2), s 84.

[319] Ibid, s 81(1).

[320] Ibid, s 16(2).

[321] Ibid, s 82(2).

[322] Ibid, s 82(3).

6.2 Capital Gains Tax: Calculation and Administration

6.2.1 Cost Base Determination

The cost base of a taxable asset includes:

- The acquisition cost
- Incidental costs of acquisition and disposal
- Capital expenditure incurred to enhance or preserve the asset's value[323]

This comprehensive approach to cost base calculation ensures that all economically relevant costs are considered when determining the actual gain realised.

6.2.2 Transitional Provisions

Assets acquired prior to the commencement of capital gains tax will nevertheless be subject to the tax on disposal.

For the disposal of a taxable asset that was acquired prior to the commencement date of the Capital Gains Tax provisions, transitional rules allow taxpayers to establish the cost base of such assets using either:

- The original substantiated cost, or
- The fair market value on 1 January 2026[324]

This "grandfathering" approach provides taxpayers with flexibility while acknowledging that accurate historical cost information might not be available for all assets.

6.3 Capital Gains Tax: Compliance Requirements

6.3.1 Record-Keeping and Documentation

The Act requires taxpayers to maintain specific records related to capital gains transactions. A person must keep records:

- Relating to the acquisition and disposal of a taxable asset
- Relating to the calculation of a capital gain or capital loss on disposal of a taxable asset

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[323] Ibid, s 88(3).

[324] Ibid, s 164(10), s 165(1).

- Evidencing that an asset is an exempt asset[325]

The Commissioner General may disallow the inclusion of expenditure in the cost of a taxable asset where the person is unable, without reasonable excuse, to produce a receipt or other record of the expenditure.[326]

6.3.2 Filing and Payment Deadlines

The vendor must lodge a Capital Gains Tax return and pay the tax due by the 21st of the following month or by the due date for stamping, if earlier.[327] This relatively short timeframe requires vendors to plan ahead for disposals and ensure they have resources available for prompt tax calculation and payment.

6.3.3 Withholding Obligations for Purchasers

Purchasers are required to deduct 10% of the consideration payable to non-resident vendors unless the vendor produces a notice from the IRC giving clearance to pay the gross.[328]

If the person disposing of the interest is a non-resident person, then the licensee is liable, as agent of the non-resident person, for any Capital Gains Tax payable.[329]

A licensee liable as agent for a non-resident person is considered secondarily liable[330] and must:

- Furnish a tax return.
- Pay the tax due in respect of the disposal.
- Complete these actions within 20 days after the date of the disposal (or within extended time if allowed)[331]

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[325] Ibid, s 144(1).

[326] Ibid, s 144(2).

[327] Ibid, s 145(1), s 146.

[328] Ibid, s 152(5), Schedule 1, Part 1(18).

[329] Ibid, s 102(2).

[330] Ibid, s 102(7).

[331] Ibid, s 102(4).

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The tax paid by a licensee on behalf of the non-resident person is credited against the capital gains tax liability of the non-resident person under the Act.[332] A licensee who pays tax as agent is entitled to recover the tax paid from the non-resident person.[333]

An exception applies where the disposal is by way of a trade in shares on a prescribed stock exchange. This provides an important exemption for transactions conducted through regulated securities markets, recognising the impracticality of applying these rules to open market transactions and avoiding potential disruption to capital markets.[334]

6.3.4 Practical Implications for Businesses

The introduction of CGT will have several practical implications for businesses involved in PNG's resource sector:

- Valuation Requirements: Companies holding relevant assets should consider obtaining baseline valuations as of 1 January 2026, to establish potential cost bases.
- Documentation Systems: Enhanced record-keeping systems will be needed to track acquisition costs and improvement expenditures.
- Transaction Structuring: Careful consideration of transaction structures is required, particularly for indirect transfers of resource interests.
- Compliance Calendar: Tax teams must incorporate the tight filing and payment deadline into their compliance calendars.

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[332] Ibid, s 102(5).

[333] Ibid, s 102(6).

[334] Ibid, s 102(3).

7 Income Tax Regulations

The Income Tax Regulations implement PNG's new Income Tax Act by providing specific operational rules. Effective from 1 January 2026, they establish the practical mechanisms needed for tax administration.[335] The Regulations have not yet been published however we understand they will cover matters as set out below.

7.1 Income Tax Regulations: Compliance Requirements

7.1.1 Key Entity Classifications

- Prescribed Unit Trust: Requires units issued at net asset value, primarily PNG investments, and significant local ownership. Qualifies for preferential tax treatment.[336]
- Non-profit Body: Must demonstrate permanent charitable commitment and ongoing disclosure to the Commissioner General. Application requires constitutional documents, financial statements, and governance details. Status can be revoked for non-compliance.[337]
- Prescribed Benefits: Employer-provided benefits eligible for salary packaging concessions. Excludes cash allowances (except specifically designated ones), employee share schemes, and already exempt benefits. Subject to 40% cap of total remuneration.[338]

7.1.2 Substantiation Requirements

Scientific Research Expenditure

Taxpayers claiming deductions must:

- Prove direct relation to creating or improving business assets or processes.
- Exclude market research, quality control, and administrative costs.
- Provide verification documentation from research institutions for external funding[339]

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[335] Ibid, s 165(1).

[336] Ibid, s 3.

[337] Ibid, s 7(2).

[338] Ibid, s 19(6).

[339] Ibid, s 34(3).

Foreign Exchange Losses

Taxpayers must document:

- Transaction nature and revenue classification justification
- Exchange rates used in calculations.
- All related hedging contracts, including those by associates.

Information must be submitted by tax return due date[340]

7.1.3 Transfer Pricing Documentation

Three-tiered approach for cross-border related-party transactions:

- Local File: Details of PNG entity transactions with functional analyses and comparability studies[341]
- Master File: Overview of global operations and transfer pricing policies[342]
- Country-by-Country Reports: Required for multinational groups with annual revenue exceeding K2.1 billion[343]

These requirements override tax treaty provisions and carry substantial penalties for non-compliance.[344]

[340] Ibid, s 54(3).

[341] Ibid, s 74(a)(i).

[342] Ibid, s 74(a)(ii).

[343] Ibid, s 74(a)(iii).

[344] Ibid, s 75(3).

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