

**INCOME TAX (AMENDMENT)
ACT 2014**

(NO. 7 OF 2014)

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INCOME TAX (AMENDMENT) ACT 2014

(NO. 7 OF 2014)

PASSED by the National Parliament this twenty-eighth day of April 2014.

(This printed impression has been carefully compared by me with the Bill passed by Parliament and found by me to be a true copy of the Bill)

Taeasi Sanga

*Taeasi Sanga (Mrs)
Clerk to National Parliament*

ASSENTED to in Her Majesty's name and on Her Majesty's behalf this 14th day of May 2014.

F. O. Kabui

*Sir Frank Utu Ofagioro Kabui
Governor-General*

Date of Commencement: see section 1

AN ACT TO AMEND THE INCOME TAX ACT (CAP. 123) IN ORDER TO INTRODUCE A NEW MINING TAX REGIME AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

ENACTED by the National Parliament of Solomon Islands.

ARRANGEMENT OF SECTIONS

1. Short Title and Commencement
2. Amendment of Section 2
3. Amendment of Section 3
4. Amendment of Section 15
5. Amendment of Section 18
6. Amendment of Section 19
7. Amendment of Section 20
8. Amendment of Section 21
9. Insertion of new section 21A
10. Insertion of new section 107A
11. Amendment of Section 109
12. Amendment of Third Schedule
13. Amendment of Fourth Schedule
14. Amendment of Sixth Schedule
15. Amendment of Ninth Schedule

INCOME TAX (AMENDMENT) ACT 2014

1. This Act may be cited as the Income Tax (Amendment) Act 2014, and commences on the 1st day of July 2014.

Short title and commencement

2. The Income Tax Act (hereinafter referred to as the “principal Act”) is amended in section 2 –

Amendment of section 2
Cap 123

(a) by inserting the following definitions in their proper alphabetical sequence –

Cap. 42

“approved infrastructure” has the meaning in section 36A of the Mines and Minerals Act;

“mineral licence” means a prospecting licence or a mining lease or both issued pursuant to the Mines and Minerals Act;”;

(b) by inserting after subsection (4) the following new subsection –

“(5) In the event of any general provision in the Act being inconsistent or in conflict with a specific provision in the Fourth Schedule, the specific provision shall prevail.”.

3. The principal Act is amended in section 3 –

Amendment of section 3

(a) by deleting paragraph (a) of subsection (1) and substituting the following –

“(a) gains or profits from –

(i) any business, for whatever period of time carried on;

(ii) employment;

(iii) any right granted to any other person for the use or possession of any property; or

(iv) the transfer of any rights relating to a mining lease or to land to which a mining lease applies”.

(b) in subsection (2) by deleting the word “or” that appears after the semi-colon in paragraph (a) and inserting the word “and”.

(c) by inserting after subsection (2) the following new subsection –

“(3) Income that is gain or profit from the transfer of any rights described in subparagraph 3(1)(a)(iv) is derived from Solomon Islands where the lease applies to land located in Solomon Islands.”.

Amendment
of section 15

4. The principal Act is amended by repealing section 15 and substituting the following section –

“Tax credit for
expenditure
incurred in
approved
infrastructure
development of
an approved
mining company

15. (1) An approved mining company that has incurred expenditure in the course of constructing approved infrastructure is entitled to a credit against the income tax payable in a year equal to the expenditure incurred in that year for the construction.

(2) If the credit available under subsection (1) exceeds the income tax payable in the year in which the expenses have been incurred, the lower of the excess and the income tax payable in the following year is allowed as a credit against the income tax payable in the following year. This credit can be carried forward indefinitely.”

Amendment
of section 18

5. The principal Act is amended in section 18(2) as follows –

- (a) by inserting in paragraph (m) after the words “section 36” the words “and at a rate of not less than twenty percent”;
- (b) by deleting paragraph (o) and substituting the following paragraph –
 - “(o) amounts allocated by an approved mining company in the year for future application towards the cost of environmental rehabilitation, restoration or reclamation as required by a mining licence, the Mines and Minerals Act, the Environment Act 1998, or a relevant agreement, provided the approved mining company holds written confirmation from the Minister of Mines and Minerals and the Minister of Environment that –
 - (i) the amounts allocated in the year are authorised or required by the Mines and Minerals Act, The Environment Act 1998, or a relevant agreement; and
 - (ii) irrevocable arrangements are in place to ensure the funds will be available to the Government of Solomon Islands to carry out the environmental rehabilitation, restoration or reclamation in the event the approved mining company does not apply the amounts as required.”. and
- (c) in paragraph (p) by inserting before the word “operating” the following words –

“Subject to Part III of the Fourth Schedule,”,

6. The principal Act is amended in section 19 as follows –

- (a) by repealing subsections (1) and (2) and substituting the following -

Amendment
of section 19

“(1) In this section, a “deductible loss” for a year means the amount by which deductions allowed in the calculation of chargeable income subject to tax exceed amounts included in chargeable income under section 3 for the year.

(2) A person who has a deductible loss in respect of a year may reduce chargeable income subject to tax by the amount of the deductible loss in the following year and for each of the subsequent four years to the extent the loss is not used to reduce chargeable income subject to taxation in a prior year.”.

(b) by inserting after subsection (2) a new subsection (2A) and renumbering the existing subsection (2A) as subsection “(2B)”.

“(2A) Notwithstanding subsection (2), an approved mining company that has a deductible loss in respect of a year may reduce chargeable income subject to tax by the amount of the deductible loss in the following year and for each of the subsequent six years to the extent the loss is not used to reduce chargeable income subject to taxation in a prior year.”.

Amendment
of section 20

7. The principal Act is amended in section 20 –

(a) by inserting after paragraph (i) in subsection (2) the following new paragraphs -

“(j) expenditures that would otherwise be deductible under section 18, apart from interest expenses allowed under paragraph 12A of the Fourth Schedule and management expenses subject to withholding tax at the level set in paragraph (xiv) of the Sixth Schedule, to the extent that the otherwise deductible expenditures:-

- (i) are paid to a related person not resident in the Solomon Islands; and
- (ii) exceed five percent of the total of deductions allowed under this Act in the year apart from operation of this paragraph.
- (k) expenditure for rehabilitation, restoration or reclamation as required by a mining licence, the Mines and Minerals Act, the Environment Act 1998, or a relevant agreement, apart from expenditure for which a deduction is allowed under paragraph 18(2)(o), or subparagraph 5(5) of the Fourth Schedule.
- (l) expenditure incurred by an approved mining company on the construction of approved infrastructure to the extent a credit is allowable to the company under section 15;”.
- (b) by inserting a new subsection as subsection (2A) and renumbering the existing subsection (2A) as (2B)

“(2A) For the purpose of paragraph 20(2)(j), a related person is:-

- (a) a person with a direct or indirect interest in the approved mining company; or
- (b) any person in which a person described in (a) has a direct or indirect interest.”.

8. The principal Act is amended in section 21 –

Amendment
of section 21

- (a) by deleting the figure “(1)” that appears in subsection (1);
- (b) by deleting subsection (2);
- (c) by deleting the marginal note of the section and inserting instead the following “Source of gains

or profits from sales of products and produce from Solomon Islands”.

Insertion of new section 21A

9. The principal Act is amended by inserting after section 21 a new section as follows –

“Arrangement and transaction not at arm’s length

21A. (1) This section applies where a person derives an amount or incurs a liability for an amount in the course of a transaction or arrangement that is for any reason not at arm’s length.

(2) Where an amount described in subsection (1) differs from the amount that would have been derived or incurred had the arrangement or transaction been at arm’s length, the Commissioner may deem the amount to be the amount that would have been derived or incurred had the arrangement or transaction been at arm’s length.”.

Insertion of new section 107A

10. The principal Act is amended by inserting after section 107 new a section 107A as follows –

“Public ruling

107A (1) The Commissioner may, by way of a public ruling explain the Commissioner’s interpretation of any provision of this Act.

(2) The Commissioner may not collect from a person tax greater than that due under the provisions of this Act as interpreted by the Commissioner in a public ruling authorised by this section.

(3) The Commissioner may not seek to impose any penalty on a person for failure to pay tax exceeding that due under the provisions of this Act as interpreted by the Commissioner in a public ruling authorised by this section.”.

11. Section 109 of the principal Act is amended by inserting after subsection (5) the following new subsections.

“(6) Nothing in subsection (1) or subsection (3) shall prevent any officer employed in carrying out the provisions of this Act from communicating to any officer, being an employee of the Department of Prime Minister and Cabinet or other Ministry for the time being responsible for the reporting requirements under the EITI Standard Requirements for EITI implementing countries, any information, being aggregate tax information that does not directly reveal the identity of any taxpayer and that –

- (i) the officer is authorised by the Ministry to receive; and
- (ii) the Commissioner considers is not undesirable to disclose and is essential to enable the officer to carry out the duties conferred on the officer in order to comply with the requirements for reporting and disclosure under EITI.

“(7) In this section “EITI” means Extractive Industries Transparency Initiative”.

12. The Third Schedule to the principal Act is amended by deleting paragraph 36.

Amendment of
Third Schedule

13. The Fourth Schedule to the principal Act is amended –

Amendment of
Fourth Schedule

- (a) by deleting subparagraph 1(1) and inserting the following subparagraph –

“(1) Subject to this Part, there shall be made in computing a person’s gains or profits from a business for a year, the following deductions:-

- (a) a wear and tear deduction as set out in subparagraph (2);
 - (b) a mining rights amortisation deduction as set out in subparagraph (2A); and
 - (c) a development expense deduction as set out in subparagraph (2B).”.
- (b) by deleting the words that appear in the current subparagraph 1(2) preceding the first listed item (i) and substituting the following –
- “The amount of the wear and tear deduction for any year shall be the appropriate percentage of the written-down value at the end of such year before making such deduction of capital assets owned by a person and used for the purposes of the person’s business, as follows:-”.
- (c) by adding after subparagraph 1(2) the following new subparagraphs –
- “(2A) The amount of the mining rights amortisation deduction for any year is $1/X$ of the cost of obtaining rights required to enable a person to utilise or acquire a prospecting licence or a mining lease, where X is the number of years for which the rights are effective, with a deduction allowed in the year of acquisition of the rights and in each of the subsequent years until the full cost has been deducted.
- (2B) The amount of the development expense deduction for any year is 25% of the balance of the approved mining company’s development expense pool, within the meaning in subparagraph 9(5) of the Fourth Schedule, at the end of the year.”.

(d) by deleting the marginal note that appears in respect of paragraph 1 and substituting the following “Wear and tear, mining rights and development pool deductions”

(e) by adding after subparagraph 5(3) a new subparagraph as follows –

"(4) Where an approved mining company has enjoyed deductions in respect of the cost of obtaining rights required to enable the company to utilise or acquire a prospecting licence or a mining lease and has not fully deducted that cost prior to the year in which the rights cease to be owned by the company or cease to be used by the company following termination of its activities:-

(a) if any amount received by the company as a consequence of ceasing to be owner or ceasing to use the rights exceeds the undeducted value of the rights, the excess will be treated as chargeable income derived in the year; and

(b) if any amount received by the company as a consequence of ceasing to be owner or ceasing to use the rights is less than the undeducted value of the rights, the difference between the amount received and the undeducted value may be deducted in that year.”.

(f) by adding after subparagraph 5(4) so inserted a new subparagraph as follows –

“(5) Where an approved mining company that has enjoyed deductions under paragraph 18(2)(o) for amounts allocated for future application towards the cost of environmental rehabilitation, restoration or reclamation as required by a mining licence, the Mines and Minerals Act, the Environment Act 1998, or a relevant agreement

has completed the rehabilitation, restoration or reclamation as required:-

- (a) if the amount deducted under paragraph 18(2)(o) exceeds the amount spent on rehabilitation, restoration or reclamation, the excess shall be included in the chargeable income of the company in the year in which the rehabilitation, restoration or reclamation activities are completed;
- (b) if the amount spent on rehabilitation, restoration or reclamation exceeds the amount deducted under paragraph 18(2)(o), the excess shall be allowed as a deduction in the year in which the rehabilitation, restoration or reclamation activities are completed; and
- (c) if the amount deductible under (b) above exceeds the chargeable income of the year, the excess shall be deductible consecutively in each of the preceding four years to the extent the excess exceeds the chargeable income of each year measured without regard to (b) above.”.

(g) by repealing Part III and inserting instead the following new Part III –

“MINING

Interpretations

8. In this Part, unless the context otherwise requires -

“mining lease” has the meaning given in the Mines and Minerals Act (Cap 42); and

"prospecting licence" has the meaning given in the Mines and Minerals Act.

Development
expenses

9(1) Expenses incurred by an approved mining company on or after the date on which a mining lease commences and prior to the date on which production of minerals from the mining lease for sale commences shall be treated as expenses incurred wholly and exclusively by the approved mining company in the production of income.

(2) Expenses described in subparagraph (1) that would otherwise be deductible under this Act are deductible only to the extent allowed in subparagraph (3).

(3) Thirty percent of expenses described in subparagraph (1) are deductible.

(4) Subparagraph (1) does not apply to a wear and tear deduction, mining rights amortisation deduction, or a development expense pool deduction allowed under subparagraph 1(1) of this Schedule.

(5) The amount of expenses described in subparagraph (1) that are not deductible in a year as a result of subparagraph (3) shall be added to an account known as the approved mining company's development expense pool.

(6) A company's development expense pool shall be reduced at the end of each year by an amount for which a deduction is allowed under subparagraph 1(1) of the Fourth Schedule for that year.

(7) A deduction is allowed for the balance of an approved mining company's development expense pool at the earlier of the date on which the mining lease to which the pool relates ends or the date on which production of minerals from the mining lease for sale ends if production ceases prior to the expiry of a mining lease because insufficient mineral reserves remain in the property.

Fiscal Stability

10(1) An approved mining company may irrevocably elect within 30 days of the entry into effect of a mineral

licence for the Income Tax Act as it stood at the time of the election to apply to the company for the duration of the mineral licence.

(2) An election made pursuant to subparagraph (1) shall be conveyed in writing to the Commissioner.

Multiple
Mineral
Licences

11(1) Subject to subparagraph (2), an approved mining company is treated as a separate person for the purposes of this Act in respect of each mineral licence held by the company.

(2) Where an approved mining company incurs expenses in respect of activities carried out pursuant to a prospecting licence on property adjoining a property on which the company carries out activities in respect of a mining lease, the amount of expenses incurred in respect of the prospecting licence for the property described in subparagraph (3) shall be treated as expenditures incurred in respect of the property for which the mining lease applies.

(3) The amount of expenditure for the purpose of subparagraph (2) is the lesser of:-

- (a) the amount of expenditure incurred in the year; and
- (b) the amount of expenditure incurred in the year that is equal to 5 per cent of the deductions allowed to the approved mining company in respect of its mining lease in the year other than the deductions that would result from the application of this section.

Limit on
deductions for
interest
expenses
Licence

12. In computing the gains and profits of an approved mining company for any year, interest paid by an approved mining company on a loan to finance its mining operations shall be deductible only in respect of debt that is equal to or less than three times the paid up equity of the company.

Accounts and
tax returns to be
kept in Solomon
Islands, United
States or
Australian
currency

13(1) Financial records of an approved mining company needed for determination of its income tax liability under this Act shall be maintained in a nominated currency and information included in a return of income required by section 57 of this Act shall be prepared on the basis of the nominated currency.

(2) For the purpose of subsection (1), a nominated currency is either Solomon Islands, United States or Australian currency as nominated by the approved mining company.

(3) The value of receipts or liabilities denominated in currencies other than the nominated currency shall be converted to a value in the nominated currency on the basis of the exchange rate in effect at 9:00 a.m. on the day the receipts are derived or the liabilities are incurred.

(4) The Commissioner may prescribe by way of public ruling the basis of the exchange rate to be used for the conversion required by subsection (3).

(5) Where the amount of a receipt or liability determined as a result of the conversion required by subsection (3) differs from the amount determined when the receipt or liability is actually received or paid:-

(a) any amount by which the nominated currency value of a receipt determined at the later date exceeds the nominated currency value determined at the earlier date is income of the approved mining company;

(b) any amount by which the nominated currency value of a receipt determined at the earlier date exceeds the nominated currency value determined at the later date is a deductible expense of the approved mining company;

- (c) any amount by which the nominated currency value of a liability determined at the earlier date exceeds the nominated currency value determined at the later date is income of the approved mining company; and
- (d) any amount by which the nominated currency value of a liability determined at the later date exceeds the nominated currency value determined at the earlier date is a deductible expense of the approved mining company.”.

Amendment of
Sixth Schedule

14. The Sixth Schedule of the principal Act containing the rates of non-resident withholding tax is amended –

- (a) by repealing paragraph (xi)
- (b) by replacing paragraph (xiii) with the following—
“(xiii) dividends paid by an approved mining company zero”.

Amendment of
Ninth Schedule

15. The Ninth Schedule of the principal Act is amended –

- (a) by deleting from the definition of “net cash receipts” in paragraph 1 the words “specified in the relevant agreement” and substituting the words “nominated under paragraph 13 of the Fourth Schedule”.
- (b) in subparagraph 2(2), by deleting the word “cover” and substituting the word “means”;
- (c) deleting the definition of “prospecting operations” that appear after subparagraph 2(2);
- (d) in subparagraph 2(3) by inserting the word “including” after the word “expenditure” in the opening subparagraph.

- (e) by deleting subparagraph 5(1) and substituting the following new subparagraph –

“5(1) An additional profits tax at the rate of twenty per cent (20%) of the additional profits is payable by an approved mining company in any tax year when the additional profits, at the end of that tax year, calculated in accordance with the formula set out below, is a positive amount -

$$A = (120\% \times B) + C, \text{ where}$$

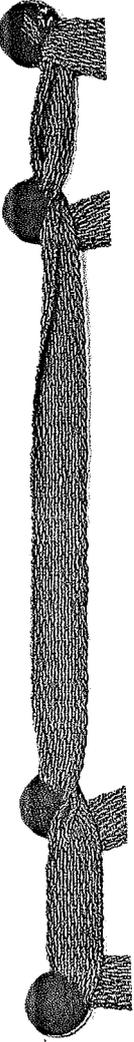
"A" = additional profits at the end of the tax year for which the calculation is made;

"B" = additional profits at the end of the preceding tax year;

"C" = net cash receipts for the tax year in respect of which the assessment of the tax on additional profits is made;

Provided that, where in any tax year the additional profits is a positive amount, the additional profits shall, for the purposes of determining the additional profits in respect of the immediately succeeding tax year, be deemed to be zero.”.

- (f) by repealing sub paragraph 8(1)(b); and
- (g) in sub paragraph 8(1)(c), by deleting the words “accumulated present value of the net cash receipts” and substituting the words “additional profits”.



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