

# Papua New Guinea



## PAPUA NEW GUINEA

### RECENT DEVELOPMENTS

The Minister for Treasury and Finance, the Honourable Patrick Pruaitch, MP handed down the 2009 National Budget on 18 November 2008. This article summarises some of the key taxation changes announced or confirmed by the Minister and certain fiscal amendments passed in September 2008 in respect of the Papua New Guinea Liquefied Natural Gas Project (PNG LNG Project).

#### Corporate tax rates

There has been no change to the general corporate income tax rate of 30%. The rate of income tax for non-resident companies, other than those engaged in mining, petroleum or gas operations, remains at 48%.

#### Personal tax rates

There has been no change to personal tax rates.

From 1 January 2009, the rates for residents remain as follows:

Taxable Income (PGK)	Tax thereon (PGK)	Rates of tax on excess (%)
7,000	Nil	22
18,000	2,420	30
33,000	6,920	35
70,000	19,870	40
250,000	91,870	42

From 1 January 2009, the rates for non-residents remain as follows:

Taxable Income (PGK)	Tax thereon (PGK)	Rates of tax on excess (%)
Nil	Nil	22
18,000	3,960	30
33,000	8,460	35
70,000	21,410	40
250,000	93,410	42

#### Tourism incentives

Continuing the theme of supporting tourism, the main policy initiative of the 2009 Budget is to enhance the existing large scale tourism development incentive.

In the 2007 Budget, the Government introduced a concessionary taxation rate of 20% in respect of income derived by a taxpayer solely from a new large scale tourism facility or a substantially improved tourist accommodation facility. This rate applies to the first year in which such income is derived and for a maximum of 9 years thereafter.

The Government has recognised that this incentive is not effective when combined with the initial year tax depreciation rate of 55% applicable to investment in tourism plant. Consequently, the period of time for which the reduced tax rate is applicable has been increased from 10 years to 15 years. In addition, the eligibility criteria have been relaxed to reduce the minimum expenditure requirement from USD10 million to USD7 million and the room requirement from 150 to 100 rooms.

These amendments are a result of representations made by PricewaterhouseCoopers and the Tourism industry.

#### Policy on tax concessions

The 2009 Budget did not contain any new tax concessions. However, the Government stated its intention to continue encouraging and facilitating future investment. The Government is also embarking on an awareness program to inform stakeholders of the existing tax concessions available. These include concessions for minerals explorers, manufacturing investment, export of certain goods manufactured in PNG and incentives for promotion and development of tourism in PNG, which are discussed in the following paragraphs.

## *Depreciation incentives – manufacturing plant*

Industrial plant not previously used in PNG is eligible for accelerated depreciation of up to 100% of cost. However, the claim for accelerated depreciation cannot take the company into a tax loss but the excessive amount can be carried forward and claimed in subsequent years. To qualify, the plant must have an effective life of more than five years for tax purposes and must be used by the taxpayer or any other person (e.g. a lessee) in a manufacturing process. Expenditure on new buildings for the housing of industrial plant, or for the storing of raw materials or finished products also qualifies for the 100% accelerated depreciation. The effect of this incentive is that a manufacturer should not be liable to income tax until the full capital cost of the manufacturing facility is recovered.

## *Double deduction for export market development*

Where certain expenditure is incurred on export market development for goods manufactured in PNG or for promotion of tourism in PNG a double deduction is allowed for those costs. Qualifying expenditure includes overseas publicity and advertising, market research, tender preparation, samples, trade fair expenses, overseas sales office expenses and certain travel costs.

The tax saving resulting from the allowance of the deduction may not exceed 75% of the expenditure actually incurred.

## *Export incentives for manufacturers*

Taxpayers who export certain qualifying goods manufactured by them in PNG are entitled to an income tax exemption of 100% of export sales made prior to the last day of the third year following the date export sales were first made. For the following 3 years, the excess of export sales over average export sales of the previous three years is exempt.

## *Depreciation incentives for agriculture, fishing and tourism*

Expenditure on new plant or articles in respect of the following activities qualifies for a 100% accelerated depreciation deduction:

1. used directly for the purposes of agricultural production;
2. used solely for commercial fishing activities performed by PNG residents;
3. boats and ships (and ancillary equipment) used solely as dive boats or used by a person carrying on a business as an accredited scuba diving/snorkelling tour operator.

Deduction of an initial year depreciation of 20% of the cost of most other new items of plant and equipment (with a life exceeding 5 years) used for the purposes of agricultural production is also available. This allows an accelerated deduction for plant or articles that are not used directly in agricultural production.

From 1 January 2006, an accelerated depreciation of 20% can be claimed in respect of plant acquired by hotels or other short-stay accommodation facilities. For such plant acquired on or after 1 January 2007, the depreciation allowed in the first year has been increased to a maximum of 55%.

## *Primary production*

Outright deductions are allowed for certain capital expenditure including expenditure on clearing, preparing or conserving land for agriculture, the eradication of pests, labourers' accommodation (for labourers earning less than PGK35 per week) and for the conservation and conveyance of water.

Losses incurred in carrying on a primary production business can be carried forward indefinitely.

Major new primary production projects with a minimum investment of PGK1 million undertaken by a company which commences in the period from 1 January 2004 to 31 December 2011 (previously 31 December 2006) will enjoy a tax rate of 20% from the date of commencement of construction to the end of the tenth full tax year after the commencement.

As from 1 January 2004, a 150% deduction is available for expenditure on services provided free of charge to smallholder growers including the provision of advice and training and technical assistance in relation to their primary production to assist them with production, processing, packaging and marketing problems. To qualify, the expenditure must be incurred under an Approved Primary Production Extension Services Plan.

## *The resource sector*

There are a number of incentives for the resource sector including a tax rate of 30% for certain petroleum projects, dividends paid from petroleum or gas income are exempt from income tax and dividend withholding tax, interest paid by a resource project to a non-resident lender is exempt from income tax and interest withholding tax, a double deduction is available for certain minerals exploration expenditure and all development expenditure on a mining project can be deducted on a 25% diminishing value basis. The taxation of resource projects in PNG is the most complex area of PNG's taxation law and potential investors in the resource sector are encouraged to obtain specific advice.

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## Policy on tax concessions

The Government's policy on tax concessions is that concessions should be made available on an industry wide or sectoral basis rather than on a project by project basis. In addressing the policy on tax concessions, the 2009 Budget papers again noted the following:

*"The tax system is compromised when concessions are given to specific projects or taxpayers. The use of project agreements to create special tax arrangements for individual projects has encouraged a wide range of investors to seek a growing list of tax concessions.*

*To enhance the integrity of the tax system, concessions provided to projects need to be confined to those available for the relevant industry in the existing tax law. This will ensure neutral and equitable tax treatment of projects in each sector, and transparency in tax policy.*

*Furthermore, the assurance of equitable treatment for all investors encourages further investment in the economy."*

## Other amendments

A small number of other amendments are made to the Income Tax Act including amendments to:

1. include a definition of the term "Public Authority";
2. remove an incorrect reference to Provincial and Local Bodies in Section 24;
3. clarify the way the Review Tribunal or the National Court will hear appeals by taxpayers dissatisfied with the Commissioner General's decision on an objection to an income tax assessment. Section 247A imposes a duty of disclosure on the taxpayer to provide access to the Commissioner General to each document that is in the possession or custody or under the control of the taxpayer and is directly or indirectly relevant to any allegation in issue in the Review or appeal. This disclosure must be made within 28 days of the making of the application to the review Tribunal or filing of an appeal to the National Court;
4. an appeal to the National Court shall be a hearing "de novo" and neither the taxpayer nor the Commissioner General shall be restricted to material or evidence considered in determining the taxpayer's objection;
5. deal with existing applications for review and appeals to the National Court which have not yet been determined. These applications and appeals will be subject to the following:
  - (1) the reviews or appeals shall be heard in accordance with Section 247A;
  - (2) the duty of disclosure applies as if the applications or appeals were lodged on 1 January 2009; and

6. oblige taxpayers to retain records for at least seven years after lodging tax returns or accounts to which they relate (instead of seven years from the transaction date).

## Taxation developments and amendments — mining, petroleum and gas

There is no amendment relating to the mining, petroleum and gas industries in the 2009 Budget. However, a number of amendments were passed in September 2008 to facilitate the implementation of the PNG LNG Project. These amendments include:

1. A technical amendment to Section 35(2)(e) and Section 155H to delete the references to the Bank of Papua New Guinea to reflect liberalisation of related exchange controls and to ensure interest paid by companies carrying on mining, petroleum or gas operations to a non-resident lender is exempt from income tax and interest withholding tax. This amendment has an effective date of 3 September 2007.
2. A new definition of "gas operations" to extend the definition to include liquefaction, refining and storage for the purposes of the PNG LNG Project.
3. An amendment to allow the PNG LNG Project additional deductions where the internal rate of return is below the project's commercially viable level.
4. An amendment to the income tax regulations to clarify when a petroleum field converts to a gas field.
5. The reinstatement of additional profits tax for all designated gas projects, including the basis upon which additional profits tax will apply to the PNG LNG Project.
6. An amendment to exempt the PNG LNG Project from customs and excise taxes during the construction of the PNG LNG Project and any subsequent phase of the project where total costs exceed USD50 million.
7. An amendment to exempt the PNG LNG Project and its customers from any export taxes.
8. An amendment to exempt the PNG LNG Project from the 2% additional tax normally imposed on resource projects in exchange for fiscal stability.
9. An amendment to exempt the PNG LNG Project from stamp duty on restructuring of ownership interests in the PNG LNG Project where the transfer is between a PNG LNG Project company and its affiliates or between PNG LNG Project companies.

## Stamp duty

There have been three amendments to the Stamp Duties Act:

1. To prevent stamp duty avoidance when entering into two or more agreements for the same transaction between the same or related parties.
2. To amend Section 48(C)(1)(c) to clarify the existing law and achieve the original policy intent where portions of the same property are sold to the same or related parties.
3. To correct the date for the abolition of stamp duty on insurance contracts to 1 April 2008.

## Excise duty — alcohol and tobacco

There has been no change to the excise duty on alcohol and tobacco products.

## Excise tariff rates

There has been no change to other excise duty rates.

## Customs tariff act

There has been no change to the customs duty rates. The 2009 Budget papers noted the Government had proposed in 2007 that it would consider further reductions in 2009. Given the uncertainty and volatility currently surrounding the economic outlook, consideration of further tariff reductions has been deferred until 2010, when the economic outlook is expected to be more settled.

## Customs act

Amendments are being made to the Customs Act:

1. to discourage smuggling by increasing the load limits which can be seized by Customs from 250 to 500 tonnes, and extend customs control in territorial waters from 3 to 12 nautical miles to be consistent with the National Seas Act; and
2. to empower the courts to impose an additional penalty for smuggling dutiable goods, counterfeit goods and excisable goods with the penalty relating to the value of customs duty which has been avoided and the value of the smuggled goods.

