INCOME TAX (AMENDMENT) BILL 2014

(NO. 7 OF 2014)

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A

BILL

Entitled

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 CLAUSES

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
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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) BILL 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 – Amendment of section 19

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

"(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. Amendment of section 109

"(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 license 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 companyzero".

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% x B) + C, 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".

INCOME TAX (AMENDMENT) BILL 2014

OBJECTS AND REASONS

The object of the Bill is to introduce a new mining tax regime in Solomon Islands. The new regime is designed to encourage responsible mining activities while also ensuring an appropriate return from these resources for the people of Solomon Islands. The regime is intended to attract increased foreign investment (and associated expertise and experience) and secure revenue into the future.

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RICK N. HOUENIPWELA

MINISTER OF FINANCE AND TREASURY

EXPLANATORY MEMORANDUM

This Bill (along with a related amendment to the Mines and Minerals Act) introduces a new mining tax regime in Solomon Islands. The amending legislation consolidates and modernises the arrangements governing Solomon Islands taxation of mining to encourage responsible mining activities while ensuring an appropriate return from the resources for the people of Solomon Islands.

Section 2

The amendments to section 2 add definitions of the terms "approved infrastructure" and "mineral license". Section 2 is also amended by specifying that in the event of any inconsistency between the provisions of the Income Tax Act (other than the Fourth Schedule) and the provisions of the Fourth Schedule, the provisions of the Fourth Schedule shall prevail. The purpose of this rule is to make sure that the detailed rules of the Fourth Schedule (relating to the mining sector and other specific matters) are applied in preference to more general rules that might be contained elsewhere in the Act.

Section 3

Section 3 is amended by adding to the list of items included in income, gains or profits from the transfer of any rights relating to a mining lease or to land to which a mining lease applies. This ensures that these amounts will be charged to tax regardless of their categorization as income or capital. New subsection 3(3) clarifies that such income is derived from the Solomon Islands where the land in question is located in the Solomon Islands.

Section 15

The Mines and Minerals Act will allow the Minister of Mines and Minerals to make it a condition of a mining lease that the company to which it is issued constructs approved infrastructure. Approved infrastructure is defined (in new section 36A of the new Mines and Minerals Act) as infrastructure that will benefit a community of the Solomon Islands and can be constructed by a company holding a mining lease more efficiently than by the Solomon Islands Government (SIG).

A mining company that is required by the Minister to contribute infrastructure in this manner receives compensation by way of section 15, rather than being paid directly by SIG. Section 15, which currently provides to approved mining companies a tax credit for approved infrastructure development, is repealed and replaced by a new provision which grants a tax credit to an approved mining company that has incurred expenditure in the course of constructing approved infrastructure.

The amount of the credit for a given year is equal to the expenditure incurred in that year for the construction. If the amount of the credit exceeds income tax liability for the year, the excess can be carried over to the immediately succeeding years. This reduces the risk that the value of the payment by SIG in the form of a tax credit is not higher than if SIG paid directly for the infrastructure.

Section 18

Section 18 of the ITA is amended by inserting (for clarification) the requirement that, for dividends to be deductible in Solomon Islands, withholding tax must have been deducted at a rate of at least twenty percent. Twenty percent is the lower rate of dividend withholding tax imposed in Solomon Islands (a rate of thirty percent applies to dividends paid to non residents). Without this amendment, it may be argued that companies (including approved mining companies, which are not required to pay dividend withholding tax) could avoid tax by paying all profit out as dividends.

This clarification ensures that dividends are only deductible from assessable income if the minimum non-zero amount of dividend withholding tax has been paid.

It is a condition of a mining licence that the holder of the licence makes provision for the eventual restoration of the mining site following the completion of mining. Amounts set aside for this purpose are recognised as legitimate operating costs of a company and a deduction is provided under section 18(2)(o). The amended measure, in conjunction with section 20, provides safeguards that ensure funds allocated for this purpose will be available and the obligation cannot be avoided.

Section 18 is amended by replacing paragraph (2)(o) with a provision that allows a deduction for amounts allocated by an approved mining company for future application towards the cost of environmental rehabilitation, restoration or reclamation. To qualify for deduction, the amounts must be required by a mining licence, the Mines and Minerals Act, the Environment Act 1998, or a relevant agreement. In addition, the mining company must hold a 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.

Section 18(2)(p), allowing a deduction for certain items incurred by an approved mining company, is amended by adding a reference to Part III of the Fourth Schedule, thereby insuring that the requirements of the Fourth Schedule are met in order for an amount to be deductible under section 18(2)(p).

Section 19

Section 19 (relating to the carry forward of losses) is amended by clarifying the general carry forward of five years, and extending this to seven years for approved mining companies. This recognizes the long term nature of mining operations, with substantial up-front costs, with corresponding profit often not generated until a mine is mature and commodity prices are supportive.

Section 20

Section 20 is amended by denying a deduction for expenditures that are paid to a related person not resident in the Solomon Islands if the total of such related-person expenditures exceed five percent of the total of deductions allowed under the Income Tax Act in the year. This related-person rule does not apply to interest expenses allowed under paragraph 12A of the Fourth Schedule or to management expenses subject to withholding tax at the level set in paragraph (xiv) of the Sixth Schedule. For the purposes of this rule, a related person is any person with a direct or indirect interest in the approved mining company, or any person in which such a person has a direct or indirect interest. For example, a parent company is a related person to a subsidiary of that parent. A sister company (which is owned in whole or in part by that parent) will also be a related person.

Section 20 is also amended to clarify that no deduction is allowed for any expenditure for rehabilitation, restoration, or reclamation as required by a mining licence, the Mines and Minerals Act, the Environmental Act, or a relevant agreement, if this expenditure does not qualify for a deduction under paragraph 18(2)(o) or subparagraph 5(5) of the Fourth Schedule.

Finally, section 20 is amended to clarify that if a credit for expenditure incurred by an approved mining company is allowed on the construction of approved infrastructure under section 15, no deduction is allowed for the expenditure. This is because the credit is designed to fully reimburse an approved mining company for constructing approved infrastructure.

Section 21

A new transfer pricing provision replaces the provision currently found in section 21(2). It becomes a new section 21A and deals with transactions that are not at arm's-length. In the case of such non-arm's-length transactions, the Commissioner may deem the amount of the transaction to be the amount that would have been derived or incurred had the arrangement or transaction been at arm's length. This is clearer to understand and administer than the current subsection.

Section 107A

A new section 107A authorises the issuance of public rulings. A public ruling can be issued by the Commissioner, explaining the Commissioner's interpretation of any provision of the Income Tax Act. This will provide clarity to taxpayers on how tax law is interpreted and administered.

The consequences of issuance of a public ruling are two-fold: the Commissioner is bound by the ruling (unless it is revoked), meaning that the Commissioner must make assessments consistent with public rulings. In addition, 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.

Section 109

A new subsection is added to section 109 to allow for the release of information required to be published under the Extractive Industries Transparency Initiative. Under the Initiative, industry participants must report taxes and fees paid to Government and the Government must report taxes and fees received from industry participants.

Third Schedule

Paragraph 36, which allows the Minister to exempt fees derived from mining operations by expatriate contractors is deleted. This ensures that fees paid to expatriate contractors by mining operations will not be exempt from income tax in Solomon Islands under the Third Schedule.

Fourth Schedule

The amendments to the Fourth Schedule modernize and rationalize the income tax measures to recognise expenses incurred by mining companies over the three phases of mining – the exploration phase, the mine development phase, and the actual mining operation stage when commercial extraction of minerals takes place. The amendments also provide a framework for relief to deduct some types of mining expenses for which there were previously limited recognition.

Income tax laws commonly distinguish between current or revenue expenses used to acquire benefits that are consumed in the course of the year and capital expenses used to acquire assets that continue to provide benefits over an extended period. Accounting principles provide for the recognition of capital expenses through annual depreciation or amortisation deductions over the life of the asset acquired with the capital expense.

Prior to the current amendments, the Income Tax Act provided depreciation rules to allow the recognition of capital expenses incurred to acquire tangible plant and equipment but had no corresponding rules for capital expenses to acquire intangible assets used in mining. Subparagraph 1(1) extends the recognition rules so expenses for both tangible and intangible expenses may be deducted over a period.

Subparagraph 1(1)(a) and subparagraph 1(2) reproduce the wear and tear deduction that was provided in the Act previously.

Subparagraph 1(1)(b) introduces a new deduction for the cost of acquiring "mining rights" which are described in subparagraph 1(2A) as the cost of acquiring a prospecting licence or a mining lease. Subparagraph 1(2A) allows a mining company that has incurred a cost to acquire a prospecting licence or mining lease to deduct that cost over the life of the licence or lease. A company that holds a prospecting licence or mining lease may not be the company that ultimately carries out all the prospecting or mining operations. Rather, for a range of commercial reasons, the company may transfer its rights to another company over the course of the licence rather than continue the prospecting or mining itself. At present, the company that acquires these rights is not able to recognise the expense for tax purposes. Subparagraph 1(1)(b) allows a deduction for the cost of the licence or lease. Subparagraph 1(2A) specifies how the deductions are spread over the remaining life of the licence or lease. The deduction is also available to the initial holder of the license or lease for any fees or costs incurred for the original acquisition.

If a company that holds a prospecting licence or mining lease ceased to hold the licence or lease because it has transferred the mining right to another person or surrendered it to the Ministry of Mines and Minerals, the difference between the amount of the original cost that has not previously been deducted under subparagraph 1(1)(b) and the amount, if any, received in respect of the transfer or surrender is recognised under subparagraph 5(4) as income or a deduction in the year in which the taxpayer ceases to own the mining right. This ensures the correct amount of tax (or deduction) is assessed.

Subparagraph 1(1)(c) introduces a deduction for development expenses. These are a subset of pre-production 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.

The section operates in conjunction with paragraph 9(1).

The amount of the mining rights amortisation deduction in subparagraph 1(2A) 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. For example, if the mining rights are effective for 8 years, then 1/8th of the cost is deductible each year (12.5% per annum).

The amount of the development expense deduction in subparagraph 1(2B) 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.

Subparagraph 5(4) deals with the situation where a mining company has taken deductions for 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. The tax treatment depends on the amount received by the company, compared with deductions previously taken. If the 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 is treated as chargeable income derived in the year. On the other hand, if the amount received 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. This ensures the correct amount of tax (or deduction) is assessed.

New subparagraph 5(5) deals with the situation of a mining company that has taken deductions under paragraph 18(2)(o) for the cost of environmental rehabilitation, restoration or reclamation, and has completed the rehabilitation, restoration or reclamation as required. In this case, if the amounts previously deducted exceed the amounts spend, the excess is included in the chargeable income of the company in the year in which the rehabilitation, restoration or reclamation activities are completed. On the other hand, if the amount spent exceeds the amount previously deducted, the excess is allowed as a deduction in the year in which the rehabilitation, restoration or reclamation activities are completed. This ensures the correct amount of tax (or deduction) is assessed.

Under paragraph 11 of the Fourth Schedule, if the mining company has other mining projects, it is treated as a separate taxpayer in respect of each lease. As the mining company will have completed its commercial exploitation of the mine when it carries out post-closure rehabilitation, it may not have income against which the deduction can be taken. (It may have income if sales of already mined materials continue after the mine closure.) To enable the taxpayer to recognise the deduction in these circumstances, a four-year carry back is allowed. This means the taxpayer can use the excess deduction against income from the previous four years.

Part III of the Fourth Schedule is revised, by repealing the existing Part and replacing it with a new Part on Mining.

Paragraph 9 deals with development expenses. It allows an immediate deduction for only 30 per cent of these expenses. Undeducted expenses are added to a development expense pool. The pool is reduced at the end of each year by an amount for which a deduction is allowed under subparagraph 1(1) for the year. The balance of the pool is deductible when the mining lease ends or production ceases.

Paragraph 10 concerns investors considering a mining project that will involve significant initial expenditures. These are made to secure returns over a long period as the mine is operated. In this case, which is common in mining, investors will value certainty regarding the tax rules that will apply to the mining project over the life of the mine. This certainty is commonly referred to as "tax stability" and it is not unusual for jurisdictions to provide for tax stability through mining or tax laws.

In conformity with the principle that all tax rules should be located in the tax law, provision for a tax stability election is included in the Income Tax Act. Paragraph 10 provides for tax stability. It allows an approved mining company to irrevocably elect in writing 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.

Paragraph 11 ensures that where a mining company has separate mining or exploration licences for different sites, the company is treated as if it were a separate taxpayer in respect of each site. This system is sometimes known as "ring fencing" or "quarantining" and is found in many countries' income tax laws. The purpose of the rule is to ensure tax is paid when a mine shifts from preparation stage to the commercial production stage. Without this rule, it would be possible for a company to shield its profits from tax by using deductions related to expenditures at another mining operation to offset the income. Paragraph 11 establishes this "ring fencing" rule.

The ring fencing rule operates in conjunction with section 19 which extends the loss carry forward period for approved mining companies to seven years (the time limit for other companies is five years). This rule protects the right of mining companies to recognize losses incurred in respect of a mine before commercial production commences and the company derives profits from the site. A limited exception to ring fencing is provided for expenses incurred under a prospecting licence on property adjoining a property on which the company carries out activities in respect of a mining lease.

Paragraph 12 provides a special thin capitalisation rule for approved mining companies, allowing a deduction for interest only in respect of debt that is equal to or less than three times paid up equity of the company.

Paragraph 13 provides for approved mining companies to keep accounts used to determine income tax liability either in United States dollars or Australian dollars, as nominated by the approved mining company.

The Sixth Schedule (providing non-resident withholding tax rates) is amended by repealing the provision that allowed the Minister to set a special rate for non-resident withholding tax on interest paid by an approved mining company.

Interest payments by approved mining companies to non-residents will attract the standard non-resident interest withholding tax rate (currently 15 per cent).

Sixth Schedule

The Sixth Schedule is also amended to clarify that the rate of dividend withholding tax on dividends paid by approved mining companies is zero. This is to increase the attractiveness of investment in Solomon Islands mining projects. However, as clarified in paragraph 18(2)(m), these dividends will not be able to be deducted, ensuring that appropriate income tax is paid in Solomon Islands.

Ninth Schedule

The Ninth Schedule (additional profit tax) is amended to simplify and clarify the operation of the additional profits tax. The tax will apply at a rate of 20 per cent. It will effectively apply to profits excluding financing costs where the rate of return from a project exceeds 20 per cent. This is referred to in the industry as a 20/20 additional profits tax.

The definition of net cash receipts is amended to refer to paragraph 13 of the Fourth Schedule (which, as described above, provides for accounting in either US, Australian or Solomon Island dollars). Paragraph 2(2), defining surface rights expenditure, is subject to a clarifying amendment. The definition of prospecting operations is deleted, as it is merely a repetition of the definition in paragraph 1. The word "including" is inserted in subparagraph (3) to clarify that the list is not exhaustive.

The formula for calculating the additional profit tax in paragraph 5 is revised. The tax is cash flow based, deducting all expenses as incurred (except for interest and other financing payments). As other tax payments are also deducted, the cumulative net cash flow provides a measure of the realized profits after tax and royalties. The net cash flow is calculated starting from the initial year of development. The cumulative balance at end-year is multiplied by an uplift factor that reflects the target rate of return, and the additional profits tax only applies when this target rate of return based on actual profitability has been achieved.

Note that in the formula $A = (120\% \times B) + C$, the initial values of C (and therefore B) at the beginning of a project will tend to be negative numbers (net cash flow). This reflects that mining projects usually generate most profits in their mature, later stages. Most additional profit tax is expected to be paid after a mine is mature and has been generating substantial profit for a number of years.

Paragraph 8 is amended by deleting the reference to the price index and replacing the reference to "accumulated present value of the net cash receipts" with the words "additional profits".

This Bill is to commence on 1st July 2014 to provide certainty to all stakeholders.

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