



**THE INCOME TAX
(AMENDMENT)
(NO.2) BILL 2005**



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**A
BILL
Entitled**

AN ACT TO AMEND THE INCOME TAX ACT (CAP 123)
CONSEQUENTIAL TO THE ENACTMENT OF THE FOREIGN
INVESTMENT ACT 2005.

ENACTED by the National Parliament of Solomon Islands.

**THE INCOME TAX (AMENDMENT) (NO. 2)
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ARRANGEMENT OF CLAUSES

CLAUSES

1. SHORT TITLE AND COMMENCEMENT
2. REPEAL AND SUBSTITUTION
3. AMENDMENT OF FIRST SCHEDULE
4. AMENDMENT OF SECOND SCHEDULE

1. This Act may be cited as the Income Tax (Amendment) (No.2) Act 2005, and shall come into operation on such date as the Minister may appoint by notice published in the Gazette.

Short title and commencement

2. Part III of the Income Tax Act is repealed and the following substituted -

Repeal and substitution
Cap 123

“PART III - INCENTIVES

10. In this Part -

Definitions

‘certificate of registration’ has the same meaning as in the Foreign Investment Act 2005.

‘investment activity’ means a commercial, economic, industrial or professional activity carried on in Solomon Islands as a business or part of a business;

‘investor’ includes a foreign investor within the meaning of the Foreign Investment Act 2005 who holds a certificate of registration for a investment activity or investment activities he conducts or intends to conduct;

‘Registrar’ has the same meaning as in the Foreign Investment Act 2005.

11. (1) An investor may apply to the Commissioner to exempt the profits and income of the investor derived from conducting an investment activity.

Commissioner may grant exemption from income tax

(2) If an investor makes an application under subsection (1), the Commissioner may exempt from income tax the profits and income of the investor that are derived from conducting the investment activity.

(3) The extent and period of a tax exemption granted under this Part shall be calculated in accordance with the formula specified in the First Schedule.

(4) Where an investor proposes an additional investment to the value of ten million dollars or more, and has satisfied the conditions stipulated in relation to the original investment, the Commissioner may grant a further tax exemption for a period not exceeding five years.

Exemptions under
the Second Schedule

12. (1) The exemptions under this section are in addition to those granted under section 11.

(2) An investor may apply to the Commissioner to claim the exemptions set out in the Second Schedule that are appropriate to the investment activity or investment activities he conducts or intends to conduct.

(3) If an investor makes an application under subsection (2), the Commissioner shall, subject to subsection (4), grant the exemptions set out in the Second Schedule that are appropriate to the investment activity or investment activities the investor conducts or intends to conduct.

(4) In granting an exemption under subsection (3), the Commissioner may -

- (a) grant the exemption in full or to a modified extent, as he considers appropriate; or
- (b) grant the exemption on the terms and subject to the conditions he considers appropriate.

Withdrawal of
exemptions granted
under section
11 or 12

13. (1) Subject to this section, the Commissioner may withdraw an exemption granted under section 11 or 12 if the investor to whom it is granted contravenes this Act, the Foreign Investment Act or his authorization under the law of Solomon Islands to conduct the investment to which the exemption relates in Solomon Islands.

(2) Before withdrawing an exemption under subsection (1), the Commissioner shall, in writing, inform the investor of the reasons why he is proposing to withdraw the exemption and ask the investor to give him written reasons why the exemption should not be withdrawn.

(3) The investor shall, within 28 days after receiving the Commissioner's request for reasons under subsection (2), give his written reasons to the Commissioner.

(4) On receiving the investor's reasons (if any), the Commissioner shall consider them and shall decide -

- (a) whether or not to withdraw the exemption; or
- (b) to allow the investor an opportunity to correct the contravention within a specified period and, if the investor does not correct the contravention to the Commissioner's satisfaction within that period, withdraw the exemption on the expiry of that period.

(5) The Commissioner shall advise the investor of his decision, and the reasons for his decision, in writing.

(6) If the Registrar cancels a certificate of registration under section 23 of the Foreign Investment Act, the exemptions granted under section 11 or 12 that apply to the investment activity or activities for which the certificate was issued are withdrawn on the cancellation taking effect.

14. (1) This section applies notwithstanding sections 34, 36, 37 and 38 and the Sixth Schedule.

Exemptions
from withholding
tax

(2) Subject to subsection (3), withholding tax shall not be payable on a dividend paid to a shareholder of an investor on profits accumulated during the period for which a tax exemption granted under section 11 has effect.

(3) The exemption from payment of withholding tax under subsection (2) applies only to the extent that the total amount of dividend paid to the shareholders of the investor does not exceed the value of the investor's original investment.

(4) The interest paid by an investor in respect of money borrowed from a financial institution and employed in the production of income and profits shall not be liable to withholding tax during the period for which a tax exemption granted under section 11 has effect.

15. (1) Where, pursuant to a relevant agreement, an approved mining company has, in any tax year, incurred expenditure in the construction of an approved infrastructure development scheme approved by the Government as provided for in the relevant agreement, the amount of such expenditure not exceeding such amount as specified in the relevant agreement shall be allowed to the approved mining company as a tax credit against the income tax due and payable under this Act by the approved mining company in respect of that tax year, provided that -

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

- (a) no other allowance, deduction or tax credit under this Act shall be granted to the approved mining company in respect of such expenditure in that or any other tax year; and
- (b) the tax credit for any tax year shall not exceed the amount of income tax payable for that tax year,

and provided further that, where the relevant agreement so provides, in relation to any tax year during the period specified in the relevant agreement, such expenditure not exceeding the amount specified in the relevant agreement shall be allowed to the approved mining company as a tax credit against the income tax due and payable under this Act by the approved mining company in respect of that tax year and the tax credit in respect of such tax year to the extent that such tax credit exceeds the amount of income tax payable in such tax year may be carried forward to the immediately succeeding tax year.

- (2) In subsection (1) -

‘infrastructure development scheme’ means a scheme for the development of such infrastructure (other than infrastructure relating to or required by the mining operations carried out by the approved mining company pursuant to the relevant agreement) and in such locality or area in Solomon Islands as approved by the Government.

15A. An approved mining company is not eligible or qualified for an exemption that may be granted to an investor under section 9, 11, 12 or 14.”

Certain restrictions on special benefits granted to approved mining companies”

3. The First Schedule to the Income Tax Act is hereby amended by deleting from the heading the words “(section 10)” and substituting therefor the words “(section 11)”.

Amendment of First Schedule

4. The Second Schedule to the Income Tax Act is hereby amended in the following respects -

Amendment of Second Schedule

- (a) by deleting from the heading the words “(section 11)” and substituting therefor the words “(section 12)”;

(b) by deleting the words "approved enterprise" wherever those words appear in any Part of the Schedule and substituting therefor in each case the words "investor"; and

(c) by deleting the word "Board" wherever that word appears in any Part of the Schedule and substituting therefor in each case the word "Commissioner"; and

(d) by deleting from sub-section 5(2) the words "section 10" and substituting therefor the words "section 11".

