

EXPLANATORY STATEMENT

FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) (AMENDMENT)
ORDINANCE 1982 OF THE AUSTRALIAN CAPITAL TERRITORY

The purpose of the proposed Ordinance is to amend the Foreign Judgments (Reciprocal Enforcement) Ordinance 1954 of the Australian Capital Territory to permit the registration and enforcement under that Ordinance of certain Papua New Guinea income tax judgments.

The Foreign Judgments (Reciprocal Enforcement) Ordinance 1954 of the Australian Capital Territory makes provision for the recognition and enforcement, on a reciprocal basis, of certain foreign judgments. A Proclamation is being made declaring Papua New Guinea for the purposes of the Ordinance. Similar legislation is in force in the Australian States (except South Australia, where there is a different scheme) and the Northern Territory. Foreign tax judgments are specifically excluded from the registration and enforcement scheme established by the Ordinance.

Agreement has been reached in the Standing Committee of Attorneys-General (which consists of the Attorneys-General of the Commonwealth, the States and the Northern Territory) on amendment, on a uniform basis, of this legislation to enable the enforcement in Australia of Papua New Guinea income tax judgments. Similar legislation has been enacted, on a reciprocal basis, in Papua New Guinea.

The provisions of the amending Ordinance are as follows:-

Section 1 provides for the citation of the amending Ordinance.

Section 2 provides that the amending Ordinance is to come into operation on 1 July 1982. This is the date of commencement agreed upon in the Standing Committee of Attorneys-General and with Papua New Guinea.



Section 3 defines the Principal Ordinance for the purposes of the amending Ordinance.

Section 4 amends the interpretation section of the Principal Ordinance. Paragraph (a) amends the definition of 'judgments given in the Supreme Court' to include judgments given in the Federal Court of Australia on appeal from the Supreme Court. The amendment is consequential upon the conferral upon the Federal Court of Australia of jurisdiction to hear and determine appeals from the Supreme Court. Paragraph (b) and (c) insert new definitions of 'non-recoverable tax' and 'recoverable tax'. Non-recoverable tax means tax other than recoverable tax. Recoverable tax means tax payable under the laws of Papua New Guinea relating to taxes on income but does not include additional or penalty tax or tax specified in a proclamation under sub-section (2A). Paragraph (d) inserts a new sub-section (2A) which empowers the Governor-General, where he is of the opinion that any tax payable under the laws of Papua New Guinea is not properly a tax on income, to declare the tax not to be recoverable tax.

Section 5 amends section 5 of the Principal Ordinance to permit the registration of a judgment under which there is payable a sum of money in respect of a recoverable tax.

Section 6 amends section 6 of the Principal Ordinance by inserting a new sub-section to enable a judgment that is in respect of both recoverable and non-recoverable tax to be registered in so far as it relates to recoverable tax.

Section 7 amends sub-section 13(1) of the Principal Ordinance (which deals with the issue by the Registrar to the judgment creditor of certificates in respect of judgments entered in the Supreme Court, for the purposes of enforcement of the judgment in a country to which Part II of the Ordinance applies) by omitting from that sub-section the exception relating to income tax and related judgments.

Section 8 provides for the case where the Proclamation of a country or of a court under the Ordinance is revoked, altered or amended, or a Proclamation is made declaring that a class or description of tax is not to be recoverable tax for the purposes of the Ordinance. A Proclamation revoking, altering or amending the Proclamation of a country or of a court, or a Proclamation declaring a class or description of tax not to be recoverable tax is referred to in new section 14, to be inserted by section 8 as a relevant Proclamation. The purpose of new section 14 is to make transitional provisions dealing with these cases.

The primary rule will be that the Ordinance continues to apply in relation to judgments given before the coming into operation of a relevant Proclamation as if that Proclamation had not been made. This primary rule may, however, be displaced by a direction by the Governor-General. The Governor-General is empowered to direct that the Ordinance shall not apply in relation to judgments given before the coming into operation of the relevant Proclamation. The direction may apply in relation to all judgments given in the courts of the country concerned or in the court concerned, as the case may be or all judgments relating to a tax declared not to be recoverable. The direction may also be given only in respect of such class or description of these judgments as is specified in the Proclamation by which the direction is given. A direction by the Governor-General does not, however, affect the application of the Ordinance to a judgment where registration of the judgment was applied for in accordance with the Ordinance before the Proclamation containing the direction came into operation.