

No. 22 of 1999.

Stamp Duties (Budget Provisions 2000) Act 1999

Certified on:

INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 1999

Stamp Duties (Budget Provisions 2000) Act 1999.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 1999.

AN ACT

entitled

Stamp Duties (Budget Provisions 2000) Act 1999,

Being an Act to amend the *Stamp Duties Act* (Chapter 117),

MADE by the National Parliament -

- (a) in respect of Section 9(c)(ii) – to be deemed to have come into operation on 1 January 1995;
- (b) in respect of Section 9(c)(iii) – to be deemed to have come into operation on 1 January 1998;
- (c) in respect of Section 9(e)(ii) – to be deemed to have come into operation on 28 April 1999; and
- (d) In respect of the remainder – to come into operation on 1 January 2000.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3C (*qualified rights*) of the *Constitution*, namely:-

- (a) the right to freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (b) the right to privacy conferred by Section 49 of the *Constitution*; and,
- (c) the right to freedom of information conferred by Section 51 of the *Constitution*,

is a law that is made for the purpose of giving effect to the public interest in public order and public welfare.

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2. OBJECTIONS AGAINST ASSESSMENTS (AMENDMENT OF SECTION 20A).

Section 20A (2) of the Principal Act is repealed and is replaced with the following:-

“(2) The Commissioner General shall consider the objection and serve notice in writing of his decision and the reasons therefor, on the person who lodged the objection.”.

3. APPEAL AGAINST ASSESMENT (AMENDMENT OF SECTION 21).

Section 21 of the Principal Act is amended -

(a) by repealing Subsection (1) and replacing it with the following:-

“(1) Where, in relation to an objection under Section 20A, a person is dissatisfied with the decision on the objection, he may, within 60 days of the date of service of the notice under Section 20A (2), appeal to the National Court in accordance with the National Court Rules against the assessment stating therein the facts of the case and the grounds of appeal.”; and

(b) by repealing Subsections (2), (3) and (4).

4. REPEAL AND REPLACEMENT OF SECTION 25.

Section 25 of the Principal Act is repealed and is replaced with the following:-

“25. ACCESS TO BOOKS, ETC.,

(1) The Collector of Stamp Duties, or an officer authorized by him in that behalf, shall at all times have full and free access to all buildings, places, books, documents and other papers for any of the purposes of this Act, and for that purpose may seize, retain and remove for inspection or make extracts from or copies of any such books, documents or papers.

“(2) The occupier of a building or place entered or proposed to be entered by the Collector of Stamp Duties, or by an officer authorized by him under Subsection (1), shall provide the Collector of Stamp Duties or the officer with all reasonable facilities and assistance for the effective exercise of powers under this section.

“(3) A person who -

(a) refuses or fails to comply with a requirement made on him under this section; or

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(b) delays or obstructs the Collector of Stamp Duties or an officer authorized by him under Subsection (1), is guilty of an offence.

Penalty: A fine not less than K200.00 and not exceeding K2,000.00.”

5. **NEW SECTION 25A.**

The Principal Act is amended by inserting after Section 25, the following new section:-

“25A. COLLECTOR OF STAMP DUTIES MAY OBTAIN INFORMATION AND EVIDENCE.

(1) The Collector of Stamp Duties may, by notice in writing, require a person, whether liable to duty or not, including a person employed in the Public Service or by an authority constituted by or under a law of Papua New Guinea-

- (a) to furnish the Collector of Stamp Duties with such information as he may require; and
- (b) to attend and give evidence before the Collector of Stamp duties or any officer authorized by the Collector of Stamp Duties in that behalf concerning his or any other person's liability to stamp duty, and may require him to produce all books, documents and other papers in his custody or under his control relating to that transaction or assessment.

“(2) The Collector of Stamp Duties may require the information or evidence to be given on oath, and either verbally or in writing, and for that purpose he or the officer so authorized by him may administer an oath.

“(3) The Regulations may prescribe scales of expenses to be allowed to persons required under this section to attend.

“(4) A person, who refuses or fails to comply with a requirement made to him under this section, is guilty of an offence.

Penalty: A fine not less than K200.00 and not exceeding K2,000.00.

“(5) The provisions of this section shall apply notwithstanding the provisions of any other law.”

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6. **NEW SECTION 55B.**

The principal Act is amended by inserting after Section 55A, the following new section:-

“55B. RESCISSION OR ANNULLMENT OF TRANSFER OF A LAND USE ENTITLEMENT MARKETABLE SECURITY.

(1) Where an agreement relating to the transfer of a land use entitlement marketable security is rescinded or annulled, the *ad valorem* stamp duty paid on the agreement shall, subject to the delivery to the Collector of Stamp Duties of the instrument on which payment was denoted and subject to this section, be refunded by the Collector of Stamp Duties to the party to the agreement by whom or on whose behalf the duty was paid, or to his executors, administrators or assigns.

“(2) An application for a refund under Subsection (1) shall be made within three months of the agreement being rescinded or annulled.

“(3) An amount being the lesser of K2.00 or 5% of the duty paid, shall be deducted from the amount of refund under Subsection (1).

“(4) This section does not apply unless the Collector of Stamp Duties is satisfied that the agreement has not been rescinded or annulled only to avoid the stamp duty on transfer of land use entitlement marketable security.”

7. **NEW DIVISION III.10A.**

Part III of the Principal Act is amended by inserting after Division 10, the following new Division:-

“Division 10A. – Acquisition of interest in certain landholders.

“78B. INTERPRETATION.

In this Division, unless the contrary intention appears-

“associated person” means a person who is associated with another person in accordance with any of the following provisions:-

- (a) persons are associated persons where they are related persons;
- (b) private corporations are associated persons where common shareholders or common trustees have a majority interest in each private corporation.

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“land holding” includes any beneficial interest in land;

“private corporation” means a company or a unit trust scheme holding land in Papua New Guinea or elsewhere which is not listed on the Port Moresby Stock Exchange or in a stock exchange that is a member of Federation Internationale des Bourses de Valuers and includes its subsidiaries as defined in Section 5 (1) of the *Companies Act 1997*.

“related person” means a person who is related to another person in accordance with any of the following provisions:-

- (a) natural persons are related persons where one is the spouse of the other or the relationship between them is that of parent and child, brothers, sisters or brother and sister and includes a trustee or nominee of any of those persons;
- (b) companies are related persons where they are ‘related company’ or ‘related corporation’ within the meaning set out in Section 2 (3) of the *Companies Act 1997*;
- (c) a natural person and a company are related persons where the natural person is a majority shareholder or a director of the company or of another company that is a related company or related corporation under the *Companies Act 1997*;
- (d) a company and a trustee are related persons where the company, or a majority shareholder or director of the company, is a beneficiary of the trust (not being a public unit trust scheme) of which the trustee is a trustee.

“78C. VALUE OF INTEREST IN LAND IN SUBSIDIARY.

The value, for duty purposes, of the interest in land or other property that a private corporation is to be taken to hold in a subsidiary of that private corporation is that portion of the interest’s unencumbered value to which the private corporation would be entitled on a winding up of –

- (a) the actual landholder; and
- (b) every subsidiary of the private corporation that stands between the private corporation and the actual landholder in the ownership chain.

“78D. DISCRETIONARY TRUSTS.

(1) A person or a member of a class of persons in whose favour, by the terms of a discretionary trust, capital the subject of the trust may be applied-

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- (a) in the event of the exercise of a power or discretion in favour of the person or class; or
- (b) in the event that a discretion conferred under the trust is not exercised;

is, for the purposes of this section, a beneficiary of the trust.

“(2) A beneficiary of a discretionary trust shall be taken to own or to be otherwise entitled to the property the subject of the trust.

“(3) For the purposes of this Division, any property that is the subject of a discretionary trust is taken to be the subject of any other discretionary trust -

- (a) that is; or
- (b) any trustee of which (in the capacity of trustee) is,

a beneficiary of it.

“78E. INTEREST AND MAJORITY INTEREST.

(1) For the purposes of this Division, a person shall be taken to have an interest in a private corporation where the person has an entitlement (otherwise than as a creditor or other person to whom the corporation is liable) to a distribution of property from the corporation on a winding up of the corporation or otherwise.

“(2) A person who, by virtue of Subsection (1), is to be taken to have an interest in a private corporation shall be taken to have a majority interest in the corporation where the person, in the event of a distribution of all the property of the corporation immediately after the interest was acquired, would be entitled to more than 50% of the property distributed.

“78F. ACQUISITION OF INTEREST.

An interest in a private corporation may be acquired by means of-

- (a) the purchase, gift, allotment or transfer of any share or unit in a private corporation; or
- (b) the variation, abrogation or alteration of a right attaching to any such share or unit; or
- (c) the redemption, surrender or cancellation of any such share or unit;

or by any combination of the means referred to above.

“78G. LIABILITY TO DUTY.

A liability to duty charged by this Division arises when a relevant acquisition is made.

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“78H REVELANT ACQUISITION.

A person who –

- (a) acquires an interest in a private corporation –
 - (i) that is of itself a majority interest in the corporation; or
 - (ii) that, when aggregated with other interests in the corporation held by the person or an associated person, results in an aggregation that amounts to a majority interest in the corporation; or
- (b) having a majority interest, or an interest described in Subparagraph (a) (ii), in a private corporation, acquires a further interest in the corporation,

shall be taken to have made a relevant acquisition.

“78I. ACQUISITION STATEMENTS.

(1) A person who has made a relevant acquisition shall prepare a statement and lodge it with the Collector of Stamp Duties before the expiry of 90 days after the date of relevant acquisition along with the proof of the amount of duty paid.

“(2) An acquisition statement under Subsection (1) shall be prepared in a form approved by the Collector of Stamp Duties and shall contain the following information:-

- (a) the name and address of the person who has acquired the interest;
- (b) the date of relevant acquisition;
- (c) particulars of the interest acquired;
- (d) particulars of the total interest of the person and any associated person in the private corporation at that date;
- (e) the unencumbered value of all landholdings of the private corporation as at the date of the relevant acquisition and as at the date of acquisition of each interest acquired in the corporation during the three years prior to the date of the relevant acquisition;
- (f) the unencumbered value of the property of the private corporation at the date of the relevant acquisition;
- (g) the amount of duty paid under this Act in respect of each earlier acquisition of an interest referred to in Paragraph (e);
- (h) such other information as the Collector of Stamp Duties may require.

“78J. PAYMENT OF DUTY.

(1) The duty payable under this Division is payable by the person who makes the relevant acquisition and shall be paid within 90 days after the liability to pay it arises.

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“(2) Where the relevant acquisition results from an aggregation of the interests of an associated person or persons, the person who made the relevant acquisition and the associated person or persons are jointly and severally liable for payment of duty.

“78K. ADDITIONAL DUTY.

Where an amount remains unpaid after the expiration of the time provided for payment under Section 78J, additional duty of an amount equal to 10% of the amount of the unpaid duty for each 30 days period or part thereof calculated from the due date, shall be payable.

“78L. COMPUTATION OF DUTY PAYABLE.

(1) Where the acquisition statement does not disclose any acquisitions during the last three years preceding the relevant acquisition, duty is chargeable, at the rate specified under this Act, on the amount calculated by multiplying the unencumbered value of all land holdings of the private corporation on the date of the acquisition of the interest acquired, by the proportion of that value represented by the interest acquired in the relevant acquisition.

“(2) Where the acquisition statement discloses one or more acquisitions during the three years preceding the relevant acquisition, duty is chargeable at the specified rate on the amounts severally calculated, in the manner provided by Subsection (1), in respect of each interest required to be disclosed in the statement.

“(3) The duty payable under this section is to be reduced by the amount of duty paid by the person acquiring relevant acquisition or any associated person earlier in respect of any acquisition included in the statement and subjected to charge of duty.

“78M. UNCOMPLETED AGREEMENTS.

Where, at the time of acquisition of an interest by any person in a private corporation, the corporation was-

- (a) the vendor, under an uncompleted agreement for the sale or conveyance of land and the agreement is subsequently completed, or
- (b) the purchaser under an uncompleted agreement for the sale or conveyance of land and the agreement is subsequently rescinded, annulled or otherwise terminated without completion,

the Controller of Stamp Duties shall assess or reassess the statement as though the land the subject of the agreement was not, at the time of the acquisition concerned, a landholding of the corporation.”

8. REFUND SET-OFF (AMENDMENT OF SECTION 96).

Section 96 of the Principal Act is amended by repealing the following words:-

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“the Collector of Stamp Duties may, on the written application by or on behalf of the person who has paid the duty (“the taxpayer”)”, and replacing them with the following:-

“the Collector of Stamp Duties shall”.

9. AMENDMENT OF SCHEDULE 1.

Schedule 1 to the Principal Act is amended-

- (a) In Item IA, by inserting after Exemption (4) the following:-
“(5) Instruments used only for liquidity management purposes between commercial banks licensed under the *Banks and Financial Institutions Act* (Chapter 137), or liquidity management purposes between commercial banks and the Bank of Papua New Guinea through any Advance or Deposit Facility or other liquidity management facility operated by the Bank of Papua New Guinea.

For the purpose of this item of Exemption, the expression “liquidity management purposes” shall mean any inter-bank loan transactions not exceeding a maturity period of 182 days.”; and

- (b) In Item 2, by inserting after Exemption (13) the following:-
“For the purposes of this item of exemption, the expression “liquidity management purposes” shall mean any inter-bank loan transactions not exceeding a maturity period of 182 days.”; and

- (c) In Item 5-

- (i) by repealing Paragraph (a) and replacing it with the following:-

“(a) Where the property is a residential property and the purchaser is a citizen and-

- (i) neither he nor (if he is married) his spouse has previously owned a residential property in Papua New Guinea or elsewhere and he is purchasing the property for use solely as his or theirs (if he is married) home-

Where the value-

Does not exceed K150,000.00

Nil

Exceeds K150,000.00 but does not exceed K200,000.00

2% of the value in excess of K150,000.00

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Exceeds K200,000.00	K1,000.00 + 5% of the Value in excess of K150,000.00
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- (ii) has previously owned a residential property either in Papua New Guinea or elsewhere and is purchasing the property for use solely as his home –

Where the Value –	
Does not exceed K150,000.00	2% of that value
Exceeds K150,000.00	K3,000.00 + 5% of the Value in excess of K150,000.00

- (iii) is the owner of a residential property and is purchasing another residential property-

Where the value-	
Does not exceed K150,000.00	2% of the value
Exceeds K150,000.00	K3,000.00 + 5% of the Value in excess of K150,000.00

- (iv) is the owner of more than one residential property and is purchasing another residential property - 5% Of the value;

“residential property”, for the purposes of this Item, includes any residential property of which a person has land use entitlement directly or indirectly under marketable security or other chose in action.” and

- (ii) in Paragraph (b), by repealing the following:-

“exceeds K25,000.00 but does not exceed K100,000.00”
and replacing it with the following:-

“exceeds K25,000.00 but does not exceed K50,000.00”;
and

- (iii) in Exemption No. (9), by repealing the words “petroleum licences” and replacing them with the following:

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“petroleum exploration licences”; and

- (d) In Item 9, by repealing Exemption (4) and replacing it with the following:-

“(4) an arrangement comprising a ‘wet hire’ (that is, an arrangement under which an operator is provided by or at the direction of the person leasing out the goods to operate the goods for the lessee).”; and

- (e) In Item 16 –

- (i) by repealing the words, “Transfers of marketable securities (other than a land use entitlement marketable security)”; and replacing them with the following-

“Transfers of marketable securities (other than a land use entitlement marketable security and acquisitions covered under Item 16A).”; and

- (ii) in Exemption No.(9), by repealing the words “Papua New Guinea Stock Exchange” (wherever occurring) and replacing them with the following:- “Port Moresby Stock Exchange”; and

- (f) by inserting after Item 16, the following:-

“16A. ACQUISITION OF INTEREST IN LANDHOLDING PRIVATE CORPORATION:

where the value –

does not exceed K25,000.00 2% of the value

exceeds K25,000.00 but does not exceed 3% of the value

K50,000.00

exceeds K50,000.00 but does not exceed 4% of the value
K100,000.00

exceeds K100,000.00 5% of the value

Exemptions –

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- (1) Where transferee is a hospital, educational or religious institution, a charitable organisation approved under the *Income Tax Act, 1959* or a trustee who is to hold the property transferred in trust for a hospital, educational or religious institution or charitable organisation.
- (2) Acquisition made consequent on the death of a person where the transferor is the executor of the will of the deceased person, the administrator of the estate of the deceased person or a beneficiary of the will or estate of the deceased person.
- (3) Transaction made by operation of law on the bankruptcy of a person or the winding up of a company.”.

I hereby certify that the above is a fair print of the *Stamp Duties (Budget Provisions 2000) Act 1999* which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *Stamp Duties (Budget Provisions 2000) Act 1999* was made by the National Parliament on 7 December 1999 by an absolute majority in accordance with the *Constitution*.

Speaker of the National Parliament.