



No. 26 of 2001.

Value Added Tax (Penalties Amendment) Act 2001

Certified on: 09.04.02



INDEPENDENT STATE OF PAPUA NEW GUINEA

No. of 2001

Value Added Tax (Penalties Amendment) Act 2001.

ARRANGEMENT OF SECTIONS

1. Accounting basis (Amendment of Section 26).
2. Recovery of tax (Amendment of Section 85).
3. New Section 85A.
 "85A. SUBSTITUTED SERVICE."
4. Deduction of tax from payment due to defaulters (Amendment of Section 86).
5. Clearance certificate to be produced to shipowner etc. (Amendment of Section 86B).
6. Offences (Amendment of Section 91).
7. Repeal and replacement of Section 93.



INDEPENDENT STATE OF PAPUA NEW GUINEA

AN ACT

entitled

Value Added Tax (Penalties Amendment) Act 2001,

Being an Act to amend the *Value Added Tax Act 1998*,

MADE by the National Parliament to come into operation on passage of the Bill.

1. ACCOUNTING BASIS (AMENDMENT OF SECTION 26).

Section 26 of the Principal Act is amended by inserting after Subsection (1) the following new subsection:—

“(1A) Notwithstanding Subsection (1) or Section 27, the Commissioner may, in any case, for reasons he thinks sufficient, direct that a person registered under this Act, or all persons registered under this Act deriving all or most of their income from participation in a particular industry, shall account for tax payable on a payments basis.”.

2. RECOVERY OF TAX (AMENDMENT OF SECTION 85).

Section 85 of the Principal Act is amended by adding the following new subsections:—

“(5) Any tax, inclusive of additional tax or further additional tax, unpaid may be sued for and recovered in any court of competent jurisdiction by the Commissioner suing in his official name.

“(6) In any action before a court by the Commissioner for the recovery of unpaid tax, the Commissioner may also sue for an additional amount equivalent to the costs incurred by him in prosecuting that action.”.

Value Added Tax (Penalties Amendment)

3. NEW SECTION 85A.

The Principal Act is amended by inserting, immediately after Section 85 the following new section:—

“85A. SUBSTITUTED SERVICE.

(1) The Commissioner may serve any process in proceedings against a person for recovery of tax or for the recovery of a pecuniary penalty, without leave of the Court, by posting the process or a sealed copy of the process in a letter addressed to the person at his last known place of business or abode in Papua New Guinea.

(2) A person who changes his address and fails to give to the Commissioner notice of his new address shall not be permitted to plead the change of address as a defence in any proceedings instituted under this Act.”.

4. DEDUCTION OF TAX FROM PAYMENT DUE TO DEFAULTERS (AMENDMENT OF SECTION 86).

Section 86 of the Principal Act is amended in Subsection (4) by repealing the words and figures “K400.00 and not exceeding K1,000.00” and replacing them with the following:—

“K500.00 and not exceeding K5,000.00”.

5. CLEARANCE CERTIFICATE TO BE PRODUCED TO SHIPOWNER ETC. (AMENDMENT OF SECTION 86B).

Section 86B of the Principal Act is amended —

(a) in Subsection (2), by deleting the words and figures “K400.00 and not exceeding K1,000.00” and replacing them with the following :—

“K500.00 and not exceeding K5,000.00”; and

(b) in Subsection (4), by deleting from the penalty clause the words and figures “K400.00 and not exceeding K1,000.00” and replacing them with the following:—

“K500.00 and not exceeding K5,000.00”.

6. OFFENCES (AMENDMENT OF SECTION 91).

Section 91 of the Principal Act is amended —

(a) in Subsection (2) —

(i) in Paragraph (a), by repealing the figure “K2,000.00” and replacing it with the following:—

“K5,000.00”; and

Value Added Tax (Penalties Amendment)

- (ii) in Paragraph (b), by repealing the figure “K4,000.00” and replacing it with the following:—
 - “K10,000.00”; and
 - (iii) in Paragraph (c), by repealing the figure “K6,000.00” and replacing it with the following:—
 - “K15,000.00”; and
- (b) in Subsection (3) —
- (i) in Paragraph (a), by repealing the figure “K500.00” and replacing it with the following:—
 - “K1,000.00”; and
 - (ii) in Paragraph (b), by repealing the figure “K750.00” and replacing it with the following:—
 - “K2,500.00”; and
 - (iii) in Paragraph (c), by deleting the figure “K1,000.00” and replacing it with the following:—
 - “K5,000.00”; and
- (c) in Subsection (4) —
- (i) in Paragraph (a), by repealing the figure “K15,000.00” and replacing it with the following:—
 - “K25,000.00”; and
 - (ii) in Paragraph (b), by repealing the figure “K25,000.00” and replacing it with the following:—
 - “K50,000.00”; and
- (d) by adding after Subsection (5) the following new subsections:—
- “(6) Notwithstanding any penalty provided under any other provision of this section, where a person fails to furnish a return as and when required by this Act, any Regulations under this Act or the Commissioner, that person shall be chargeable, by way of additional penalty for that offence, with additional tax (herein called further additional tax) being an amount equal to the greater of —
 - (a) the tax payable in respect of that return; or,
 - (b) K100.00 for each month or part thereof after the date on which that return was due to be lodged.

Value Added Tax (Penalties Amendment)

"(7) Before or after making an assessment of further additional tax under Subsection (6), the Commissioner may in any case, for reasons that he thinks sufficient, remit the further additional tax or penalty or any part of that tax or penalty."

7. REPEAL AND REPLACEMENT OF SECTION 93.

The Principal Act is amended by repealing Section 93 and replacing it with the following new section:—

"93. PROSECUTIONS.

(1) A proceeding for the recovery of a pecuniary penalty under this Act may be instituted in the name of the Commissioner by action in the National Court.

"(2) Where the penalty sought to be recovered does not exceed K1,000.00, or the excess is abandoned, the proceeding may be instituted in the name of the Commissioner by information in a court of summary jurisdiction.

"(3) In a taxation prosecution instituted in a court of summary jurisdiction, where the penalty exceeds K400.00 and the excess is not abandoned, the defendant within seven days after service of process may elect in manner prescribed to have the case tried in the National Court, and, upon the defendant so electing, the prosecution shall stand removed to the National Court and shall be conducted as if it had been originally instituted in the National Court.

"(4) In a taxation prosecution in the National Court, the case shall be tried and the penalty, if any, adjudged by a judge of the Court.

"(5) In a taxation prosecution in a court of summary jurisdiction, an appeal lies from a conviction or order of dismissal to such court and in such manner as is provided by the law of Papua New Guinea for appeals from convictions or orders of dismissal.

"(6) A taxation prosecution in the National Court may be commenced, prosecuted and proceeded with in accordance with any rules of practice established by the Court for Crown suits in revenue matters or in accordance with the usual practice and procedure of the Court in civil cases or in accordance with the directions of the Court or a judge.

"(7) All information, summonses, convictions and warrants shall suffice if the offence is set forth as nearly as may be in the words of this Act.

"(8) An objection shall not be taken or allowed to any information or summons for any alleged defect in the information or summons in substance or in form or for any variance between the information or summons and the evidence adduced at the hearing in support of the information or summons, and the court shall at all times make any amendment necessary to determine the real question in dispute or which may appear desirable.

Value Added Tax (Penalties Amendment)

"(9) If any defect or variance referred to in Subsection (8) appears to the court to be such that the defendant has been deceived or misled, it is lawful for the court, upon such terms as it thinks just, to adjourn the hearing of the case to a future day.

"(10) A conviction, warrant of commitment or other proceeding, matter or thing done or transacted in relation to the execution or carrying out of this act shall not be held void, quashed or set aside by reason of any defect or want of form, and a party is not entitled to be discharged out of custody on account of that defect.

"(11) Any of the following offences, namely:—

- (a) failure duly to furnish any return or information;
- (b) making or delivering a return that is false in any particular, or making a false answer; or
- (c) failure to comply with any requirement,

shall be deemed to have been committed—

- (d) at the place where the return or information was furnished, or should, in accordance with this Act, the regulations or a requirement of the Commissioner, have been furnished, or where the answer was made, or where the requirement should have been complied with; or
- (e) at the usual or last known place of business or abode of the defendant,

and may be charged as having been committed at either of those places.

"(12) A witness on behalf of the Commissioner in a prosecution under this Act shall not be compelled to disclose the fact that he received any information or the nature of the information or the name of the person who gave the information, and an officer appearing as a witness shall not be compelled to produce any reports made or received by him confidentially in his official capacity or containing confidential information.

"(13) In a taxation prosecution, an averment of the prosecutor or plaintiff contained in the information, complaint, declaration or claim is evidence of the matter averred.

"(14) Subsection (13) applies to any matter so averred although—

- (a) evidence in support or rebuttal of the matter averred or of any other matter is given; or
- (b) the matter averred is a mixed question of law and fact, but in that case the averment is evidence of the fact only.

"(15) Any evidence given in support or rebuttal of a matter averred by virtue of Subsection (13) shall be considered on its merits, and the credibility and probative value of that evidence shall be neither increased nor diminished by reason of that subsection.

Value Added Tax (Penalties Amendment)

"(16) Subsection (13) does not apply to—

- (a) an averment of the intent of the defendant; or
- (b) proceedings for an indictable offence or an offence directly punishable by imprisonment.

"(17) This section does not lessen or affect any onus of proof otherwise falling on the defendant.

"(18) Where a prosecution under this Act has been instituted by an officer in the name of the Commissioner, the prosecution shall, unless the contrary is proved, be deemed to have been instituted by the authority of the Commissioner.

"(19) The production of a telegram, facsimile message or copy of electronic mail purporting to have been sent by the Commissioner and purporting to authorise an officer to institute a prosecution under this Act is sufficient evidence of the authority of the officer to institute the prosecution in the name of the Commissioner.

"(20) In an action, prosecution or other proceeding in any court by or against the Commissioner, he may appear either personally or by a barrister or solicitor, or by an officer in the Public Service.

"(21) The appearance of an officer in the Public Service and his statement that he appears by authority of the Commissioner are sufficient evidence of that authority.

"(22) Subject to Subsection (23), a minimum penalty imposed by this Act is not liable to reduction under any power of mitigation that would, but for this section, be possessed by the court.

"(23) Where, in proceedings to prosecute a person for an offence against this Act—

- (a) the Act specifies that an amount in excess of K100.00 shall be the minimum penalty in relation to that offence; and
- (b) prior to the matter being heard by a court, an application is made in writing by or on behalf of the person specifying that, pursuant to this section, a penalty of an amount less than the minimum penalty should be imposed in relation to that prosecution for the offence; and
- (c) the court determines that exceptional circumstances apply which justify the imposition of a lesser penalty,

the court may impose a penalty of an amount not less than K100.00.

"(24) Where a pecuniary penalty is adjudged to be paid by a convicted person, the court shall—

- (a) commit the offender to a corrective institution until the penalty is paid; or

Value Added Tax (Penalties Amendment)

- (b) release the offender upon his giving security for the payment of the penalty; or
- (c) exercise for the enforcement and recovery of the penalty any power of distress or execution possessed by the court for the enforcement and recovery of penalties or money adjudged to be paid in any other case.

"(25) Where the court makes an order committing the offender to a corrective institution under Subsection (24) the court may, at any time before the offender is imprisoned in pursuance of the order, allow the offender a specified time for payment of the penalty or allow him to pay the penalty by specified instalments and, in that case—

- (a) the order committing the offender to a corrective institution shall not be executed unless the offender fails to pay the penalty within that time or fails to pay any instalment at the time when it is payable, as the case may be; and
- (b) if the offender pays the penalty within that time or pays all the instalments, as the case may be—the order committing the offender to a corrective institution shall be deemed to have been discharged; and
- (c) if the offender is imprisoned in pursuance of the order but, before being so imprisoned, has paid part of the penalty—Subsection 26 shall apply in relation to him as if the amount of the penalty were that part of the penalty remaining unpaid immediately before his being so imprisoned.

"(26) The officer-in-charge of a corrective institution to which a person has been committed for non-payment of a penalty under this Act shall discharge him—

- (a) on payment to the officer-in-charge of the penalty adjudged; or
- (b) on a certificate by the Commissioner or an Assistant Commissioner that the penalty has been paid or released; or
- (c) if the penalty adjudged to be paid is not paid or released—according to the following table:—

Amount of Penalty	Period after commencement of imprisonment on the expiration of which defendant is to be discharged
Not more than K100.00	7 days.
More than K100.00 and not more than K200.00	14 days.
More than K200.00 and not more than K400.00	1 month.
More than K400.00 and not more than K500.00	2 months.
More than K500.00 and not more than K1,000.00	3 months.
More than K1,000.00 and not more than K5,000.00	6 months.
More than K5,000.00	1 year.

Value Added Tax (Penalties Amendment)

"(27) Where a person is committed to a corrective institution for non-payment of more than one penalty—

- (a) his imprisonment for the period specified in Subsection (26) in respect of any one of those penalties does not relieve him from liability to imprisonment for the period so specified in respect of the amount of any other of those penalties; and
- (b) the last-mentioned period of imprisonment commences at the expiration of the first-mentioned period of imprisonment.

"(28) Where an order for the payment of a sum of money by a person to the Commissioner is made under this Section by a court of summary jurisdiction, a certificate of that order in the prescribed form and containing the prescribed particulars (which certificate the clerk or other proper officer of the court is hereby required to grant) may, in the prescribed manner and subject to the prescribed conditions, be registered in any court having jurisdiction to entertain civil proceedings to the amount of the order.

"(29) From the date of registration the certificate is a record of the court in which it is registered and has the same force and effect in all respects as a judgement of that court and, subject to the prescribed conditions, the like proceedings (including proceedings in solvency) may be taken upon the certificate as if the order had been a judgement of that court in favour of the Commissioner.

"(30) The Commissioner's costs of registration of the certificate and other proceedings under this section shall, subject to the prescribed conditions, be deemed to be payable under the certificate.

"(31) In all taxation prosecutions the court may award costs against any party, and the provisions of this Act relating to the recovery of penalties, other than by terms of imprisonment, extend to the recovery of any costs adjudged to be paid.

"(32) The adjudgment or payment of a penalty under this Act does not relieve a person from liability to assessment and payment of any tax or additional tax or further additional tax for which he would otherwise be liable.

Value Added Tax (Penalties Amendment)

I hereby certify that the above is a fair print of the *Value Added Tax (Penalties Amendment) Act 2001* which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *Value Added Tax (Penalties Amendment) Act 2001* was made by the National Parliament on 5 December 2001.

Speaker of the National Parliament.

