

No. 17 of 2004.

***Customs (2005 Budget Amendment) Act 2004.***

Certified on: 11.02.05



INDEPENDENT STATE OF PAPUA NEW GUINEA.

No of 2004.

*Customs (2005 Budget Amendment) Act 2004.*

ARRANGEMENT OF SECTIONS.

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**INDEPENDENT STATE OF PAPUA NEW GUINEA**

AN ACT

entitled

***Customs (2005 Budget Amendment) Act 2004,***

Being an Act to amend the *Customs Act* (Chapter 101),

MADE by the National Parliament.

**1. INTERPRETATION (AMENDMENT OF SECTION 1).**

Section 1 of the Principal Act is amended –

- (a) by repealing the definition of “the Customs” and replacing it with the following new definition:-

“the Customs” means the Division of Customs of the Internal Revenue Commission;” ; and

- (b) by inserting after the definition of "dutiable goods" the following new definition:-

“duty ” includes any customs duty, administrative penalties and interest penalties;”.

**2. REPEAL OF SECTION 17A.**

Section 17A of the Principal Act is repealed.

**3. ENTRIES (AMENDMENT OF SECTION 19).**

Section 19 of the Principal Act is amended –

- (a) in Subsection (3) by inserting immediately after the words “delivered to a Collector at a port or airport” the following:-

“five days”; and

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- (b) in Subsection (4) by repealing the words “ duty of Customs has been paid on any goods,” and replacing them with the following:-

“examination of goods or assessment of duty,”; and

- (c) by adding after Subsection (7) the following new subsection:-

“(8) A person making an entry shall pay an entry processing fee as prescribed.”.

**4. REPEAL AND REPLACEMENT OF SECTION 30.**

Section 30 of the Principal Act is repealed and is replaced with the following:-

**“30. REPORT OF CARGO.**

(1) A pilot or owner of an aircraft arriving from a place outside the country, who fails—

- (a) to report, within 3 hours prior to the arrival at an airport, the aircraft and its cargo by sending to the Collector an inward manifest of goods for the airport; or
- (b) to answer questions relating to the aircraft and its cargo, crew, passengers, stores and voyage; or
- (c) to send or produce documents relating to the aircraft and its cargo,

is guilty of an offence.

Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K5,000.00 and not exceeding K10,000.00.

"(2) A master or owner of a ship arriving from a place outside the country, who fails—

- (a) to report, within 24 hours prior to the arrival at a port, the ship and her cargo by sending to the Collector an inward manifest of goods for the port; or
- (b) to answer questions relating to the ship and her cargo, crew, passengers, stores and voyage; or
- (c) to send or produce documents relating to the ship and her cargo,

is guilty of an offence.

Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K5,000.00 and not exceeding K10,000.00.”.

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**5. NEW SECTION 35A**

The Principal Act is amended by inserting after Section 35, the following new section :-

**“35A. ASSESSMENT OF DUTY.**

(1) Where an entry is made in accordance with Section 35(1), the Collector may assess such duty as in his opinion is chargeable as customs duty.

"(2) Where an assessment is made under this section, the Collector shall issue a notice in writing of the assessment and the duty payable to the owner or agent of the goods.”.

**6. ENTRY OUTWARDS (AMENDMENT OF SECTION 42).**

Section 42 of the Principal Act is amended –

(a) in Subsection (1) by inserting immediately after the words “on board the ship or aircraft” the following:-

“and within 3 days before entry outwards.” ; and

(b) by repealing Subsection (2).

**7. NEW SECTION 80A.**

The Principal Act is amended by inserting after Section 80 the following new section:-

**“80A. DATE OF PAYMENT OF DUTIES.**

(1) Any duty specified in a notice of assessment is due and payable on the date specified in the notice, being a date not less than 5 clear working days after the date of the issue of the notice of assessment.

"(2) Where an amount of duty specified in a notice of assessment under this section is not paid on or before the date specified in the notice and the notice has been issued to the owner or agent of the goods, the owner or agent of the goods shall pay to the Collector, in addition to the duty so specified, interest on the unpaid duty at the rate of 8% of the amount of the unpaid duty for each 5 day period or part thereof for which the duty remains unpaid from the date for payment specified in the notice until the duty is paid.

"(3) The Collector may reduce or remit any penalty payable under this section.

"(4) If a dispute arises as to the amount of the duty on any goods or the interest penalty remitted under Subsection (3), the provisions of Section 176 shall apply.”.

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**8. REPEAL AND REPLACEMENT OF SECTION 127.**

Section 127 of the Principal Act is repealed and is replaced with the following:-

**“127. RETURN OF SEIZED GOODS ON SECURITY.**

(1) The Commissioner General or the Collector may authorize any ship, boat, aircraft or goods seized to be delivered to the claimant on his giving security.

"(2) The security given to the Commissioner General or the Collector shall be in the form of cash or by bank guarantee.

"(3) The amount of the security shall be an amount equal to the value of the items seized, as determined by the Commissioner General or the Collector, plus freight and insurance costs incurred in their transport to Papua New Guinea, plus the amount of any duty of customs or excise and any Goods and Services Tax payable on their importation.

"(4) The question as to whether the value, determined by the Commissioner General or the Collector under Subsection (3), of items seized, is fair and accurate, is non-justiciable.”

**9. NEW SECTION 127A.**

The Principal Act is amended by inserting after Section 127 the following new section:-

**“127A. DISPOSAL OF SEIZED GOODS ON REFUSAL TO PROVIDE SECURITY.**

(1) Where a claimant refuses to give security as required by the Commissioner General or Collector under the provisions of Section 127, in respect of any ship, boat, aircraft or goods seized, the Commissioner General may sell the ship, boat, aircraft or goods seized by public auction and shall –

- (a) set up a trust account at a bank in Papua New Guinea, into which the net proceeds of that sale, after deducting any selling expenses, shall be deposited; and
- (b) pay to the claimant the amount held in that trust account if he successfully challenges the seizure in legal proceedings commenced under the provisions of Section 129; or
- (c) if no legal proceedings for return of the ship, boat, aircraft or goods seized have been commenced by the claimant under the provisions of Section 129 within the time required by that Section, or if such legal proceedings have been commenced and are unsuccessful, the Commissioner General shall pay the amount held into the consolidated revenue of the State.

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"(2) Where the Commissioner General has made payment in full of the net proceeds to a claimant under the provisions of Subsection (1), that payment shall be deemed to be in full satisfaction of all claims by the claimant relating to the seizure of that ship, boat, aircraft or goods seized, including, but not limited to, any claim for damages or loss resulting from the seizure of that ship, boat, aircraft or goods seized.

"(3) On payment by the Commissioner General in full of those net proceeds to a claimant, the claimant may not commence any further legal proceedings against the Commissioner General or the Collector in respect of the seizure of that ship, boat, aircraft or goods seized."

**10. NEW SECTION 131A, 131B AND 131C.**

The Principal Act is amended by inserting after Section 131, the following new sections:-

**"131A. OWNER OR IMPORTER OF GOODS TO KEEP RECORDS.**

(1) The owner of goods shall keep in Papua New Guinea, in the English language, sufficient records to enable the accuracy of the declared value for Customs duty, and shall retain those records in Papua New Guinea for a period of five years after the completion of the transactions, acts or operations to which they relate.

Penalty: A fine not less than K5,000.00.

"(2) This Section does not require the preservation of any records—

- (a) in respect of which the Commissioner General has notified the owner of the goods that their preservation is not required; or
- (b) of a company that has gone into liquidation and which has been finally dissolved.

"(3) For the purposes of this section, the owner of goods shall be deemed to be keeping records in the English language if he keeps records stored in magnetic tapes or computer disks or other information or storage devices which are readily accessible and convertible into written form in the English language.

**"131B. AUTHORISED OFFICER MAY REQUIRE PERSON TO PRODUCE DOCUMENTS.**

(1) The Commissioner General or an officer authorised by him in that behalf, may by notice in writing, require a person who is required under Section 131A to keep records, to furnish him with such information as he may require within a period specified in the notice —

- (a) where the document is in writing, the document; or

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- (b) where the information is stored in magnetic tapes or computer disks or other information or storage devices, a production of the information in a document setting out the information in a form the authorised officer can understand.

"(2) Failure to produce such information following a requirement made under Subsection (1) is an offence and subject to a penalty of a fine of not less than K5,000.00.

"(3) The period that may be specified in a notice given under Subsection (1) shall be not less than 14 working days after the notice is given but may be extended for up to an additional 14 days by the Commissioner General upon request.

**"131C. ACCESS, ETC., TO BOOKS, ETC.,**

(1) Subject to this section, the Commissioner General, or an officer authorised by him in that behalf, shall at all times have full and free access to all buildings, places, computers, books, documents, records, papers and other information storage devices 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 computer, book, documentary or paper records.

"(2) An officer is not entitled to remain on or in any building or place under this section if, on being requested by the occupier of the building or place for proof of authority, the officer does not produce an authority in writing signed by the Commissioner General stating that the officer is authorised to exercise powers under this section.

"(3) The occupier of a building or place entered or proposed to be entered by the Commissioner General, or by an officer under Subsection (1), shall provide the Commissioner General or the officer with all reasonable facilities and assistance for the effective exercise of powers under this section."

**11. ADMINISTRATIVE PENALTIES (AMENDMENT OF SECTION 147B).**

Section 147B of the Principal Act is amended in Subsection (1) –

- (a) by inserting after the words "a penalty of an amount" the following:-

"of not less than 50 percent and"; and

- (b) by inserting after the words "not declared or attempted to be avoided" the following :-

"or where the goods are exempt, free or zero rated from duty then a penalty of not more than 5 percent of the value of the goods."



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**12. REMISSION OF PENALTIES (AMENDMENT OF SECTION 147C).**

Section 147C of the Principal Act is amended –

- (a) in Subsection (1) by inserting after the words “on the basis of a written application made” the following :-

“and upon payment of the penalty imposed”; and

- (b) by inserting after Subsection (4) the following new subsection:-

“(5) Where a penalty is remitted under this Section, the person who paid the penalty may apply for an offset of the amount remitted pursuant to Section 194.”.

**13. SECTION 147B NOT TO APPLY IN CERTAIN CASES (AMENDMENT OF SECTION 147D).**

Section 147D of the Principal Act is amended by inserting after Subsection (2) the following new Subsection:-

“(3) Section 147B does not apply to goods which are smuggled and the provisions of the Act on forfeiture and seizure may apply to the smuggled goods.”.

**14. REPEAL OF SECTION 191A.**

Section 191A of the Principal Act is repealed.

I hereby certify that the above is a fair print of the *Customs (2005 Budget Amendment) Act 2004* which has been made by the National Parliament.

*Clerk of the National Parliament.*

I hereby certify that the *Customs (2005 Budget Amendment) Act 2004* was made by the National Parliament on 24 November 2004.

*Speaker of the National Parliament.*

