

No. 66 of 1996.

*Stamp Duties (Amendment No. 2) Act 1996.*

Certified on : 10.02.97

INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 1996.

*Stamp Duties (Amendment No. 2) Act 1996.*

ARRANGEMENT OF SECTIONS.

1. Interpretation (Amendment of Section 1).
2. Stamp duty returns (Amendment of Section 10A).
3. Repeal and replacement of Section 68A.  

**"68A. COMPANY RECONSTRUCTIONS."**
4. Transfer of marketable securities and rights in respect of shares (Amendment of Section 70).
5. Rates of duty (Amendment of Schedule 1).

INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 1996.

AN ACT

entitled

*Stamp Duties (Amendment No. 2) Act 1996,*

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

MADE by the National Parliament -

- (a) in respect of Section 5(a) - to be deemed to have come into operation on 1 January 1995; and
- (b) in respect of Section 5(b) - to be deemed to have come into operation of 1 June 1995; and
- (c) in respect of the remainder - to come into operation on certification.

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

Section 1 of the Principal Act is amended by inserting after the definition of "borrower" the following:-

"'citizen' means a person who is a citizen of Papua New Guinea by virtue of Division IV.2 (*acquisition of citizenship*) of the *Constitution* and includes, for the purpose of Section 68A, a Papua New Guinea institutional investor which is 100% owned by the State;"

**2. STAMP DUTY RETURNS (AMENDMENT OF SECTION 10A).**

Section 10A(5) of the Principal Act is amended by repealing the words "the periods of four and six months referred to in that section shall be deemed to expire two and four months respectively after that date" and replacing them with the following:-

"the periods of two and six months referred to in that section shall be deemed to expire two and six months respectively after that date.".

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3. **REPEAL AND REPLACEMENT OF SECTION 68A.**

Section 68A of the Principal Act is repealed is replaced with the following:-

**"68A. COMPANY RECONSTRUCTIONS.**

(1) The Collector of Stamp Duties may approve an instrument or instruments to be exempt from stamp duty where it is shown to his satisfaction that the instrument or instruments relate to the transfer of property in a corporate reconstruction in the following circumstances:-

- (a) upon the liquidation of a wholly owned subsidiary and the *in specie* distribution of the property by the parent company to another wholly owned subsidiary; or
- (b) upon the transfer of property from a wholly owned subsidiary to another wholly owned subsidiary or to the parent company.

"(2) An instrument is not exempt under this section -

(a) where -

- (i) the corporate reconstruction involves transfer of property between subsidiaries of a parent company, unless the subsidiaries are at least 95% owned by the parent company and have been so owned for at least three years prior to the date of application for exemption, or since the date of incorporation where the subsidiary is less than three years old; or
  - (ii) the corporate reconstruction involves the transfer of property from a subsidiary company, unless the subsidiary company is at least 95% owned by the parent company and has been so owned for at least three years prior to the date of application for exemption, or since the date of incorporation where the subsidiary is less than three years old; or
  - (iii) any person who controls at least 20% of the issued capital or voting rights of the ultimate parent company has not held a minimum of 20% of the issued capital or voting rights for at least three years prior to the date of application for exemption; and
- (b) unless 51% of the shares in the transferor and transferee companies are held directly, or through one or more interposed companies, by citizens; and

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- (c) unless the Commissioner General gives a certificate in writing stating that in his opinion, the conveyance does not have the purpose or effect of avoiding or delaying the payment of any tax under the *Income Tax Act 1959*.

"(3) Where it is proposed that the company should be party to an instrument to be made to give effect to a scheme that may attract the application to Subsection (1) any person acting on behalf of the company may, before the instrument is made, apply to the Collector for his determination whether the instrument, if made, would be exempt from the payment of stamp duty as prescribed by that section or would be outside the purview and application of those provisions.

"(4) An application under Subsection (3) shall -

- (a) be in writing; and
- (b) accurately and fully disclose the scheme to effect which the instrument is to be made; and
- (c) be accompanied by written evidence in detail of such matters as are relevant the making of the determination sought.

"(5) A determination made by the Collector under Subsection (3) shall be binding upon him and all other persons concerned except where the instrument, the subject of the determination, or scheme to effect which the instrument is made, differs in any material particular from the details furnished to the Collector with or in connection with the relevant application.

"(6) The Collector may call for the production to him of such evidence as he requires for the determination of any matter of which he is to be satisfied for the purpose of this section and, if so called by the Collector, such evidence shall be furnished by way of statutory declaration made under oath or declaration.

"(7) Where a claim under this section for exemption has been allowed and -

- (a) it is subsequently discovered that any declaration or other evidence furnished in support of the claim was untrue in a material particular; or

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(b) if the company cease to qualify for the exemption within five years after the date on and from which the conveyance, transfer or assignment in question operated, the claim shall be deemed to be disallowed and an amount equal to the duty remitted shall become payable forthwith upon discovery or, as the case may be, cessation and may be recovered from any court of competent jurisdiction from the transferor or transferee as a debt due to the State together with interest thereon at the rate of 10% per annum for the period commencing on the date the instrument in question was made and continuing until payment of the amount is made.

"(8) For the purposes of this section, "citizen" includes a prescribed person."

**4. TRANSFER OF MARKETABLE SECURITIES AND RIGHTS IN RESPECT OF SHARES (AMENDMENT OF SECTION 70).**

Section 70(3)(b) of the Principal Act is repealed and is replaced with the following:-

"(b) to the period of two months and six months were references to periods of two months and six months respectively after the end of the period referred to in Subsection (2)."

**5. RATES OF DUTY (AMENDMENT OF SCHEDULE 1).**

Schedule 1 to the Principal Act is amended in Item 5 -

(a) in Item 5 -

(i) by inserting at the end of Paragraph (a) the following:-

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

(ii) by inserting the following new exemption:-

"(7) Conveyances or transfers of real property by the Gazelle Restoration Authority under a land resettlement scheme implemented pursuant to or otherwise authorized under the *Gazette Restoration Authority Act 1995*.; and

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(b) by inserting after Item 15A the following new Item:-

**"15B. COMPANY RECONSTRUCTIONS TRANSFER OF PROPERTY.**

Transfer or assignment of property covered by Section 68A exemption.	An amount of K500.00 per transaction or the amount by which K500.00 exceeds the amount of duty assessable under Item 5 or 16 and not more than K5,000.00 for all related transactions."; and
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(c) in Item 16 by adding to the list of exemptions the following:-

"10. Transfer of marketable securities or rights in respect of shares to a shareholder in the course of distribution of assets of a company in consequence of the winding up of the company or the reduction of the capital of the company providing that, in the opinion of the Collector of Stamp Duties, the transfer is not in connection with a scheme or arrangement to avoid stamp duty."

I hereby certify that the above is a fair print of the *Stamp Duties (Amendment No. 2) Act 1996* which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *Stamp Duties (Amendment No. 2) Act 1996* was made by the National Parliament on 11 December 1996.

Speaker of the National Parliament.

