

Unvalidated References:

National Capital District Commission Act 1990

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This reprint of this Statutory Instrument incorporates all amendments, if any, made before 25 November 2006 and in force at 1 July 2001.

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Legislative Counsel
Dated 25 November 2006

INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. 16 of 1991.

National Capital District Commission (Sales and Service Tax) Regulation
1991

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National Capital District Commission (Sales and Service Tax) Regulation

1991

MADE by the Head of State, acting with, and in accordance with, the advice of the National Executive Council under the *National Capital District Commission Act 1990*.

Dated 200 .

PART I. – PRELIMINARY.

1. INTERPRETATION.

In this Regulation, unless the contrary intention appears—

“**Commission**” means the National Capital District Commission established by Section 3 of the *National Capital District Commission Act 1990*;

“**Manager**” means the Manager appointed under Section 19 of the *National Capital District Commission Act 1990*;

“**non-resident dealer**” means a person registered under Section 10 as a non-resident dealer;

“**retail sale**”, in relation to goods, means the sale of goods for consumption or use and not for resale—

(a) at a place to which the public has access, by invitation or otherwise, for the purposes of the sale or purchase of such goods;
or

(b) in pursuance of an offer or invitation to the public, or for an advertisement addressed to the public or a section of the public;

“**sales tax**”, in relation to goods, means the sales tax imposed by this Regulation;

“**seller**”, in relation to goods, includes a wholesaler and a retailer;

“**service tax**”, in relation to services, means the service tax imposed by this Regulation;

“**tax**” means sales tax and service tax imposed by this Regulation;

“**tax payer**” includes the person liable to pay tax under Section 7 and a person who buys from the person liable to pay tax either for retail sale or for consumption and use;

“**taxable goods**” means the taxable goods referred to in Section 3;

“**taxable services**” means the taxable services referred to in Section 3.

PART II. – TAXABLE GOODS.

2. APPLICATION.

This Regulation applies and in relation to all sales of goods and services provided within the National Capital District.

3. TAXABLE GOODS AND SERVICES.

(1) Subject to this Regulation, all goods sold in the National Capital District—

- (a) by retail sale; or
- (b) to a person who buys the goods for the purposes of retail sale of those goods,

are taxable goods.

(2) Subject to this Regulation, all services sold in the National Capital District by persons holding themselves out as offering such services to the public or a section of the public, not being services under a contract of employment, are taxable services.

4. SALE VALUE OF TAXABLE GOODS AND TAXABLE SERVICES.

The sale value of taxable goods or taxable services is the amount for which the goods or the services, as the case may be, are sold by the person liable to pay sales tax under Section 7.

5. IMPOSITION OF SALES TAX AND SERVICE TAX.

Sales tax and service tax shall be imposed on the sale value of taxable goods and taxable services.

6. RATE OF TAX.

(1) A Law of the Commission shall prescribe the rate of tax that is to be imposed on the sale value of a particular type, class or category of the taxable goods or taxable services, as the case may be.

(2) Notwithstanding Subsection (1), if the Commission considers it expedient to do so, the Commission may, by a law of the Commission, prescribe a rate of tax applicable to the sale value of taxable goods and taxable services generally.

(3) The Law of the Commission prescribing rates of tax under this section may make provision for one rate of tax to apply in respect of one tax payer and another rate of tax to apply in respect of another tax payer.

7. LIABILITY FOR TAX.

(1) Sales tax shall be levied and paid by the vendor of taxable goods who sells the goods—

- (a) by retail sale; or

(b) to a person for the purposes of retail sale.

(2) Subject to Subsection (3), service tax shall be levied and paid by the person selling taxable services.

(3) In the case of taxable services sold by way of contract and subcontract, the Manager shall, in the circumstances of each case, decide whether the tax is payable by the principal contractor or by the subcontractor.

PART III. – REGISTRATION AND RETURNS, ETC.

8. REGISTRATION.

(1) A person who–

(a) for the purpose of sale–

(i) imports goods in the National Capital District; or

(ii) manufactures goods in the National Capital District; or

(b) sells in the National Capital District–

(i) goods, otherwise than as an importer or manufacturer; or

(ii) Services,

the gross monthly value of which is equal to or exceeds an amount prescribed by a law of the Commission for the purposes of this section; or

(c) buys goods in the National Capital District for resale in another province,

shall apply to the Manager for registration–

(d) in the case of the persons to whom Paragraph (a) and (b) apply as an importer, manufacturer or seller, as the case requires; and

(e) in the case of a person to whom Paragraph (c) applies, as a non-resident dealer.

(2) An application under Subsection (1) shall be in the form prescribed by a law of the Commission and shall be forwarded so as to reach the Manager–

(a) in the case of a person who on the date of the coming into operation of this Regulation is a person referred to in that subsection–within 30 days of that date;

(b) in any other case–within such time and as often as is determined by the Manager in the circumstances of each case.

(3) On receipt of an application under Subsection (1), the Manager or his delegate shall register the applicant in a register maintained for that purpose and shall send to the person registered a certificate of registration.

(4) A person who, without reasonable excuse (proof of which is on him), fails to register within the time specified referred to in Subsection (2), is guilty of an offence.

Penalty: A fine not exceeding K500.00.

9. RETURNS.

(1) Where the Manager is of the opinion that a person, other than a non-resident dealer, registered under Section 8 conducts a business that is constituted by, or that includes, the sale of taxable goods or taxable services he may, by written

notice to that person, require the person to make monthly returns of his sales to the Manager.

(2) A return under this section—

- (a) shall be in the form prescribed by a law of the Commission; and
- (b) shall not be deemed to be furnished unless—
 - (i) it is accompanied with the tax payable, if any; and
 - (ii) it is duly signed containing a full, true and complete statement of all matters required to be state in it; and
 - (iii) it is received by the Manager at his office at the City Hall or at wherever his office is located, not later than 21 days after the of the month to which the return relates.

(3) A person is guilty of an offence if—

- (a) he fails, within the time specified under Subsection (2), to make a return; or
- (b) he intentionally makes a return that is false or is misleading in a material way.

Penalty: A fine not exceeding K500.00.

10. EXEMPTIONS.

(1) The Commission may—

- (a) by notice in the National Gazette, exempt from sales tax, the whole or part of the sale value—
 - (i) of a particular type, class or category of taxable goods or taxable services; or
 - (ii) of taxable goods or taxable services if those goods or services are sold at a place or places specified in the notice; or
- (b) on application made to it, in the form prescribed by a law of the Commission, by a person or body, including a non-resident dealer, exempt from sales tax or service tax, as the case may be, the whole or part of the sale value of a specified type, class or category of taxable goods or taxable services sold to that person or body.

(2) A notice under Subsection (1)(a) may—

- (a) be of indefinite duration or may relate to a period or occasion specified in the notice; and
- (b) be subject to such conditions as are so specified.

(3) The Manager shall issue to a successful applicant, under Subsection (1)(b), a certificate of exemption in the prescribed form law of the Commission which—

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- (a) shall state the period of its validity and the type, class or category of goods to which the exemption applies; and
- (b) shall specify the purpose or use to which the goods the subject of the exemption are to be put; and
- (c) shall state that its validity only extend to purchases made by the holder from persons required to make returns under Section 11; and
- (d) shall be subject to such conditions as are specified in it; and
- (e) is evidence of the matters stated in it.

(4) A document purporting to be a certificate of exemption under Subsection (3) may be received in evidence in any court or in proceedings before a person authorized by law or by consent of parties, to hear, receive and examine evidence.

(5) A holder of a certificate under Subsection (3) who by virtue of the certificate buys goods free of sales tax is guilty of an offence if—

- (a) he uses or applies those goods otherwise than in accordance with the use specified in the certificate; or
- (b) he breaches any other conditions specified in the certificate.

Penalty: A fine not exceeding K500.00.

(6) Notwithstanding Subsection (5), the Manager may, if he has reasonable grounds to believe that the events stated in Paragraphs (a) or (b) of Subsection (5) have occurred in respect of a holder of an exemption certificate, cancel the certificate of that holder.

(7) A person who sells taxable goods or taxable services the sale value of which is the subject of an exemption—

- (a) under Subsection (1)(a)—shall not impose sales tax or service tax, as the case may be, on the sale value of those goods or services; and
- (b) under Subsection (1)(b)—shall not impose and is not liable to pay the sales tax and service tax that would otherwise be imposed and payable by him on the sale value of those goods or services.

11. REBATES.

(1) This section applies to:—

- (a) a non-resident dealer who buys goods for resale in a province where a similar tax is imposed in that province; and
- (b) a person who buys goods or services the subject of an exemption under Section (10)(1)(a); and
- (c) a person who is exempted under Section 10(1)(b); and
- (d) any other person who believes, in the particular circumstances of his case, that sales tax or service tax should not be paid by him on the sale value of any goods or services purchased by him.

(2) The Manager or his delegate may, on application made to him by a person to whom this section applies, allow to that person a rebate of sales tax or service tax paid by the person if that tax had been remitted by the tax payer to the Commission.

(3) The onus of establishing to the satisfaction of the Manager—

(a) that sales tax or service tax paid should not have been paid; or

(b) that a rebate is otherwise available,

rests with the applicant.

PART IV. – COLLECTION OF TAX.

12. PAYMENT OF TAX.

(1) A person liable to pay sales tax or service tax shall, in respect of the sale value of all taxable goods or taxable services sold by him, during any month, pay sales tax due on that sale value within 21 days after the end of that month.

(2) Sales tax or service tax, as the case may be, shall be paid to the Manager at the office of the Commission at the City Hall in the National Capital District, or as directed by the Commission.

(3) If sales tax or service tax, as the case may be, is not paid before the expiry of the time specified in Subsection (1) or such further time as the Manager allows, additional tax shall be payable at the rate of 20% on the amount of tax that remains unpaid, computed from the expiration of the time specified in that Subsection or of the extension, as the case may be.

13. ASSESSMENT OF TAX IN CERTAIN CASES.

(1) Subject to Subsection (2), where—

- (a) a person makes default in furnishing a return or in paying the tax; or
- (b) the Manager is not satisfied with the return furnished by a person or with the tax paid by person; or
- (c) the Manager has reason to believe that a person, though the person may not have furnished a return, is liable to pay sales tax or service tax, as the case may be,

the Manager may cause an assessment to be made of the amount upon which in his judgment tax ought to be levied and the person shall be liable to sales tax or service tax, as the case may be, on the amount so assessed.

(2) A person is not liable under Subsection (1) unless the Manager has delivered to him a notice of assessment in the form prescribed by a law of the Commission.

(3) A person may, within 21 days after receipt of a notice under Subsection (2), object to the assessment by lodging with the Manager a notice of objection in the form prescribed by a law of the Commission.

(4) Within 21 days after receipt of an objection under Subsection (3), the Manager shall consider the objection and—

- (a) reject the objection and confirm the assessment; or
- (b) uphold the objection and cancel or vary the assessment.

(5) The Manager shall give to the objector written notice of his decision under Subsection (4).

(6) An objector who is dissatisfied by a decision of the Manager may, within 21 days after receipt of a notice, appeal to a District Court.

(7) Sales tax or service tax, assessed under Subsection (1) shall be paid—

- (a) before the expiration of the time determined by the Manager; or
- (b) within 7 days after the conclusion of an unsuccessful appeal, if any, made under Subsection (6),

and if the tax is not so paid, additional tax at the rate of 20% shall be payable on the outstanding tax by the person liable to pay the tax.

14. AVOIDANCE OF TAX.

A person who, by any wilful act, default or neglect or by fraud, art or contrivance avoids payment or attempts to avoid payment in full or part of the tax chargeable under this Regulation, is guilty of an offence.

Penalty: A fine not exceeding K500.00 and the amount of tax avoided or attempted to be avoided.

15. RECOVERY OF TAX.

Any amount of sales tax or service tax, including additional tax imposed under Section 12(3) and Section 13(7), payable under this Regulation is recoverable as a debt due to the Commission.

16. CONDUCT OF PROCEEDINGS.

(1) The Commission may lay information and conduct proceedings for offences under this Regulation, and may sue for and recover any sales tax or service tax due and payable under this Regulation.

(2) In any prosecution or proceeding under this Regulation, proof is not required of—

- (a) the establishment of the Commission; or
- (b) any authority, general or special, of the Commission to prosecute or to take any proceedings or to sue.

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